Latest developments regarding the new Late Payments Directive
FIEC note

Introduction:

On 20/10/2010, the European Parliament voted in favour of a new directive on combating late payment in commercial transactions, which will replace the existing rules of the current directive 2000/35/EC.
The directive adopted is the result of a political agreement between the European Commission, the Council and the European Parliament (so-called "trilogue"), which occurred on 14/9/2010. The choice of this specific "trilogue" procedure was made to already reach a compromise in first reading, while the issue was very controversial at the Council and Parliament's level during the first phases of the first reading procedure.

Schedule of the latest and next phases:

14/9/2010: "trilogue" political agreement
5/10/2010: Parliament's Committee on Internal Market and Consumers Protection (IMCO) formally approved the "trilogue" compromise
12/10/2010: Competitiveness Council "took note" of this first validation step
20/10/2010: European Parliament (plenary session) voted in favour of the "trilogue" compromise
21/10/2010: formal endorsement by Council?
By end 2010: publication in OJEU
Within 2 years: transposition into national laws

Content of the new directive – main points of interest:

- **B2B**: statutory 30 days payment period / Otherwise: contractual freedom respected, with capping up to 60 days, "unless expressly agreed in the contract" and IF "not grossly unfair to the creditor"
- **Public Authorities**: statutory 30 days payment period, "unless otherwise expressly agreed in the contract and provided it is objectively justified in light of the particular nature or features of the contract" → with strict capping up to 60 days
  + OPTIONAL derogations possible in 2 cases only – to be chosen by each Member State: statutory payment period of maximum 60 days for public entities in healthcare sector and **public undertakings** under the regime of art. 106 of the Treaty
- **Verification and acceptance periods**: 30 days (in addition to payment period!)... "unless otherwise expressly agreed in the contract ("and any tender document" → for public authorities!)" and IF "not grossly unfair to the creditor" (no capping!)
- **Article 6**: about "grossly unfair contractual terms and practices"
- **Interest rate for late payment**: statutory interest at reference rate PLUS AT LEAST 8% (above European Central Bank's reference) + minimum fixed amount of 40€ as a compensation for recovery costs
- **Transposition period**: 2 years

Conclusion:

The press relayed that the three Institutions consider this new directive as a big victory in favour of the SMEs, which are the ones facing the worst difficulties regarding late payments. This emphasis is partly due to the fact that this initiative was part of the "Small Business Act" adopted in 2008 and, in this framework, aimed at serving above all the interests of SMEs. We can however have doubts concerning this statement and the real impact that this new directive will have, in particular considering the fact that the main problem pointed out was that, in the practice, companies are reluctant to use legal instruments to request their money, as they fear being excluded from future business opportunities...

However, even if the concrete impact of this new directive is still unknown, the new rules provide a basis for improvement, especially in the Mediterranean Member States, which are the most affected by late payments.