

1 Is "statutory interest" provided for in the Member State? If so, how is "statutory interest" defined in this Member State?

Statutory interest is provided for in Spain as a subsidiary remedy to set compensation for damages in the absence of an agreement between the parties, if the debtor is in default. It is provided for in Article 1108 of the Civil Code (*Código Civil*), which requires the unpaid debt to be in cash or to have been converted into cash.

There is no explicit definition of statutory interest.

There are, however, different types of statutory interest. The most common rate is that referred to in the Civil Code. However, in other matters, the law establishes specific interest rates, which in many cases result from the application of a certain percentage to the statutory interest. In cases where these interest rates are applicable, they may also be considered statutory interest in the sense that they are set by law. These include:

- *with respect to mortgages*, Law 1/2013 of 14 May 2013 amends Article 114 of the Mortgage Law (*Ley Hipotecaria*) and sets the maximum rate of late-payment interest — in the case of loans for the purchase of the principal residence when the mortgage is on the dwelling itself — at three times the statutory interest rate (currently 9%).

The Law on Mortgage Loan Contracts (*Ley Reguladora de los Contratos de Crédito Inmobiliario*) amended the text of Article 114 which, in its new wording, entered into force on 16 June 2019. It establishes late-payment interest as the rate of ordinary interest plus 3 percentage points over the period for which the payment is outstanding. It applies to loans taken out by individuals secured against mortgages on residential property. Late-payment interest cannot be capitalised under any circumstances. Agreements to the contrary regarding this rule on late-payment interest are inadmissible.

- Article 20(4) of Law 16/2011 on Credit Agreements for Consumers (*Contratos de Crédito al Consumo*) sets an upper limit of 2.5 times the statutory interest rate for such operations.

- Unless agreed otherwise, Article 7 of Law 3/2004 on combating late payment in commercial transactions (*lucha contra la morosidad en las operaciones mercantiles*) establishes the statutory rate of late-payment interest that the debtor is obliged to pay as the sum of the interest rate applied by the European Central Bank to its most recent principal refinancing operation carried out before the first day of the current half of the calendar year, plus eight percentage points.

The interest rate applied by the European Central Bank to its principal refinancing operations will be understood to be the interest rate applied when those operations are fixed-rate auctions. If a principal refinancing operation were to be carried out as a variable-rate auction, this interest rate will refer to the marginal rate of interest resulting from that auction.

The statutory rate of late-payment interest, determined in accordance with the provisions of this paragraph, will be applied for six months from the day on which it is set.

-With respect to *insurance contracts*, Article 20(4) of Law 50/1980 of 8 October 1980 on insurance contracts (*Ley del Contrato de Seguro*) penalises unjustified delays by insurance companies in the payment of compensation to those affected by claims covered by insurance contracts taken out with the insurers, applying an annual interest rate equal to the statutory interest rate in force when payment becomes due, plus 50%. If compensation is not paid within two years of the claim, the judge must impose an annual interest rate of no less than 20% on the insurer.

The 'post-judgement interest' (*interés procesal*) referred to by Article 576 of Law 1/2000 of 7 January 2000 on civil procedure (*Ley de Enjuiciamiento Civil*), which states that once a judgement or decision has been handed down at first instance ordering a cash payment, annual interest becomes due to the creditor either at the statutory interest rate plus two percentage points, at the interest rate agreed on by the parties, or at the rate provided for by special legal provision.

2 If yes, what is the amount/rate and legal basis for it? If different rates of statutory interest are provided for, what circumstances and conditions apply?

The interest rate is provided for in the budget laws for each year.

For 2017, the rate is provided for in Additional Provision No 34 of Law 3/2017 of 27 October on the general state budget (*Ley de Presupuestos Generales del Estado*), which establishes it as:

- 3.00% while that budget remains in effect.

- Over the same period, the late-payment interest referred to in Article 26 of General Law 58/2003 of 17 December 2003 on taxation (*Ley General Tributaria*) will be 3.75%.

- Over the same period, the late-payment interest referred to in Article 38(2) of General Law 38/2003 of 17 November 2003 on subsidies (*Ley General de Subvenciones*) will be 3.75%.

The interest rates can be seen at the following address, as published by the Bank of Spain:

http://www.bde.es/clientebanca/es/areas/Tipos_de_Interes/Tipos_de_interes/Otros_tipos_de_i/otros-tipos/Tabla_tipos_de_interes_legal.html

As stated in the answer to the previous question, in addition to the statutory interest provided for in Article 1108 of the Civil Code for setting the compensation for unpaid pecuniary claims, various rates of statutory interest apply. These include:

- *with respect to mortgages*, Law 1/2013 of 14 May 2013 amends Article 114 of the Mortgage Law (*Ley Hipotecaria*) and sets the maximum rate of late-payment interest — in the case of loans for the purchase of the principal residence when the mortgage is on the dwelling itself — at three times the statutory interest rate.

The Law on Mortgage Loan Contracts (*Ley Reguladora de los Contratos de Crédito Inmobiliario*) amended the text of Article 114 which, in its new wording, entered into force on 16 June 2019. It establishes late-payment interest as the rate of ordinary interest plus 3 percentage points over the period for which the payment is outstanding. It applies to loans taken out by individuals secured against mortgages on residential property. Late-payment interest cannot be capitalised under any circumstances. Agreements to the contrary regarding this rule on late-payment interest are inadmissible.

- Article 20(4) of Law 16/2011 on Credit Agreements for Consumers (*Contratos de Crédito al Consumo*) sets an upper limit of 2.5 times the statutory interest rate for such operations;

- Unless the late-payment interest has been agreed, Article 7 of Law 3/2004 on combating late payment in commercial transactions (*lucha contra la morosidad en las operaciones mercantiles*) establishes the statutory rate of late-payment interest that the debtor is obliged to pay as the sum of the interest

rate applied by the European Central Bank to its most recent principal refinancing operation carried out before the first day of the current half of the calendar year, plus eight percentage points.

The interest rate applied by the European Central Bank to its principal refinancing operations will be understood to be the interest rate applied when those operations are fixed-rate auctions. If a principal refinancing operation were to be carried out as a variable-rate auction, this interest rate will refer to the marginal rate of interest resulting from that auction.

The statutory rate of late-payment interest, determined in accordance with the provisions of this paragraph, will be applied for six months from the day on which it is set.

-With respect to *insurance contracts*, Article 20(4) of Law 50/1980 of 8 October 1980 on insurance contracts (*Ley del Contrato de Seguro*) penalises unjustified delays by insurance companies in the payment of compensation to those affected by claims covered by insurance contracts taken out with the insurers, applying an annual interest rate equal to the statutory interest rate in force when payment becomes due, plus 50%. If compensation is not paid within two years of the claim, the judge must impose an annual interest rate of no less than 20% on the insurer.

The 'post-judgement interest' (*interés procesal*) referred to by Article 576 of Law 1/2000 of 7 January 2000 on civil procedure (*Ley de Enjuiciamiento Civil*), which states that once a judgement or decision has been handed down at first instance ordering a cash payment, annual interest becomes due to the creditor either at the statutory interest rate plus two percentage points, at the interest rate agreed on by the parties, or at the rate provided for by special legal provision.

3 If necessary, is there further information available on how to calculate statutory interest?

The interest rates can be seen on the website indicated in the previous answer.

http://www.bde.es/clientebanca/es/areas/Tipos_de_Interes/Tipos_de_interes/Otros_tipos_de_i/otros-tipos/Tabla_tipos_de_interes_legal.html

4 Is there free online access available to the legal basis mentioned above?

Yes, at the following address:

http://www.bde.es/clientebanca/es/areas/Tipos_de_Interes/

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