



New consumer debt recovery rules: more protection, less costs

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On Sept. 1, 2023, new rules came into effect regarding consumer debt recovery. A new chapter, titled "Consumer Debts," was added to the Economic Law Code. This law aims to eliminate unfair practices in the debt collection process and better protect consumers in late payments.

Companies that contract with consumers are best to recheck their agreements and general terms and conditions for compliance with this new legislation. After all, violations will be heavily sanctioned.

Why these new rules?

In practice, it appeared that consumers were often vulnerable when they contracted with companies. Late payments were sometimes charged unreasonably high interest and costs at the first reminder. This led to a downward spiral of excessive debt for some consumers. The May 23, 2023 law seeks to end this.

Who do these rules apply to?

The new law applies to B2C ("Business to Consumer") transactions, in other words, when a consumer fails to pay their invoice to a business or pays it late. This law applies to all businesses regardless of size, both large companies and SMEs. Note that the rules on late payments between businesses (B2B, "Business to Business") remain unchanged and are covered by the law of August 2, 2022 on combating late payments in commercial transactions.

First reminder: free of charge

When a company is faced with late payment of an invoice by a consumer, it may no longer automatically and immediately apply a damage clause. The company is obliged to send a first reminder, and it must be free of charge. This reminder, whether paper or electronic, must include at least the balance due, the amount of the penalty clause, company details, the goods

or services involved and the due date for payment.

A fee may be charged for subsequent reminders, up to a maximum of 7.5 euros, excluding postage.

Waiting period of 14 days

After the first free reminder, the consumer has 14 calendar days to still pay his invoice. Only after this 14-day period has passed may a company apply a damages clause, provided it is included in the contract. This waiting period allows consumers to check, pay or, if necessary, dispute their invoice without immediately owing interest or fees. Indeed, the legislator assumes that the consumer's late payment is not always intentional, but may be the result of forgetfulness, for example.

Ceiling for damages

If the consumer still has not paid after the expiration of the 14-day waiting period, the damages clause can be applied, under strict conditions.

The late payment interest cannot exceed that set by the law of August 2, 2002 on late payments in commercial transactions. Currently, this interest rate - for the second half of 2023 - is 12%.

In principle, interest runs on the outstanding balance from the expiration of the 14-day waiting period. However, an exception has been made for SMEs. They are allowed to charge interest from the calendar day following the day the reminder is sent to the consumer.

There are also statutory maximum ceilings for flat-rate damages, depending on the amount owed. The purpose is to prevent excessive costs and protect consumers. These caps are as follows:

- 20 euros if the balance due is 150 euros or less.
- 30 euros , plus 10% of the amount due between 150.01 euros and 500 euros.
- 65 euros, plus 5% of the amount owed above 500 euros, with an absolute maximum of 2000 euros.

What if you do not comply with the new rules?

Companies that do not comply with the new rules risk civil penalties. For example, the court may order that payments made by the consumer in violation of the law must be refunded in full. The consumer may also be completely exempted from paying any damages clause.

In addition, administrative and even criminal penalties can be imposed for non-compliance with

the new law.

Conclusion

These new rules seek to create a fairer and more transparent debt collection process that better protects consumers and avoids excessive costs. Companies that contract with consumers should ensure that their procedures and terms and conditions are in line with this new legislation to avoid legal repercussions.



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