

New method of calculating statutory interest

The beginning of 2016 heralds major changes to the method of calculating interest on all civil law transactions. The amended provisions come into force on 1 January 2016. They change first and foremost the method of calculating statutory interest distinguishing between the calculation of default interest and interest on principal and, in the case of default interest, between the calculation of such interest in transactions between businesses or between businesses and certain public entities (i.e. transactions between professionals) and transactions between other types of parties. They also introduce a new method of calculating maximum interest.

Interest calculation method

Until now the Council of Ministers has periodically set the amount of statutory interest, taking into account market interest rates and the NBP's interest rates. From the beginning of 2016, statutory default interest in commercial transactions (in practice, this means transactions between businesses or between businesses and certain public entities) will be the sum of the NBP's reference rate and 8 percentage points.

The system of calculating statutory interest based on the NBP reference rate will also be incorporated into the Civil Code. Under the new method described in that legislation, statutory interest (on the principal amount, e.g. a credit facility), if not specified by the parties, will be equal to the sum of the reference rate and 3.5 percentage points, while statutory default interest will be the sum of the reference rate and 5.5 percentage points. In practice, however, the latter will not apply to transactions between businesses, where the above-mentioned margin of 8 percentage points will apply.

At the same time, the mechanism based on the reference rate will apply instead of the mechanism that has applied to date, this being four times the NBP's lombard rate (which is currently 2.50), also in relation to the new method of calculating the maximum amount of statutory interest (on the principal and for default). From 1 January 2016, the maximum interest chargeable must not exceed an amount that is twice the amount of, as the case may be, statutory interest and statutory default interest. However, it is not clear if in the case of commercial transactions this maximum rate is determined by reference to the statutory rate of default interest applying to the commercial transactions or the rate specified in the Civil Code. It seems to us that the rate specified for commercial transactions should apply, but the issue requires clarification through case law or by means of further amendments to the Act.

Under the new rules, the NBP reference rate that is the basis for calculating statutory default interest in commercial transactions will be set twice a year, on 1 January – for interest payable from 1 January to 30 June, and on 1 July – for interest payable from 1 July to 31 December. This rate is currently 1.50.

Other important amendments

Currently, a business creditor whose debt becomes entitled to statutory interest in accordance with the provisions set out above is also entitled to compensation of an amount which is the equivalent of EUR 40. Unlike the current regulation the new rules clearly show that this amount will be payable on a single commercial transaction or, if the parties decide in an agreement that the performance is to be fulfilled in parts, the compensation will as a rule be payable in relation to each unpaid part.

There is in general currently a statutory 60-day time limit from the date an invoice or bill is delivered by which debts in commercial transactions have to be paid (30 days in the transactions where the debtor is a public entity). Currently, this period can be extended (other than where the debtor is a public entity) in circumstances where the fixed period would not lead to a conflict with the "principles of social co-existence". This will now be replaced with a test of whether or not the extension would cause serious unfairness to a creditor, which is consistent with EU legislation. That criterion also applies to the agreement of the time limit for examining whether any goods or services comply with the agreement under which they are provided (which will not be allowed to exceed 30 days, on the assumption that it is not seriously unfair to the creditor) and to determining the payment schedule.

Finally, it should be added that from the new year parties to commercial transactions will not be allowed to agree upon between themselves the time limit for delivering a bill or invoice; this is to prevent any postponement in the point in time when interest starts to accrue.

Interim provisions

According to the interim provisions, the old legislation will apply to interest payable for a period ending before the new legislation comes into force, which implies that the new legislation will apply to interest payable for a period after the new legislation comes into force. There is no doubt that this rule applies to transactions with the consumers. However, in the light of another interim provision (which says that the old provisions apply in general, to commercial transactions concluded at the time the old provisions were still in place and public tender proceedings initiated at that time), it is unclear whether interest on receivables due under commercial transactions entered into before the new legislation comes into force, but still having effect for a period after that is subject to the new provisions or the old

ones. Therefore, it would be unclear what interest would apply to e.g. a commercial transaction carried out pursuant to a contract entered into in 2015 but where the invoice was issued in 2016.

It seems to us that new provisions on interest (unlike other provisions of the amended law, i.e. not related strictly to interest) will apply as of 1 January 2016 also to commercial transactions entered into earlier. However, this is another example of a provision which requires clarification through case law or by means of further amendments to the Act.

Summary

The new provisions are intended to provide increased protection for creditors by eliminating the risk associated with interest being set at levels lower than those guaranteed in EU legislation, and in this respect they should be viewed favourably. Having different interest rates apply depending on the type of transaction and whether the interest is on principal or for a default should, in our opinion, be seen also as a positive change.

However, the lack of clarity as to the method of calculating maximum interest in commercial transactions and as to the interim provisions regarding interest applying to the commercial transactions should be viewed negatively. Furthermore, time will show what will be the results of replacing the amount of statutory interest set by the Council of Ministers and the maximum interest set based on the NBP lombard rate with a calculation based on the NBP's reference rate. Generally, it seems as the new rule may lead to a decrease in the amount of interest payable on principal (if the parties do not specify that amount) and default interest in non-business transactions, but in other cases (including maximum interest), the result may be a similar or higher level of interest.

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