

CLIENT ALERT

Late Payment in Belgian Commercial Transactions: What is the Impact of the Changes to the Payment Term Rules?

February 14, 2022

A new Belgian law, passed on August 14, 2021, has introduced several important changes to the 2002 law on combating late payment in commercial transactions. These changes entered into force on February 1, 2022.

The Belgian law on late payments, which applies only to commercial transactions between companies (“B2B”), is the Belgian implementation of the European Late Payment Directive 2011/7/EU. It aims to protect companies against commercial agreements that allow for unreasonably long payment terms, and it has been amended several times in the past.

1. The old regime

Before February 1, 2022, the law provided for:

- A standard payment term of 30 days, for those agreements that did not foresee any specific term; and
- the possibility for the parties to contractually extend this term, but limited to a maximum payment term of 60 days in situations where the creditor was an SME and the debtor was not an SME. Hence, in other circumstances, the parties still had the possibility to agree on longer payment terms.

The old regime also provided that this payment term ran from:

- the date on which the debtor received the invoice; or
- the date on which the debtor received the goods or services; or
- the moment when the debtor had verified the conformity of the goods or services. The term for such verification could be a maximum of 30 days.

It was therefore possible for companies to abuse the spirit of the law by setting a verification period of thirty days, with the result that the payment term became in fact 90 days (60 + 30).

Moreover, some companies included clauses setting the date of receipt of the invoice in a way that increased the payment term.

2. The new regime

The amendments introduced by the law of August 14, 2021 are intended to close these loopholes.

While the standard payment term of 30 days remains unchanged, the maximum term of 60 days now applies to *all* B2B transactions regulated by Belgian law, irrespective of whether the debtor/creditor is an SME. It should be noted that the law allows for exceptions to be made by Royal Decree for certain sectors. No such Royal Decree has yet been passed.

Regarding the start of the payment term, the new law provides that it begins:

- either on receipt by the debtor of the invoice (or an equivalent request for payment); or
- on receipt of the goods or services (if the date of receipt of the invoice is uncertain or if the debtor receives the invoice earlier than the goods or services).

No contractual postponement of this date of receipt is allowed. If the parties want to agree on a period for verifying the conformity of the goods or services, this verification term must be an integral part of the maximum term of 60 days.

Also, no contractual arrangements can be made concerning the date of receipt of the invoice: the debtor must provide the creditor with all the information that is required for a timely issuing of the invoice, which is, in most cases, no later than the fifteenth day of the month following that in which the taxable event occurred (according to the rules of the Royal Decree of December 29, 1992).

In case of non-compliance with the new rules, the possible sanction is twofold:

- the non-compliant clause will be considered unwritten, which means that the standard payment term of 30 days will apply;
- the unpaid amount will be increased automatically with interest (as from the end of the 30-day period), without any need for the creditor to send a formal notice, and with an additional fixed indemnity of 40 euro.

These sanctions will, of course, only be triggered if the creditor invokes its legal rights, if need be, before the court.

3. Practical questions and consequences

The new rules raise a few practical questions, such as how to deal with a system of instalments that a creditor may wish to grant to debtors. Technically, such payment terms are considered unwritten if they exceed the maximum term of 60 days. No legal exceptions are provided for this specific case. In theory, clauses that grant payment terms above 60 days could therefore be questioned in court. However, it is clear that such a system of instalments could still be applied by the parties provided that neither party objects or challenges the clause either in or outside court.

The changes entered into force on February 1, 2022 and clearly apply to commercial contracts entered into or modified as from this date. As a result, we highly recommend that you review your standard commercial contracts, such as general terms and conditions, that will be entered into going forward.

In addition, a strict interpretation of the wording of the law suggests that the changes would also apply to contracts that are currently in force. This strict interpretation was confirmed by the Minister of Economy, Pierre-Yves Dermagne, on February 2, 2022 following a question in Parliament. It is not clear that this was really the intention of the legislator, but given the Minister's interpretation we recommend that you take the new rules into account for any ongoing contracts as well. Indeed, as a creditor, you could try to invoke the new rules immediately.

Finally, we note that the new rules apply to contracts governed by Belgian law.

Please feel free to contact the corporate and commercial team of Crowell Brussels for any additional information regarding this amended law on late payments, or for any assistance in rendering your commercial contracts or terms and conditions compliant with the new legislation.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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