



Inside Story – Germany

This month's Inside Story is brought to you by Barbara Brenner of Kanzlei Prof. Dr. Hemmerling, Bonn, Germany, email: b.brenner@kanzlei-hemmerling.de

EU combating late payment “culture” of big firms and public sector throughout Europe. UK serves as a model. Here's the story:

EC is obstinate in combating late payment culture throughout Europe. In 2000 they started their first attack by EC Directive 35/2000 – with almost no effect at all. 10 years later, they found out that:

- Debtors couldn't care less! Payment time throughout Europe is still too long, exceeding often 120 and even 180 days.
- SMEs are still struggling from late payment culture of their clients.
- Public sector was identified as the main defaulting party, which did NOT respond to EC-Directive 35/2000 at all.

In 2008, the UK Institute of Credit Management invented a Prompt Payment Code in order to encourage big firms to change their culture. In vain. When in 2013 the British online-magazine “The Telegraph” published the story of an entrepreneur who complained about the bad payment culture of Balfour Beatty, a wave of similar stories came up. This made the UK business and enterprise minister really angry. The heads of the biggest firms, FTSE 350, received a letter by Michael Fallon, telling them that they had one month to sign up to the Prompt Payment Code, by threat of getting “*named and shamed*” in a public register. It obviously worked. Meanwhile all of the FTSE 100 have signed and most of the FTSE 350, too. He started then to chase the public sector.

One year ago, on March 16th, 2013, the deadline for the implementation of EC-Late-Payment-Directive N°.2 (07/2011) ended. Romania was the first MS to implement the directive into national law – a few days after it was published! Lithuania is reported to have implemented it in May 2013, including a €40 allowance for recovery costs – without even having entered the Eurozone! Spain, Belgium and Greece are still working, Italy is missing entirely.

What about model-MS Germany?

Germany tried hard, but failed, to get the law passed in time. In 2013 the elections took place. New parliament, new game: Government had to start again at Zero!

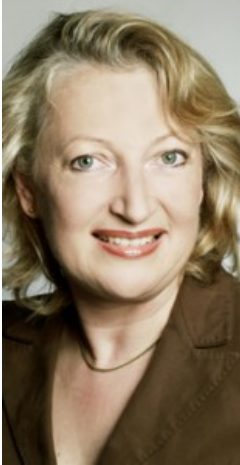
Finally, the Commission got angry and opened another EU infringement proceeding for non-transformation of the Directive against Germany, which worked. On Monday 24th February 2014, the new German Minister of Justice finally circulated a revised Draft Law on the Implementation of EU-Directive 07/2011 – after only one year of delay! Here is what it orders:

1. Contractual terms agreeing more than 60 days payment time and 30 days for acceptance and verification proceedings are void.
2. In case that the client is a Public Authority, this period is limited to 30/15 days respectively.
3. In case the parties rely upon General Terms of Contract, this period is limited to 30/15 days respectively; any payment terms exceeding 60 days will be regarded as "grossly unfair" and will therefore be void.
4. Germany does not allow an exception for Public Health Service.
5. The interest rate for late payments will rise from 8 to 9 percentage points above ECB reference rate for commercial transactions.
6. In addition to interests, the creditor is entitled to obtain an allowance of €40 for recovery costs without the necessity to prove. Exceeding but reasonable costs (solicitor's fees and costs for the engagement of a debt collection agency) are recoverable upon proof.
7. In case the receipt of the invoice is unclear, the above-mentioned period starts upon receipt of the goods.
8. **New:** Not only undue Terms and Conditions, **but also undue contract terms and undue practices** shall in future be challengeable for third parties

There is no provision on how the observation of the law is guaranteed.

BUT: Following the text of the Directive, undue practices may be regarded as "grossly unfair" and therefore may be subpoenaed under EU-Unfair-Competition-Rules.

Competition rules might therefore be THE sharp sword against Late Payment Culture in future – and hopefully more effective.



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