

# Novelties in the fight against late payment of debts of companies and Public Administrations: one step forward and another one back

*Royal Decree-Law 4/2013, of 22 of February, on support measures for entrepreneur, stimulation of growth and job creation*

On 23 of February Royal Decree-Law 4/2013 was published in the Official Journal. In spite of its title, such regulation amends various fields that have little or nothing to do with employment. We refer here to the amendments that affect Law 3/2004, which establishes measures for fighting late payment in commercial transactions, and the recast text of the Law on Public Sector Contracts (TRLCSP for its acronym in Spanish). Such amendments reflect the need to adapt our legal order to Directive 2011/7/EU.

## Novelties as regards Law 3/2004

In this field various measures are adopted in the benefit of the creditor. In the first place, payment periods are simplified, which in the absence of an agreement will be always of 30 days from the reception of the goods or provision of services, although the invoice might have been received earlier. Such period may be extended by agreement, although it may never exceed 60 days. On the other hand, the interest rate applicable to late payments which, in the absence of any agreement of the parties, shall have to be paid by the debtor, increases from 7 to 8 percentage points, that must be added to the rate applied by the Central European Bank.

With regard to the compensation for the recovery costs, a fixed amount of 40 Euros is established, to which the creditor shall be entitled in any case and without the need of an express request, and the limits existing so far are eliminated, and it will now be possible to claim all the costs incurred in the complaint, including attorney fees. All these novelties will apply from 24 of February 2014.

## Novelties in the TRLSCP

The novelties introduced here are not as favourable to the creditor as it may first seem. It is convenient to remind that Law 15/2010 modified the Law on Public Sector Contracts in order to reduce the payment period from 60 to 30 days, counted from the delivery of the goods or the service provision. This period of 30 days is maintained but, however, it shall not begin to count from the date of the delivery of the goods or the provision of the services, but from the moment of approval by the Administration. To this end, the Administration shall be obliged to give its approval within the period of 30 days following such delivery or provision (there is no mention to what happens if those 30 days pass without the Administration giving its approval). But, be that as it may, with this new mechanism the payment deadline is once more, artificially, extended from 30 to 60 days.

Moreover, in order for the accrual of late payment interest to start the invoice must have been submitted before the corresponding administrative register within the 30 days period from the delivery of the goods or the provision of the service. It must be determined in each case which the register in question is.

These novelties in the TRLCSP are applicable from 24 of February of 2013.