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## Taking counsel

Agris Repss

How can I fight against late payments?

In a standard business situation, if boiled down to its essentials, goods of whatever kind are exchanged for money. It may happen, as it does in life quite often, that the seller delivers the goods according to the contract but the buyer does not pay or does not pay at the agreed time. If the contract provides for interest or penalties for late payment (e.g. you have to pay 100 euros on Aug. 1, and for every day you are late you pay additional 0.1 percent), the seller may be relatively sure that his patience will be rewarded.

But what if the contract is silent on the interest? And, more important, what if the contract provides for no interest at all?

Late payment directive. The European Union also considered this problem of the unprotected creditor and adopted Directive/2000/35 that member states had to implement into national law by Aug. 8, 2002 (and new member states by May 1, 2004). The directive lays down the rules that guarantee creditors receive due interest for late payments in commercial transactions.

The most important rules are, firstly, that the interest rate is equal to 7 percent + the interest rate of the national central bank applied to its most recent refinancing operations (after joining the euro area, the interest rate of the European Central Bank). This considerably exceeds the default interest provided in general civil laws (for example, in Latvia it is 6 percent).

Secondly, if the specific contract has a lower interest rate, it can be declared unenforceable, or damages can be claimed if it is grossly unfair to the creditor. This rule turns the fairness issue upside down, since until now it was the debtor who usually complained about unfairly high payments; but under the directive a contract is considered to be unfair if the interest is unreasonably low. If the contract deviates from the default rules of the directive, the debtor has to explain and prove the objective reasons for that.

Lastly, the directive lays down the requirement for civil procedure. The member states have to ensure that the creditor obtains an enforceable court decision within 90 days from lodging the claim, provided that the debtor does not dispute it.

Implementation in the Baltics. The directive has been implemented in Estonia and Lithuania. Therefore, the rules stated above can be relied upon by creditors acting under Estonian and Lithuanian laws. Latvia is, however, the only Baltic country that has failed to implement the directive by May 1, 2004. Thus the beneficial rules of the directive are not available to Latvian creditors, and the general rules of the civil law and the civil procedure law still apply.

If compared to the situation in the rest of Europe, Latvian creditors are clearly disadvantaged. The default interest rate is the standard 6 percent of the civil law. A contract with a lower interest rate will not be considered grossly unfair and will not give rise to a damage claim - but it will be a perfectly legitimate use of freedom of contract. The civil procedure law notably lacks any 90-day limitation rule (which would be fulfilled in the smaller cases decided in district courts, but probably would be exceeded in claims over 30,000 lats [44,700 euros] that are decided by regional courts). Still, the so-called "warning procedure" may be applied in these cases, which, if the debtor does not dispute the case, is quick and efficient.

In general, the only option that Latvian creditors have is to wait for the laws to be amended and include express penalty clauses in the contracts until that time.

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