De Wet Betalingsachterstand is eindelijk gewijzigd

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The Late Payment Directive 2011/7/EU should have been implemented by 16 March 2013, but it wasn’t implemented until 22 November 2013. For this reason, the new Act is retroactively applicable to payments for contracts that have been closed, renewed or extended since 16 March 2013.

Two types of commercial transaction are distinguished in the new Act: commercial transactions between undertakings and commercial transactions between undertakings and public authorities.

Standard payment term

The standard payment term for commercial transactions is 30 calendar days, if there is no fixed payment term in the contract. More specifically, the creditor is entitled to interest for late payment if one of the following time limits has expired:

â€¢ 30 calendar days after the date of receipt by the debtor of the invoice or an equivalent request for payment;
â€¢ where the date of receipt of the invoice or equivalent request for payment is uncertain, 30
calendar days after the date of receipt of the goods or services;
• where the debtor receives the invoice or equivalent request for payment earlier than the
goods or services, 30 calendar days after the date of receipt of the goods or services;
• where a procedure for acceptance or verification, which allows for the goods or services to
be checked against the contract, is provided for, and if the debtor receives the invoice or
equivalent request for payment earlier than the date on which such acceptance or verification
takes place, 30 calendar days after that date.
The acceptance or verification procedure should not exceed 30 calendar days from the date of
receipt of the goods or services unless otherwise expressly agreed and provided it is not grossly
unfair to the creditor.

Maximum payment term

Undertakings are free to agree, implicitly or explicitly, on a payment term which is longer than 30
days, provided that this payment term is not grossly unfair. Undertakings are also free to agree
on a payment term which is longer than 60 days, provided that there is an express agreement
and that this payment term is not grossly unfair.

In the case of an agreement between an undertaking as creditor and a public authority as debtor,
the maximum payment term is 60 days. The payment term can be longer than 30 days (but no
more than 60 days) on the condition that this longer payment term (1) is expressly agreed upon,
(2) is justified by the special nature or certain elements of the contract and (3) is not grossly
unfair.

Payment schedules

Parties can also agree on payment schedules providing for instalments. In such cases, if any of
the instalments is not paid by the agreed date, the interest and compensation should be
calculated solely on the basis of overdue amounts.

Interest rate

Unless parties agree upon a contractual interest rate, the applicable interest rate is the ECB main
refinancing rate plus eight percentage points, rounded up to the next half percentage point.
Therefore, the currently applicable interest rate is 8.5% (8 + 0.25 (ECB main refinancing rate) =
8.25, rounded up to the next half percentage point = 8.5).

Compensation for recovery costs

From now on, the creditor is entitled to claim from the debtor, as a minimum, a fixed sum of 40
EUR as compensation for the creditor’s own recovery costs. This sum is payable without the
requirement for a reminder.

In addition to the fixed sum of 40 EUR, the creditor is also entitled to obtain reasonable
compensation from the debtor for any recovery costs exceeding that fixed sum and incurred by the debtorâ€™s late payment. This could include, inter alia, expenses for instructing a lawyer or employing a debt collection agency.

Unfair contractual terms and practices

Under the new Late Payment Act, certain contractual terms and practices are presumed to be grossly unfair. In particular, contractual terms or practices which exclude interest for late payment and contractual terms or practices excluding compensation for recovery costs are considered as grossly unfair.