
March 2013

Easy money - new legislation for faster commercial payments

On 16 March 2013, new legislation came into effect with the aim of combating late payments and long, contractual commercial payment terms. The new legislation has put transposed into Swedish law, an EU Directive on combating late commercial payments and is expected to bring a number of positive effects such as lower financing and administration costs for companies, improved conditions for sound competition and economic benefits for society as a whole.

Background

As a rule, payment for commercial goods and services takes place in arrears. Credit is important for trade, not least because credit facilitates administration of payments and thus makes for more effective commerce. In the light of this, amongst other things, it is important that credit time-limits are kept and that late payment, i.e. payment after the due date, is avoided to the extent possible.

There already exists a relatively strong degree of protection under Swedish law for a creditor's right to payment by the due date. In this respect, penalty interest, compensation for collection costs and the cost of injunctions may be mentioned. Furthermore, a simplified collection system is provided for payments via summary proceedings at the Enforcement Authority.

Despite the relatively extensive and far-reaching regulation under Swedish law, late payments are relatively commonplace in Sweden. Under the framework of the committee report on commercial payments in Sweden (Betalingstider i näringslivet (SOU 2007:55)) a more detailed study of payments in Sweden was undertaken. The report makes clear that, amongst other things, half of all invoices issued are paid too late, even if this is often not a matter of longer delays. Despite the fact that this proportion would appear to be large, it transpired that late payments are more common in many other European countries.

Late payments can entail problems for companies and particularly those with poor liquidity. The consequence of late payment might be that a creditor, in order to maintain liquidity, must finance its business in other ways, which may entail undesirable and increased costs. Furthermore, the effect might be that the creditor affected by a

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late payment cannot pay its own debts to other companies, which ultimately can impact on even more liquid and competitive companies.

New legislation in force

The legislative changes have transposed EU Directive (2011/7/EU) on fighting late payments, which was passed by the European Parliament and the Council of Europe on 16 February 2011. The Directive has been dealt with on a national basis more recently in the report on faster payments (Sw. *Snabbare betalningar* (SOU 2012:11)) and in the faster payments bill (Sw. *Snabbare betalningar* (prop. 2012/13:36)).

In order to strengthen the creditor's interests and position, changes were made on 16 March 2013 to the following acts:

- Interest Act;
- Act on Compensation for Collection Costs;
- Act on Contractual Terms Between Commercial Parties; and
- Act on Payment Injunctions and Repossessions.

In broad terms, the legislative changes mean that a claim made upon delivery of goods or services must be paid no later than 30 days after the creditor presents its demand for payment. The provisions concern the payment relationship between commercial parties and the payment relationship between a commercial party and a public authority or other public body. Thus, the legislative changes do not apply to the relationship between companies and private individuals. Longer payment periods for commercial parties only apply if the creditor expressly consents to this. Public authorities and other public bodies may not, however, agree on longer payment periods. For these players, a payment period of 30 days always applies.

If a creditor suffers a late payment, the creditor is in all cases entitled to a late payment fee of SEK 450 as compensation. A debtor is only obliged to pay payment reminders and debt collection costs to the extent that the costs exceed the late payment fee. Further, the creditor's right to penalty interest is mandatory and cannot be waived. This also applies to the right to late payment fees, unless special reasons exist. As regards public authorities and other public bodies, these are always obliged to pay at least the statutory penalty interest. The legislative amendments do not prevent businesses from agreeing on instalment plans and thus do not concern payments due under an instalment plan.

The legislative amendments also mean that creditors will be better compensated for late payments. The compensation amounts for debt collection have been raised in line with cost rises since 2003, which means that a creditor is entitled to compensation for payment reminders at SEK 60, for collection claims at SEK 180 and for the preparation of an amortization plan at SEK 170.

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The new provisions apply to receivables based on contracts which are entered into after the amendments take effect. Thus, as a consequence, the late fee and the increased compensation amounts for debt collection only apply to receivables which fall due after the amendments take effect and for measures which are taken thereafter.

Summary – consequences of the legislative amendments

Long payment terms can be a burden for the liquidity of an independent supplier, which in the long run can adversely affect the company's profitability. In a broader perspective, this can lead to disturbances on the market and undermine the conditions for competitive business.

As initially mentioned, the legislator's purpose in amending the legislation is to complement the regulatory framework which exists in order to prevent late payments and long agreed commercial payment terms. If invoices in the business world and the public sector are paid faster than before, a number of positive effects are expected such as lower financing and administration costs for companies, enhanced conditions for sound competition (especially for small and medium-sized companies) and, in the long run, public economic gains. The survey which was made in the area under the framework of the committee report *Payment terms in the business world (Sw. Betalningstider i näringslivet (SOU 2007:55 s. 135 ff))*, makes clear that Swedish companies annually pay several billions of kronor for various administration costs, money which could have been used on growth-enhancing measures instead.

The legislative amendments may mean that companies' liquidity problems decrease, which in turn benefits growth and in the long run prevents companies from being taken into receivership. However, the actual effect of the legislative amendments may be questioned. It is generally known that some companies – especially larger ones – demand long credit terms from their suppliers and as a matter of principle do not pay invoices on time. As the legislative amendments are drawn up, it will be possible for companies, through special agreements, to deviate from the statutory 30 day credit period. In my opinion, it is likely that larger companies in particular in their relation with relatively smaller ones will demand that their suppliers provide such consent and will thereby continue to apply long credit periods. Therefore, my view is that small companies will continue to face difficulties in the future in standing up to larger companies. In this light, one can question how efficient the legislative amendments will be in reality, and thus if the aim of preventing late payments and long payment terms really will be fulfilled.

Since deviations from the new regulation require special agreement, despite what is stated above, the legislative amendments are deemed to have some effect. The Directive, on which the amendments are based, is a minimum directive which prescribes a 60 days payment term. In contrast, this means that we have chosen, on a national level,

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more stringent regulation, but the question is whether it is strict enough to achieve any significant effect and the aim of the legislative amendments. On the other hand, more stringent regulation must be weighed against the freedom of contract which enjoys a strong position under Swedish law, especially between companies. In the context of freedom of contract, it is perhaps not possible to achieve a more suitable regulation on the area. Hence, we have to draw for support on the "adjustment section" in section 36 in the Contracts Act when it comes to remedying disparities in contracts between companies. The question is however; who is prepared to litigate this type of issue?

Finally, it must be emphasized that Swedish Parliament in January 2013, when adopting the legislative amendments, recommended that the Government produced a proposal to further strengthen small and medium-sized companies' position in this respect. What these proposals will consist of remains to be seen.



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