BUSINESSEUROPE

POSITION PAPER

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SME Relief Package and the Late Payment Regulation

Introduction

On 12 September, the European Commission adopted the **SME Relief Package** Communication presenting a set of measures to address the challenges European SMEs face. On the same day, the Commission proposed a new Regulation on combating **late payments**.

BusinessEurope welcomes efforts to create a better SME-proofed regulatory regime for SMEs. There is an urgent need to simplify and significantly reduce the regulatory burden for companies, including reporting obligations. The intentions outlined in the SME Relief Package are welcome but will need to be checked against delivery.

However, the European Union has a diverse economic landscape – featuring businesses of variable sizes, sectors, and financial capabilities – which must be reflected in the debate about late payments. The prevalence of late payment issue differs among member states and it is therefore essential to exercise caution, avoid taking hasty decisions and consider the principle of proportionality.

Contractual freedom is fundamental and crucial in allowing the flexibility to capture business-to-business specific circumstances. If implemented, the proposal could potentially have a negative impact on the competitiveness of SMEs, since payment deadlines are one of several negotiation parameters on which businesses compete, besides price, terms of delivery, payment, etc.

With this paper, BusinessEurope shares our views on the Commission proposal for a regulation on combating **late payment** in commercial transactions and on several key actions proposed by the European Commission in its **SME Relief Package**.

I. Late Payment Regulation

BusinessEurope strongly supports a culture of prompt payment, actions to curb payment delays and misconduct in all commercial transactions, i.e., business-to-business, business-to-consumer and business-to-public authority. Late payments can place companies, in particular SMEs, under high financial pressure and in some cases lead to severe liquidity problems.

However, the European Union has a diverse economic landscape – featuring businesses of variable sizes, sectors, and financial capabilities – which must be reflected in the debate about late payments. The prevalence of the late payment issue differs among member states, and it is therefore essential to exercise caution and avoid taking hasty decisions.

When drawing conclusions from data gathered, a distinction must be made between late payments and long payment terms, the first one being a payment occurring beyond the payment term agreed by the parties and the latter being a period agreed by the parties when a payment will be made. This is not a late payment.

Fact-checking

Public authorities

Some studies confirm that late payment by public authorities still remains a huge problem, particularly in some countries. Government and public services organisations typically pay after 69 days, representing the most problematic sector.[1] This shows that legislator's attention should focus in particular on the late payments from public sector to businesses. Public authorities have a special responsibility in this regard and should lead by example.

B2B relations

The latest figures show that 1 out of 2 companies in Europe pay on time. On average, late payment in Europe is around 13 days. And the percentage of “long” late payment as defined by the current directive, i.e., above 30 days, is in the range of only 8% in Europe.[2] This data shows that, despite the existence of late payment cases, this is not as severe as often described.

Moreover, the majority of respondents to the 2023 Late Payment public consultation[3] expressed the opinion that payment terms between businesses (B2B) should remain unchanged. Several stakeholders also expressed an aversion to limiting freedom of contract.

[1] European Payment Report 2023 Intrum. This European Payment Report is based on a survey conducted in 29 European countries between end of November 2022 and March 2023, with a total of 10.556 respondents across 15 industries in Europe participating in the research.
[2] Délais de paiement des entreprises : étude 2ème trimestre 2023 - Altares, September 2023.
[3] Late payments – update of EU rules (europa.eu)

Impact of fixed 30-day payment terms without freedom of contract

The Commission's proposal which simultaneously lowers payment terms to 30 days and fully removes the 'freedom of contract' clause in B2B contractual terms can result in significantly negative impacts. The following four examples illustrate the risks.

Risk 1: A non-negotiable payment deadline could push the price upwards.

Payment deadlines are not the only parameter being negotiated in B2B relations and on which businesses compete. Businesses set their own terms of trading, including price, guarantee period, terms of delivery and payment. Even by intuition, one might guess that limiting one of the negotiating parameters might lead to an adjustment of others. For example, a non-negotiable payment deadline could push the parties to renegotiate the price upwards or downwards, not necessarily in their interest. Some argue that the 30-day limit proposed by the Commission might force some companies to increase prices to generate enough liquidity to be able to pay suppliers on time.

Risk 2: A non-negotiable payment deadline is far from ideal for companies operating with low margins or when cash flow depends on the selling of supplied goods.

For companies, including SMEs, operating in sectors working with low margins long payment terms can give them time to maximise sales before they pay their suppliers. In sectors in which cash flow is closely linked to the nature of delayed selling of supplied goods (e.g. seasonal items) usually suppliers are paid over a certain period as items are sold, as these companies might not have resources to buy the stock upfront. This can sometimes mean that companies will need to refinance themselves with huge costs at times of increasing interest rates and significant margin pressure,[4] and in which refinancing from banks might not be available, as many smaller companies are increasingly experiencing.

Risk 3: Flexibility does not mean abuse.

In some value chains, companies, especially upstream suppliers regardless of their size, agree on extended payment conditions. This is the case in which some (larger) companies allow longer payment terms with the aim to support their (smaller) customers by voluntarily not asking for shorter payment terms to help improve cash flow throughout the supply chain. SMEs themselves also benefit from this type of flexibility.

Risk 4: Internationalised businesses often agree longer payment terms with suppliers.

For EU suppliers or buyers operating outside the EU, a potential challenge of the proposed regulation regards their competitiveness in relation to the rest of the world. As a trend seems to exist that payment terms are typically longer in an internationally competitive environment [5], restricting payment terms as a negotiating element might lead to a competitive disadvantage for EU companies. They will be bound by stricter payment

[4] According to Eurocommerce, the principal European organisation representing the retail and wholesale sector, the impact of the Commission proposal to bring payment terms in B2B transactions to 30 days with no derogation was quantified in transfers of cash in the range of €100 to 150 bn in retail and €10 to €15 bn for the refinancing. Source: Euromonitor (retail turnover, excl. sales tax).

[5] A 2023 study by Danish Industry indicates that internationalised businesses agree longer payment terms with suppliers (only three out of ten businesses that are exposed to international competition meet demands for payment of 30 days or less from their suppliers). A similar trend was seen in a previous edition of the survey (2019).

terms with EU customers, suppliers, etc., while freedom of contract could be maintained in B2B transaction outside the EU. Consequently, EU internationalised companies might be pushed to require shorter payments, making them less attractive to international customers in comparison to non-EU suppliers able to offer more flexible payment terms. This will eventually lead to a shift in demand towards non-EU suppliers. In fact, while late payment legislation also exists in third countries, it is unlikely to have full alignment with the proposed EU legislation.

Takeaways and proposals

The legal framework of the current directive has broadly proven itself, even though the evidence suggests that prevalence of late payment differs among member states. The proposal to move from a directive to a regulation could support efforts to tackle this issue across the EU in a more harmonised manner. Member states will have a key role in supporting its effective implementation and enforcement.

The Commission's proposal to simultaneously reduce the payment deadline for to 30 days *and* to fully remove the 'freedom of contract' clause appears disproportionate to the nature and scale of the challenges in B2B transactions. The unintended consequences (see examples above) also seem to have been underestimated.

While the proposal to cap at 30 days the "by default" deadline of payments is understandable to incentive further progress in payments, it is imperative to preserve room for contractual flexibility to accommodate specific and case-by-case circumstances.

In addition, co-legislators should explore other, more proportionate avenues to further improve the culture of prompt payment, especially in business-to-public authority payments, which still remains a huge problem, particularly in some countries. This could include: ensuring proportionate enforcement provisions; strengthening mediation/alternative dispute solutions; promoting factoring and providing greater clarity around how the EU legislation can be used by SMEs; and, sharing best practices as a tool to encourage faster payments.

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II. SME Relief Package

Simplifying taxes (action 1)

→ on the Commission proposal for a **tax simplification directive** establishing a Head Office Tax system for SMEs, we are supportive of the intentions of mitigating tax compliance challenges for certain SMEs as they grow and expand into new member states through establishing new permanent establishments (PEs). This proposal has the potential of reducing administrative burdens substantially, giving an impetus to cross-border entrepreneurship. However, it is essential for the proposed rules to offer taxpayers legal certainty about the presence of a PE beyond their home Member State to minimise disputes and ensure appropriate revenue distribution for businesses operating in multiple Member States. Introducing the proposed rules in a pilot mode could prove beneficial for evaluating their effectiveness prior to their permanent implementation.

Better regulation for SMEs (actions 2, 3, 4, 7)

→ we support the Commission commitment to systematically consider **specific SME-friendly provisions in new legislative proposals**, in line with the recommendations of our SME Test benchmark analysis report. This action is even more relevant considering that four out of five of all EU legislative initiatives are relevant for SMEs (according to the Commission's SME filter). Good intentions must be backed by political commitment for a more consistent application of the SME Test guidelines. This should be considered a collective responsibility of all Commission services.

→ to support its improvement, we ask the European Commission to better develop the analysis of the **SME Test** in its **Annual Burden Survey report**, in particular by highlighting the qualitative changes compared to its application in previous years. This should be done rapidly.

→ we welcome that the post of a dedicated **EU SME Envoy**, vacant for several years, will be filled by end of 2023. This should not be a "tick the box" exercise. We ask for a strong, committed EU SME Envoy with an entrepreneurial mindset as a crucial interlocutor at the helm of the EU SME strategy. The EU SME Envoy must have a real say in the Commission's decision making and must be supported with adequate resources. The EU SME Envoy's involvement in **RSB** hearings on initiatives that have a high impact on SMEs is a positive step and the Envoy's key take-aways from these hearings should be included under the regular SME Envoy network reporting session to the EU Competitiveness Council. SME envoys appointed by EU national governments have a central role in supporting and complementing the role of the EU SME Envoy, in particular in their task of promoting SME friendly regulation and policymaking at national level.

→ while the Commission has a crucial role in making sure that proposed EU legislation is SME-proofed, other European institutions are equally responsible in regard to better regulation principles. This is particularly true for amendments to Commission's proposals during the co-legislative process which may introduce direct or indirect, as well as cumulative, burdens or costs on SMEs which were not initially foreseeable or expected. It is worth recalling that the "2016 Interinstitutional Agreement on better lawmaking" already mandates Council and Parliament to conduct an impact assessment of substantial amendments made to Commission proposals.

- → the increased use of regulatory sandboxes to promote experimentation and innovation for start-ups is positive. Close partnerships between businesses, national authorities and the European Commission will be key to the success of sandboxes in Europe.

Using digital technologies to reduce burden and improve resilience (action 8)

- → the Commission's plan to launch by the end of 2023 the once-only technical system in co-operation with Member States and further expand the scope of the **Single Digital Gateway** to cover new procedures, taking into account SME needs, is in principle positive and in line with BusinessEurope request. This would be a tremendous boost for labour mobility. The effectiveness depends however on the Member States' readiness and capacity to apply the implementation of said Regulation (EU) 2018/1724 on the establishment of a Single Digital Gateway in order to fully digitise the selected 21 administrative services by 12 December 2023 which include three social security services (application for the A1 certificate, applications for the European Health Insurance Card and applications for pension calculations). It will therefore need to be monitored and assessed with relevant KPIs demonstrating the value added and the facilitation of cross-border processes. Overall, the efforts to boost digitalisation in the field of reducing bureaucracy and administrative burden need to be sped up, for instance with regards to the A1 certificate pilot project.

Simplifying procedures and reporting requirements (action 9)

- → the good intentions announced to rationalise reporting requirements alongside the work programme, as part of a systematic and recurring cycle to meet the 25% reporting reduction target must be backed urgently by more detailed information. Only a few seem to be new announcements and what is proposed for SMEs specifically, will need to be checked "against reality". We suggest keeping the focus on "reduction" rather than "rationalisation".

Improving liquidity and access to finance (actions 11, 12, 13, 14)

- → actions aimed to improve SMEs access to EU programmes are welcome. In particular, the European Commission proposal for the 2023 mid-term review of MFF 2021-2027 should put SMEs at its core and do not reduce existing funds for European SMEs. The guarantees offered by the European Investment Fund are becoming increasingly smaller, while the programs experience a growing number of applicants from National Promotional Institutions. This should be seen as a success, why the guarantee ceilings should be raised proportionally, so that European entrepreneurs and SMEs can continue to utilize the programs and contribute to growth, jobs and green transition. It is important that Member States approve the increase in InvestEU 's budget. Due to the success of InvestEU, this fund needs to be expanded.

- → the creation of this pilot facility to allow Export Credit Agencies to support SMEs in trading with Ukraine is positive and supports our call to a more European approach to export credits. We suggest accelerating the work on a European strategy for export credits in order to provide a more effective and consistent export credit (guarantee) offer across the entire EU, focusing on solutions that can also cater to the needs of SMEs.

→ regarding the Commission intention to promote the use of standardised procurement provisions and conditions suitable for SMEs to improve their participation in public procurement, effective legal remedies should be extended and made more widely available for smaller public procurement activities, with the possibility for some exemptions regarding small procurements. This in turn may also cause a reduction in the use of 'second instance' dispute resolution, making procurement easier and more cost-effective for smaller projects.

→ we support the establishment of proportionate **standards for ESG reporting** within the relevant bodies such as EFRAG. Restricting the information that can be requested in the chain based on CSRD standards is in principle positive, but it needs to be clarified how this is achieved. Furthermore, these announcements are not new, but existing policy. Therefore, quick action is needed taking into account the reality, that the SMEs as a part of the supply chains will be influenced by the reporting requirements addressed to the companies in the CSRD scope.

Enabling access to skilled staff (actions 16, 17)

→ a key way to enhance Europe's attractiveness for economic migration is by increasing the visibility of the potential that Europe's world of work can offer to interested third country nationals. An **EU Talent Pool** that allows EU-wide employers and public employment services to post vacancies, allows third country job seekers to view them and facilitates matching in one place is a novelty worth exploring. This can only be successful when the Talent Pool focuses on its added value. It should be simple for all involved actors, avoid parallel structures and allow for technical inter-operationality with national systems and tools as well as elements of the EURES network. To start with, the EU Talent Pool could address labour shortages in sectors and occupations identified as of strategic relevance for the EU and those part of the EU Talent Partnerships with third countries. Attention should be paid to programmes and accelerator programs that support women entrepreneurs. When it comes to access to capital, EIB and EIF can play an important role in setting diversity targets for their investments and financial activities. Relevant recommendations may be found the European Parliament's report "Reaching women's economic independence through entrepreneurship and self-employment".

Supporting SMEs throughout their entire business life cycle (actions 18, 19)

→ we support the measures proposed to have more companies exempted from EU reporting obligations. In this regard, we support the adjustment of the two financial thresholds to inflation and the assessment of a possible adjustment of the staff headcount threshold to 500 in the Accounting Directive that would remove thousand European companies from the CSRD/Taxonomy scope. This change should only apply to EU reporting obligations and not to EU funding programmes, State Aids, etc. Research and analytical work to better understand the nature and scale of challenges and opportunities related to small mid-caps is important before assessing possible further measures to support these companies.

→ we support EU level actions to boost business transfers. As an example, in Finland, there is an active business transfers forum which provides feedback and policy recommendations on how to tap into the unused potential of transferring existing viable businesses to a new owner. EU-level actions could include for example awareness raising about the skills needed for a successful transfer.

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