

POLICY BRIEF 6

REMINDER FOR ADOPTING GOOD PRACTICES IN IMPLEMENTING THE LATE PAYMENT DIRECTIVE



PROJECT:

“ADOPTING GOOD
PRACTICES IN
IMPLEMENTING THE LATE
PAYMENT DIRECTIVE”

THIS POLICY BRIEF INVESTIGATES THE STATE OF AFFAIRS IN IMPLEMENTING THE LAW ON FINANCIAL DISCIPLINE AS A MEANS FOR ENSURING GREATER LIQUIDITY OF ECONOMIC OPERATORS AND TIMELY PAYMENT OF MONETARY LIABILITIES EXISTING BETWEEN THEM. ALSO ENCLOSED ARE RECOMMENDATIONS FOR IMPROVEMENT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR FURTHER HARMONIZATION WITH THE LATE PAYMENTS DIRECTIVE, AND RECOMMENDATIONS FOR IMPROVING THE IMPLEMENTATION AND INVOLVEMENT OF ENTITIES FROM DIFFERENT SECTORS.



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INTRODUCTION

Economic operators face difficulties in collecting receivables existing between them, as well as receivables they have with the public sector, which leads to a disruption of their liquidity and deterioration of the overall economic activity. In order to overcome this problem, in 2013, the Law on Financial Discipline was adopted (Official Gazette 187/2013), which has undergone several subsequent amendments in 2014, 2015 and 2016. The Law regulates the timely fulfilment of monetary liabilities arising from the realization of business transactions between economic operators from the private sector, that is, between the public sector entities and the economic operators from the private sector, in order to prevent the non-payment of monetary liabilities within the foreseen deadlines.

Although the law has been in effect for five years, the business community continuously points to the need to overcome the following challenges: a) the law does not consider all economic actors in the state equally, b) it does not contain a quick collection mechanism from the largest debtor of SMEs – i.e. the state, and c) it does not provide the features of a modern financial contract, rather it has the structure of a traditional contract for collection between legal entities.

The purpose of the conducted research is to contribute to the improvement of the legal framework for the implementation of the agreements in the country, in particular: 1) to detect weaknesses in the implementation of the law; 2) to determine the degree of harmonization of the law with the EU directives; as well as 3) make recommendations for amendments in the legal and institutional framework for improving collection. The research was realized with the support of the re-granting program of the project “Strengthening Capacities and Mechanisms for Supporting Chapter 20 Reform Processes”.

Financial debt loses its value if it is not paid on time, thus any time lost in the procedure for re-processing would affect the value of the service and/or the product. Consequently, expeditious collection is of great importance to economic operators.

The legal solution came into force with a series of shortcomings.

The European Union (EU) consistently states that further harmonization of the legal framework with the EU Late Payments Directive is necessary

APPROACH AND CONCLUSIONS

The methodology of the conducted research is based on the following two key points:

1. Analysis of the Law on Financial Discipline with respect to the 2011/7/EU Directive with a corresponding table and a Summarized Report on the legal analysis;
2. Analysis of the application of the law through the processing of empirical data collected from a survey of companies, mainly SMEs, and conducted direct structured interviews with representatives of relevant institutions, including the Public Revenue Office (PRO) and the Ministry of Finance.

1. Foreign investors are not encouraged to use the legal provisions because of the long-lasting and unprofitable collection procedure.
2. The law is not fully compatible with the domestic legal system.
3. The jurisdiction for its implementation is subject to further consideration.
4. The law is not comprehensive because there is a lack of complete regulation of the liabilities of the public sector, especially for invoices for smaller amounts.
5. Inequality of the commercial sector in regards to the public sector.

Conclusions from the legal and institutional analysis

- In regards to the harmonization of the law in our country with the EU regulation - the conducted analysis show that it is, mainly, aligned with some minor exceptions.
- The rights arising from this law supersede ownership rights, but because of the need to establish long-standing business relations - the requirement, i.e. the need for partner tolerance is stronger, so it does not have any significant application.
- The law regulates in detail the period during which the right to collection can be realized - a maximum of 60 days (in the commercial sector) from the day of issuing the invoice, in a separate court procedure or via self-help. Given that in the protection of the right to ownership, such short procedures are not regulated and self-help is not mentioned.
- The exclusion of public and state-owned enterprises from this law slows down the cash flow, as firms wait for a long time for the collection of their receivables from the state, which slows down the settlement of their obligations to other companies.
- The implementation of the law is at the cost of significant use of PRO resources for non-tax purposes, which is contrary to the basic competence of PRO, that is, the establishment, control and collection of taxes. In this context, the PRO has submitted a request for the change of competences based on the implementation of the law.

Conclusions from the research of the SMEs sector

The conducted survey shows that the collection of receivables is one of the biggest problems for the companies; however, the Law on Financial Discipline has not met their expectations.

BY INCLUDING STATE AND PUBLIC INSTITUTIONS IN THE LAW ON FINANCIAL DISCIPLINE, THE LIQUIDITY OF COMPANIES WOULD BE SIGNIFICANTLY INCREASED.

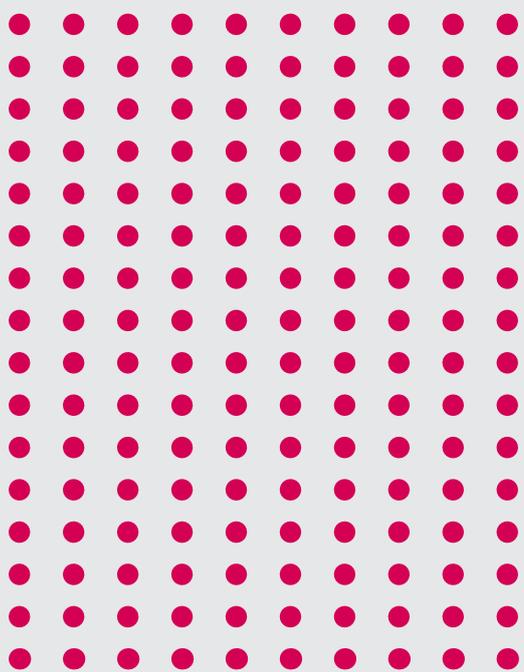
1. The reasons for this are the complicated procedure for initiating proceedings, which are not only lengthy, but also include authorities such as the courts and enforcement agents, whose involvement may disturb the future relationships between economic operators that have established a business cooperation, therefore it is necessary to have a defined and documented procedure that would be carried out automatically on the basis of the performed service or realized delivery without greater engagement of the economic actors.

2. The fact that state and public institutions are excluded from this law discontinues the cash flow chain, taking into account that they are debtors to private economic operators with high amounts in receivables. Failure to meet their obligations regularly slows down the functioning of private sector operators.

RECOMMENDATIONS FOR POLICY MAKERS

- There should be longer deadlines for fulfilling the monetary liabilities that can serve as voluntary lending to the debtor by the creditor.
- Strengthening the effect of the pro-forma invoice, i.e. invoicing should be postponed until payment by the economic operator-debtor based on the issued pro-forma invoice and the performed service/delivery. Thus, the economic operators would not have to pay the value added tax based on the calculated amount; rather they would pay on the basis of the paid amount and after the delivery of the service/product.
- Drafting amendments or drafting a new law for the precise definition of the jurisdiction for its implementation on the part of a relevant institution.
- Disseminating information through the Ministry of Economy about the mechanisms for its implementation.
- Amendments to the Law on Enforcement Proceedings allowing the notary's enforcement act to be a sufficient legal basis for collection not only for economic operators from the private sector, but also for the state as the main factor and carrier of the economic activities.
- Modification and amendment to the Law on Obligations regarding the procedure for reprocessing - especially in the section for collection of arrears from the state.
- The complicated procedure for initiating the collection procedure should be simplified and there should be a defined and documented procedure that would be automatically carried out on the basis of the performed service/or delivery without greater engagement of the economic stakeholders.
- Inclusion of banks in the process of debt collection and changing the manner of their functioning in this respect, i.e. the banks should be included in the collection of due payables, and lawyers, notaries and enforcement agents should be excluded from the process, which would reduce the time for collection and the costs related to executive decisions.

THE CONCEPT OF THE LAW ON FINANCIAL DISCIPLINE MUST BE CHANGED. THE LAW SHOULD REFER TO COLLECTION IN GENERAL, BASED ON ISSUED INVOICES AS ACTIVITY, AND NOT ONLY ON COOPERATION AGREEMENTS. THIS WILL IMPACT THE CHANGES IN THE RELATIONSHIP WITH THE LAW ON OBLIGATIONS, WHERE ARTICLES SHOULD BE INTRODUCED REGULATING THE CONTRACT FOR POTENTIAL COLLECTION BETWEEN THE SUBJECTS.



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