



## Germany

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## New rates of interest payable on debts

**O**utstanding debts can place a considerable strain on a creditor's business. For example, it can mean he has to fund the amount owing with a bank loan.

The general rule is that a creditor must prove the amount of his loss before damages will be assessed and awarded. However, a creditor has for some time been able to ask for interest for the period the debt is due without having to go through this process. This sum represents the minimum damage payable to him. Until 30 April 2000 interest was calculated at a rate of 4 % p.a.

For some time it was felt that this was an inadequate rate of interest.

Accordingly, with effect from the 1 May 2000 the relevant law was amended so that, for claims falling due for the first time after 1 May 2000, interest is payable at a rate of 5% p.a. over the basic rate fixed by

the Bundesbank. The Bundesbank fixes the basic interest rate from time to time. For example, on 1 May 2000 it fixed a rate of 3.42 % and on 10 September 2000 a rate of 4.26 %. Thus an interest rate of 8.42% p.a. was payable from 1 May 2000 and 9.26 % p.a. from 1 September 2000.

## United Kingdom

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## A new financial services regulator for the UK

**T**he Financial Services and Markets Act 2000 was approved by the UK parliament in June 2000 and came into force at midnight on 30 November 2001 (a date fondly referred to in the trade as "N2"). It largely replaces existing UK laws regulating financial services and makes the Financial Services Authority ("FSA") the sole regulator of the UK financial services industry. The old organisations, which regulated financial services - such as the Securities and Futures Authority and the Personal Investment Authority - are no more.

The FSA has four main aims. These are:

- to promote market confidence;
- to promote public understanding of financial services;
- to protect consumers; and
- to reduce financial crime.

There is a general prohibition against anyone carrying on a regulated financial services activity in the UK without either the FSA's authorisation or a statutory exemption.

There is a new "financial promotion" regime with much broader scope than previous rules. It covers communications originating not only inside the UK but also outside the UK if they are capable of having an effect in the UK. Any such communication will be regulated, even a conversation in the course of a personal visit which was requested by the customer.

There is also a new, broad "market abuse" regime which supplements existing criminal sanctions and covers activities such as insider dealing. In the past it has proved difficult to obtain a criminal conviction for such offences and it is hoped that it will be easier to obtain a civil remedy under the new rules.

## Spain

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## New laws governing civil and commercial proceedings in Spain

**A** new Civil and Commercial Procedure Law came into force in Spain on 8 January 2001. It represents a new code governing both civil and commercial proceedings.

This long-awaited code introduces simpler and faster proceedings. For example, judges, abogados and clients will now be required to attend hearings in person as most cases in the First Instance Courts will be conducted orally; the old rigid rules governing cross examination of parties, witnesses and experts, will be replaced by new far more flexible procedures; and judgements will generally be enforceable immediately even if an appeal is filed.

In particular the new code has introduced major changes in relation to the collection of debts. The Court will have new, cost-effective means to search for the assets of a debtor; fines will be imposed on a defendant who fails to co-operate with the Court in disclosing his assets; and new rules for public auctions will ensure a more rational and profitable system for liquidating assets. National and international commercial trade will undoubtedly benefit from this new legislation.

## Germany

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## Reform of German contract law

**F**or 20 years people have been discussing the reform of contract law in Germany. By the end of 2001 Germany had to implement the European guideline on the sale of consumer goods, the guideline on payment default and the guideline concerning electronic commerce. The Federal Ministry of Justice took this opportunity not only to change sales law but also to reform certain areas of general contract law and other areas of the German Civil Code.

These are the most important changes:

**Time Limitation:** Until 31<sup>st</sup> December 2001 the normal limitation period was 30 years. From 1<sup>st</sup> January 2002 all rights will usually be barred by the statute of time limitation after 3 years. Time starts to run for a creditor from the end of that year in which he becomes aware of the circumstances which give him a right of action.

The limitation period for rights arising out of the ownership of real estate is 10 years.

The period for claiming damages arising from an infringement of property law, family law and the law of inheritance or for a claim relating to life, body, health or freedom is 30 years.

The limitation period for warranty

claims under the sales law and the law concerning manufacturing contracts is extended from 6 months to two years.

**Sales law and the law concerning manufacturing contracts:** Where goods are defective, the right to cancel a contract no longer excludes the right to damages. A buyer can claim specific performance of a contract but if this is denied, unconscionable or impossible, the buyer may cancel the contract, reduce the price, or claim damages or compensation for expenses. In effect there is now no difference between legal and contractual rights of cancellation.

**Codification of case law:** Certain principles, which have been developed by the Courts in respect of breach of contract or breach of trust during contractual negotiations, have been codified.

**Integration of consumer-protection acts and rules on information duties in**

**e-commerce:** Some German consumer protection acts have been integrated in the German Civil Code.

## Switzerland

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## Switzerland's European integration policy

**O**n 6 December 1992 the Swiss people decided not become part of the European Union Although the

Swiss government has confirmed that EU membership is the long-term goal of its integration policy it has since that date been negotiating separate agreements with the European Community

As of June 21 1999 Switzerland and the European Community have signed seven bilateral agreements relating to the following sectors

- Free movement of persons
- Civil aviation
- Overland transport
- Agriculture
- Technical barriers to trade
- Public Procurement markets
- Research

The agreements were approved by the Swiss parliament in its 1999 summer/autumn session and by the Swiss people on 21 May 2000. The agreements have also been ratified by all of the parliaments of the EU countries. Although the agreements are not yet in effect it is expected that this will happen before July 2002.

Of particular interest to companies willing to invest in Switzerland is the agreement on the free movement of persons, which will gradually open up the labour market.

The agreement covers workers, the self-employed, and persons not gainfully employed of sufficient financial means. Moreover, for companies with domicile in neighbouring countries the agreement on public procurement markets will represent a chance to extend their business in Switzerland.

## Italy

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## New rules for copyright protection in Italy

In August 2000, in order to improve copyright protection in Italy, the Italian legislature passed a set of rules that partially amended copyright laws dating from 1941.

The modifications introduced by the new law of 18th August 2000, no. 248, are focused mainly on two areas:

- 1) The restriction of the right to photocopy published works; and
- 2) Harsher administrative and criminal sanctions for the infringement of copyright on certain, frequently "pirated", products, such as computer programmes, audio-visual works, records, tapes and videotapes.

On the first issue, Law 248/2000 provides that published works cannot be photocopied or in any other way reproduced if the number of pages copied exceeds 15% of the total number of pages of the book or magazine in which the relevant text appears, excluding advertisement pages. In addition to this limitation, the new law imposes an obligation to pay royalties on owners of photocopying centres/points based on the number of pages reproduced through their machines. Such royalties are paid out to the relevant authors and publishers through the

Italian Authors and Publishers Society (SIAE), whose role is to protect copyright holders in Italy.

No restriction applies to photocopying activities carried out by libraries for the provision or organisation of their services.

On the second issue there has been a toughening of administrative and criminal sanctions which apply to activities such as the importation, duplication, distribution, sale, marketing of products such as computer programmes, audio, visual and audio-visual works, tapes, records, cassettes, databases and decoding devices allowing access to encrypted television programmes. Criminal sanctions can apply even if such activities are not carried on with a view to obtaining a specific economic benefit - the mere intention to acquire a general advantage from such activities can be sufficient.

As an example of the new system, the unauthorized duplication of a film meant for the television or cinema distribution can result in a fine of between approximately Euro 2,500 to 15,000 and imprisonment for a period of between 6 months and 3 years. The maximum term of imprisonment is increased to 4 years if more than 50 copies of the film are produced.

## Belgium

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## The KID COOL case: everybody is entitled to information

In Belgium, companies which fulfil certain requirements (for example where they have a certain number of employees) are obliged to organise a council at which employees are informed, amongst other things, of important matters that may affect the company. This obligation came to public prominence after Renault, the French-controlled car manufacturer, closed down its Belgian plant without any warning.

In 1999 a famous retail chain, namely KID COOL, went belly-up. Its business was sold to a company, LOOK Int, that divided KID COOL in 5 separate entities. Those individual companies did not create a council. The new owner did not give information to the employees, who brought the case eventually before the President of the Court. The President ruled that employees were entitled to information about the company for which they worked, basing his decision on article 23 of the Constitution. The President even clarified how this information was to be passed to the employees. This decision is important if the Court of Labour confirms it. It will give every employee the right to information from his employers about the company for which he works. All attempts by the employer to block the participation of the employees in the running of a company will be futile.

To be continued...

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