

**CHANGES TO THE COMMERCE ACT
(IN FORCE AS OF 01 MARCH 2013)**

Changes to the Bulgarian Commerce Act (“the **CA**”) were published in State Gazette, issue No. 20 as of 28.02.2013, and enter into force as of 01.03.2013¹.

The published amendments transpose Directive 2011/7/EU on combating late payment in commercial transactions (“the **Directive**”) and aim at reaction against the commonly used practice of late payment well after the deadline between traders and by public authorities, as well.

Below is a brief article on the main changes to the CA.

PAYMENT PERIODS

The new provisions of the CA distinguish two important moments in determining payment deadlines in commercial transactions:

I. When both parties wish to define the payment period

Parties in a commercial transaction may agree on a payment period not longer than 60 calendar days. When the debtor is a public contractor², the maximum payment period should be 30 calendar days.

This is the main rule but two exceptions are envisaged when parties may agree on longer payment period:

- (i) *when the nature of the product or the service demands it; or*
- (ii) *for another important reason.*

It is important that in both cases the CA requires that the contractual clause for longer payment period does not constitute a gross abuse of the creditor’s interest and good faith.

The changes to the CA do not introduce a legal definition of the phrase “*gross abuse of the creditor’s interest*”. However, some interpretation guidelines from the Directive could be used in this respect.

When debtor is a public contractor, a longer payment period agreed between the parties as an exception may not exceed 60 calendar days in any circumstances.

II. When no payment period is agreed between the parties

¹ It should be noted that the legal measures in question should not be applicable to agreements executed before 15 March 2013.

² Public contractor is an entity pursuant to article 7 of the Public Procurement Act.

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If this is the case, payment should be made within 14 days following the date of receipt by the debtor of the invoice or an equivalent request for payment.

Similarly, this rule has some exceptions, too, when the 14-day term remains unchanged but starts from a later moment:

- (i) *when the date of receipt of the invoice or the equivalent request for payment cannot be defined* – the 14-day payment period starts from the date of receipt of the goods or services;
- (ii) *when the invoice or the equivalent request for payment is received before the date of receipt of the goods or services* – again, the 14-day payment period starts from the date of receipt of the goods or services;
- (iii) *when the contract or the law provides for a procedure of acceptance or verification of the goods or services and the invoice or the equivalent request for payment is received before that* – the 14-day payment period starts from the date on which the acceptance or the verification took place. In this event, the CA lays down a maximum period for acceptance or verification that is 14 days from the date of receipt of the goods or services, except for the cases in which a longer period is demanded by the nature of the goods or services or for another important reason.

SCOPE OF APPLICATION OF THE MEASURES

The Bulgarian legislature limits the scope of application of the measures in question for determining payment periods in general to payments made as remuneration for commercial transactions.

Debts arising from negotiable instruments; debts that are subject to insolvency proceedings and payments made as compensation for damages including payments from insurance companies are excluded from the scope of the new provisions.

The new measures also regulate transactions in which craftsmen or persons performing services by their own labour or liberal professions are constituted as a party.

INDEMNIFICATION OF THE CREDITOR IN THE EVENT OF A DEBTOR'S DEFAULT IN PAYMENT

The changes to the CA brings in a new right for the creditor who has fulfilled his obligations entitling the creditor to claim fair compensation of the damages resulting from the debtor's default in payment. This new right is parallel and independent with respect to the general rules in contract law for indemnification of the creditor's interest in case of a debtor's default.

If the creditor has fulfilled his obligations under the agreement but the debtor has delayed the payment, the creditor is entitled to claim, without sending a payment notification, indemnification in the amount of the statutory interest rate starting from the date of the debtor's default, as well as compensation for the expenses needed for collecting the receivable in the of amount of no less than BGN 80.

This rule should be applicable unless otherwise agreed between the parties, i.e. the liability of the debtor in such cases can be limited. However, such limitation should not constitute a gross abuse of the creditor's interest and good faith. For example, pursuant to the Directive a clause in the agreement stating that the creditor is not entitled to claim any expenses for collecting the receivable will always constitute such gross abuse.

When debtor is a public contractor, any limitation of his liability will be considered null and void.

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