

Payment terms: no relaxation of the regulations during the Covid-19 health crisis

In these difficult times, significant adjustments aiming at safeguarding the economy have been implemented. There is, however, one aspect for which no provision has changed the applicable regulations and is, on the contrary, subject to increased vigilance: compliance with the payment terms of suppliers.

I. Creation of a crisis committee

“[F]aced with the deterioration of payment terms”, Bruno Le Maire, French Minister for the Economy and Finance, and François Villeroy de Galhau, Governor for the Bank of France, have announced the creation of a so-called crisis committee “to answer the most difficult cases and put an end to an increasing trend of cessation of payments or late payments, contrary to the guidelines of the State regarding relations between customers and their suppliers”¹.

This committee is co-driven by the Business Mediator, Pierre Pelouzet, reporting to the Ministry of the Economy and Finance, and the Credit Mediator, Frédéric Visnovsky. It will also include business federations (AFEP, CPME, MEDEF, U2P), Chambers of Commerce and the DGCCRF (Directorate General for Competition, Consumer Affairs and Fraud Control).

The goals that have been announced for this committee cover both the analysis of the deterioration of payment terms and the detection of late payments. This committee also aims at *“Putting an end to critical situations through the commitment of the representatives of businesses who are able to act towards businesses whose behaviour is not normal”* and *“Promoting businesses who voluntarily take part in economic solidarity”².*

The creation of this crisis committee announces a proactive approach, which is meant to be dissuasive, throughout the health crisis, to obtain compliance with payment terms. Indeed, the Business Mediator has underlined the existence of three ways to apply pressure on companies who would not pay their suppliers in due time:

“Starting from this week, with the Committee in charge of monitoring payment terms, we have three levels of action. Firstly, we contact the parties involved to understand the problem. Calling upon national solidarity is often enough to trigger the payment. Companies like Carrefour, Jouve or Iliad are also setting an example. The second level is the Name and Shame principle: publishing the name of the big groups who are not compliant. Very efficient. Lastly, Bruno Le Maire has announced, on Tuesday, that bank guarantees could be refused to companies who do not pay their suppliers. During the crisis, immediate payment must become the norm”³.

More than complying with the regulations, the Mediator is asking businesses to become “model students”, asking them not to wait 60 days before paying their suppliers, this message having been passed on by the Medef, which has called for solidarity amongst companies.

While a company cannot be blamed for not doing more than what the law and its contractual obligations impose, this will have an impact on the actions of the agents of the DGCCRF when analysing the payment practices of the inspected companies.

Indeed, after the crisis, the DGCCRF should start acting in a more intransigent way with an increase in the number of inspections (which are already a priority for the DGCCRF) and a risk of strict penalties imposed on companies who would not have complied with the payment terms during the crisis.

Non-compliance with payment terms was already reported by SMB and very small businesses. The Business Mediator indicated, in this respect, that *“payment terms already came up the most in our hundred monthly referrals”⁴.* Such non-compliance during the crisis could be considered all the more responsible for the collapse of companies that were already encountering difficulties.

¹⁺² Official press release of the Government, 23 March 2020, no. 2088

³⁺⁴ Interview of Mr Pelouzet published in Ouest France, <https://www.ouest-france.fr/sante/virus/coronavirus/coronavirus-delaix-de-paiement-nous-avons-des-moyens-d-agir-souligne-le-mediateur-6790338>



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While inspections can sometimes lead to reminders of the law instead of financial penalties or the relaxing of penalties when the payments are only a few days late, this could be replaced by heavy fines in all cases, without force majeure being a valid justification.

In this context, you will find hereafter the main rules relating to payment terms.

2. Regulations applicable to payment terms

Law no. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of the economy (the so-called Sapin II Law), which came into force on 11 December 2016, provides for the following terms:

- **Legal term:** 30 days following the date of receipt of the goods or provision of the service.
- **Authorised contractual term:** the payment term cannot exceed 60 days from the date of issuance of the invoice (not the date on which it is received).
- **Exception:** the parties can determine a payment term of 45 days end of month.
- **Periodic invoices:** the contractual term cannot exceed 45 days. In the absence of any contractual clause, the legal 30-day period applies.

- **Special terms:**
 - transport services: 30 days from the date of issuance of the invoice;
 - foodstuffs: 30 days from the end of the 10-day delivery period;
 - possibility of professional agreements⁵.

In the event of non-compliance with the payment terms, the available penalties are the following:

- An administrative fine, the amount of which cannot exceed, per breach, **75,000 Euros for a natural person and 2 million Euros for a legal entity.**

The amount of the fine is multiplied by two in the event of further breaches within two years from the date on which the first decision to apply a penalty became final.

The amounts can be added together if several breaches are reported (e.g. if breaches are reported regarding both the rules of the agreed legal cap and the transport sector).

- The publication of the penalty on all kinds of media (DGCCRF's website, but also the website of the company concerned, the Media, etc.).

Before the crisis, the DGCCRF did not hesitate to impose fines of more than 1 million Euros. It can be expected that this trend will continue regarding inspections concerning the period of the Covid-19 crisis.

⁵ It is reminded that there are also special terms in the following sectors: agricultural equipment, sale of sports gear, leather sectors, clockmaking-jewellery-goldsmithery and toys

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