



Waiver to the interests for late payment by signing up to the supplier payment plan may or may not be valid

In its judgment of 16 February 2017, the Court of Justice of the European Union leaves the door open for the national court to verify whether the aforementioned waiver was freely agreed to

Between 2008 and 2013, several companies supplied goods and provided services to medical establishments forming part of the Health Service of the Autonomous Community of the Region of Murcia, which failed to pay for those goods and services. Those companies then assigned the debts at issue to IOS Finance, a factoring company that would later assume responsibility for claiming debt from the aforementioned Health Service. As part of said claim, in addition to the principal sum of the debt, it claimed for interest in respect of late payment and compensation for the recovery costs accrued. Given that the Health Service failed to pay those amounts as well, IOS joined the so-called “supplier payment plan”, a mechanism that enabled it to obtain payment only of the principal amounts of said debts. Then, IOS brought proceedings against the Health Service requiring it to pay the amounts claimed in respect of interests for late payment and compensation for recovery costs. The court hearing the claim decided to refer the matter to the CJEU for a preliminary ruling. It asked for a ruling on whether the Spanish regulation on supplier payment plans entailing the waiver of the right to interest and recovery costs was consistent or not with Directive 2011/7/EU, which proposes several measures for combating late payment.

Supplier payment plans

Supplier payment plans were created so that companies could receive payment on invoices issued to the Autonomous Communities and Local Authorities. In exchange for immediate

payment of the principal debt, all suppliers joining this extraordinary financing mechanism agreed to waive their right to receive interest for late payment and compensation for recovery costs owed by the aforementioned Administrations for having failed to meet payment deadlines. In terms of interests, said waiver involved renouncing the right to receive payment of interest, calculated at the Euribor rate plus 8%, on the principal.

“Freely agreed to” waiver

The CJEU analyses whether the creditor's waiver of the right to interest for late payment and recovery costs contradicts Directive 2011/7/EU. Said Directive establishes that any agreements excluding the right to receive payment for such concepts are clearly abusive. The Court concludes that said waiver is not contrary to Community law, provided that the creditor has agreed to it freely.

The CJEU believes that in order to assess whether consent has been granted freely or not, it is necessary to ensure that the creditor was in fact able to rely on any effective legal remedy to seek payment of the debt in full, had he wished to, (including interest for late payment and recovery costs). According to the CJEU, the Spanish courts are competent to decide on this aspect. Therefore, we will have to wait and see how the Spanish courts rule in terms of whether the creditor was in fact able to rely on any effective legal remedy to seek payment of the debt in full..