

# Payment period and accrual of late payment interest in public contracts: latest controversial Supreme Court ruling

Below follows an examination of Supreme Court Judgment no. 5938/2024, which confirms its doctrine on the payment period and the accrual of late payment interest in public contracts. This doctrine, which establishes a general 60-day period, raises doubts as to its compatibility with Directive 2011/7/EU and with the case law of the Court of Justice of the European Union.

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**S**upreme Court Judgment no. 5938/2024, of 26 November (rapporteur: José Manuel Bandrés), rules on the determination of payment periods and on the *dies a quo* for the accrual of late payment interest in the event of delay on the part of the public authority in public sector contracts.

Specifically, the provision currently being interpreted is Article 198(4) of the Public Sector Contracts Act (which, in the present case, corresponds to Art. 216(4) of the recast version of

the Public Sector Contracts Act of identical wording), and according to which:

Public authorities shall pay the price within 30 days of the date of acceptance of the progress reports or documents certifying that the goods or services supplied are in conformity with the contract (...), and in the event of delay, they shall be required to pay to the other party to the contract, upon expiry of that 30-day period, interest for late payment and compensation for recovery costs, in accordance

with Commercial Transactions (Late Payments) Act 3/2004 of 29 December.

(...) public authorities must accept the progress reports or documents certifying that the goods or services supplied are in conformity with the contract within 30 days of the actual supply of the goods or services.

The judgment *a quo* of the Galician High Court of Justice interpreted that, in accordance with the above article, if during the 30-day period granted to the public authority for verification it does not raise objections, the maximum payment period is reduced to 30 calendar days from invoice submission, instead of the potential 60 days. In other words, in the absence of objections, the public authority must pay the price within 30 days of receipt of the invoice.

Based on this interpretation, the Galician High Court of Justice affirmed the view held by the Judicial Review Court of Lugo, which allowed the appeal lodged by a contractor against the City Council of Lugo in relation to the accrual of interest for late payment.

However, the Supreme Court's judgment has corrected this interpretation, which it describes as "decontextualised", and confirms its previous doctrine, according to which the maximum period for payment by the public authority is 60 calendar days from submission of the invoice, provided that no objections are raised during the verification period. The only exception is if the invoice is expressly accepted before the end of the verification period, in which case the payment period is reduced to 30 calendar days from the date of acceptance.

Consequently, the accrual of late payment interest begins on the day after this period of 60 days has elapsed since the invoice was presented

or 30 days after its acceptance, where prior to the expiry of the verification period. This interpretation had been upheld by the Supreme Court, *inter alia*, in the judgments of 19 January 2022 (app. 4188/2020), 2 February 2022 (app. 1540/2020) and 7 April 2022 (app. 83/2020).

However, this doctrine of the Supreme Court should possibly have been reviewed following the Judgment of the Court of Justice of 20 October 2022, *BFF Finance Iberia, S.A.U. v Gerencia Regional de Salud de la Junta de Castilla y León* (Case C-585/20). This judgment interprets Directive 2011/7/EU on combating late payment in commercial transactions and, as far as is relevant here, Article 4 thereof, which regulates maximum payment periods in transactions between undertakings and public authorities.

The judgment of the Court of Justice of the European Union (CJEU) ruled on the question referred for a preliminary ruling as to "whether Article 4(3) to (6) of Directive 2011/7 must be interpreted as precluding national legislation which lays down, in general terms, for all commercial transactions between undertakings and public authorities, a maximum payment period of 60 calendar days consisting of an initial period of 30 days for a procedure of acceptance or verification of the conformity of the goods or services supplied with the contract, followed by an additional period of 30 days for payment of the agreed price".

The CJEU stated that the Directive "does not view the procedure of acceptance or verification as an integral part of commercial transactions between public authorities and undertakings", and pointed out that the application of a payment period exceeding 30 calendar days - up to a maximum of 60 - is exceptional and must be limited to certain well-defined cases, in particular those expressly referred to in Article 4(4) of the Directive.

Consequently, the Judgment concluded that Directive 2011/7/EU precludes national legislation, such as Spanish legislation, that lays down, in general terms, for all commercial transactions between undertakings and public authorities, a maximum payment period of 60 calendar days, including where that period consists of an initial period of 30 days for a procedure of acceptance or verification of the conformity of the goods or services supplied with the contract, followed by an additional period of 30 days for payment of the agreed price.

According to the foregoing, both the Spanish legislation on public sector procurement and the Supreme Court Judgment that is the subject of this commentary are contrary to Directive 2011/7/EU and the CJEU's case law, insofar

as the former uphold a general period of up to 60 calendar days for the payment of invoices to contractors by public authorities, without the possibility of prepayment, when there is express acceptance within the verification period, sufficing to validate such infringement in the terms required by EU law.

In this context, a review of the Spanish legal regime is necessary in order to ensure that it is fully compatible with EU law as regards maximum payment periods and the accrual of late payment interest. It should also be recalled that any national court hearing a dispute relating to this issue may refer a question to the CJEU for preliminary ruling on the conformity of the interpretation upheld by the Supreme Court with European case law.