

European Union combats Late Payments in Commercial Transactions

By Lejeune Association Management

"35% of all cases of late payments is caused by intention!"

A very important directive, particularly for small and medium sized companies remained relatively unnoticed. It concerns Directive 2000/35/EU, which was published on 29th June 2000 and like all other "directives" had to be implemented in the legislation of the member states. With the exception of Spain and Luxembourg this implementation has now been concluded and consequently time has come to make use of the advantages which this directive is offering.

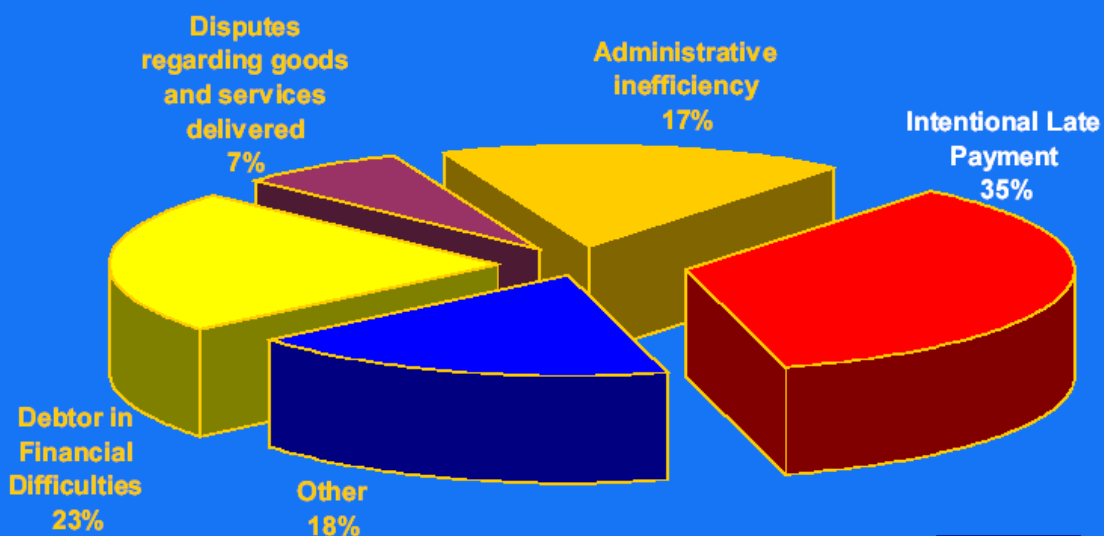
The figures, which the EU Commission gave as arguments for its actions are striking:

- one out of four insolvencies are due to late payments;
- causing a loss of 450.000 jobs in the EU annually;
- outstanding debts of € 23,6 billion are lost every year through insolvencies caused by late payments.

Late payment has a lot to do with the David Goliath situation in business land. Statistics published by the EU show that for example in France 74% of the net borrowers are large companies (over 250 employees) and only 26% are SME. It is obvious that market power has a lot to do with whether or not to take free credit. Not less then 35% of the late payments consequently are intentional as the following EU statistic clearly shows.

EU STUDY 1994-1997

Causes of Late Payment - Export (W. Europe)



Source: "European Payment Habits Survey April 1997", Intrum Justitia

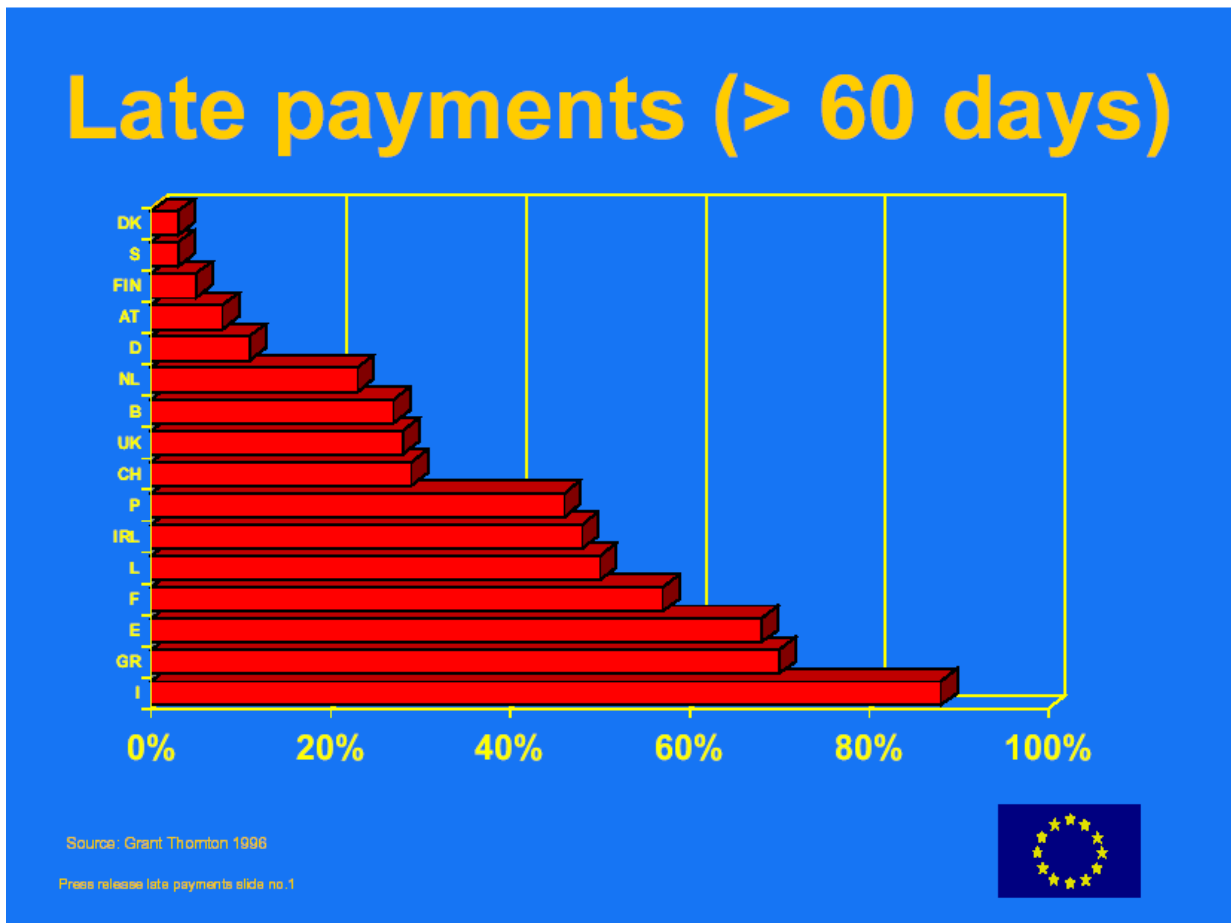
Press release late payments slide no.4



The figures mentioned in the above graphic are just the EU averages. In some countries like f.e. Spain, the intentional late payments have reached a level of not less than 62%.

It is the firm opinion of the European Commission that variations in payment deadlines across Europe distort the single market. In countries where penalty interest rates are generally low, debtors prefer to owe money rather than to borrow, to ensure that their debts are paid on time. The great variations in average late payments in the EU is shown clearly in the next chart:

EU STUDY 1994-1997



All these matters gave reason for the EU Commission to interfere with Directive 2000/35, which envisages that purchasers are required to pay their suppliers within a month of the receipt of the goods. In fact, according to the directive, payments must be made:

- 30 days after the date that the debtor received the invoice, or a similar valid request for payment.
- Automatic right to implement substantial penalty interest (7 percentage) points above ECB rate) on debts outstanding 31 days.
- No reminder necessary for collection interest, because late payment is a break of contract, which should be automatically sanctioned.
- Contract freedom to fix different payment periods.

So far the essence of the Directive which has been implemented in national law in the member states of the EU, with the exception so far, of Spain and Luxembourg. A check in the various countries about the implementation gave the following results.

DIRECTIVE 2000/35/EC - Late Payments in Commercial Transactions

OUTCOME OF A QUESTIONNAIRE

COUNTRY	A	B	DK	SF	F	IRL	I	D	G	LU X	NL	P	ES	S	UK
Directive implemented ?	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	NO	YES	YES
- Directive implemented on	aug-02	aug-02	jul-02	may-02	may-02	aug-02	oct-02	jan-02	?-03	- / -	dec-02	?-03	- / -	jul-02	aug-02
Implementation in national legislation includes:															
- Benchmark includes 30 days net payment	YES	YES			YES		YES	YES	YES	- / -	YES		- / -		YES
- Penalty interest of 7 % points above ECB rate	8%	YES			YES		YES	8%	YES	- / -	YES		- / -		8%
- Contract freedom to fix different payment period	YES	YES			YES		YES	YES	YES	- / -	YES		- / -		YES
- Statutory right to interest in case of late payment	YES	YES			YES		YES	YES	YES	- / -	YES		- / -		YES
- No reminder necessary due to breach of contract	YES	YES			YES		YES	YES	YES	- / -	YES		- / -		NO
- Additional items (country specific)	YES	YES			NO		NO	YES	NO	- / -	NO		- / -		YES

Additional items:

Austria: Compensation of other damage, in particular costs of recovery; compound interest (express agreement).

Belgium: Principle of "Vordering tot staking" was included.

United Kingdom: Base rate is Bank of England Base rate, in stead of ECB rate; contract freedom can be overruled by Court of Justice.

A last word on how to proceed. As late payments are a matter of great concern for years in the packaging sector it is of utmost importance to make use of the facilities which this Directive is offering. All sales conditions include a paragraph on payment terms, however practice showed that exceptions forced or unforced are numerous. The money lost in this way runs into the billions Euro's. Consequently this new EU Directive should be used to apply the regulations on payment terms from the sales conditions which the industry was unable to apply through its own too weak market power. The advantages for the packaging industry could easily reach a figure of more the 1% of sales.