

# Spain: new measures to combat late payments in commercial transactions

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**O**n 7 July 2010, Act no 15/2010 of 5 July on measures to combat late payments in commercial transactions (*Ley de Morosidad*), which amends Act no 3/2004 of 29 December, came into force. This Act incorporates Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 into Spanish national law.

The pronounced financial crisis in which the global economy has been undeniably submerged for the past few years has had a special transcendence for Spanish companies and Spanish society in general. It became necessary to adapt to existing EU rules combating late payments in order to provide an efficient and effective response to the serious problem of very late payments – or even failure to pay – in commercial transactions.

On this topic, there are three highly relevant aspects related to the new regulations.

## Terms of payment

The most important amendments introduced by the new *Ley de Morosidad* are the new maximum terms of payment in commercial relations between businesspersons (in a broad sense). These legal terms are compulsory and binding and therefore cannot be lengthened by mutual agreement of the parties.

More precisely, the terms of payment established in the *Ley de Morosidad* are a maximum of 30 days for administrative entities, from delivery of the document that accredits the total or partial fulfilment of the contract, and 60 days from the date of receipt of the goods or rendering of services, in the case of private companies. These terms will be fully applicable as of 1 January 2013.

Furthermore, the Act includes a special and immediately applicable term of payment for fresh and perishable food products (30 days from delivery).

Conversely, those food products not considered perishable will be subject to a maximum term of payment of 60 days, also calculated from the delivery date. Those terms are not immediately applicable. The *Ley de Morosidad* establishes periods of progressive adjustments of the payment terms until 2013, for those products not falling under the definition of perishable food products and includes a special regime for civil leases of services with public administrations.

### Consequences of breach

Article 9 of the *Ley de Morosidad* states that agreements between the parties that attempt to modify the legal payment terms or the penalties for late payment will be deemed null and void. In such cases, after the term legally provided, creditors will be entitled to claim for late interests (ie the interest rate applied by the European Central Bank to its main refinancing operations before the first day of each natural semester plus seven percentage points).

The affected party will be able to claim, in addition to the amount of the credit, damages for recovery costs, up to a limit of 15 per cent of the amount of the main debt, if it exceeds €30,000.00, or equal to the amount of the debt, if it is less than €30,000.00.

The joint interpretation of the *Ley de Morosidad* with other administrative Acts leads one to conclude that authorities can potentially impose fines as they can verify if the legal payment terms are being respected (fines can be up to €60,000.00 depending on the autonomous communities' statutory regulations).

Any adjustment in payment periods, or violation of the legally established conditions, can be reported judicially or administratively through associations such as the Chamber of Commerce, professional associations and company associations.

### Foreigners and the Ley de Morosidad

Another issue to consider is the possible application of compulsory payment terms when commercial transactions include a foreign party.

When both parties have their domicile in European Union Member States, the case will

be easily solved by determining the applicable law for the transaction by means of (EC) Regulation No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

Where the parties decide to apply Spanish law, or when its application is determined by the abovementioned Regulation, the transaction will be subject to the provisions of the *Ley de Morosidad* (ie payment terms, interests, etc).

In the event that the applicable law is one other than Spanish law, but the transaction is linked in some way to Spanish law (eg the delivery of goods takes place in Spain), it should be considered whether the establishment of compulsory payment terms would constitute 'jus cogens' rules and, therefore, if they would be compulsory irrespective of what the applicable law is according to Article 9 of Regulation (CE) No 593/2008.

In order to obtain a response to that question, we will have to wait and observe the application of this amendment and how problems relating thereto are solved by the courts.

Finally, we must conclude that though the new Act has implemented significant amendments, which could improve the competitiveness of Spanish companies and may lead to a reduction in the major payment delays that currently exist in Spain, and somehow manage to spur economic growth, the lack of a clear system of fines and infractions may jeopardise the efficiency of the measures, insofar as there may be agreements, either express or tacit, against the legal terms described above.

Nevertheless, for the time being application of the Act must be considered in a positive light. According to statistical sources, a progressive reduction of the payment terms took place within the private sector in 2010, to the amount of €1.8bn,<sup>1</sup> which has undoubtedly contributed to an increase in competitiveness and an ability for Spanish companies to self-finance, and therefore to the economy's reactivation.

#### Note

- <sup>1</sup> PMCM (Spain: *Plataforma Multisectorial contra la morosidad* [www.pcmcm.es](http://www.pcmcm.es)).