

## Late Payment of Commercial Debts: EU Agreement Will Have Little Impact

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### Abstract

The EU Parliament and Council have agreed new rules to strengthen the protection of small firms facing late payment of bills by public authorities and companies. Diana Bentley speaks to John Abbott, litigation partner at London city firm Silverman Sherliker, about the implications of the decision

### Analysis

On Monday 13 September 2010 the EU Parliament and the EU Council agreed on new rules to further protect small firms against the late payment of bills by public authorities and companies. MEPs, lobbying on behalf of small businesses, gained concessions in several areas including the general payment and notification periods, the capping of payment periods by public authorities and the interest rates payable in relation to late payments.

However, John Abbott suggests that although the spirit of the decision is to be admired, in practice it may not have much impact. "I think this latest decision is more focused on offering SMEs greater protection in dealing with public bodies. It could be they are more bureaucratic and less efficient than private companies at paying their debts so that could be justified," says Abbott.

The difficulties small businesses face in collecting outstanding debts was first addressed in the UK in the Late Payment of Commercial Debts (Interest) Act 1998 which gave businesses the statutory right to claim interest from other businesses for the late payment of commercial debt. The UK was one of the first countries in the EU to address the problem. In August 2002 the Act was amended to incorporate the provisions of the European Directive 2000/35/EC. This also addressed late payment of commercial debts and was an attempt to protect small businesses that often do not have the financial resources to withstand late payment of their invoices. The amended legislation provides for reasonable recovery costs and lays down a simple method of calculating interest—which is a stipulated rate over a reference rate. In the UK the rate is 8 per cent and the specified rate is the Bank of England base rate selected at 6 monthly intervals.

In practice however, Abbott says: "SMEs may very well value the business they gain from organisations that do not pay their debts promptly. If they are dependent on the business of a body that only pays invoices after 90 days, for example, are they going to complain? For that reason we don't see many actions to recover interest. But once people do take action I must say, the statutory provisions are useful and these new terms may well help."

The payment period in the UK under current legislation is 30 days but the issue of public authorities was addressed in the agreement. The new agreed terms provide the deadline for public and private sectors to pay bills for goods and services will be 30 days and that only in exceptional circumstances can public bodies extend the payment deadline. Public authorities providing healthcare can choose a deadline of up to 60 days. The 30 day deadline can only be extended if the parties expressly agree and provided it is not grossly unfair to the creditor. A fixed sum of €40 will be the set compensation for recovery costs. The interest rate suggested is 8 per cent over the specified rate—which is already the rate prevailing in the UK. The agreement now must be approved by the full EU Parliament and is like to be put to the vote in October 2010.

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