

LATE PAYMENT IN WESTERN EUROPE:

COMPARATIVE STUDY

BELGIUM - ENGLAND AND WALES
FRANCE - GERMANY - ITALY
LUXEMBOURG - THE NETHERLANDS
PORTUGAL - SPAIN

September 2014



Payments in commercial transactions are often made much later than initially agreed. Being exposed to late payments may entail considerable costs for creditors. Therefore fighting late payment is an important task for businesses throughout Europe. However fighting late payment on a European level still demands knowledge and experience in the jurisdictions of your debtors.

The European Commission has harmonized the rules governing late payment to some extent. The first initiative at the level of the European Union resulted in Directive 2000/35/EC. Somewhat more than 12 years later, a new Directive on combating late payment has been introduced (Directive 2011/7/EU). Rules on late payment however may still differ from country to country on some points.

Lack of harmonization of the regulations in Europe does not facilitate businesses' work. Therefore, we decided to make a comparative study with lawyers specialized, like us, in distribution and marketing law in their own country (Belgium, England and Wales, France, Germany, Italy, Luxembourg, The Netherlands, Portugal and Spain) and to inform you of the results of such comparative study by the way of this report.

This report aims to facilitate businesses in fighting late payments throughout Europe. It provides a convenient per country overview of answers to most relevant questions such as '*What is the maximum statutory period of payment?*', '*What is the sanction in case of a breach of the maximum period of payment?*', '*Which is the place of payment?*', etc. . References to the different national texts are also included. The report takes into account the implementation of the Directive on combating late payment. For your convenience a comparative schedule of all countries treated is included.

Please note that this report only concerns transactions between companies. The specific rules applicable for transactions between a company and a public authority are outside the scope of this report. We remain at your disposal should you have any enquiries.

Best regards,

Léon Gloden
Partner

Elvinger, Hoss & Prussen
2, Place Winston Churchill
L-1340 Luxembourg
Direct line : +352 44 66 44 2511
Fax: +352 44 22 55
leongloden@ehp.lu | www.ehp.lu



While this document has been prepared with the utmost care, it merely concentrates legal information and must therefore not be understood as legal advice. Hence, we exclude any liability that may arise out of the use or misuse of the information.

	Belgium	England and Wales	France	Germany	Italy	Luxembourg	The Netherlands	Portugal	Spain
Implementation Directive 2011/7	Implemented: 22 November 2013; Entry into force: 16 March 2013 (retroactive!)	Implemented	Implemented: 22 March 2012 and 2 October 2013 Entry into force: 1 January 2013	The directive is formally implemented by law of 22nd July 2014. However, even before many requirements of the directive were already fulfilled in German law.	Implemented: 9 November 2012	Implemented: 29 March 2013; Entry into force: 14 April 2013	Implemented; Entry into force: 16 March 2013	Implemented: 10 May 2013 <i>Specific rules on Food commodities see country report enclosed</i>	Implemented: 22 February 2013 <i>Specific rules on Food commodities see country report enclosed</i>
Maximum statutory period of payment	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: up to 60 days	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: up to 60 days	No contractual arrangement: 30 days following the date on which the goods were received or the services were provided Contractual arrangement : Up to 45 calendar days end of the month or 60 calendar days following the date the invoice is issued see country report for specific rules	According to the new provisions in German Civil Code the maximum period will generally be 60 days.	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: Up to 60 days see country report for sector specific rules	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: Up to 60 days	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: Up to 60 days	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: Limited to 60 days	No contractual arrangement: 30 days following events (harmonized by article 3 Directive 2011/7/EU - see country reports enclosed) Contractual arrangement: up to 60 days see country report for sector specific rules
Exceptions to maximum statutory period of payment	Yes, longer period (+60 days) is possible provided it is not grossly unfair to the creditor	Yes, longer period (+60 days) is possible provided it is not grossly unfair to the creditor	Yes, (see country report enclosed)	According to the new provisions in German Civil Code exceptions are possible, if they are expressly agreed and if the extended delay is not grossly unfair to the creditor.	Yes, longer period (+60 days) is possible provided it is not grossly unfair to the creditor	Yes, longer period (+60 days) is possible provided it is not grossly unfair to the creditor	Yes, longer period (+60 days) is possible provided it is not grossly unfair to the creditor	Yes, longer period (+60 days) is possible provided it is not grossly unfair to the creditor	Yes, longer period (+60 days) is possible conditions see country report enclosed
Sanctions in case of breach of maximum period of payment	Revision of the clause and reduction of period of payment	Statutory period applies automatically	Administrative fine up to 75,000 EUR (for individuals) and 375,000 EUR (for legal entities) (see country report for specific rules)	The new provisions in German Civil Code provide sanction of invalidity of the clause stating the maximum period. Still according to the new provisions the general rules of German concessionary law shall apply instead.	Clause is void, statutory period applies	Clause is unenforceable	Clause is invalid	Clause is unenforceable	Clause is unenforceable
Interest rates charged on late payments	ECB + 8%	Bank of England official dealing rate +8%	Interest rate agreed by the parties, not less than 3 times the legal interest rate If no contractual arrangement : ECB + 10%	Former law: 8 per cent points above the base rate for B to B transactions. New: 9 per cent points above the base rate for B to B transactions.	ECB + 8%	ECB + 8%	ECB + 8%	ECB + 8%	Interest rate agreed by parties Or ECB +8%
Minimum fixed compensation for recovery costs	40 EUR	According to size of debt <£1000= £40 >£1000= £70 >£10.000= £100	40 EUR	The new provisions in German Civil Code provide for 40,00 Euro.	40 EUR	40 EUR	40 EUR	40 EUR	40 EUR

	Belgium	England and Wales	France	Germany	Italy	Luxembourg	The Netherlands	Portugal	Spain
Costs exceeding fixed sum	Reasonable compensation	Reasonable compensation	Additional compensation if supporting evidence is provided	May be recovered without any limitation.	Compensation if supporting evidence is provided	Reasonable compensation	Reasonable compensation for recovery costs	Reasonable compensation for recovery costs	Reasonable compensation for recovery costs
Sanctions for excluding compensation for recovery costs	Clause is void, Revision by judge	If not provided in another, substantial contractual remedy, clause is void	Compensation of 40 € not mentioned in the seller's GTC: administrative fine 75,000 EUR (for individuals) / 375,000 EUR (for legal entities)	Former law: Invalidity under certain circumstances. New provisions in German Civil Code : Invalidity.	Clause is void, replaced by statutory provisions	Clause is deemed to be abusive	Clause is subject to nullification	Clause is void	Clause is void
Place of payment	Place foreseen under agreement Or Place where the item was located at the time of obligation Or Place where the debtor is domiciled Sale of goods: Unless otherwise provided for, place of delivery	Place foreseen under agreement Or Depends on intention of the parties Or If payment requires the presence of both parties, payment where supplier may be	Place foreseen under agreement Or Place where the item was located at the time of obligation Or Place where the debtor is domiciled Sale of goods: Unless otherwise provided for, place of delivery		Place foreseen under agreement Or Place where creditor is domiciled Sale of goods: Unless otherwise provided for, place of delivery	Place foreseen under agreement Or Place where the item was located at the time of obligation Or Place where the debtor is domiciled Sale of goods: Unless otherwise provided for, place of delivery	Place foreseen under the agreement (see country report for specifics) Or Creditor's place of business or residence at the time of payment Purchase agreement: Unless otherwise provided for, place of delivery	Place of domicile of creditor at the time of payment If the creditor changes domicile after the establishment of the obligation, payment can be made at the debtor's domicile, unless creditor compensates damage	Place foreseen under agreement Or Place where the item was located at the time of obligation Or Place where the debtor is domiciled
Date of payment	depends on the amount being available to the creditor Bank transfer: Time at which the account of creditor is credited Sale of goods: Time of delivery of the purchased product	See country report enclosed: Date of payment of principal sum	Deemed to be made on the date when the funds are made available to the creditor Bank transfer: Time at which the account of creditor is credited		Not defined: See country report enclosed	Not defined: See country report enclosed:	Depends on the amount being available to the creditor Bank transfer: Time at which the account of creditor is credited Purchase agreement: Time of delivery of the purchased product	Not defined	Not defined
Specific provisions relating to payment schedules providing for instalments	Interest and compensation calculated solely on the basis of overdue amounts	Interest payable on each qualifying debt, ie on each obligation to pay the whole or part of the contract price	No		Interest and compensation calculated solely on the basis of overdue amounts	Interest and compensation calculated solely on the basis of overdue amounts	No	Interest and compensation calculated solely on the basis of overdue amounts	Interest and compensation calculated solely on the basis of overdue amounts
Specific provisions relating to a general procedure of acceptance or verification	No	Yes (see country report enclosed)	Yes (see country report enclosed)		Yes (see country report enclosed)	Yes (see country report enclosed)	No	Yes (see country report enclosed)	Yes (see country report enclosed)
Retention of title allowed?	Yes	Yes	Yes		Yes, in case of sale through instalments	Yes	Yes	Yes	Yes

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Note : This report only concerns transactions between companies. The specific rules applicable for transaction between a company and a public authority are out of scope of this report.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

The answer is positive.

The Belgian Act of 22 November 2013 modifying the Act of 2 August 2002 on combating late payment in commercial transactions;

[Loi 22 novembre 2013 modifiant la loi du 2 août 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales, MB 10 décembre 2013 / Wet 22 november 2013 tot wijziging van de wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties, BS 10 december 2013]

It is to be noted that this Belgian Act of 22 November has a retroactive entry into force on 16 March 2013 (see the note at the end of this questionnaire).

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

N/A

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

(i) 30 calendar days following the date of receipt by the debtor of the invoice or an equivalent request for payment;

(ii) 30 calendar days after the date of receipt of the goods or services if the date of the receipt of the invoice or the equivalent request for payment is uncertain or if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services;

(iii) 30 calendar days after the date of the acceptance or verification of the conformity of the goods or services with the contract where a procedure of acceptance or verification is provided for by statute or in the contract and if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place;

The maximum duration of the procedure of acceptance or verification shall not exceed 30 calendar days from the date of receipt of the goods or services, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor.

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

The parties are entitled to agree to a longer period of payment provided it is not grossly unfair to the creditor. With regard to its assessment of gross unfairness, the judge will consider whether the clause creates a gross unbalance between the rights and duties of the parties, to the detriment of the creditor, and whether the debtor has objective reasons to demand a longer period of payment;

Please note that the explanatory memorandum of the draft bill stipulates that the period of payment may exceed 60 days provided that this is not grossly unfair to the creditor. (E.g. the debtor may objectively justify this extension (for example for a large company with a complex procedure for verification of invoices).

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

If a judge considers that a clause providing for a period of payment longer than 30 days is grossly unfair to the creditor, the judge will revise this clause and reduce the period of payment. However, the clause revised in this way shall not provide for a period of payment of less than 30 days.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

The interest rate applied by the European Central Bank to its most recent main refinancing operations plus 8 percentage points, rounded up to the next half percentage point.

Please note that the parties are entitled to agree on a different rate provided it is not grossly unfair to the creditor. With regard to the assessment of gross unfairness of the interest rate, the same guidelines apply as for the assessment of gross unfairness in case of deviation of the compulsory period of payment.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

40 EUR (the creditor is entitled to obtain this minimum fixed sum automatically and without formal notice).

3.2.2. Costs exceeding the aforementioned fixed sum

The creditor is entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding the aforementioned fixed sum. These costs may include the procedural indemnities provided by the Belgian Judicial Code (i.e. a forfait indemnity for attorney's costs of the winning party in a procedure).

3.3. Sanctions

Any clause that excludes the right to claim interest for late payment will be considered as grossly unfair and may therefore be revised by the judge.

Any clause that excludes the right to claim any compensation for the costs exceeding the minimum fixed sum (40 EUR) will be presumed to be grossly unfair and may therefore, where applicable, be revised by the judge.

4) Which is the place of payment?

The principle:

Article 1247 of the Belgian Civil Code states as follows:

"Payment must be made at the place foreseen under the agreement. If no place of payment is indicated in the agreement, payment occurs, if it concerns a specific and known item, at the place where the item was located at the time of the obligation."

Other than these two cases, payment occurs at the place where the debtor is domiciled."

Specific rule in the case of sale of goods:

In accordance with Article 1651 of the Belgian Civil Code, if nothing has been provided for by the parties, the buyer is to pay at the place of delivery of the item sold.

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

No, the notion of "date of payment" is not defined.

Payment of a monetary amount only occurs when the amount is made available to the creditor.

With respect to the sale of goods, Article 1651 of the Belgian Civil Code states that *'if nothing has been decided in this respect at the time of sale, the buyer must pay at the place and at the time of delivery'*.

Payment in cash is therefore the principle, but the parties are free to provide for other means of payment.

If payment is to occur by cheque or by bank transfer, the moment of payment is the moment on which the cheque is cashed or on which the bank account of the seller is credited (all events prior to these moments are mere orders for payment).

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

If the parties agree on payment schedules providing for instalments, where any of the instalments is not paid by the agreed date, interest and compensation shall be calculated solely on the basis of overdue amounts.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

No.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

Belgian law permits the parties to provide for a clause whereby transfer of title on movable goods is delayed until payment has occurred.

To be enforceable between the parties, the debtor must have been informed of the existence of this clause at the latest at the time of signing of the agreement. In general, the inclusion of such a clause in the terms of sale is allowed, provided the debtor was granted the opportunity to become aware of it at the latest at the time of signing of the agreement (e.g. inclusion of the

terms of sale on the back of the order, with a reference to the terms of sale on the front page of the order). With respect to enforceability in relation to third parties, the retention of title clause cannot be enforced by the seller if the item sold has been resold by the buyer and is no longer in the buyer's possession.

Critical note regarding the retroactive entry into force of the Belgian on 16 March 2013!

The entry into force of the Belgian Act of 22 November 2013 modifying the Act of 2 August 2002 on combating late payment in commercial transactions (implementing directive 2011/7) is fixed retroactively to 16 March 2013 with the exception of certain rules concerning the application of the rules on late payment between companies and public authorities.

It is important to remark that the act enters into force retroactively. The Belgian Constitutional Court holds the view that retroactivity of acts is in principle not legal. This 'principle of non retroactivity' should guarantee the prevention of legal insecurity. The law should be accessible and predictable, so that those seeking justice can predict, to a reasonable degree, the consequences of a certain action at the moment that action takes place.

According to the Constitutional Court, retroactivity of an act can only be justified in case of exceptional circumstances. The retroactivity should be indispensable to achieving a goal in the general interest. If the retroactivity of an act has as a consequence that the outcome of judicial procedures is influenced in a certain way or if it impedes judges to rule over certain legal questions asked before them, the principle of non retroactivity requires exceptional circumstances or imperative reasons of general interest to justify the retroactivity which at the expense of a category of citizens, undermines the legal guarantees for all.

We consider that for this act no such exceptional circumstances exist. The fact that the deadline for implementing the directive has expired, in our opinion, cannot justify the retroactive entry into force of the implementing act. Furthermore we believe that the retroactivity could create legal insecurity, especially with regard to questions of accumulation of indemnities.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

Directive 2011/7 has been implemented under English law. It was implemented by the Late Payment of Commercial Debts Regulations 2013 (SI 2013/395) and the Late Payment of Commercial Debts (No.2) Regulations 2013 (SI 2013/908). These amend the existing legislation on the late payment of commercial debts, the Late Payment of Commercial Debts (Interest) Act 1998 (the **Late Payment Act**).

The revised framework applies to commercial contracts for the supply of goods and services (other than consumer credit agreements and contracts of security, such as mortgages and charges) (**Relevant Contracts**) made on or after 16 March 2013. A minor alteration to this framework was introduced with effect from 14 May 2013 (see section 2.1(i)(c) below).

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

N/A

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

The Late Payment Act effectively imposes payment periods for Relevant Contracts by providing that interest on outstanding payments starts to run after certain time periods.

These payment periods depend on the nature of the purchaser:

(i) Public authorities

If no time for payment is stated in the contract

Where a public authority purchases goods or services, if no time for payment is stated in the contract, interest will start to run on outstanding payments from 30 days after the latest of:

- (a) receipt of the supplier's invoice;
- (b) receipt of the goods or services from the supplier; and
- (c) the day (or, for contracts entered into between 16 March 2013 and 13 May 2013 (inclusive), 30 days) following verification or acceptance of the goods or services, where a procedure for this is provided for by statute or the contract,

(together, the **Relevant Events**).

In relation to point (c), the Late Payment Act limits the amount of time for purchasers to verify the conformity of goods or services with the contract to 30 days following performance by the supplier, unless the parties expressly agree a longer period and that period is not grossly unfair to the supplier (see further the discussion of the concept of «grossly unfair» in section 2.2 below).

By agreement

Where a public authority purchases goods or services, the parties may only agree a due date for payment of up to 30 days after the latest of the Relevant Events.

(ii) Businesses

If no time for payment is stated in the contract

Where a business purchases goods or services, if no time for payment is stated in the contract, interest will start to run on outstanding payments from 30 days after the latest of the Relevant Events. The considerations in relation to the verification of goods and services described in paragraph (i) above will apply equally in the case of business purchases.

By agreement

Where a business purchases goods or services, the parties may agree a due date for payment of up to 60 days after the latest of the Relevant Events and, if the extension is not «grossly unfair» to the supplier, may expressly agree to extend the due date for payment beyond that.

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

As mentioned in section 2.1(ii), where a business purchases goods or services, the parties can agree a due date for payment over the normal limit of 60 days after the latest of the Relevant Events if the extension is not «grossly unfair» to the supplier.

When determining whether it is grossly unfair to agree such an extension, all the circumstances of the situation are considered, in particular:

- (i) whether anything is a gross deviation from good commercial practice and contrary to good faith and fair dealing;
- (ii) the nature of the goods or services supplied; and
- (iii) whether the purchaser has an objective reason for requiring a change from the standard statutory payment periods.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

If the parties agree a longer period for payment than the statutory payment periods described above, the statutory payment period will apply automatically. The relevant clause will therefore have no effect.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

The statutory interest in respect of late payments of debts arising under Relevant Contracts is simple interest at a rate of 8% over the Bank of England's official dealing rate. The rate is fixed in January and

July in each year. The supplier may claim at the rate that is current when the interest began to run.

The amount of interest, together with any relevant fixed sum (see section 3.2.1 below), payable by a purchaser in respect of a late payment may be calculated using the free calculator available at the following website: <http://late-payment-law.co.uk/calculator.html>.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

Once statutory interest begins to run in relation to a qualifying debt, the supplier is entitled to a fixed sum, calculated as follows:

Size of debt	Fixed sum
Less than £1,000	£40
£1,000 or more, but less than £10,000	£70
£10,000 or more	£100

3.2.2. Costs exceeding the aforementioned fixed sum

If the reasonable costs of the supplier in recovering the qualifying debt are not met by the fixed sum specified in section 3.2.1, then the supplier is also entitled to a sum equivalent to the difference between the fixed sum and those costs.

3.3. Sanctions

In order to displace the right to statutory interest (including by postponing the time at which interest starts to run or by imposing conditions on the right to interest), a contractual clause must provide a «substantial contractual remedy» for the late payment of the debt, otherwise it will be void. A remedy for the late payment of a debt will not be a «substantial remedy» where:

- (i) the remedy is insufficient either to compensate the supplier for late payment or to deter late payments; and
- (ii) it would not be fair and reasonable to allow the remedy to oust or vary the right to statutory interest that would otherwise apply in relation to the debt.

Any attempt to exclude or limit the right to receive the fixed sum described in section 3.2.1 or any additional reasonable costs described in section 3.2.2 will be ineffective to the extent it is not fair and reasonable.

4) Which is the place of payment?

The place for performance of a contract under English law, if not specified in the express terms, depends on the intention of the parties as indicated by the nature and terms of the contract and the other circumstances of the particular case.

Where a place for payment is specified in the contract, the purchaser must tender payment at that place in order to discharge itself, unless the specified place is varied by mutual consent or the requirement is waived by the supplier.

Where no place for payment is specified either expressly or by implication from the nature and terms of the contract and the surrounding circumstances, and the payment requires the presence of both parties for completion, the general rule is that the purchaser must seek out the supplier and perform the contract wherever the supplier may be.

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

The Late Payment Act provides that statutory interest «ceases to run when the interest would cease to run if it were carried under an express contract term». The meaning of this is not completely clear, but it is suggested that statutory interest will cease to run once the principal sum is paid.

There are no specified differences relating to the means of payment used.

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

If more than one payment falls due under a contract (eg instalment payments), interest is payable on each qualifying debt, ie on each obligation to pay the whole or part of the contract price.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

Where there is a procedure of acceptance or verification (whether provided for by statute or by the contract) by which the conformity of goods or services with the contract may be ascertained, and the purchaser has been invoiced for those goods or services before the procedure is completed, then, if the contract is silent or specifies an invalid period for payment, interest will start to run on outstanding payments from 60 days following the day on which the procedure is completed.

Where the relevant procedure is completed later than 30 days after receipt of the relevant goods or services from the supplier, the procedure will be treated as completed at the end of that period, unless the supplier and the purchaser expressly agree a longer period for completing the procedure and the longer period is not grossly unfair to the supplier (as to which, please refer to section 2.2 above).

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

Retention of title clauses are allowed under English law, although there are limitations on their effectiveness (eg in certain insolvency situations).

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

Directive 2011/7 has been implemented into French law through the following acts:

- Article 121 of law n°2012-387 of 22 March 2012, simplifying the law and reducing administrative formalities (codified under articles L.441-3 and L.441-6-1 of the French commercial code);
- Decree n°2012-1115 of 2 October 2012, setting the amount of the fixed sum to compensate recovery costs (codified under article D.441-5 of the French commercial code).

These new provisions are enforceable since 1st January 2013. They apply to agreements concluded after that date but also to on-going agreements concluded before that date where the debt starts running after that date.

Besides these provisions, two recent laws have brought significant changes to the rules on payment in France, particularly concerning the sanctions incurred (laws n° 2014-344 dated 17th March 2014 and n°2014-626 dated 18th June 2014).

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

N/A

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

2.1.1. The maximum statutory periods are the following:

- (i) Where the parties have agreed to a contractual period of payment, such period of payment must be limited to:
 - a. 45 calendar days end of the month; or
 - b. 60 calendar days net following the date the invoice is issued (L.441-6 I § 9).

In case of summary invoices under article 289 3 I of the French general tax code, this period shall not exceed 45 days following the date the invoice is issued (L.441-6 I § 9).

- (ii) Where the parties have not agreed to a specific period of payment in the contract, such payment shall be made at the latest 30 calendar days following the date on which the goods were received or the services were performed (L.441-6 I § 8).

For deliveries made on the fiscal territory of Guadeloupe, Martinique, French Guiana (Guyane Française), Reunion and Mayotte, and the French Overseas Communities of Saint-Barthelemy, Saint-Martin and Saint-Pierre-et-Miquelon, the periods of payment hereabove start running as of the date the goods have been cleared through customs at the final destination's harbour. Where the goods are made available to the buyer, or the person representing him, in Metropolitan France, the period of payment will start running as of the 21st day following the date the goods have been made available or, if prior, as of the date of the clearing of the goods.

2.1.2. Specific maximum periods of payment are provided for concerning certain sectors and/or products:

- (i) For road freight transport, car rentals (with or without driver), transport commissioners, activities relating to transit, shipping agents, air freight, freight brokers and custom's brokers, the period of payment may not exceed 30 days following the date the invoice is issued (L.441-6 I § 11).
- (ii) The period of payment of any producer, retailer or service provider may not exceed (L.443-1):
 - a. 30 days after the end of the ten-day period from delivery for purchases of perishable food products, frozen or deep-frozen meat, deep-frozen fish, ready-cooked dishes and canned food made from perishable food products (with the exception of purchases of seasonal products made in the context of "cultivation contracts" referred to under article L.326-1 to L.326-3 of the French rural code);
 - b. 20 days after the day of delivery for purchases of live cattle intended for consumption and fresh meat by-products;
 - c. 30 days after the end of the month of the delivery for purchases of alcoholic beverages subject to the consumer tax specified in article 403 of the French general tax code;
 - d. 45 calendar days end of the month or 60 calendar days following the date the invoice is issued for purchases of grapes and grape musts used in the making of wine and alcoholic beverages subject to the tax provided for under article 438 of the French general tax code, unless derogating provisions laid down in inter-branch decisions or subject to inter-branch agreements concluded under the conditions specified in Book VI of the French rural and maritime fishing code and made compulsory by a statutory provision.

For deliveries made on the fiscal territory of Guadeloupe, Martinique, French Guiana, Reunion and Mayotte, and the French Overseas Communities of Saint-Barthelemy, Saint-Martin and Saint-Pierre-et-Miquelon, see article 2.1.1 above.

- (iii) For sales of standing timber: 45 calendar days end of the month or 60 calendar days, following the delivery (L.155-2 French forestry code).

2.1.3. In the book sector, periods of payment can be freely agreed between the parties (law n°2010-97 of 27 January 2010)

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

Under specific circumstances, organisations officially recognised as representing undertakings may conclude national agreements under which the parties agree to reduce the period of payment or that the period of payment will start as of the date of receipt of the goods or the date of performance of the services (L.441-6 I § 10).

Besides this exception, intra-branch agreements in certain sectors may fix under specific conditions periods of payment that exceed the statutory maximum period of payment (Law n° 2012-387 of 22 March 2012).

Several intra-branch agreements have been concluded and approved by a decree (the leather sector, the agricultural machinery sector, the watches and jewellery sector, the sporting goods sector and the toy sector). The recreational vehicle sector is still waiting for the decree that will confirm its agreement.

To some extent, we believe this option may not be in conformity with the Directive since the conditions under which such agreements may be concluded do not take into account whether it may be grossly unfair to the creditor.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

Failure to respect the maximum period of payment mentioned in article L.441-6 I § 8, § 9, § 11, or L.443-1 of the French commercial code,

may be punished by an administrative fine of up to:

- €75,000 for individuals;
- €375,000 for legal entities.

This maximum fine is doubled for offences repeated within 2 years as of the day on which the first decision has become final.

The French commercial code punishes by the same administrative fine:

- The failure to respect the computation of the payment period agreed between the parties according to article L.441-6 I §9,
- Any provision or practices which have the effect to unreasonably delay periods of payment provided in article L.441-6.

Moreover, to obtain or attempt to obtain, under threat of an abrupt termination, even partially, grossly unfair conditions regarding payment terms may be punished notably by a civil fine up to 2 million euros.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

The minimum applicable interest rate is equivalent to three times the legal interest rate (thus 2.13% in 2012, 0.04% in 2013 and 2014).

Where the parties have not provided for such rule, the legal interest rate shall be the European Central Bank's reference rate increased by 10 points of percentage.

The applicable ECB reference rates are the following:

- for the 1st semester of the year concerned, it shall be the rate in force on January 1st of that year;
- for the 2nd semester of the year concerned, it shall be the rate in force on July 1st of that year.

The creditor is entitled to interest for late payment from the day following the end of the period for payment without the necessity of a reminder.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

40 euros for recovery costs are charged by the creditor, without the necessity of a reminder, in addition to any interest rates charged on late payments.

This amount must be stated in the creditor's general terms and conditions and on invoices.

3.2.2. Costs exceeding the aforementioned fixed sum

When recovery costs are higher than the fixed sum, the creditor is entitled to obtain an additional compensation from the debtor upon justification.

3.3. Sanctions

French Law does not provide for specific sanctions concerning a clause that would exclude compensation for recovery costs. But, this may be regarded as a submission or an attempt to submit a party to obligations creating a significant imbalance in the parties' rights and obligations (L. 442-6 I 2° of the French commercial code).

Two sets of obligations are specifically provided for by French law:

- The seller shall provide in its general terms and conditions the interest rates charged on late payments and the fixed sum for recovery costs. The absence of such provision or providing a rate or conditions in which the debt is due that do not conform article L.441-6 I § 12, is sanctioned by an administrative fine of up to:
 - €75,000 for individuals;
 - €375,000 for legal entities.

This maximum fine is doubled for offences repeated within 2 years as of the day on which the first decision has become final.

- Invoices must indicate the fixed sum for recovery costs. The absence of such indication may be sanctioned by a fine amounting to €75 000 for individuals (or €375 000 for legal entities). The fine may be increased by 50% of the amount invoiced or which should have been invoiced (or 250% for legal entities). Legal entities may also incur a penalty of exclusion from the public markets for a maximum period of five years.

4) Which is the place of payment?

The principle is stated under article 1247 of the French civil code:

“Payment must be made at the place foreseen under the agreement. If no place of payment is indicated in the agreement, payment occurs, if it concerns a specific and known item, at the place where the item was located at the time of the obligation.

(...)

Other than these two cases, payment occurs at the place where the debtor is domiciled.”

A specific rule is provided for in the case of sale of goods:

Article 1651 of the French civil code states that, if nothing has been provided for by the parties, the buyer is to pay at the place of delivery of the item sold.

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

Payment of a monetary amount only occurs when the amount is made available to the creditor.

If payment is to occur by cheque or by bank transfer, the moment of payment is the moment on which the cheque is cashed or on which the bank account of the seller is credited.

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

No.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

Yes. Article L.441-6 IV of the French commercial code states that unless there are more favourable provisions benefiting the creditor, where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for, the duration of such procedure is set according to good commercial practices and may not exceed 30 calendar days from the date of receipt of the goods or services, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of article L.442-6 of the French commercial code.

The period of acceptance or verification may not result in the extension nor postpone the starting point of the maximum payment period of 45 calendar days end of the month or 60 calendar days following the date the invoice is issued or, in case of a summary invoice, 45 days following the issuance of the invoice, unless otherwise expressly provided in the agreement and provided it is not grossly unfair within the meaning of article L.441-6 IV § 2 or article L.442-6 of the French commercial code.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

French law permits the parties to provide for a clause whereby transfer of title on movable goods is delayed until full payment of the debt (article 2367 of the French civil code).

To be enforceable between the parties, such right of retention must be provided for in writing and expressly agreed between the parties.

Note : This report only concerns transactions between companies. The specific rules applicable for transactions between a company and a public authority are out of scope of this report.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

The implementation of Directive 2011/7 of 16 February, 2011, was not treated as a special priority by the German legislator, because German law has already been in compliance with major segments of the Directive. Thus, the majority of norms stipulated by the Directive had already existed under German law. The law transposing the Directive has finally entered into force the 29th July 2014.

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

The German Federal Government presented a bill to the Bundestag, the German parliament, back in August 2012. However, after prolonged debates the bill could not be passed before the legislative session ended in 2013. According to German constitutional law, all draft laws that were not passed during one legislative session must once again be subject to the entire parliamentary process during the following legislative session. Thus the German statute of 22nd July concerning the prevention of late payment in commercial transactions and on the modification of the Renewable Energy Sources Act was published in the German Federal Law Gazette the 28th July 2014 and entered into force the following day.

There are other examples in the past when Germany did not meet the target date for the implementation of a directive. In such cases, the act to implement the

directive frequently provided for the retroactive application of the law from the target date for the implementation of the directive. Nevertheless the modifications to the German Civil Code implemented by the statute on the prevention of late payment entered into force the 29th July 2014, according to article 5 of this statute.

In the following, we are going to describe the former legal situation and, if applicable, the relevant provisions of the German Civil Code as amended and modified by the law on the prevention of late payment of 22nd July 2014.

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

Under former German law there was no maximum statutory period of payment.

In accordance with the law of 22th July 2014 the Federal Government introduced an additional § 271 a in the Civil Code containing provisions on maximum statutory periods of payment for all contracts not involving transactions with consumers. As a rule, the maximum statutory period of payment shall be 60 days. It shall be reduced to only 30 days when payment is due from a public debtor. The period of payment may be exceeded, if expressly agreed and if such a delay is not grossly unfair to the interests of the creditor. A public debtor may only extend the period of payment to a maximum of 60 days, even if the aforementioned conditions are met.

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

As described under 2.1 above, according to the new article 271 a of the German Civil Code, the period of payment may effectively be extended, if expressly agreed and if the delay is not grossly unfair to the creditor.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

Under the German Civil Code, as modified by the law of 22th July 2014 any contractual provisions on the period of payment shall be ineffective, if they do not comply with the requirements specified by 2.1 above. If a provision on an excessively long period of payment becomes invalid, the general rules of German concessionary law on the period of payment shall apply. Thus, an invalid period of payment will be replaced by German concessionary law, i.e. the periods foreseen by the new article 271 a of German Civil Code. According to German concessionary law, the creditor may demand immediate payment and default is deemed to have occurred one month after the invoice was issued or served.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

Former German law already provided for the payment of interest in the event of late payments. The interest rate is 5 per cent points above the base rate, if the contract regulates a transaction with a consumer, otherwise it was set at 8 per cent points above the base rate.

According to the modified article 288 para. 2 of the German Civil Code, the interest rate charged on late payments was raised to 9 per cent points above the base rate for all contracts not concluded with consumers.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

Former German law did not foresee the payment of a fixed sum that is not related to the actual damage caused by late payment.

In accordance with the statute of 28th July 2014, a provision was introduced as article 288 para. 5 of the German Civil Code entitling the debtor to receive a fixed sum of 40.00 Euro in the event of a default in payment under contracts not involving consumers.

The exact wording of this provision was the subject of controversy during the legislative process and one of the reasons why the draft law could not be passed by the end of the legislative period in 2013.

3.2.2. Costs exceeding the aforementioned fixed sum

Compensation for the enforcement and execution of the payment obligation has been enshrined in German law for a long time. It goes without saying that this reimbursement is not limited to 40.00 Euro.

3.3. Sanctions

Even under former German law, the possibility to exclude a debtor's liability for late payment in general conditions was limited. Relevant German law rendered the exclusion of the debtor's liability in general conditions invalid, if such exclusion results in an unfair disadvantage to the creditor and is in contradiction to the rules of good faith.

According to the recently introduced art. 288 para. 6 of German Civil Code, any provisions (not only limited to provisions in general conditions) of individual agreements excluding interest charged on late payments or the fixed compensation sum of 40.00 Euro are to be considered invalid (in transactions not including consumers).

4) Which is the place of payment?

The place of payment under German law is the creditor's place of business, unless otherwise agreed.

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

German law does not know any explicit norms on the date when payment shall be deemed to have been made. Germany considers that the rules on the date of payment derive from the rules on the place of payment.

Thus, payment is deemed to have been effected when the amount has arrived at the creditor's place of business and is at his disposal.

In the event of cash payment, the moment when the cash was handed over and title was transferred to the creditor is considered the date of payment.

In the event of a bank transfer, payment is deemed to have been made when the transferred amount was credited to the creditor's account and when the recipient of the payment is able to dispose of the funds.

According to standard practice, payment by check is considered to have been made timely, if the check arrives in time at the creditor's address. However, according to general rules of German law, payment by check is deemed to have been effected only at the moment when the creditor actually receives the money from the check and is able to freely dispose of it.

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

Former German law already contained provisions on payment by installments. A creditor is not obliged to accept installment payments, unless expressly agreed. Payment by installments can, however, be stipulated in the contract.

Therefore, according to the new art. 271 a para. 5 of the German Civil Code, any agreement on payment by installments will invalidate the provisions on the maximum period of payment laid down in this art. 271 a para. 5 of the German Civil Code.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

According to German law, a procedure of acceptance or verification is foreseen only in law of contracts for work and services (Werkvertragsrecht). Under former German law, there were no explicit provisions defining the moment in time at which acceptance must take place. However, even under former legal regulations it was recognized that from a certain moment there is a right to ask for acceptance.

In transposing the Directive, the law of 22nd July invalidates any contractual provisions stipulating an acceptance period of more than 30 days after receipt of the goods. Similar to the provisions on the maximum statutory period of payment, the time frame for acceptance may be effectively extended only by explicit agreement and if such extension is not grossly unfair for the creditor.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

Germany has played a pioneering role in the promotion of the principle of retention of title. Retention of title has been enshrined in German law for a long time. Thus, there is no need to introduce new provisions in transposal of that segment of the Directive, as its content has been a steady and frequently applied component of German law for already quite a long time.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

Directive 2011/7/EU has been implemented in Italy by Legislative Decree (LD) 192 of 9 November 2012 (which has modified Legislative Decree n. 231 of 9 October 2002).

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

Maximum statutory term of payment is 30 days (art. 4, par. 2 of the LD).

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

As regards transactions between companies, the 30-day term can be derogated by the parties. Terms in excess of 60 days shall be expressly agreed upon and shall not be severely unfair for the creditor.

For transactions with certain types of public enterprises and with local health authorities, the term is 60 days (art. 4, par. 5 of the LD).

The LD also provides for specific terms for transactions where the debtor is a public administration, which is out of the scope of the present report.

For transactions in the agricultural and food sector, a sector legislation applies (art. 62 of Law Decree of 24 January 2012 n. 1) providing for specific payment terms depending on whether the goods being purchased are perishable (30 days) and non-perishable (60 days).

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

Any clause considered severely unfair is void (and thus unenforceable) and will be replaced by the statutory provisions.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

The interest rate charged on late payments is the rate applied by the European Central Bank to its most recent main refinancing operations plus 8 percentage points (art. 2, lett. e) of LD). The parties can agree on a different rate, provided it is not severely unfair.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

Euro 40 (art. 6, par. 2 of LD).

3.2.2. Costs exceeding the aforementioned fixed sum

Costs exceeding Euro 40 (provided they are linked to the recovery of the credit) can be requested if supporting evidence is provided (art. 6, par. 2 of LD).

3.3. Sanctions

Any clause that excludes the payment of late interests and the recovery costs is considered null (art. 7, par. 3 of LD) and is replaced by the statutory provision.

4) Which is the place of payment?

The place of payment, according to art. 1182 of the Italian Civil Code, is either the place indicated in the contract, or where the creditor is domiciled.

Specific provisions apply for sale purchase agreements: for such agreements, the place of payment is either where indicated in the contract, or where the goods/services are delivered, or eventually where the creditor is domiciled (art. 1498 civil code).

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

The notion of “date of payment” is not defined by the LD. However, with reference to the transactions between companies, the 30-day term envisaged by art. 4, par. 2 of the LD, is calculated based upon:

- (a) the receipt of the invoice by the debtor;
- (b) the receipt of the goods/services;
- (c) the acceptance or the control of conformity of the goods/services (art. 4, par. 2).

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

According to Art. 4, par. 7 of the LD provides for payments through instalments; where a single instalment is not paid at the agreed date, the interests are calculated on the basis of the sums not paid.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

According to Art. 4, par. 6 of the LD a specific procedure for the control of the conformity of goods/services may be foreseen; the length of such procedure should not exceed 30 days from the delivery of the goods/services, unless expressly agreed between the parties in writing and provided that longer terms are not severely unfair.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

Art. 1523 provides for the possibility to allow retention of title in the case of sale through instalments.

NB: Where you believe there may be a lack of conformity between the transposed text and the Directive, we would be grateful if you could indicate it.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

The directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011, on combating late payment in commercial transaction, has been implemented in Luxembourg by the law of 29 March 2013 (the “Law”), which modifies the law of 18 April 2004.

The Law has been published on 11 April 2013 in the official gazette and is enforceable since 14 April 2013.

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

N/A

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

The maximum statutory periods are the following:

- (i) In the case of commercial transactions between undertakings, if the parties have not agreed to a specific period of payment in the contract, the period of payment is 30 calendar days;
- (ii) In the case of commercial transactions between undertakings and public authorities, the period of payment is also 30 calendar days (article 4 of the Law).

The time limit of 30 days starts to run as follows:

- a. 30 calendar days following the date of receipt by the debtor of the invoice or an equivalent request for payment;
- b. if the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 calendar days after the date of receipt of the goods or services;
- c. if the debtor receives the invoice or the equivalent request for payment earlier than the goods or services, 30 calendar days after the date of the receipt of the goods or services.
- d. if a procedure of acceptance or verification of the conformity of the goods or services is provided for by statute or in the contract and if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place, 30 calendar days after such date.

However, where the parties have agreed to a contractual period of payment, such period of payment must be limited to:

- (i) 60 calendar days (article 3 of the Law) in the case of commercial transactions between undertakings; and
- (ii) 60 calendar days (article 4 of the Law), in the case of commercial transactions between undertakings and public authorities. This extension of the period of payment must be expressly agreed in the contract.

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

- (i) In the case of commercial transactions between undertakings: as mentioned under point 2.1., the period for payment fixed in the contract may not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of article 6 of the Law.
- (ii) In the case of commercial transactions between undertakings and public authorities: as mentioned above, the contractual period of payment cannot exceed 60 calendar days and such period must be expressly agreed.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

Article 6 (1) of the Law provides that a contractual term or a practice relating to the date or period of payment, the rate of interest for late payment or the compensation for recovery costs may be declared unenforceable if the clause is grossly unfair to the creditor.

In determining whether a contractual term or a practice is grossly unfair to the creditor, within the meaning of the above mentioned paragraph, all circumstances of the case shall be considered, including:

- any gross deviation from good commercial practice, contrary to good faith and fair dealing;
- the nature of the product or the service; and
- whether the debtor has any objective reason to deviate from the statutory rate of interest for late payment, from the payment period or from the lump sum (please refer to point 3.2. hereunder).

A contractual term or a practice which excludes compensation for recovery costs is presumed to be grossly unfair.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

The creditor is entitled to interest for late payment from the day following the end of the period for payment without the necessity of a reminder.

In case of a breach of this maximum period of payment, the interests for late payment are the minimum applicable interest rates. These interests correspond to the sum of the reference rate plus 8 percentage points.

The reference rate is the interest rate applied by the European Central Bank (the “ECB”) to its most recent main refinancing operations.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

The Law ensures that, where interest for late payment becomes payable in commercial transactions in accordance with Article 3 or 4, the creditor is entitled to obtain from the debtor, as a minimum, a lump sum of EUR 40 (article 5 (1) of the Law).

This lump sum is payable without the necessity of a reminder.

3.2.2. Costs exceeding the aforementioned fixed sum

The creditor shall, in addition to the lump sum, be entitled to obtain reasonable compensation from the debtor for any recovery costs and incurred due to the debtor's late payment, e.g. lawyer's fees.

3.3. Sanctions

A clause excluding the payment of the lump sum or the recovering costs is deemed to be abusive.

4) Which is the place of payment?

The Law does not provide for any particular place of payment.

The principle is stated under article 1247 of the Luxembourg Civil Code:

“Payment must be made at the place foreseen under the agreement. If no place of payment is indicated in the agreement, payment occurs, if it concerns a specific and known item, at the place where the item was located at the time of the obligation.

Other than these two cases, payment occurs at the place where the debtor is domiciled.”

A specific rule is provided for in the case of sale of goods:

In accordance with Article 1651 of the Luxembourg Civil Code, if nothing has been provided for by the parties, the buyer is to pay at the place of delivery of the item sold.

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

The notion of “date of payment” is not defined by the Law.

It is customary to differentiate:

- payment of a monetary amount, which only occurs when the amount is made available to the creditor;
- payment by cheque or by bank transfer – in this case, the moment of payment is the moment on which the cheque is cashed or on which the bank account of the seller is credited.

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

Yes, article 3 (5) of the Law allows the parties to agree on payment schedules providing for instalments.

This article provides that the parties (in commercial transaction between undertakings or between undertakings and public authorities) may agree on payment schedules providing for instalments.

Where any of the instalments are not paid by the agreed date, interest and compensation are calculated solely on the basis of overdue amounts.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

Yes, article 3 (3) b iv) and article 4 (3) iv) of the Law provide that: “where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided by the Law or in a contract, and if the debtor receives the invoice or the request for final payment sooner or at the date of acceptance or verification, 30 calendar days after this date. The maximum duration of that procedure does not exceed 30 calendar days from the date of receipt of the goods or services, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of Article 6.”

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

The Luxembourg legal system allows the parties to provide for a clause whereby transfer of title on movable goods is delayed until full payment of the debt (article 1135-1 of the Civil Code).

To be enforceable between the parties, such right of retention must be provided for in writing and expressly agreed between the parties.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

Directive 2011/7 has been implemented into Dutch law by the following legislative changes: Article 6:96(4) (recovery costs), 6:119a(4+5) (term of payment) and 6:120 (percentage of statutory interest) of the Dutch Civil Code, hereinafter referred to as the “DCC”.

These legislative changes are enforceable as of 16 March 2013. They apply to agreements concluded as of that date.

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

N/A

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

Where the parties have not agreed to a specific period of payment in the contract, payment shall be made (Article 6:119a(2) DCC):

- 30 days following the first day after the creditor has received the invoice; or
- if there is no fixed date of receipt of the invoice or if the creditor received the invoice before receipt of the performance, 30 days after the beginning of the day following that on which the performance is received; or

- if the creditor has stipulated a period within which the performance must be accepted or ascertained whether the performance is in conformity the agreement, 30 days after the beginning of the day following that on which the creditor has accepted or ascertained the conformity of the performance. If the creditor does not approve or accept the performance, the payment must be made 30 days after the beginning of the day following that on which the period will have lapsed (Article 6:119a(2) DCC). In any case, this payment term may not exceed 30 days after the beginning of the day following that on which the performance is received (Article 6:119a(4) DCC).

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

As mentioned in the last sentence of the third bullet point of the previous answer (2.1), this payment term may not exceed 30 days after the day following that on which the performance is received. However, parties may contractually deviate from this 30-day payment term, provided they explicitly arrange this in their agreement and provided that the term of payment is not grossly unfair.

Contrary to the provisions as mentioned under 2.1, parties may contractually agree on a period of payment (‘freedom of contract’), which period of payment may not exceed 60 days (Article 6:119a(5) DCC). However, also in this case parties may deviate from the 60-day payment term provided they explicitly arrange this in their agreement and provided that the term of payment is not grossly unfair. Whether a payment term should be deemed grossly unfair depends on:

- whether the debtor has any objective reason to deviate from the 60-days payment term;
- the nature of the performance; and
- the extent to which the payment term deviates from good commercial practice (Article 6:119a(5) DCC).

A deviating payment term may not be invoked if it is included in a party's general terms only; the term will have to be separately agreed upon between the parties.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

Pursuant to existing Dutch law (Article 6:248(2) DCC), any contractual provisions that are deemed unacceptable according to the standards of reasonableness and fairness are invalid. There was therefore no need to implement Article 7(1) of the Directive.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

The interest rate has been increased with one percentage point to eight percentage points (Article 6:120(2) DCC).

This means that the rate of the statutory interest for commercial contracts equals the refinancing interest as determined by the European Central Bank for its most recent basic refinancing transaction, as it has taken place on the first day of the concerning six-month period, plus eight percentage points. Statutory interest which runs on the first day of the concerning six-month period is calculated as of that day according to the new interest rate for a time period of half a year.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

The creditor is entitled to demand a fixed minimum amount of € 40 for recovery costs. This amount is payable without any notice being required. Parties may not deviate from this amount to the detriment of the creditor (Article 6:96(4) DCC).

3.2.2. Costs exceeding the aforementioned fixed sum

The creditor is entitled to obtain compensation from the debtor for any recovery costs exceeding the aforementioned fixed sum.

3.3. Sanctions

According to Article 6:96(4) DCC parties may not deviate from the amount as mentioned in answer 3.2.1. to the detriment of the creditor. Any stipulation in contravention with Article 6:96(4) DCC is subject to nullification.

4) Which is the place of payment?

Payment shall be made at the creditor's place of business or residence at the time of payment (Article 6:116(1) and 6:118 DCC), unless the law, common practice or a legal act implies otherwise (Article 6:115 DCC). The creditor may designate another place for payment in the country where it has its place of business or residence at the time of payment or at the time the obligation arises (Article 6:116(2) and 6:118 DCC).

If, pursuant to Article 6:116 DCC, the sum of money must be paid in another place than the creditor's place of business or residence at the time at which the obligation arose, and as a result of which it becomes considerably more difficult for the debtor to comply with his obligation, then the debtor is entitled to withhold payment until the creditor has pointed out another place of payment in one of the countries as meant in Article 6:116(2) DCC, where such difficulties do not exist (Article 6:117 DCC).

If the agreement should found to be a purchase agreement, payment of the purchase price has to be made at the time and at the place of the purchased product's delivery (Article 7:26(2) DCC).

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

The notion 'date of payment' is not explicitly defined under the DCC.

However, there are specific cases with regard to the means of payment used, in which a date of payment is implied:

- In case a payment is made by bank transfer, this payment is considered to be made at the time at which the bank account of the creditor is credited (Article 6:114 (1+2) DCC).

- If the agreement is found to be a purchase agreement, then payment of a cash amount is considered to be made at the time and at the place of the purchased product's delivery (Article 7:26(2) DCC).

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

No.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

No.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

The principle is stated under Article 3:92 DCC:

“Where the intended purpose of an agreement is for the alienator to retain an object that the alienator has given into another party's power until that other party has fulfilled its performance, this agreement is considered to be entered into under a condition precedent of complete fulfillment of that performance. (...)”

Pursuant to this provision, the debtor will receive ownership after an additional condition has been fulfilled (mostly: full payment as agreed upon). Article 3:92 DCC differs slightly from the text of the Directive; the Directive merely includes the provision ‘until they are fully paid’, whereas Article 3:92 DCC includes the more extensive term ‘performance’.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

The Directive was implemented by Decree-Law 62/2013 of 10 May.

There is a specific regulation concerning food commodities - Decree Law 118/2010 of 25 October, as amended by Decree-Law 2/2013 of 9 January. Decree Law 62/2013 does not prejudice the application of this specific regulation.

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

Decree-Law 62/2013:

Where the date or period for payment is not fixed in the contract, the creditor is entitled to interest for late payment upon the expiry of any of the following time limits:

- (i) 30 calendar days following the date of receipt by the debtor of the invoice;
- (ii) where the date of the receipt of the invoice is uncertain, 30 calendar days after the date of receipt of the goods or services;
- (iii) where the debtor receives the invoice earlier than the goods or the services, 30 calendar days after the date of the receipt of the goods or services;

(iv) where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by statute or in the contract and if the debtor receives the invoice earlier or on the date on which such acceptance or verification takes place, 30 calendar days after that date.

The period for payment fixed in the contract cannot exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor.

Decree Law 118/2010 of 25 October (concerning food commodities)

- (i) In the absence of an applicable self-regulation instrument (provided for in Article 6-A thereto), in commercial transactions between companies that market food products, the maturity of the obligation of payment occurs, imperatively, until the 30th day after the date of receipt of the goods and respective invoice;
- (ii) Where the parties agree on the periodic summary of invoices between buyer and supplier, in order to facilitate the management of payments, and provided that such period does not exceed 20 days, the period referred to above shall be counted as from the end of the period to which the invoices summary relates.

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

Decree-Law 62/2013:

The parties are entitled to agree on a longer period of payment provided it is not grossly unfair to the creditor.

Decree Law 118/2010 of 25 October (concerning food commodities):

The parties may agree on shorter periods of maturity.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

Decree-Law 62/2013:

Any clause that provides for a period of payment longer than the authorized one will be considered unenforceable and therefore the periods of payment mentioned in 2.1 above will be applicable.

If the maximum period of payment is not observed, late payment interests and compensation for recovery costs are due.

Decree Law 118/2010 (concerning food commodities):

In case of failure to make the payment within the periods of time above mentioned a supplementary rate of 2 percentage points shall accrue to the default interest rate. Additionally, such breach amounts to an administrative offence punishable with a fine of € 150 - € 3,740 (in case of individuals) or of € 500 - € 44,891.81 (in case of companies).

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

Decree-Law 62/2013:

The interest rate applied by the European Central Bank to its most recent main refinancing operations plus 8 percentage points.

Decree Law n. 118/2010 (concerning food commodities):

The parties may not determine a default interest lower than the rate of interest above mentioned, notwithstanding the penalty clauses that the parties may stipulate.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

40.00 EUR.

3.2.2. Costs exceeding the aforementioned fixed sum

The creditor is entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that fixed sum and incurred due to the debtor's late payment. This includes expenses incurred, inter alia, in instructing a lawyer or employing a debt collection agency.

3.2.3. Note

See above

3.3. Sanctions

The following will be null:

- (i) A contractual term or a practice which excludes interest for late payment or compensation for recovery costs.
- (ii) A clause that, without a sound reason, establishes an excessive period of payment or excludes/limits liability for the delay.
- (iii) A clause that relates to the maturity date, the period of payment or the compensation for recovery costs, and is manifestly abusive to the creditor's prejudice.

4) Which is the place of payment?

Rules of the Portuguese Civil Code:

- (i) When the obligation concerns a certain sum of money, its fulfillment shall be carried out at the place of domicile that the creditor has at the time of the fulfillment.
- (ii) If the creditor changes his domicile after the establishment of the obligation, the payment can be made at the debtor's domicile, unless the creditor compensates him for the damage caused by the change of domicile.

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

No.

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

Yes. When the payment is due in instalments and one of the instalments is not paid by the agreed date, interest and compensation shall be calculated on the basis of overdue amounts.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

Yes. Where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

In disposal contracts, the seller may reserve the ownership of the good until the total or partial fulfillment of the other party's obligations or until the occurrence of other events. In the case of an immovable or movable good subject to registration, only a registered clause in that regard can be enforced *vis-à-vis* third parties.

1) Has Directive 2011/7 of 16 February 2011 been implemented into national law in your country?

1.1. If so, what are the references of the national text?

Directive 2011/7 has been implemented into Spanish law through the following Act:

- Article 33 of Royal Decree-Law 4/2013 of 22 February 2013 that implements measures supporting entrepreneurs and stimulating growth and employment creation. This Royal Decree Law modifies Law 3/2004 (Late Payment Act) by means of which measures against late payment in commercial operations were adopted.

1.2. If not, is implementation currently under way? What is the expected timeframe for implementation?

N/A

2) Time Limit:

2.1. Principle: What is the maximum statutory period of payment?

The Late Payment Act effectively imposes payment periods for commercial transactions involving the delivery of goods or the provision of services, in which the creditor is a private company and the debtor either another private company or a public authority.

The maximum statutory periods are the following:

- (i) Where the parties have not agreed to a specific period of payment in the contract, such payment shall be made at the latest 30

calendar days after the date of the receipt of the goods or services. Suppliers must send the invoice or equivalent request for payment to their customers within thirty days of the date of effective delivery of the merchandise or provision of the services.

- (ii) Where the parties have agreed to a contractual period of payment, such period of payment must be limited to a maximum of 60 calendar days. When a contractual period of payment is agreed, the receipt of the invoice by electronic media will effectively initiate the payment period, provided that issuer identity and authenticity, invoice integrity and receipt by the addressee are guaranteed.
- (iii) The period of payment of any producer, retailer or service provider may not exceed (Act 7/1996, of 15 January, establishing the Regulatory framework for retail trade):
 - a. 30 days after from delivery for purchases of perishable and fresh food products (as defined in Royal Decree 367/2005);
 - b. When retailers agree with their suppliers to payment terms of over 60 days from the date of delivery and receipt for non-perishable, non-fresh, non-consumer merchandise, payment must be effected under an enforceable negotiable instrument, with explicit reference to the maturity date shown on the invoice. When the goods become payable in over ninety days, this instrument shall be endorsable. In any event, the instrument must be issued or accepted by retailers within thirty days of receipt of the merchandise, provided the invoice has been sent. The seller may make deferrals of over one hundred twenty days contingent upon submission of a surety or commercial bond or credit insurance;

2.2. Exception: Under which circumstances is it possible to deviate from this compulsory period of payment (in particular Article 7 of the Directive)?

- (i) Invoices covering periods of no longer than 15 days may be grouped in a single invoice for all the deliveries made in that period, as a periodic summary invoice, or grouped in a single document to facilitate payment handling, as periodic invoice grouping. Such arrangements shall be valid if the mid-span date in the summary invoice or invoice grouping period is established as the initial date for computing the payment term and the sum involved is payable no more than 60 days after such date.
- (ii) When an acceptance or verification procedure, by means of which the compliance of the provided goods or services with the terms of the contract is subject to verification, is legally or contractually established, its duration may not exceed 30 calendar days after the date of the receipt of the goods or services. In this case, the payment period must be limited to a maximum of 30 calendar days after the date of acceptance or verification of the goods or services, even if the invoice or equivalent request for payment was received prior to the acceptance or verification.
- (iii) As mentioned in section 2.1(ii), the parties can agree a due date for payment beyond the limit of 30 calendar days after the date of the receipt of the goods or services and such agreed period of payment must be limited to a maximum of 60 calendar days from such receipt. This deviation from the 30 calendar days payment period must not be abusive to the supplier.

When determining whether it is abusive to agree to such an extension, all the circumstances of the situation are considered, in particular:

- (i) The nature of the goods or services supplied;
- (ii) Whether the debtor offers additional guaranties;
- (iii) Whether anything is a gross deviation from customary business practices and contrary to good faith and fair dealing;
- (iv) Whether the purchaser has an objective reason for requiring a change from the standard statutory payment periods; and

- (v) Whether the deviation mainly aims at providing the debtor with liquidity to the detriment of the creditor or if the main contractor imposes on its suppliers or subcontractors payment conditions which are not justified by the conditions of which the contractor benefits or by other objective reasons.

2.3. Sanctions: What is the sanction in case of a breach of this maximum period of payment?

If the parties agree a longer period for payment than the statutory payment periods described above, the statutory payment period will apply automatically. The relevant clause will therefore have no effect.

If the agreed payment period, as established in Sections 2.1(ii) and 2.2(iii), is considered to be abusive, the relevant clause will be considered void and will, therefore, have no effect.

3) Compensation for late payment

3.1. Interest rates charged on late payments (Article 3 of the Directive)

- (i) The applicable interest rate will be the one agreed by the parties in the contract.
- (ii) Where the parties have not provided for such rule, the legal interest rate shall be the European Central Bank's reference rate applied to its most recent principal financing operation carried before the first day of the relevant semester, increased by 8 percentage points.

The creditor is entitled to interest for late payment from the day following the end of the period for payment without the necessity of a reminder.

3.2. Compensation for recovery costs

3.2.1. Minimum fixed sum (Article 6 of the Directive)

40 euros for recovery costs are charged by the creditor, without the necessity of a reminder, in addition to any interest rates charged on late payments.

The debtor will not be obliged to pay recovery costs in case he is not liable for the late payment.

3.2.2. Costs exceeding the aforementioned fixed sum

The creditor is entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding the aforementioned fixed sum as long as the creditor is able to justify such costs.

The debtor will not be obliged to pay recovery costs in case he is not liable for the late payment.

3.3. Sanctions

As mentioned in section 3.1.(i), the parties can agree the interest rate applicable for late payments. However, any interest rate clause deviating from the interest rate established in section 3.1.(ii) must not be abusive to the supplier.

When determining whether it is abusive to agree to such an extension, all the circumstances of the situation are considered, in particular:

- (i) The nature of the goods or services supplied;
- (ii) Whether the debtor offers additional guaranties;
- (iii) Whether anything is a gross deviation from customary business practices and contrary to good faith and fair dealing;
- (iv) Whether the purchaser has an objective reason for requiring a change from the standard statutory interest rate; and
- (v) Whether the deviation mainly aims at providing the debtor with liquidity to the detriment of the creditor or if the main contractor imposes on its suppliers or subcontractors interest rates which are not justified by the conditions of which the contractor benefits or by other objective reasons.

Any clause excluding compensation for recovery costs will be considered void.

If the agreed interest rate is considered to be abusive, the relevant clause will be considered void and will, therefore, have no effect.

4) Which is the place of payment?

The principle is stated under article 1171 of the Spanish Civil Code:

“Payment must be made at the place foreseen under the agreement.

If no place of payment is indicated in the agreement, payment occurs, if it concerns a specific and known item, at the place where the item was located at the time of the obligation.

Other than these two cases, payment occurs at the place where the debtor is domiciled.”

5) Is the notion of «date of payment» defined? Does it differ according to the means of payment used?

No.

There are no specified differences relating to the means of payment used.

6) Are there any specific provisions relating to payment schedules providing for instalments (Article 5 of Directive)?

Yes. It is established that when the parties agree to payment schedules providing for instalments, when one of the payments is due, compensations for late payment (interests and compensation for recovery costs) will be calculated on the basis of past due amounts.

7) Are there specific legal provisions relating to a general (not sector-specific) procedure of acceptance or verification by which the conformity of the goods or services may be ascertained (Article 3.4 of the Directive)?

Yes. Please see Section 2.2.(ii) above.

8) Does your legal system allow retention of title clauses as foreseen under Article 9 of the Directive?

Yes. The Late Payment Act expressly establishes that, in the bilateral relations between seller and buyer, the

former shall retain title to the goods sold until they are fully paid for, if buyer and seller have explicitly agreed to a retention of title clause prior to delivery of the goods.

Without prejudice to the application of Article 1112 of the Civil Code, the seller's right may pass to another party who, through advances, financing or assumption of the obligation, pays the compensation on behalf of the debtor or enables the latter to acquire a right over the object of the retention of title or to use it when such compensation is, in effect, applied to that purpose.

One of the measures that the seller or third party financing the transaction may take to protect their right is to retain the documents substantiating ownership of the goods for which the retention of title is covenanted.

