

Legal Alert

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Changes to payment terms and combating late payments in commercial transactions – Regulation 2023/0323(COD)

Regulation on combating late payment in commercial transactions. As the next step, the regulation in the wording established by the Parliament will be submitted to the Council, which will decide on approving or modifying the standing of the Parliament. New regulations are to become effective after 18 months as of the publication thereof. The EU regulation shall apply directly.

Even now, when concluding long-term agreements (e.g. tenancy, lease, construction works, framework agreements), it must be taken into account that the Regulation will apply thereto if the settlements are made when the Regulation is in force.

List of transactions that may be concerned with the provisions of the Regulation

The Regulation will apply to payments in transactions of the supply of goods or provision of services and it will concern, e.g. also the liabilities following from insurance agreements (excluding payment of compensation).

Change of payment terms

The Regulation stipulates that the payment terms specified in the agreement may not be longer than 30 days as of the date of the service of invoice and goods supply. The payment term can be extended up to 60 days if it has been expressly specified in the agreement, and as regards seasonal goods and slow rotating products – the payment term can be so extended up to 120 days. The European Commission will specify the definitions of seasonal goods and slow rotating products.

Interest

If the payment term fails to be observed, then the interest will accrue automatically and retroactively, i.e. from the date of the invoice receipt by the purchaser or from the date of hand-over and acceptance of goods or services. The Regulation stipulates that the amount of interest charged on late payments will equal the reference rate increased by 8 percentage points (which represents reduction of the interest specified in the Polish, so-called, Anti-backlog Act by 2 percentage point).

The Regulation does not allow for the waiver of interest accruing on late payment.

Compensation for the costs of late payment enforcement proceedings

The lump sum compensation for non-observance of the payment term will be increased to:

- 50 EUR for each commercial transaction of the value **from 0 to 1,500 EUR;**
- 100 EUR for each commercial transaction of the value **from 1,501 EUR to 15,000 EUR;**
- 150 EUR for each commercial transaction of the value **above 15,000 EUR.**

The Regulation does not allow for the waiver compensation by the supplier.

Terms and conditions of hand-over and acceptance procedures

Verification whether the delivered goods or provided services comply with the agreement may not take longer than 30 days, with the reservation that such hand-over and acceptance/verification of compliance procedures must be set forth in the provisions of law only in reference to necessary cases and with the reservation that the agreement must specify the details of such procedures and its time frame.

Update of obligations of a General Contractor in public procurement

The Regulation obliges to prove to the ordering party, within 30 days, that the General Contractor has made relevant payments to its direct subcontractor. If the General Contractor fails to provide such a proof, the ordering party will be obliged to notify thereof the law enforcement authorities (in Poland - most likely the President of the Office of Competition and Consumer Protection (UOKiK)).

Contact us!

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