

Commercial transactions: combating late payment

2023/0323(COD) - 12/09/2023 - Legislative proposal

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.