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ABOGADOS Y CONSULTORES

Spain. Will it reduce the time for payment?

The Government's response to the problem of long delays in payment, especially acute in Spain, has been addressed again with Law 15/2010. Before the reform, the law served only to ask for an increased interest on arrears, but only when it came to litigation. In fact, during the years before the crisis, in place of an interest rate of 5%, claimants were seeking 10%-11% interest, but only in court, never in settlements.

The reform does not introduce administrative sanctions to force the companies to comply with payment terms but leaves the suppliers with the burden of suing each other, and customers, when they deem it suitable to their own interests. It is therefore a minimally invasive government intervention in the market, but actually introduces a maximum payment period of 60 days in the trade business.

Spain is ahead of the reform of the directive on late payments and has decided to establish a maximum payment period of 60 days, applying the following transitional arrangements:

From 07/07/2010 to 31/12/2011 85 days
From 01/01/2012 to 31/12/2012 75 days
From 01/01/2013 60 days

The payment period shall begin from the date of delivery of the goods, even when it has set a deadline for review and eventual acceptance of them. Companies must invoice within 30 days of delivery. The term "days" means calendar days, not only labour days.

The legislature's intention is to establish a payment within 60 days, but it forgot to repeal the former Article 9, which defines that maximum term of payment as an alternative legal regime and seems to leave this matter up to the parties, thus allowing extension clause periods of 60 days, provided they are not abusive. The solution to avoid this inconsistency will be the repeal of Article 9 or the non-application by the courts, which must comply with the limit of 60 days.

It is true that the European Parliament's legislative resolution on the reform of the Directive is in accordance with an extension of 60 days, provided they are not abusive situations, but it seems that Spain has decided to continue the hard-line of a non-extendable term of payment.

What if a customer pays later than 60 days?

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As mentioned above, the solution must be found by the supplier himself. In case he wants to raise the banner of their rights before the client, he could follow these options:

Wait for the end of the business relationship with his client. In fact, what supplier would tell the client that he is in breach of the terms of payment and has to pay interest?

At the time that the relationship is over, with no hope of a future relationship, the supplier may go to court to claim interest, a possibility already existing before the reform and that very few chose to use.

We wonder if the supplier could seek damages. The European Parliament's legislative resolution on the reform of the Directive refers indirectly to this possibility. What would happen if a supplier went bankrupt due to invalid payment deadlines imposed by a client? Theoretically, it could seek damages from the customer, since the judge has the power to intervene in the consequences of the ineffectiveness of obligations (Article 1258 Spanish Civil Code).

Another course of action is provided by the Unfair Competition Law. The supplier does not accept terms longer than 60 days and realizes that other competitors are hired by a client who exceed the statutory period for payment. He could sue for unfair competition, both tolerant supplier and the client, and seek damages. The claimant will have the burden of proving that the point of lengthening the payment period has been crucial to the establishment of the relationship between the customer and the competitor.

The law against late payment gives to business associations, chambers of commerce and professional associations the opportunity to act before the courts to nullify the continuing practice of the lengthening of payments. Until now, these entities have not acted in this area. We shall see if something changes in the future.

There will be other consequences for companies that pay later than 60 days. The law imposes the obligation to indicate in the annual report "information about the payment period to suppliers." This consequence can end up as a result more cosmetic than real, for the following reasons:

- a) In Spain there is no specific penalty if companies to prepare the note to the annual accounts poorly or badly.
- b) Probably a company that pays later than 60 days may indicate in the report: "In the Company's payments to suppliers the company respects the obligations contained in Law 3 / 2004 of 29 December and does not apply to clauses that may

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be abusive according to the criteria of Article 9 of the standard. " In the case of audited companies, we shall see what support the auditors give to these kinds of declarations.

In our view, the reform provides some tools to pressure companies to pay punctually and will have to verify whether suppliers or legitimate public and private entities decide to act.

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This article can only be published in magazines, newsletters and web pages by expressly explicitly indicating the name of the lawyer Piero Viganego as the author.

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