

**In addition to late payment interest, 40 Euros of recovery cost provided in the form of a lump sum is due to the obligee**

**Experience has shown that many company executive officers know nothing about the fact that under contracts between businesses, in case the invoices of their business are not settled within the deadline, they are entitled to recovery costs provided in the form of a lump sum - an expert at Kovács Réti Szegheő Law Firm drew the attention of Origo. Dr. Mónika Kapecz pointed out that in respect of contracts concluded after 1 July 2013, it is worth bearing in mind for businesses that when their invoices are not settled within the deadline, they could enforce recovery costs provided in a lump sum, in addition to the late payment interest.**

From 1 July 2013, in case of a default in payment based on contracts between businesses, the obligee is entitled to a recovery cost of 40 Euros provided in a lump sum, in addition to late payment interest.

The new Civil Code entered into force on 15 March also provides this way, in accordance with an EU directive - the expert at Kovács Réti Szegheő Law Firm underlined.

Of course, the recovery cost provided in a lump sum is applicable to contracts concluded or amended accordingly after 1 July 2013. This provision shall not apply to contracts concluded before this date or not amended regarding monetary debt or late payment interest, even if the default occurred after 1 July 2013.

### **Late payment interest and 40 Euros**

According to the Civil Code, the obligee is without further conditions entitled to a recovery cost of 40 Euros provided in a lump sum in addition to the monetary debt plus late payment interest. The parties can agree in their contract on a recovery costs provided in a lump sum that is higher than 40 Euros.

“Without further conditions” means - Dr. Mónika Kapetz highlighted - that the obligee is entitled to this amount regardless of whether the debtor provided excuses for his default or whether any actual recovery costs incurred by the obligee. If the business in default performs voluntarily, the amount of 40 Euros will be due to the creditor as from the first date of default, without special request for payment.

Within the meaning of the Civil Code, if the amount of the costs incurred by the creditor during his acts to encourage the debtor to perform voluntarily, such as making telephone calls or giving a written notice, remains below 40 Euros, the debtor still has to pay this amount to the obligee.

### **Recovery cost provided in the form of a lump sum constitutes an independent legal title**

Recovery costs provided in the form of a lump sum is an independent legal title, and is and becomes due as late payment interest does. Like that, it is also an objective sanction for monetary debts - the expert at Kovács Réti Szegheő Law Firm stated.

Any contractual provision aimed at limiting or excluding the amount equivalent to the minimum of 40 Euros is deemed null and void, but the parties may freely depart from it from 40 Euros upwards.



The obligee, if the actual costs of recovery of its claim exceed 40 Euros, can enforce this difference as compensation or litigation costs if other conditions exist. Recovery costs provided in the form of a lump sum are included in the compensation, but not in the contractual penalty for delay, as according to the Civil Code the rules governing late payment interest are applicable to the contractual penalty for delay.

In case the monetary debt is paid in default, the creditor is entitled to demand the recovery costs provided in the form of a lump sum without regard to the amount of the debt, or the date or the duration of such delay.

### **Additional Rules**

The currency of the recovery costs in the form of a lump sum follows the principal claim, meaning that according to the Civil Code it takes the currency of the principal debt, and if the debt is to be paid in Forints, the recovery cost provided in the form of a lump sum is to be calculated applying the medium foreign exchange rate of the National Bank of Hungary in effect on the first day of the period for which the late payment interest is charged. The parties can depart from this mode of exchange in their contracts.

However, the Civil Code does not render it compulsory for the obligee to enforce the recovery costs provided in the form of a lump sum. The recovery costs provided in the form of a lump sum is not a taxable income, and it does not have to be followed by an invoice as specified in the VAT Act.

If the obligee does not enforce his claim for recovery costs provided in the form of a lump sum, it will not have gift tax or other duty implications - Dr. Mónika Kapetz emphasized.

In consideration of the aforesaid, it is worth bearing in mind for businesses that in case their invoices are not settled within the deadline under their contracts concluded after 1 July 2013, they could enforce recovery costs provided in the form of a lump sum, in addition to late payment interest.