

L.N. 233 of 2005

**EUROPEAN UNION ACT
(CAP. 460)**

Commercial Code (Amendment) Order, 2005

IN exercise of the powers conferred upon him by article 4(2) of the European Union Act, the Prime Minister has made the following Order:

Citation, scope and commencement.

1. (1) This Order may be cited as the Commercial Code (Amendment) Order, 2005.

(2) The purpose thereof is to transpose the provisions of Directive 2000/35/EC of the European Parliament and of the Council of the 29th June, 2000 on combating late payments in commercial transactions.

(3) This Order shall come into force on the 1st July, 2005.

Adds new Sub-Title IA to Title II of the Commercial Code.

2. Immediately after Sub-Title I of Title II of the Commercial Code there shall be added the following new Sub-Title:

“Sub-Title IA

**OF LATE PAYMENTS IN COMMERCIAL
TRANSACTIONS**

Definitions for the purposes of this Sub-Title.

“26A. For the purposes of this Sub-Title -

“commercial transactions” means transactions between traders, between traders and public authorities and between members of the liberal professions and traders or public authorities, which lead to the delivery of goods or to the provision of services for remuneration;

“enforceable title” means any decree, judgment or order for payment issued by a Court by law or other competent authority, whether for immediate payment or payment by instalments which permits the creditor to have his claim against the debtor collected by means of forced execution. It includes any such decree, judgment or order for payment that is provisionally enforceable and remains so even if the debtor appeals against it;

“public authority” means the Government of Malta, Local Councils and other public bodies where a body is considered to be a public body when it:

- is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature,
- has legal personality, and
- is financed for the most part by the State, or Local Councils or other public bodies, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, Local Councils, or other public bodies;

“undertaking” means any organisation acting in the course of its independent economic or professional activity, even where it is carried on by a single person;

“late payment” means a payment which is still due after the contractual or statutory period established for payment;

“retention of title” means the contractual agreement according to which the seller retains title to the goods in question until the price has been paid in full;

“reference rate” means the central intervention rate established by the Governor of the Central Bank of Malta in terms of the powers granted to him in Part IIA of the Central Bank of Malta Act in force on the first calendar day of the half year during which interest becomes due and which for the purposes of this Sub-Title shall apply for the following six months;

“interest rate” means the reference rate in force on the first calendar day of the half year during which interest becomes due, plus seven percent (7%).

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Scope of this
Sub-Title.

26B. The provisions of this Sub-Title shall, notwithstanding the provisions of any other law, apply to payments made as remuneration for commercial transactions, irrespective of whether they are carried out between private

bodies, public authorities or both, including commercial transactions to which members of the liberal professions are a party, with effect from the 1st July, 2005:

Provided that this Sub-Title shall not regulate transactions of traders, public authorities or of members of the liberal professions with consumers, interest in connection with other payments not regulated by this Sub-Title, such as payments under any provision of this Code or of any other law in respect of cheques and bills of exchange or payments made as compensation for damages including payments from insurance companies.

Interest in
case of late
payment.

26C. (1) Interest payable in accordance with this Sub-Title shall become payable from the day following the date or the end of the period for payment fixed in the contract.

(2) If the date or period for payment is not fixed in the contract, interest shall become payable automatically without the necessity of a reminder:

(i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment; or

(ii) if the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 days after the date of receipt of the goods or services; or

(iii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services; or

(iv) if a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by law or in the contract and if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place, 30 days after the latter date.

(3) The creditor shall be entitled to interest for late payment to the extent that:

(i) he has fulfilled his contractual and legal obligations; and

(ii) he has not received the amount on due time, unless the debtor is not responsible for the delays.

(4) The rate of interest for late payment which the debtor is obliged to pay, shall be the interest rate as defined in article 26A, unless otherwise specified in the contract. The reference rate in force on the first calendar day of the half year during which interest becomes due shall apply for the following six months.

(5) Unless the debtor is not responsible for the delay, the creditor shall be entitled to claim reasonable compensation from the debtor for all relevant recovery costs incurred through the debtor's late payment.

(6) Any agreement on the date for payment or on the consequences of late payment which is not in accordance with the provisions of sub-articles (2), (3) and (4) of this article shall give rise to a right to claim for damages if when all circumstances of the case including good commercial practice and the nature of the product are considered, it is grossly unfair to the creditor:

Provided that in determining whether an agreement is grossly unfair to the creditor, it shall be taken, inter alia, into account whether the debtor has any objective reason to deviate from the provisions of sub-articles (2), (3) and (4) of this article. If such an agreement is determined to be grossly unfair, the terms established in this Sub-Title shall apply unless the First Hall of the Civil Court upon the application of any party interested determines different conditions which are fair and which are to apply.

Sale of
moveables.

26D. In the case of a commercial transaction consisting of the sale of movables, the seller shall be entitled to retain title of the same until the price thereof is fully paid if such retention of title has been expressly agreed to in writing between the buyer and the seller before the delivery of the said movables.

Exclusions.

26E. The provisions of this Sub-Title shall not apply to:

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(i) debts that are subject to insolvency proceedings instituted against the debtor;

(ii) contracts that have been concluded prior to the 1st May, 2004;

(iii) interest payments of less than two liri.”.