

Montenegro, Corporate & Commercial: New

JULY 2014

Late Payment Act

The Act on Deadlines for Settlement of Monetary Obligations ("**Late Payment Act**") entered into force in Montenegro on 12 July 2014. This piece of legislation is inspired by the EU Late Payments Directive 2011/7. It applies to the commercial transactions between undertakings, as well as between undertakings and public sector.

Deadlines for settlement of monetary obligations between undertakings

The deadline for settlement of monetary obligations in the transactions entered into between the undertakings is set at 30 days. The parties may contractually extend this period up to a maximum of 60 days or, exceptionally, 90 days if the debtor of the monetary obligation provides the creditor with an irrevocable and unconditional on-demand bank guarantee or a bill of exchange backed by a bank, or if the debtor is considered a 'small legal entity' under the accounting regulations.

Deadlines for settlement of monetary obligations between undertakings and public sector

The rules on the deadline are the same with respect to the transactions involving public sector, except that the extension to 90 days subject to provision of bank guarantee or bill of exchange does not apply. On the other hand, in the transactions with the Health Insurance Fund, the deadline for payment may be contractually extended up to a maximum 90 days.

Deadline triggers

Payment deadlines start running from one of the following dates:

- i) the date of receipt by the debtor of the invoice or an equivalent request for payment; or
- ii) the date of the fulfillment of the creditor's obligation:
 - a. when the date of the receipt of the invoice or an equivalent request for payment is uncertain, or
 - b. when the debtor receives the invoice or an equivalent request for payment in advance of supply of goods or services; or
- iii) the expiry of the statutory or contractual deadline for inspection of delivered goods, if this occurs after the receipt of the invoice or an equivalent request for payment.

In case of bullet payment, the above deadlines run with respect to each installment separately.

Consequences of failure to timely settle monetary obligation

In case of the debtor's failure to pay its monetary obligation within one of the prescribed deadlines, the creditor is entitled, in addition to default interest, to a fixed amount of EUR 50 as a special **compensation for recovery of costs, regardless of whether it actually incurred any costs. The creditor remains entitled to separately request compensation of any damage in excess of default interest, if it can prove such damage.**

A failure to settle monetary obligation timely is a misdemeanor for which the law prescribes a fine ranging between EUR 1,000 and EUR 10,000 for undertakings (other than entrepreneurs) and between EUR 500 and EUR 2,000 for director of defaulting undertakings. Misdemeanor proceedings can be initiated by the tax authority, which supervises the implementation of the Late Payment Act.

Conclusion

The effect of the Late Payment Act is in that (i) it overrides any contractual provision stipulating for a payment deadline longer than the one set by the Act, (ii) entitles the creditor to a symbolic EUR 50 fine; and (iii) exposes the debtor undertaking and its director to a misdemeanor fine (on the assumption that the Tax Authority will show an interest in pursuing such cases).

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