



## Collecting debt principal through the Plan of Payments to Suppliers does not impede the claiming of late payment interest

*The voluntary or involuntary waiving of late payment interest is contrary to EU regulations and therefore null*

In recent years various so-called “Plans of Payments to Suppliers” (PPP, as abbreviated in Spanish) have been approved in Spain. The PPP are financing mechanisms for payment to suppliers of Public Authorities, intended to offset the non-payments suffered by said suppliers as a consequence of the economic crisis. However the regulations controlling the PPP also establish that once a supplier adheres to this mechanism and the owed capital has been paid, the debt with the Public Authority is deemed settled in full, in other words not just the capital but also all late payment interest to which the supplier might be entitled.

### This dilemma has now been resolved

Many suppliers opted to include their unpaid bills in the PPP, to collect their debt and forget about claiming any late payment interest to which they might be entitled, no matter how much this might be. However, a few, in spite of having resorted to the PPP, decided to claim the late payment interest to which they believed they were entitled. Little by little, several courts are now upholding these claims, the last of which was the Court of First Instance no. 21 of Seville in its judgment of 19 November. This judgment follows the same criterion as that already established by Contentious-Administrative Court no. 6 of Valencia in its judgment of 24 November 2014.

### Direct effect of the directive

These Courts recall that Directive 2011/7/EU introduced several new developments in the fight against non-payment in commercial operations that might be applied to transactions between individuals, and to operations with the Public Authorities. One such novelty is that of considering contractual clauses or practices excluding late payment interest as abusive, and therefore null.

Our legislator included this question contained in the Directive and therefore modified Law 3/2004 which regulates the measures for combating non-payment in commercial operations in Spain. However, it did not modify the provision included in the PPP that establishes that receipt of the capital excludes the collection of late payment interest. According to the judges, the mentioned Directive is directly applicable to the case, which nullifies the voluntary or involuntary waiving of late payment interest. The nullity means that the supplier is entitled to receive all pertinent late payment interest.

In the coming months we are very likely to receive confirmation of all of this from the Court of Justice of the European Union as well, when it answers the preliminary ruling on this issue by Contentious-Administrative Court no. 6 of Murcia in late 2014.