

# Procedure file

| Basic information   |   |
|---|---|
| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation  | 2023/0323(COD)<br>Awaiting Council's 1st reading position |
| Commercial transactions: combating late payment   |   |
| Subject<br>3.45.02 Small and medium-sized enterprises (SME), craft industries<br>3.45.03 Financial management of undertakings, business loans, accounting |   |
| Legislative priorities<br><a href="#">Joint Declaration 2023-24</a>   |   |

| Key players                            |   |  |            |
|--|---|--|------------|
| European Parliament                    | Committee responsible   | Rapporteur   | Appointed  |
|  |  <a href="#">Internal Market and Consumer Protection</a> |  <a href="#">THUN UND HOHENSTEIN Róza</a><br>Shadow rapporteur  | 23/08/2023 |
|  |   |  <a href="#">MANDERS Antonius</a><br> <a href="#">PENKOVA Tsvetelina</a><br> <a href="#">GRUFFAT Claude</a><br> <a href="#">JURZYCA Eugen</a><br> <a href="#">JORON Virginie</a><br> <a href="#">KOULOGLOU Stelios</a> |            |
|  | Committee for opinion   | Rapporteur for opinion   | Appointed  |
|  |  <a href="#">Industry, Research and Energy</a>         | The committee decided not to give an opinion.  |            |
|  |  <a href="#">Legal Affairs</a>                         | The committee decided not to give an opinion.  |            |
| Council of the European Union          | Commission DG   | Commissioner   |            |
| European Commission                    | <a href="#">Internal Market, Industry, Entrepreneurship and SMEs</a>  | BRETON Thierry   |            |
| European Economic and Social Committee |   |  |            |

| Key events |   |                               |         |
|------------|---|-------------------------------|---------|
| 12/09/2023 | Legislative proposal published                          | <a href="#">COM(2023)0533</a> | Summary |
| 02/10/2023 | Committee referral announced in Parliament, 1st reading |                               |         |
| 20/03/2024 | Vote in committee, 1st reading                          |                               |         |
| 25/03/2024 | Committee report tabled for plenary, 1st reading        | <a href="#">A9-0156/2024</a>  |         |
| 23/04/2024 | Decision by Parliament, 1st reading                     | <a href="#">T9-0299/2024</a>  | Summary |

| Technical information                        |  |
|--|--|
| Procedure reference                          | 2023/0323(COD)   |
| Procedure type                               | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype                            | Legislation  |
| Legislative instrument                       | Regulation   |
| Legal basis                                  | Treaty on the Functioning of the EU TFEU 114                   |
| Mandatory consultation of other institutions | <a href="#">European Economic and Social Committee</a>         |
| Stage reached in procedure                   | Awaiting Council's 1st reading position                        |
| Committee dossier                            | IMCO/9/13225   |

| Documentation gateway   |  |                               |            |      |         |
|---|--|-------------------------------|------------|------|---------|
| Legislative proposal  |  | <a href="#">COM(2023)0533</a> | 12/09/2023 | EC   | Summary |
| Document attached to the procedure                              |  | SEC(2023)0313                 | 13/09/2023 | EC   |         |
| Document attached to the procedure                              |  | SWD(2023)0312                 | 13/09/2023 | EC   |         |
| Document attached to the procedure                              |  | SWD(2023)0313                 | 13/09/2023 | EC   |         |
| Document attached to the procedure                              |  | SWD(2023)0314                 | 13/09/2023 | EC   |         |
| Committee draft report  |  | <a href="#">PE756.002</a>     | 14/11/2023 | EP   |         |
| Amendments tabled in committee                                  |  | <a href="#">PE757.363</a>     | 15/12/2023 | EP   |         |
| Amendments tabled in committee                                  |  | <a href="#">PE757.130</a>     | 18/12/2023 | EP   |         |
| Economic and Social Committee: opinion, report                  |  | <a href="#">CES3705/2023</a>  | 17/01/2024 | ESC  |         |
| Committee of the Regions: opinion                               |  | <a href="#">CDR4941/2023</a>  | 31/01/2024 | CofR |         |
| Committee report tabled for plenary, 1st reading/single reading |  | <a href="#">A9-0156/2024</a>  | 25/03/2024 | EP   |         |
| Text adopted by Parliament, 1st reading/single reading          |  | <a href="#">T9-0299/2024</a>  | 23/04/2024 | EP   | Summary |

## Commercial transactions: combating late payment

PURPOSE: to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an

equal footing with the Council.

**BACKGROUND:** every year, around 18 billion invoices are issued in the EU, more than 500 every second. Goods and services are often supplied on deferred payments: the supplier (the creditor) grants the client (the debtor) a payment term to pay the invoice (trade credit), after the goods are delivered or the service agreed on in the contract is provided.

Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions or by law.

Late payments directly affect liquidity and predictability of cash flows. This affects competitiveness, reduces productivity, leads to redundancies, increases the likelihood of insolvencies and bankruptcies and is a critical barrier for growth. Small and medium sized enterprises (SMEs), who rely on regular and predictable streams of cash, are heavily affected by those negative consequences.

For debtors, paying late is an attractive form of finance that costs the debtor nothing but does have a cost for the creditor. This is compounded by the inadequacy of the current EU legal framework, Directive 2011/7/EU (the Late Payment Directive), which lacks sufficient preventive measures and suitable deterrents, and whose enforcement and redress mechanisms are insufficient.

The revision of the Late Payment Directive addresses these shortcomings, with the ultimate aims of improving the payment discipline of all concerned actors (public authorities, large companies and SMEs) and protecting companies from the negative effects of payment delays in commercial transactions.

**CONTENT:** the proposed regulation will apply to payments made in transactions between undertakings or between undertakings and public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for remuneration.

The regulation will not apply to payments for transactions with consumers; payments made as compensation for damages, including payments from insurance companies; payments resulting from obligations that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings.

The proposed revision of the Late Payments Directive:

- limits the payment period and the duration of the procedure of acceptance or verification to a maximum of 30 days;
- eliminates any reference to the concept of grossly unfair practices and clauses;
- removes exceptions for a maximum payment period of 60 days for healthcare and public authorities carrying out economic activities;
- supports that payments are passed down the supply chain in contracts for public works, by requiring the main contractor to prove that direct subcontractors have been paid;
- clarifies that interest for late payment is automatically due when the necessary conditions are satisfied, requires also that the debtor give the creditor all the information they need to ensure an invoice can be accepted and clarifies that interest for late payment accrues until payment of the principal;
- states that the interest for late payment will be equal to the reference rate plus 8 percentage points;
- provides that a flat fee compensation for recovery costs will be automatically due by the debtor to the creditor and will amount to a fixed sum of EUR 50, per every single commercial transaction;
- states that Member States are obliged to designate national authorities responsible for enforcing the Regulation, who are to cooperate with the Commission and with other relevant national enforcement authorities;
- sets out the conditions under which creditors and associations of creditors can complain about late payments, as well as the obligations of the enforcement authorities in relation to complaints;
- promotes the voluntary use of effective and independent alternative dispute resolution mechanisms for a quicker settlement of disputes between creditors and debtors, without damaging their commercial relationship;
- ensures the use of digital tools for enforcing the Regulation and the promotion of credit management tools and financial literacy training for SMEs, to reduce late payment.

## Commercial transactions: combating late payment

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The European Parliament adopted by 459 votes to 96, with 54 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on combating late payment in commercial transactions.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

### Scope and application

The aim of this Regulation is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular SMEs.

Members wish to specify that the Regulation should not apply to payments resulting from purchases, sales, deliveries, commissions or agency operations contributing to the manufacture of books, as well as for the supply of paper and other consumables dedicated to the printing, binding or publishing of books in their special position as slow-moving, cultural products, where the payment terms are defined by agreement between the concerned parties.

### Payment periods

In commercial transactions, the payment period should not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services in accordance with contractual agreement. Where the date of the receipt of the invoice or the equivalent request for payment is uncertain, the payment period should not

exceed 30 calendar days from the date of receipt of the goods or services. This period should apply both to the transactions between undertakings and between public authorities and undertakings.

In commercial transactions between undertakings, where expressly agreed in the contract, the payment period may be extended up to 60 calendar days. In transactions between undertakings for the purchase of slow moving or seasonal goods, the payment period may be extended up to 120 calendar days from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods.

Member States should introduce appropriate measures to improve public authorities payment practices towards undertakings by introducing measures to ensure that an undertaking which is a creditor is able to obtain upon request to the public authority, which has not paid the amount due within the maximum payment period, the offsetting of the amount due against any outstanding amount that the creditor has towards the same public authority.

#### Interest for late payment

It should not be possible for the creditor to waive its right to obtain interest for late payment when the debtor is a public authority or a large undertaking. Where the conditions are satisfied, interest for late payment should start accruing from the day following the expiry of contractual or statutory payment period.

#### Compensation for recovery costs

Members considered that where interest for late payment becomes payable, a flat fee compensation for recovery costs should be automatically due by the debtor to the creditor and should amount to a fixed sum of EUR 50, per every single commercial transaction of a value between 0 and EUR 1 500, EUR 100 per every single commercial transaction of a value between 1 501 and EUR 15 000, and EUR 150 per every single commercial transaction above EUR 15 000.

#### Null and void contractual terms and practices

The following contractual terms and practices should be null and void, and in any case should be prohibited: (i) excluding or limiting the right of the creditor to make assignments of the credit to third parties for the purpose of accessing financing services; make use of an executive order of payments issued by a court; (ii) preventing or postponing the moment of sending the invoice by the debtor; (iii) prohibiting, excluding or limiting the assignment of receivables to relevant financial institution; (iv) using means of payment altering payment terms.

#### Transparency and awareness raising

Member States should, where appropriate, use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies for late payment among undertakings.

#### Recovery procedures for unchallenged claims

Creditors should obtain an enforceable title, including through an expedited procedure and irrespective of the amount of debt, within 60 calendar days of the lodging of the action or application at the court or other competent authority, provided that the debt and the procedure are not disputed.

#### Complaints

The complainant may submit a complaint to the enforcement authority anonymously or identify any information for which it requests confidentiality. Where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it should initiate, conduct and conclude an investigation of the complaint within 90 days after the receipt of the complaint.

The Commission should make a standard EU complaint form available for the enforcement authorities of the Member States.

#### Reporting obligations

Contracting authorities, as referred to Directive 2014/24/EU, should report on a yearly basis on their payment practices.

#### European Observatory of late payments

Members proposed that the Commission should set up an Observatory of Late Payment at the latest by the date of application of this Regulation. The Observatory should monitor payment as well as late payment practices within the Union in order to collect and share expertise, best practices and identify potential harmful practices, as well as effectiveness of enforcement authorities in carrying out their tasks. The Observatory should be chaired by the Commission and should be composed of representatives of relevant experts and stakeholders.

| Transparency             |                   |      |            |  |
|--------------------------|-------------------|------|------------|--|
| JURZYCA Eugen            | Shadow rapporteur | IMCO | 06/03/2024 | Fleishman-Hillard                                      |
| THUN UND HOHENSTEIN Ró?a | Rapporteur        | IMCO | 30/11/2023 | CONFEDERACION ESPAÑOLA DE LA PEQUEÑA Y MEDIANA EMPRESA |
| JURZYCA Eugen            | Shadow rapporteur | IMCO | 30/11/2023 | CONFEDERACION ESPAÑOLA DE LA PEQUEÑA Y MEDIANA EMPRESA |
| THUN UND HOHENSTEIN      | Rapporteur        | IMCO | 23/11/2023 | Polish Confederation Lewiatan                          |

|                          |                 |            |            |  |
|--------------------------|-----------------|------------|------------|--|
| Róza                     |                 |            |            |  |
| THUN UND HOHENSTEIN Róza | Rapporteur      | IMCO       | 21/11/2023 | BUSINESSEUROPE   |
| TOVAGLIERI Isabella      | Committee chair | ITRE       | 21/11/2023 | Confartigianato Imprese  |
| THUN UND HOHENSTEIN Róza | Rapporteur      | IMCO       | 16/11/2023 | European Construction Industry Federation  |
| THUN UND HOHENSTEIN Róza | Rapporteur      | IMCO       | 26/10/2023 | European & International Booksellers Federation<br>Federation of European Publishers |
| THUN UND HOHENSTEIN Róza | Rapporteur      | IMCO       | 25/10/2023 | BUSINESSEUROPE   |
| THUN UND HOHENSTEIN Róza | Rapporteur      | IMCO       | 25/10/2023 | BFF Banking Group  |
|                          | Member          | 19/03/2024 |            | Auchan Retail France   |
| TÓTH Edina               | Member          | 19/03/2024 |            | Egészségügyi Technológia és Orvostechnikai Szállítók Egyesülete                      |
|                          | Member          | 18/03/2024 |            | Confédération des petites et moyennes entreprises                                    |
|                          | Member          | 14/03/2024 |            | Fédération du commerce et de la distribution   |
|                          | Member          | 14/03/2024 |            | BUSINESSEUROPE   |
| RINZEMA Catharina        | Member          | 12/03/2024 |            | Vereniging VNO-NCW   |
|                          | Member          | 08/03/2024 |            | BUSINESSEUROPE   |
| COMI Lara                | Member          | 01/03/2024 |            | Federazione Italiana dell'Industria Alimentare                                       |
| COMI Lara                | Member          | 28/02/2024 |            | Unione Italiana Vini   |
| KOKALARI Arba            | Member          | 22/02/2024 |            | Svensk Handel  |