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IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Regulation of the European Parliament and the Council

on combating late payments in commercial transactions

{COM(2023) 533 final} - {SEC(2023) 313 final} - {SWD(2023) 312 final} - {SWD(2023) 313 final}

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Glossary of acronyms

Acronym	Meaning or definition
ADR	Alternative dispute resolution
Automatic payment of interest and compensations	The right to obtain interests and compensations cannot be surrendered by the creditor and cannot be subject to negotiations with debtors
average EU hourly labour cost	An average EU-wide cost of man-hour applied under the OIOO approach, equal to EUR 25.70. Notably, Eurostat estimated that in 2022 EU-wide average hourly labour costs at EUR 30.50: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Hourly_labour_costs
B2B	Business-to-Business

Acronym	Meaning or definition
B2B comparative study 2018	EU Commission study: Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour, 2018, https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1/language-en/format-PDF/source-103408786
B2C	Business to consumers
Commission report to the EP and the Council	Commission Report to the European Parliament and to the Council on the implementation of the Late Payment Directive: COM (2016) 534 final, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2016%3A534%3AFIN (and the supporting SWD 2016 278) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0278
Commission Study 2021	Building a responsible payment culture – improving the effectiveness of the Late Payment Directive. https://op.europa.eu/en/publication-detail/-/publication/cb4bc1bd-1467-11ed-8fa0-01aa75ed71a1/language-en/format-PDF/source-search
Corporate Social Reporting Directive or CSRD	Directive 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.
CWP 2023	Commission Work Programme 2023, https://commission.europa.eu/strategy-documents/commission-work-programme/commission-work-programme-2023_en
D&B payment survey 2022	https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/
Dies ad quem	Ending day of a period or deadline
ECJ	European Court of Justice
Economisti Study 2022	Economisti Associati, Nomisma, Crif, Milieu : Building a responsible payment culture in the EU – Improving the effectiveness of the Late Payment Directive (2011/7/EU)
ECOSOC	European Economic and Social Committee
EPR [….]	European Payment Report, Intrum (different years)
EP Resolution 2019	Resolution of the European Parliament on the implementation of the Late Payment Directive, 2019, https://www.europarl.europa.eu/doceo/document/TA-8-2019-0042_EN.html
Expert group	Expert group, which informs every six months about the rate applicable to the statutory interest for late payments in the Member States (see Annex 13), https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=2710
Ex post evaluation study 2015	Ex post evaluation study on the implementation of the Late Payment Directive, 2015 https://publications.europa.eu/en/publication-detail/-/publication/400ecc74-9a54-11e5-b3b7-01aa75ed71a1
F4F Opinion 2021	Opinion of the Fit for Future Platform on the implementation of the Late Payment Directive, 2021, https://commission.europa.eu/document/download/157d837a-22a0-47fb-ac9a-628f559d4923_en?filename=Final%20opinion%202021_SBGR2_06%20Late%20payments_fup.pdf

Acronym	Meaning or definition
G2B	Public authorities/government to businesses (the public sector is always the debtor in the transactions falling under the scope of the LPD)
Impact assessment 2009	Impact assessment 2009 for the LPD 2011 - SEC(2009) 315 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN
JRC Study 2018	Conti, M., Elia, L., Ferrara, A. and Ferraresi, M., Governments` Late Payments and Firms` Survival: Evidence from the European Union, https://publications.jrc.ec.europa.eu/repository/handle/JRC121059
JRC 2021	Ferrara A., Ferraresi M. Assessing the economic impact of faster payments in B2B commercial transactions. Final Report, https://publications.jrc.ec.europa.eu/repository/handle/JRC121059
JRC Study 2022	Ferrara A., Ferraresi M. (2022), Assessing the economic impact of faster payments in B2B commercial transactions. https://publications.jrc.ec.europa.eu/repository/handle/JRC130205
LPD	Late Payment Directive (Directive 2011/7/EU)
Mediation Directive	Directive 2008/59/EC on Mediation in Civil and Commercial matters
m or micro	A microenterprise as in Commission Recommendation concerning the definition of micro, small and medium-sized enterprises (2003/361/EC)
M	A medium-sized company as in Commission Recommendation concerning the definition of micro, small and medium-sized enterprises (2003/361/EC)
MS	EU Member States
OIOO	One-in-one-out approach
p.a.	Per year (from Latin 'per annum')
PC	Public consultation
Plum Consulting 2017	Plum Consulting 2017: Sweating the Small Stuff, http://plumconsulting.co.uk/sweating-small-stuff-impact-bureaucracy-burden
PO[number]	Policy option – for details please refer to Table 1, Table 2 and Table 3
Public procurement directives or PP directives	Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC: Other Directives in the public procurement area are: - Directive 2014/25/EU (on public procurement in the utilities sector). The EU Public procurement framework also includes Directives 2014/23/EU (on concessions), - Directive 2009/81/EC (on procurement in the defence and security sector), Directive 89/665/EEC and Directive 92/13/EEC (Remedies Directives), Directive 2014/55/EU (on e-invoicing in public procurement).
RSB	Regulatory Scrutiny Board
S or small	A small company as in Commission Recommendation concerning the definition of micro, small and medium-sized enterprises (2003/361/EC)
SAFE survey	Survey on SMEs access to finance

Acronym	Meaning or definition
SDG	Sustainable Development Goal
SME panel	A targeted SME consultation, details and results in Annex 16
SME Performance Review	https://single-market-economy.ec.europa.eu/smes/sme-strategy/sme-performance-review_en
SME Strategy	COM(2020) 103, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0103
SOTEU	State of the European Union speech
Strategic foresight report 2022	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0289&qid=1658824364827
Trade credit	Supplier credit, takes place when a sale is not made against cash but against a deferred payment
The Domino Effect study	2017 UK study 'The Domino Effect: the impact of late payments', https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf
UTP Directive	Directive 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

Glossary of terms

A note on terminology:

- **Payment term** is the time period set out in the contract and agreed by the two parties. It corresponds to the trade credit granted by the creditor to the debtor to pay off the amount due.
- **Payment delay** is the period of time starting after the due date according to the contract (payment term), until the payment is received by the creditor.
- **Payment duration (or period)** is the total period of time required for the payment to reach the creditor, i.e. from the beginning of the payment term until the payment is received (total sum of payment term and potential delay). The figure below visualises the difference between these concepts:

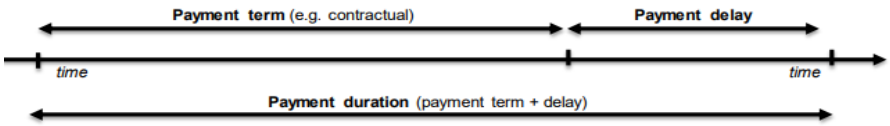

Figure 1 : Payment term, payment delay, payment duration

- Agreed term – payment term agreed in the contract,
- Arbitration service
- Commercial transaction serves to transmit economic values such as materials, products, and services from those who want to exchange them for another value, usually money, to those who need them and are willing to pay a countervalue1. The LPD defines 'commercial transactions' as transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration.
- Compensation refers to both compensation flat fee and compensation interest together
- Contract, invoice
- Days sales outstanding (DSO) is the average number of days it takes a company to receive payment and is calculated as follows: DSO= (average amount of the account receivable/revenue) * 365 days.
- Interest for late payment - means statutory interest for late payment or interest at a rate agreed upon between undertakings, subject to Article 7 of the LPD
- Mediation service
- Legal term – payment term stemming from provisions of the law, e.g. the LPD
- Statutory interest for late payment – means simple interest for late payment at a rate which is equal to the sum of the reference rate and at least eight percentage points (LPD, Art 2 par. 6)
- Terms: firm, company, business, enterprise, undertaking are used interchangeably
- Verification procedure – a procedure by which the conformity of the goods or services with the contract is to be ascertained

Annexes

This report includes mandatory annexes (annexes 1-5), standard annexes (SME test, digital by default) and others in support of the main text.

[1] https://www.britannica.com/topic/commercial-transaction;

1 INTRODUCTION

1.1 Political context

1. Reliable streams of payments are necessary for SMEs to operate, grow and invest. Prompt payments protect small business' liquidity, productivity, and solvency. They strengthen the competitiveness of the whole EU economy. They support companies in their transition towards more sustainable and digital models and strengthens their resilience. Late payment harms the functioning of the internal market, adversely affects employment and poses risks to the growth prospects of the EU. A culture of late payment undermines the freedom of economic initiative, enshrined in the EU Charter of Fundamental Rights (Article 16).

2. Before the coronavirus pandemic, only 40% of payments[2] in commercial transactions were made within the agreed contractual deadline. Economic shocks and factors increasing uncertainty cause timeliness of payments to deteriorate. In first half of 2022, six out of ten companies expected the risk of late payments to grow in the short term due to inflation[3]. High interest rates, which are an indirect effect of inflation, support late payment[4]. Predictability of payments is important for all businesses. SMEs have more limited access to liquidity than public authorities or large businesses, which makes getting paid on time vital. Late payment disrupts their daily operations, negatively affects their employment and investment decisions, and undermines their position in supply chains.

3. The Commission recognises a broad consensus that the European model for inclusive economic growth, based on sustainable competitiveness, economic security, trade and open strategic autonomy and fair competition, is a source of prosperity[5]. In 2019, the European Parliament [6] identified several shortcomings of the Late Payment Directive (LPD), e.g. the lack of an absolute maximum payment term in B2B transactions, insufficient remedial measures, and insufficient enforcement mechanisms. The SME Strategy for a sustainable and digital Europe, calls for ensuring a 'late-payment-free' environment for SMEs and strengthening the enforcement of the LPD. In 2021, the Fit for Future platform highlighted critical issues in the implementation of the LPD in the F4F Opinion 2021. These findings mirror the conclusions of previous assessments carried out by the European Commission[7] - see Annex 6.

4. President von der Leyen announced a revision of the LPD in the 2022 SOTEU speech 'because it is simply not fair that 1 in 4 bankruptcies are due to invoices not being paid on time. For millions of family businesses, [the revision] will be a

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[2] B2B comparative study 2018
[3] Intrum, EPR 2022,
[4] PPMI, 'SMEs and high inflation', SME Performance Review, in preparation
[5] COM(2023) 168 final,
[6] EP Resolution 2019
[7] Ex-post Evaluation 2015, Commission Report to the EP and the Council, B2B Comparative study 2018

lifeline in troubled waters'. The President announced an SME relief package as well. The revision of the LPD has been included in the CWP for 2023.

1.2 Legal context

5. The LPD was adopted in 2011 to address the shortcomings of Directive 2000/35/EC (see Annex 6). It introduced the following measures:

1) Obligations for payments G2B:
   a) public authorities have to pay for goods and services within 30 days,
   b) public entities operating in the market and carrying out economic activities, and public authorities in the healthcare can set payment terms not exceeding 60 days.
2) Obligations for payments B2B:
   a) enterprises have to pay their invoices within 30 days. This term can be extended to 60 days if expressly agreed and not "grossly unfair" to the creditor.
3) Both in B2B and G2B transactions, where a contract foresees a verification procedure for the acceptance of the goods or the services, it should not exceed 30 days from the date of the reception of the goods or services. This term can be extended (indefinitely) as long as expressly agreed in writing, and not "grossly unfair" for the creditor. Enterprises are entitled to claim interest for late payment and to obtain a minimum fixed amount of EUR 40 as a compensation for recovery costs. They can claim reasonable compensation for all remaining recovery costs.
4) The minimum interest rate for late payment is 8 percentage points above the ECB's reference. Public authorities are not allowed to fix a lower interest rate for late payment. Businesses can fix a lower rate if it is expressly agreed in the contract and not "grossly unfair" to the creditor.

6. The LPD (recital 4) recalls all the relevant regulations to facilitate judicial claims of unpaid credits cross-border[8].

7. The LPD is closely linked to the Unfair Trading Practices in the agro-food supply chain (UTP) Directive. The legal relationship between the two legal texts is explained in Recitals (17) and (18) and article 3(1) of the UTP Directive. Notably, the late payment prohibition in the UTP Directive constitutes a lex specialis for the agricultural and food sector in relation to the LPD. The prohibition of late payments laid down in the UTP are without prejudice to the late payments and remedies rules in the LPD. The late payments in the LPD are also without prejudice to the specific rules applicable in the agri-food sector to value-sharing agreements, payments in the context of the school scheme and to certain payments in the must and wine sectors.

8. The Corporate Sustainability Reporting Directive (CSRD) requires large and listed companies to report according to European Sustainability Reporting Standards (ESRS) to be adopted by the Commission. It specifies that ESRS

[8] https://commission.europa.eu/law/cross-border-cases/procedures-simplify-cross-border-cases_en

should define e.g. the information that companies have to report about payment practices. The recitals of the CSRD indicate that such information should include the date or period for payment, and the rate of interest for late payment or the compensation for recovery costs.

9. Some of the public procurement directives provide for a direct payment to subcontractors. Art 71(3) of the directive 24/2014/EU provides for the possibility for the Member States to lay down provisions on direct payments to the subcontractor for services, supplies or works provided to the economic operator to whom the public contract has been awarded (the main contractor) 'where the nature of the contract so allows'.

1.3 Implementation – state of play

10. The LPD entered into force on 16 March 2011. All Member States have transposed the Directive. The last notification of transposing measures arrived in July 2014.

11. In April 2023, there were 8 infringement procedures pending: 6 for bad application and 2 for non-conformity of legislation. Many of the bad application cases involve long payment delays to suppliers by the public authorities, particularly in the health sector. Others concern not respecting the interest rates and compensation for recovery costs.

12. The case law of the Court of Justice concerning the LPD, either exclusively or jointly with Directive 2000/35/EC, includes several preliminary rulings and one judgement in the framework of an ongoing infringement procedure (see Annex 11).

13. The LPD's implementation was supported by an awareness raising campaign and an expert group (see glossary), which informs every six months about the rate applicable to the statutory interest for late payments in the Member States (see Annex 13).

14. The LPD allows Member States to introduce provisions that are more favourable to the creditor than those necessary to comply with the Directive. Several Member States[9] resorted to this possibility and enacted stricter rules (see examples in Annex 9).

15. While the Commission did not carry out an evaluation before this impact assessment, there is extensive evidence collected throughout the years, which constitutes a robust basis to identify the problems and the possible options to

[9] Austria, Bulgaria, Croatia, Denmark, Finland, France, Germany, Ireland, Lithuania, Poland, Spain, Sweden and the Netherlands. The United Kingdom excludes the extension from 30 to 60 days in payments by public entities in the healthcare sector, and transposed the 40 eur compensation in the form of a schedule according of the value of the invoice (similar to the Irish national provisions).

address them. Namely, the LPD was evaluated in 2015[10] and several of its aspects were assessed in 2016[11], 2017[12], 2018[13], 2019[14], 2021[15] and 2022[16] - see Annex 6.

16. The initiative is expected to contribute to Sustainable Development Goals: SDG 8, 'decent work and economic growth', SDG 3, 'Ensure healthy lives and promote well-being for all at all ages', SDG 4, 'Quality education' and SDG 9, 'Industry, Innovation and Infrastructure'.

2 PROBLEM DEFINITION

2.1 What is the problem?

5 out of every 10 invoices are paid late[17] – SMEs are more affected than large companies

17. Commercial transactions between undertakings consist in supplying goods or providing services in exchange of monetary payments. Every year, between 18 and 40 billion invoices are exchanged in the EU, more than 500 every second[18].

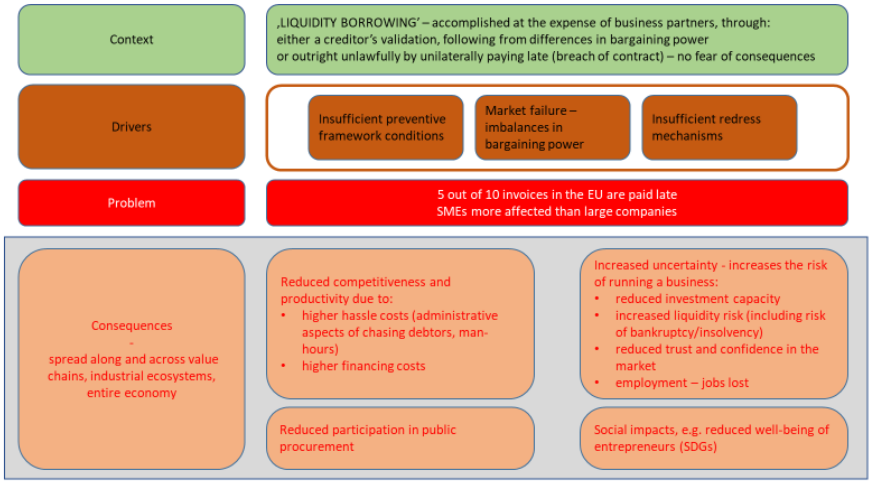
18. Late payments are those payments that are not made within the agreed or legal term. In addition to late payments, there are also long payment terms set in contracts. The longer the period between the delivery of goods or services and the payment, the less likely the creditors are to consider the period as fair, as regards both late and long payment terms.

19. Late payments represent a problem for the European economy because of their negative economic and social consequences. They reduce competitiveness, increase uncertainty, reduce SME participation in public procurement and harm the well-being of entrepreneurs. Late payments undermine productivity[19] growth

[10] Ex-post evaluation
[11] Commission Report to the EP and the Council
[12] JRC 2021
[13] B2B comparative study 2018
[14] EP Resolution 2019
[15] F4F Opinion 2021
[16] Commission Study 2021, JRC 2022 study
[17] Source: D&B payment survey 2022
[18] https://blog.summitto.com/posts/number_of_invoices/
[19] Uncertainty and Productivity: Exploring the Links: 'Uncertainty affects productivity through reductions in capital investment, which in turn lowers the trajectory of labour productivity'.
http://www.microprod.eu/wp-content/uploads/2022/09/Uncertainty_1Sep2022.pdf
The Domino Effect study: 'Companies need channel their administrative resources from other potentially more productive uses to managing late payments.',
Fluctuations in Uncertainty: 'When uncertainty is high, productive firms are less aggressive in expanding and unproductive firms are less aggressive in contracting. The high uncertainty makes both of them more cautious. This caution produces a chilling effect on the productivity-enhancing reallocation of resources across firms'.

and fairness, both of which are key factors on which the EU is building its sustainable competitiveness[20]. In any affected company they increase working capital needs, drive up hassle costs and increase financing costs. They affect companies from all sectors[21], all EU Member States[22] and they disproportionately severely affect SMEs[23]. As a result, they are present in cross-border transactions, undermining the development of the single market and internationalisation of EU companies. In 2022, average EU payment term equalled 37 days and average EU actual payment time stood at 50 days[24]. See Annex 17.

Figure 2: Late payment problem - context, drivers, and consequences



https://www.jstor.org/stable/pdf/23723489.pdf?refreqid=excelsior%3Acf14d88cfe9ae0ea753d5346751629e2&ab_segments=&origin=&initiator=&acceptTC=1

[20] COM(2023) 168

[21] EPR 2022

[22] EPR 2022

[23] T. Nicolas, *Short-term financial constraints and SMEs' investment decision: evidence from the working capital channel*, Small Business Economics (2021)

[24] EPR 2022,

Figure 3: Trend lines for total payment duration (average of B2B, G2B and B2C) and delays in payments by public authorities, in the EU-24[25]

20. 'Cash is king' was a common refrain throughout the 2008-2009 recession and even more true during the recovery[26]. The adoption of the LPD in 2011 (transposition in 2014) helped reduce payment delays from their high post-crisis (2008-2009) levels and has lowered firm exit rate by 0.3 percentage points in sectors highly exposed to the public authorities, compared to sectors less dependent on the public authorities[27]. The delays rose sharply in 2020, likely driven by the coronavirus crisis, and have remained high since then. Average payment duration went up from 37.2 days in 2019 to 56.5 days in 2020[28].

21. Since then, payment performance has not returned to its pre-crisis levels. In 2022, payment duration was higher than in 2014.

2.1.1 Public authorities often pay late

22. Public authorities should lead by example and pay their suppliers on time. The LPD recalls a "*special responsibility*" of public authorities to facilitate SME access to finance and develop a legal and business environment supportive of timely payments in commercial transactions[29]. The importance of public authorities paying on time is driven by the fact that every year, over 250 000 public authorities in the EU spend around 14% of GDP (around EUR 2 trillion per year) on the purchase of services, works and supplies. And yet, the payment performance of public authorities can stand significantly below the requirements set by the LPD.

23. In Italy, the average payment period of the "worst" public payers exceeds 400 days[30]. In Spain, local communities often pay late: in October 2022, their average payment period stood at 53 days, and there were cases of payment periods exceeding 300 days[31].

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[25] Source: EPR 2022. Total duration in days to get paid presents the average of business-to-consumers, business-to-business and public authorities' transactions. Note: Covers EU-27 countries except Cyprus, Luxembourg and Malta, where data is not available.

[26] ACCA and CBI (2010), Small Business Finance and the Recovery, http://www.accaglobal.com/content/dam/acca/ global/PDF-technical/small-business/pol-af-sbf.pdf

[27] JRC 2018 study

[28] SME Performance Review

[29] LPD, Recital 6

[30] https://www.confindustriadm.it/tempi-di-pagamento/

[31] https://www.hacienda.gob.es/es-ES/CDI/Paginas/PeriodoMedioPago/PeriodoMedioPago.aspx

24. In general, although late payments by public authorities have gone down significantly since the introduction of the LPD (from 27.8 days in 2011 to 16.8 days in 2022) (see figure 3), they remain a significant problem. On average, payments by public authorities are still slightly more delayed than payments in business-to-business transactions (16.8 days for G2B vs. 13.3 days for B2B).

25. Although public authorities are already obliged to pay within 30 days since the introduction of the LPD, numerous attempts remain to circumvent the obligations in place. For example, common practices include long verification procedures before starting the clock on 30 days requiring a waiver of the entitlement to interest and compensation or bans on execution of executive orders of payment issued by a Court.

2.1.2 Late payments affect SMEs more severely than large companies

26. Late payments are an issue for companies of all sizes[32]. While some studies[33] point to comparable levels of payment terms and delays in SMEs and large companies, other studies show that payment behaviour of large companies differs from the one of smaller enterprises. The percentage of punctual payers decreases as business size rises[34]. A 2021 study demonstrates that microenterprises, and in some markets small companies, showed the best payment behaviour (Figure 15 in Annex 17).

27. The larger the company is, the worse payment performance it is likely to exhibit[35] [36].

28. Large companies tend to hoard liquidity and not pass it on to the supply chain. In Spain, it has been reported that the massive injection of liquidity completed under coronavirus-crisis support led to a situation where large companies doubled their pre-crisis liquidity levels and did not pass it on to SMEs. At the same time, they slowed down their payments, leaving EUR 82 billion of invoices unpaid outside the legal payment term[37].

29. Medium and large companies are much more effective in managing the cost of overdue payments than small and microenterprises are. Micro companies are most affected by the problem of delays with 8% of their total cost resulting from late

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[32] SAFE Survey, 2022

[33] EPR 2022

[34] Global Trade Credit Payments Study - CRIBIS & Dun & Bradstreet (dnb.co.uk)

[35] D&B payment survey 2022

[36] On average, 51.3% of micro-enterprises pay their invoices by the due date, while the same is true for 47.9% of small enterprises, 41.5% of medium-sized enterprises and only 34.5% of large enterprises. This effect is visible in all the EU countries analysed in the study except the Czech Republic and Slovenia. Details on country performance are in Annex 17.

[37] https://www.economistjurist.es/zbloque-1/el-futuro-de-200-000-pymes-y-autonomos-peligran-por-la-alargada-sombra-de-la-morosidad/

payment. The corresponding percentages in small, medium and large companies amount to respectively 5.5%, 3.9% and 3.3% of total costs[38].

2.1.3 *Late payment affects companies from all sectors*

30. Late payments affect all sectors. Most business organisations responding to the PC are either openly against sectoral exceptions or do not mention such a consideration in their submissions. Construction sector business associations call for reducing tolerance for long payment terms and late payment but are not asking for a sectoral approach. Some stakeholders representing wholesale, retail and textile industries have called for sectoral approaches. The evidence from the PC does not show unanimity among stakeholders from these sectors and their diverging views are sometimes starkly contradictory (e.g. with regards to large retailers). Findings from the SME panel do not confirm the need for a sectoral approach. These aspects are analysed in sections 6.1.1.1.1 and 6.1.1.1.2. See also Figure 15 in Annex 17.

31. Construction sector stakeholders report late payments as particularly acute. Practices to artificially delay payment in construction sector include disputes on the quality of the work or materials, extending verification procedures, or making administrative payment processes excessively complex[39]. 49% of SMEs in the construction sector reported late payment problems[40]. The percentage share of payments made on time in this sector is not satisfactory anywhere in the EU, except for Denmark, where 91.9% payments were made on time[41]. The percentage share of payments made by the agreed deadline in 2022 ranged from 15% in Bulgaria to 68% in Germany[42].

2.1.4 *Late payment is a worldwide problem*

32. Late payments are a worldwide problem. In 2017, 10% of the invoices issued in commercial transactions around the world were estimated not to be paid on time or to be written-off as bad debt[43], costing the global economy $1 trillion every year[44].

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[38] https://for.org.pl/pliki/artykuly/2628_zatoryraport.pdf

[39] Analytical Report on Late Payments in the Construction Sector, 2020, European Construction Sector Observatory

[40] SAFE survey, 2022

[41] [41] D&B Payment Survey, 2022 https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/

[42] D&B Payment Survey, 2022 https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/

[43] Late payments are often referred to as the "assassins" of SMEs in "*How SMEs can speed up payments from large corporations*",https://www.forbes.com/sites/forbesbusinesscouncil/2020/04/30/how-smes-can-speed-up-payments-from-large-corporations/?sh=1311bc2d405d

[44]https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

33. Many EU trading partners address late payment problems with behavioural or disclosure legislation (see Annex 18). In B2B, prompt payment rules are found in Japan, India and Türkiye. The size of at least one of the two parties in the contract is used to define payment terms conditions (from 30 days plus verification from the date of invoice to 60 days including verification from delivery date; Japan and New Zealand have rules on unfair payment practices). Reporting obligations tend to focus on where late payment risks are higher. UK, USA, Australia have also promoted voluntary codes in B2B; their effectiveness remains to be proven. Specific prompt payment B2B legislation exists for the construction and agriculture sector. In G2B, prompt payment rules set 30 or fewer days as payment terms, with shorter deadlines for payment to small companies in some countries. Construction is the most regulated sector, both in B2B and G2B, with strict timing of payments also down the supply chain. Most prompt payment rules include automatic application of interest, and compensation never appears.

34. In summary, the information on payment practice laws in non-EU countries is uneven. Several countries are in the process of considering or advancing late payment legislation. This explains why there is little in terms of evaluation (mainly from UK, US/Canada and an evaluation in Australia is ongoing). The reviews screened point to the fact that there is no single policy measure that would guarantee successful reduction in payment delays, e.g. policy measures put in place in the US lacked an effective dispute resolution mechanism, which significantly reduced their overall effectiveness.

2.1.5 Payment performance deteriorates in periods of adverse economic conditions: coronavirus-crisis and inflation

35. General payment discipline deteriorates in times of economic difficulties[45] (see section 2.1). In April 2020, the French "*Médiateur des Entreprises*" informed that the number of complaints about late payments they received in March 2020 increased tenfold compared to normal situation and that late payment was the first reason for the complaints[46]. In Italy, every day of delayed payment causes the need for working capital of small businesses to increase by up to 15% or EUR 19

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[45] Avec la crise sanitaire de 2020 et son impact sur l'activité des entreprises, les comportements de paiement se sont rapidement dégradés. https://www.economie.gouv.fr/files/files/directions_services/mediateur-des-entreprises/odp_2020.pdf?v=1637739908
In the UK, 62% of all small businesses have experienced either an increase in late payments from customers
(44%) and/or had their payments frozen completely (30%) as a result of COVID-19. https://www.fsb.org.uk/static/84f47dd3-0cbe-4339-afd147be808b02f5/Late-Again-How-the-coronavirus-pandemic-is-impacting-payment-terms-for-small-firms.pdf

[46] NetPME, (*Coronavirus). Médiateur des entreprises : « Nous sommes submergés par un tsunami de saisines »,* 20.04.2020 https://www.netpme.fr/actualite/coronavirus-mediateur-des-entreprises-nous-sommes-submerges-par-un-tsunami-de-saisines/
Le Figaro : « les incidents de paiements multipliés par trois », 16.04.2020
https://www.lefigaro.fr/flash-eco/coronavirus-les-incidents-de-paiement-multiplies-par-trois-20200416

billion[47]. In Spain, in the first 6 months of 2021, 70% of invoices were paid late[48]. See Figure 3 in section 2.3 for information on cyclicality.

36. Inflation reduces the real value of debt[49] and paying late means paying less. While inflation itself affects late payments only to a limited extent, it may have indirect effects as central banks take action to curb inflation by raising interest rates, which may negatively affect economic growth, firms' liquidity as well as their financing options, thus affecting late payments, too[50]. Inflation increases business risks, making it more difficult to predict input factor prices. In a high-inflation environment, enterprises may find it difficult to pay their bills when prices go sharply up. In times of high-interest rates, paying late becomes very attractive as long as it does not entail paying interest.

2.2 Consequences of late payments

37. Late payment creates a domino effect that leads to more late payment. Consequences of late payment spread along and across supply chains, industrial ecosystems, and the entire economy. Consequences of late payment are discussed in depth in Annex 20.

38. Positive consequences of late payment accrue to debtors. They include stronger cash flow, and they allow the debtor to avoid going through the process of applying for financing.

39. Negative consequences of late payment accrue to both creditors and debtors. Late payment:

1) reduces competitiveness,
   a) increases hassle costs of chasing debtors for payment,
   b) increases cost of financing,
2) increases uncertainty and the risk of running a business,
   a) reduces investment capacity,
   b) increases liquidity risk and the risk of bankruptcy,
   c) reduces trust and confidence in the market,
   d) results in jobs lost,
3) reduces participation of SMEs in public procurement,

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[47] Il Sole 24 Ore: *Coronavirus, servono 15 miliardi di liquidità nei prossimi 3 mesi*, 19.03.2020 https://www.ilsole24ore.com/art/coronavirus-servono-15-miliardi-liquidita-prossimi-3-mesi-ADLnKTE?refresh_ce=1
The quoted estimate was calculated based on an optimistic scenario assuming a 20-day delay after the agreed payment term. In practice, payment delays exceeding 100 days occured even before the COVID-19 crisis.

[48] Cinco Días: *Efectos de la morosidad en las pymes*", 23.09.2021 https://cincodias.elpais.com/cincodias/2021/09/21/pyme/1632178660_252671.html

[49] https://www.icaew.com/insights/viewpoints-on-the-news/2022/oct-2022/the-impact-of-late-payments-on-small-businesses
https://www.mondu.ai/blog/effects-inflation-payment-behavior-b2b/

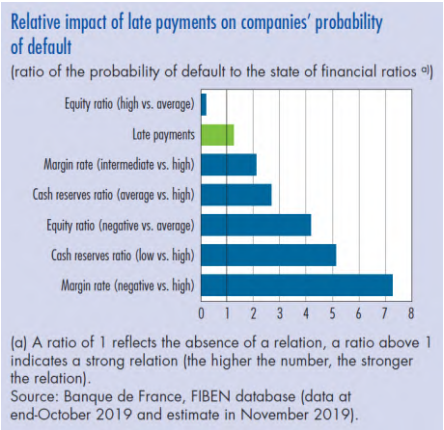
[50] PPMI, 'SMEs and high inflation', SME Performance Review, in preparation

4) produces negative societal outcomes.

2.3 Problem drivers

40. Parties of commercial transactions seek to maximise their financial liquidity at minimum cost and, while trade credit is a generally accepted practice, there is no universal agreement about which payment terms are considered fair and which are not.

Figure 4: High cash reserves ratio represents a stronger motivational factor for companies managing their probability of default than reducing late payment[51]



Late payment is caused by horizontal drivers common to all sectors and applicable in commercial transactions.

In LPD's context, the interpretation and application of key provisions on payment terms are delegated to insufficiently defined concepts (e.g. 'grossly unfair'); enforcement of the law is insufficient because it can only be obtained through long and costly court procedures, and it is easier for many debtors to obtain finance through late payment rather than bank credit.

Figure 4 shows that high cash reserves ratio reduces a company's probability of default much more than the increase caused by the existence of late payment.

41. Late payment happens in the context of **'borrowing liquidity'** – accomplished at the expense of the business partner[52], either by obtaining the creditor's validation by exploiting differences in bargaining power, or by unilaterally, outright unlawfully paying late (breach of contract), with no fear for consequences. Asking for long or extended payment terms is a latent demand for cash. These sources of finance are substitutes for normal trade credit and bank loans or overdrafts. But they are not free. The implicit interest rate in a trade credit

[51] https://publications.banque-france.fr/en/do-late-customer-payments-impact-companies-probability-default

[52] 'Imagine walking into a shop, taking what you want up to the counter, and then, when the time comes to pay, saying 'thanks – but I think I'll just take these now and pay later', and casually walking out with your items.', https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

agreement is usually very high as compared with the rates on bank credit[53]. Cost savings debtors obtain through late payment are illusionary because debtors effectively use and pay for their creditors' working capital funding. We are assuming that a creditor needs a working capital credit line to fund trade credit to customers. We are assuming that creditor's weaker bargaining power than the debtor's means that creditor's business risk is higher than debtor's. Therefore, interest rate banks require from the creditor is higher than they require from the debtor. Late payment allows therefore the debtor to limit their collaboration with their bank, avoid applying for a loan and strengthen their cash position, but at a higher price. Provision of working capital financing can be considered as a standalone economic activity, to be declared under NACE section K.

42. Departing from this context in which the debtor is seeking to strengthen their cash position and avoid talking to their bank, drivers for late payment can be found on three fronts: insufficient preventive measures, market failure that results from imbalances in bargaining power, which put in question the integrity of a commercial transaction, and finally, insufficient redress mechanisms.

43. Next to these, there are drivers that cannot be addressed under this initiative, e.g. corrective measures addressing inefficiencies in administrative processes for payment fall within the remit of the Member States.

2.3.1 Insufficient framework conditions

44. The scene for potential late payment is often set before the commercial transaction is concluded. Several factors make it possible. The law and business practices, which have so far relied on the principle of freedom of contract, have created a grey zone for assessing the level of fairness in setting payment terms and agreeing payment periods.

45. The LPD fixes a maximum payment term in B2B transactions at 30 days but gives a wide margin of discretion to set longer terms by contract. Therefore, companies with bargaining power impose excessively long payment terms on their smaller suppliers. Lack of legally defined maximum payment term for B2B transactions increases the likelihood a company will have to deal with late payment.

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[53] V. Cuñat, Trade Credit: Suppliers as Debt Collectors and Insurance Providers, The Review of Financial Studies, Volume 20, Issue 2, March 2007, Pages 491–527, https://doi.org/10.1093/rfs/hhl015, and M. A. Petersen and R. G. Rajan, Trade Credit: Theories and Evidence, The Review of Financial Studies , Autumn, 1997, Vol. 10, No. 3 (Autumn, 1997), pp. 661-691, Oxford University Press, https://www.jstor.org/stable/2962200

46. The LPD insufficiently clarifies how to handle the duration of verification procedures[54], very common in public procurement. In practice, payment terms are lengthened by delaying the moment a creditor is allowed to send the invoice.

47. While trade credit is universally used and short payment periods are generally considered fair, this is not always the case for long payment periods or payment periods exceeding agreed payment terms[55]. This lack of clarity on which payment terms are fair leaves it to the party with stronger bargaining power to win the battle for liquidity and determine a transaction's payment term. Based on this mechanism some sellers accept conditions with which they do not feel comfortable or consider unfair. Imbalance of power is a very important driver for B2B transactions[56] (see Figure 14 on p. 187). In 2022, 61% of companies reported that they had been asked for longer payment terms than they were comfortable with[57], and this includes both B2B and G2B transactions. EU companies consider that the main causes for customers to pay late[58] include the fact that debtors are in financial difficulties, intentional late payment, and administrative inefficiency (reported by respectively 54%, 50% and 48% of companies).

48. SMEs appear to be under-utilising tools such as credit reference information[59] to obtain information on payment track-record of their prospective customers. It is therefore difficult for them to estimate the risk that a potential client could pose for their business. Companies need a better understanding of their exposure, vulnerabilities, and potential losses to inform resilience strategies. SMEs need better financial management skills which would help them to reduce the risk of default, shorten the average collection period, and support an optimal cash flow thanks to effective credit management. 70% of businesses indicated that lack of skills and in-house know-how are preventing them from improving the management of payment delays[60]. Bad invoice management disproportionately affects SMEs because they either cannot afford or rely less than large companies on state-of-the-art solutions, which can immediately reduce the risk of payment delays or accelerate payment (e.g. digital invoice management tools or e-invoicing). Many agreements are still concluded verbally, e.g. in the agriculture sector. These can lead to misunderstandings, cause difficulties with proving the agreed conditions, and prevent the use of remedial actions.

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[54] The LPD establishes that in cases where the contract provides for verification procedures to ascertain the conformity of the goods and services with the contract, the payment shall take place 30 days after that date, unless otherwise expressly agreed in the contract and provided it is not "grossly unfair" to the creditor.

[55] Trade credit is more expensive than bank credit because it includes costs associated with having a late payment option, greater risk of default and the higher cost of acquiring funds (Cuñat 2007). https://www.rba.gov.au/publications/bulletin/2013/sep/pdf/bu-0913-5.pdf

[56] B2B Comparative study

[57] EPR 2022

[58] EPR 2019

[59] ACCA and CBI (2010), Small Business Finance and the Recovery
http://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-af-sbf.pdf

[60] EPR 2022

2.3.2 Market failure – imbalances in bargaining power

49. The incidence of late payments in commercial transactions depends on the level of competition in a market and the bargaining power of companies. Some businesses accept late payment because they can afford it, can manage it and see it as a way to gain new customers. Insufficient bargaining power may influence creditor to accept long or late payment for fear of harming commercial relationships with stronger clients. Such fear is an important reason for not claiming interest or compensation for late payment[61]. Strong bargaining power may encourage debtors to seek or impose an extension of the payment period, a practice called 'supply-chain bullying'[62].

50. Many payment terms agreed in this way are long. While they are considered lawful in light of the freedom of contract principle, on which the LPD is based, they are often considered unfair by the creditors. In 2021, 49% of EU businesses declared having accepted longer payment terms that they were comfortable with, in order not to damage client relationship[63] (see Annex 17 for more details). This points to the fact that freedom of contract, on which the LPD has been based, and fairness in setting payment terms do not always go together. This proposal is seeking to address the need for more fairness in B2B transactions. In that context, some Member States, e.g. the Netherlands, Sweden, have put in place laws to address late payment. These provisions are stricter than the LPD – see Annex 23.

51. The LPD does not sufficiently well protect creditors. The provisions regarding the payment of interest and a flat fee compensation for costs, in case of late payment required a court ruling to bring the necessary clarity[64]. 'Entitlement' to the interest and compensation is a heavily underused right. Some debtors specifically circumvent these provisions by using such contractual clauses that make repayment of debt conditional on creditors' agreement to give up their rights to interests and compensation.

52. Enforcement is not lean enough, which encourages many debtors to take chances of not being sanctioned for paying late, also in light of the time and money needed to complete legal procedures. The consequences of late payment are not imminent or unavoidable.

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[61] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:0316:FIN:en:PDF

[62] https://www.gov.uk/government/news/business-secretary-launches-review-to-prevent-small-firms-from-being-ripped-off-by-larger-companies
https://www.linkedin.com/pulse/bullying-wrong-includes-big-brand-corporations-mark-pettler

[63] Intrum, European Payment Report 2021

[64] BFF Finance IBERIA C 585/20
https://curia.europa.eu/juris/document/document.jsf;jsessionid=9ACA3ACE89C179B9127A057DD337BB72?text=&docid=267402&pageIndex=0&doclang=ES&mode=lst&dir=&occ=first&part=1&cid=793023

53. The rules that support the monitoring of compliance are not strong enough. There is little information on average payment terms, average payment periods or payment performance.

54. The LPD is not sufficiently well linked with other policies related to public spending (e.g. public procurement, regional and structural funds), which prevents public (and EU) money from supporting fair payment. The LPD lacks rules and tools to make prompt payments the norm and to marginalise bad payment behaviour.

55. Finally, public authorities do not lead by example. Commercial transactions with public bodies suffer from imbalances in bargaining power. Public authorities often do not pay on time, try to circumvent their legal obligations regarding interest and compensation, and do not set the example for B2B transactions.

2.3.3 Insufficient redress mechanisms

56. Many, especially small, companies are not aware of the provisions of the LPD, or how these are to be applied in practice. They also lack the ability to self-empower themselves and assert their rights to timely payments. The LPD does not provide small creditors with adequate tools to take action against their debtors. Legal action is the only measure envisaged in the LPD, and it is usually disproportionately costly, disproportionately time-consuming, and likely to damage business relations between the parties.

57. Obtaining satisfactory result through taking matters to court is uncertain because of weaknesses of the LPD. The lack of clear definition of 'unfair' practices or clauses makes it difficult for companies to assess their chances of winning in court. Several provisions of the LPD build on the concept of 'grossly unfair', an undefined concept, which makes it difficult for a creditor to prove a specific contractual clause or practice as unlawful. Access to mediation is insufficient. There exist other practices, which result in circumventing the LPD's obligations, e.g. practices banning assignments of receivables, which hamper factoring[65] (see Annex 10). These practices are not defined as unfair in the LPD which makes it very difficult for SMEs not to accept them.

2.4 How likely is the problem to persist?

58. If no additional EU action is taken, the identified issues are likely to persist (based on the input received by the Commission from stakeholders and desk research).

59. Between years 2014 and 2022, the drop recorded after the transposition of the LPD did not bring payment times below 30 days. The spike following the

[65] If the contract restricts the parties' ability to assign or transfer rights created under the contract, restrictions on assignment can prevent the parties from factoring receivables or otherwise raising finance on them.

coronavirus pandemic erased the gains made before 2020. The difficult economic context, high inflation and higher interest rates are likely to support the prevalence of late payments. The problem is highly unlikely to go away when the situation will have stabilised. Payment delays persist even during the absence of economic crises.

60. Late payment remains attractive because for a debtor it represents the quickest, easiest and paperless way to obtain financing. The bargaining power, not sufficiently harnessed by the provisions of the LPD, and the lack of clear guidance on which payment terms are fair will allow parties to continue paying as they see fit.

61. So far, the Commission's enforcement action has been limited to infringement procedures against Member States, reporting on payment performance in the European Semester and making country specific recommendations. Several recent legal initiatives and ongoing projects may affect the issue of commercial payments. All of these are assessed under the baseline.

62. The current situation allows for different provisions in different Member States and therefore a risk of market fragmentation. For example, in some Member States the compensation interest stops accruing once its amount is equal to the amount of the underlying overdue payment. Furthermore, the LPD was not correctly transposed in several Member States, with currently still 2 active infringement procedures, due to non-conformity of legislation. This also makes it difficult for courts to deliver consistent judgments and for companies to evaluate their chances of success in the court. This is further aggravated in cross-border situations, when dealing with justice systems in other EU Member State(s) becomes necessary.

63. Late payers who start paying on time would need to seek working capital financing. This would entail a certain adjustment process of obtaining a credit loan and the payment of the interest. The net financing cost for the debtor would likely go down[66], but the cost of dealing with the bank would increase.

64. No megatrends apply to the late payment problem tackled by this initiative[67]. The initiative will support developing a future-proof and agile EU regulatory framework, with the single market at its heart, which will be conducive to sustainable business models and consumption patterns and EU competitiveness, as identified in the strategic foresight report among areas of action for a successful twinning[68].

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[66] Assumption follows from the creditor's weaker bargaining power than debtor's, which allows the debtor to impose long or late payment terms in a commercial transaction.

[67] https://commission.europa.eu/system/files/2022-06/br_toolbox_-_nov_2021_-_chapter_3.pdf p.156

[68] Strategic foresight report 2022

3 WHY SHOULD THE EU ACT?

3.1 Legal basis

65. This initiative aims to enhance competitiveness in the single market by reinforcing the provisions to prevent late payments, thereby creating a culture of prompt payment.

66. Article 114 of the Treaty on the Functioning of the EU (TFEU) is the appropriate legal basis for this initiative to achieve its objectives. This article is the appropriate legal basis for measures aimed at achieving the objectives set out in Article 26 TFEU (harmonising national provisions).

67. The overall objective of this legislative proposal is to ensure the smooth functioning of the EU single market by combating the unlawful misappropriation of liquidity in the EU market. There is a strong value added of action at EU level because the problems that this proposal tackles affect cross-border transactions and are not limited to the territory of a single Member State. Member States on their own could not bring about a consistent improvement to those problems. The revision also aims at boosting sustainable competitiveness, increasing both fairness and liquidity in the single market, enabling the digital and twin transition while reducing the administrative burden of chasing debtors.

68. Coordinated action is required to ensure that all Member States have the minimum rules in place to prevent late payments, have the right enforcement and deterrent measures to combat late payments and the adequate means of redress. In this context, the targeted EU intervention through this proposal complies with the principle of subsidiarity.

69. The LPD is a recast of the first Late Payment Directive (Directive 2000/35/EC), based on Article 95 TEC. The LPD and its revision fall within the joint remit ('shared competence') of the EU and its member governments.

3.2 Subsidiarity: necessity of EU action

70. The 'history' behind the adoption of the current and previous Directive (see Annex 6) illustrates that the need of EU action against late payments has been evident since 1995.

71. The problem of late payments is widespread across the EU and affects all Member States. The causes of the problem are common in all EU Member States. Facilitating prompt payment will require all Member States to make rules stricter in a coordinated way. Implementing 27 national solutions would likely result in a lack of uniform rules, fragmentation of the single market and higher cost for companies trading across borders. The EU dimension is justified by the fact that this action affects all commercial transactions in public procurement and between businesses, regardless of their size. It is the very essence of the single market. This action concerns the revision of existing EU legislation in order to strengthen its provisions; therefore, it can be done only at EU level.

72. Some EU countries have introduced national rules that are more stringent than the LPD and grant better protection to SMEs – for example capping payment terms in B2B transactions at 30 days when the creditor is an SME or setting up enforcement bodies. At the same time, some national legislations have introduced a ban on assigning receivables, thereby prohibiting the restriction on the parties' ability to assign or transfer rights that helps getting finance. To avoid fragmentation of the single market, it is necessary to ensure homogenous implementation and enforcement of the rules.

73. Similarly, co-ordinated action is required to tackle the asymmetry of power and asymmetry of information, as well as means of redress across Member States.

74. Therefore, Member States acting individually could not satisfactorily remove the barriers to ensure prompt payment across the EU. A coherent legal framework for payment terms, payments of interest and compensation and enforcement, can only be achieved at EU level.

3.3 Subsidiarity: added value of EU action

75. Value added of EU action for this initiative is strong because it seeks to address a widespread, EU-wide problem, which affects not only intra-Member State transactions, but also cross-border transactions in the single market. Payments allow the single market to function. Late payment may affect any commercial transaction in the EU. This initiative concerns the revision of an already exiting EU legislation (Directive 2011/7/EU) therefore, it can be done only at EU level. Implementing 27 solutions to lay down rules on national level would risk fragmenting the single market and bring additional familiarisation and compliance costs for companies trading across borders in the EU.

76. A coordinated action at EU level including Member States is required to:

1) define provisions on interest and compensation fees (articles 3,4, and 6) so that they can be transposed in a uniform manner into national legislations,

2) establish clearer payment terms for B2B, as well as enforcement and monitoring provisions, that apply cross border,

3) ensure that there are synergies with the public procurement framework, and especially taking into account that the National Recovery and Resilience Plans in the Member States are implemented primarily through public procurement.

77. In line with the principle of proportionality, the planned initiative will not go beyond what is necessary to achieve its objectives by revising the current rules applicable to all commercial transactions in public procurement and between businesses, which could not be achieved by Member States on their own (see in particular section 5.4 and Annex 14).

4 OBJECTIVES: WHAT IS TO BE ACHIEVED?

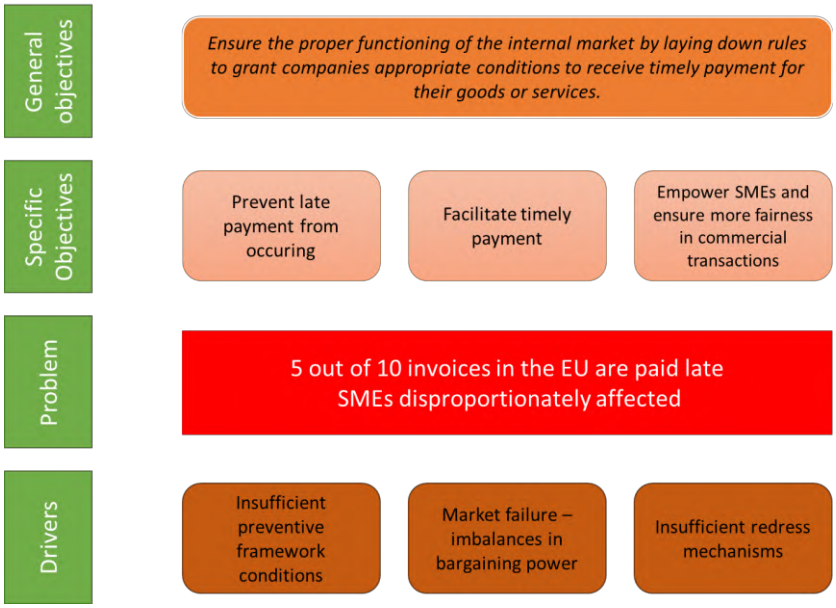
78. The initiative is expected to contribute to progress towards Sustainable Development Goals no. 8: Decent work and economic growth, no. 3: Ensure healthy lives and promote well-being for all at all ages, no. 4: Quality education and no. 9: Industry, innovation and infrastructure. Further details are in Annex 3.

4.1 General objectives

79. The general objective is to ensure the proper functioning of the internal market and competitiveness for EU companies by laying down rules to grant companies appropriate conditions to receive fair and timely payment for their goods or services. This initiative aims to contribute to strengthening competitiveness and growth of companies active in the internal market by improving the payment discipline of all concerned actors (SMEs, large businesses and public authorities) and protecting SMEs against the negative effects of payment delays in commercial transactions.

80. The need to ensure that the internal market can work for the sustainable development of Europe, based on balanced economic growth, a highly competitive social market economy, and that it can promote economic and social cohesion, follows from Article 3 of the TEU.

Figure 5: Late payment problem - general and specific objectives



4.2 Specific objectives

81. The specific objectives are:

4.2.1 To prevent late payment from occurring

82. The first specific objective of the intervention would be to provide a clear set of measures to prevent late payment and make companies more aware of their rights and obligations, notably by fixing maximum payment terms or mastering companies' proficiency in credit management and digital literacy. The specific objective aims to facilitate business-to-business relations between companies especially in the early (mainly pre-contractual) stage of their business relationship and to allow them:

1) to plan and dedicate their resources to their core activities, and
2) to fully understand the benefits offered by streamlined and timely cash flows, that better correspond to the flow of physical goods or delivered services.

83. The initiative should lead to creating a more predictable business environment for those enterprises which use trade credit to sell their products or services.

4.2.2 To facilitate timely payment

84. The second specific objective refers to the contractual stage of a business relationship. It aims to make it easier for companies to receive due payments on time, to help them exercise their right to systematically receive interest and the flat fee compensation, and to ensure better enforcement of the rules by creating appropriate mechanisms for enforcement. These mechanisms should ensure the necessary speed, independence and affordability to overcome the observed gap in the application of LPD's provisions. A stronger commitment from the public authorities to pay on time and to lead by example is also necessary, especially in public procurement context.

4.2.3 To empower SMEs and ensure more fairness in commercial transactions

85. The third specific objective is to empower SMEs and ensure more fairness in commercial transactions, to make it easier for companies to assert their right to receive timely payments. This objective seeks to respond to the need to request Member States to specifically address the question of unfair contractual terms and practices through their applicable national law, address insufficient access to mediation, or create better framework for redress possibilities. The objective seeks improvement in companies' situation without creating unnecessary or disproportionate burdens and facilitate access to effective redress, where currently a judicial procedure represents the only available option.

86. These three objectives address the problem drivers identified in section 2.3. Each specific objective corresponds to an individual driver.

5 WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1 What is the baseline from which options are assessed?

87. As set out in section 2.4, the initiative is not linked to any of the megatrends but would support the area of action for a successful twinning related to developing an EU regulatory framework with the single market at its heart.

88. More than 70% of businesses never claim interests or compensation when paid late. In the absence of EU action with respect to the LPD, businesses are likely to continue experiencing payment delays. The identified weaknesses of the LPD: the absence of a cap on payment terms in B2B transactions, unclear provisions regarding unfair payment practices, the payment of interest and compensation and the absence of means for monitoring and enforcement, would continue to negatively affect the payment performance of companies. The fact that the current provisions do not sufficiently empower the creditor to claim interests and compensations has led to a proliferation of national schemes, business practices or contractual clauses whereby debtors make repayment of their debt conditional on creditors' giving up their rights to interests and compensation. Should the LPD's sanctioning powers remain unchanged, its creditor protection provisions will continue to be circumvented.

89. Companies do not claim the EUR 40 flat fee compensation for recovery costs. The amount of the fee no longer covers the hassle cost of chasing debtors.

90. The Commission would continue to enforce the LPD mainly through the European Semester's country specific recommendations or through infringement procedures for bad application or incorrect transposition of the LPD. Both are lenghty procedures unlikely to have the desired effects. In that context, a number of Member States have been requested to provide regular reporting on their payment behaviour.

91. Since the problem is not new, the EU initiatives already put in place to tackle the problem of late payment form part of the baseline. Examples are set out below.

92. The UTP directive (article 1) addresses the capping of B2B payment terms and clarifies what are practices that 'grossly deviate from good commercial conduct', which can be used as a proxy for understanding what 'grossly unfair' means. EU countries were required to transpose the directive into national law by 1 May 2021 and apply it six months after. It aims to better protect farmers and small and medium sized suppliers in the agro-food sector. It provides for mandatory rules that outlaw certain unfair trading practices. It bans 10 unfair trading practices and lists further 6 unfair trading practices, which are only allowed if the supplier and the buyer agree on them beforehand in a clear and unambigious manner. Such practices include unfair payment terms, and provide for enforcement and fines.

93. Several court rulings linked to the LPD have given guidance on the interpretation of the interest and compensation claims, (see section 1.3 and Annex 11). It is

preferable to reflect them in the wording of the LPD to make it easier for companies to secure their rights.

94. A pilot project for a temporary EU Observatory for late payments was launched in 2023 to support the monitoring of compliance with payment terms and transparency on payment performance, such as collection of statistics on average payment periods or average payment terms in B2B and G2B transactions (see Annex 7). The project relies on voluntary data provision and builds on national and sectoral databases, leading to issues of coherence and comparability of data. The European construction sector observatory (ECSO)[69] regularly analyses and comparatively assesses payment performance in the construction sector in 27 EU countries and the UK.

95. The Corporate Sustainability Reporting Directive[70] (see Annex 14) acknowledges the important role of payment practices in the management of a company and the quality of relationships with suppliers and requires payment practices to be covered in the reporting standards[71].

96. Digital means such as e-invoicing can facilitate timely payments. Promoting the use of modern digital payment tools and digital literacy can result in shortening invoice-processing time, reducing error rates and streamlining companies' cash management. Since the adoption of the LPD, both digital banking payment solutions and automated accountancy programs have become universally available on the market. They can foster prompt payment by providing liquidity management solutions.

97. Digital solutions can boost transparency and facilitate reporting obligations resulting from several legal instruments. The directive on electronic invoicing in public procurement[72] aims to make the use of e-invoicing widespread. The VAT in the digital age proposal[73] aims to make compliance with VAT easier for businesses by better harnessing the potential offered by digitalisation. Public authorities and companies could benefit from open and reusable digital solutions[74] which the Commission is making available for free, e.g. eID, eSignature, eDelivery, see Annex 22.

98. The Commission launched a call in March 2023 for a pilot project for the uptake of alternative dispute resolution mechanisms and mediation[75] to address the lack

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[69] https://single-market-economy.ec.europa.eu/sectors/construction/observatory_en

[70] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464&from=EN

[71] Reporting standards (including one on payment practices) are in preparation; in the draft standards, it is proposed that payment practices' disclosure is conditional on the company's materiality assessment. The Directive will become gradually applicable starting with the businesses' financial year of 2024.

[72] 2014/55/EU - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0055

[73] https://taxation-customs.ec.europa.eu/taxation-1/value-added-tax-vat/vat-digital-age_en

[74] https://ec.europa.eu/digital-building-blocks/wikis/display/DIGITAL/Digital+Homepage

[75] Services - 127264-2023 - TED Tenders Electronic Daily (europa.eu)

of accessible (i.e. alternative to legal action) tools for companies to take action against their debtors. The project's limitations (geographical scope, duration) are unlikely to provide a sustainable EU-wide solution.

99. Finally, higher inflation and higher interest rates provide additional incentives for paying late. With record-high inflation exceeding 9% in 2022[76] and associated rises in interest rates, the possibility of using free funding (by paying late) has become more attractive. Inflation also points to the need to adjust the EUR 40 compensation fee for hassle costs to which a creditor has the right. According to an EU-wide survey[77], six out of ten companies are worried that the risk of late payments will grow in the short term, due to inflation.

100. The current baseline is likely to deteriorate in the future because of the war at EU's borders, inflation, higher interest rates and energy prices shock.

5.2 Description of the policy options

101. The policy options (PO) address the problem drivers (section 2.3) through a user-driven approach to achieve the objectives (section 4), in particular by:

1) fixing the framework conditions to prevent late payments;
2) fixing the market failure resulting from imbalances in bargaining power to facilitate timely payments;
3) empowering SMEs to take action, challenge unfair conditions and claim redress when paid late.

102. The activities related to the monitoring LPD's implementation (see Annex 6) have allowed the Commission during the last 10 years to pre-identify the specific areas for intervention among several possibilities across the political/regulatory spectrum (defined within the limits of political and legal feasibility and Treaty competences, see Annex 14). The options presented and assessed in this report focus on areas of intervention pre-identified as critical for combating late payments: the 'framework conditions' including the degree of freedom of contract, 'the enforcement' and the 'redress mechanisms'.

103. Each option presents a different degree of intervention among these areas. PO1 considers a stronger intervention on the 'freedom of contract' under 'framework conditions' to bring a better balance between freedom of negotiation and fairness, by laying down stricter payment terms. The option's rationale is prevention and it envisages no EU intervention on 'enforcement' and 'redress mechanisms', leaving these elements to the existing baseline scenario. This approach essentially follows the specific policy choice recently made in the Netherlands, where

[76] In 2022, EU annual inflation reached the highest level ever measured at 9.2%. Compared with 2021, when the annual value was 2.9%, it more than tripled. https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230309-2

[77] June 2022, https://europa.eu/eurobarometer/surveys/detail/2244

payment terms in B2B transactions have been reduced from 60 to 30 days[78]. PO2 focuses on 'enforcement', by sharpening deterrents (interest and compensation fees) and designating enforcement bodies. This option leaves more freedom to the parties at the outset of their contractual relationship but is more focused on ensuring the implementation of the will of the parties. The rationale for this option is to ensure that agreed payment conditions are met and intervening only if this is not the case. This approach has recently been put in place in Spain (see Annex 9). PO3 focuses the intervention on remedial measures. It is the least interventionist at the level of the freedom of the parties. The measures assessed under this option seek to improve the redress conditions when payment terms – which have been freely negotiated – are not met, and where the existing deterrents have not been effective. This approach has been implemented in Belgium and in Ireland in the construction sector[79].

104. Each proposed policy option is put forward as standalone, therefore can be introduced independently from others. However, each option aims to address only a part of the shortcomings of the current situation. In addition, options include different sub-options which vary in the degree to which they respond to the individual specific objectives.

105. Policy options contain legal measures. The analysis consists in choosing the best sub-option to address the policy option to which it belongs. In the next step, individual (standalone) policy options are compared against a package of individual policy options to determine the best way to achieve the objectives. The preferred package is a combination of three policy options.

5.2.1 Policy option 1: Prevent late payment from occurring

106. **Policy option 1 (PO1)** seeks to address drivers (section 2.3.1) identified with regards the specific objective 1 (section 4.2.1). Policy measures considered under this option aim at ensuring prevention. They focus on the early stages of commercial transaction, including the stage before the contract is signed. This is because late payments may stem from unfairly negotiated contracts, which from the start force the creditor to accept excessively long payment terms. Through this practice a debtor plans for an effective payment delay and incorporates it into the contract. The problem becomes invisible, because it is included from the start into the contract and formally accepted by the creditor.

107. The current regulatory framework does not set an absolute maximum payment term in B2B transactions. The EP pleaded for the setting up of preventive measures to combat late payments, including capping of payment terms in B2B transactions, introducing transparency obligations, and providing SMEs with

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[78] https://business.gov.nl/amendment/legal-payment-term-large-companies-reduced-30-days/

[79] Belgium: https://economie.fgov.be/fr/themes/line/belmed-mediation-en-ligne/reglement-alternatif-de/sortes-de-reglements-des/conciliation/commission-de-conciliation, Ireland: Construction Contracts Act 2013.

training on credit and invoice management[80]. The Fit for Future platform refers to similar measures (recommendations number 4, 5 and 7 of the F4F opinion 2021).

108. **Policy option 1a** (PO1a) sets up a maximum payment term in B2B transactions, making it mandatory for businesses to pay in maximum 30 days. This would introduce a clear legal limit to B2B transactions. While this would limit the current freedom of contract, it would boost the degree of fairness with which payment terms are set and establish a better balance in the negotiation of payment terms.

109. A possibility for capping payments in B2B transactions at 30 days but allowing for (longer) specific payment terms for certain identified sectors, in particular those characterised by seasonality or long shelf-life of products[81] is addressed in section 6. In France there are specific payment terms for identified sectors ('Délais dérogatoires')[82].

Table 1: Policy option 1

Prevent late payments			
Baseline	**PO 1a**	**PO 1b**	**PO 1c**
No capping in B2B transactions will continue supporting the less-than-satisfactory payment performance in B2B transactions, eroding the potential for smaller companies in particular to become more competitive.	**Capping at 30 days** in B2B transactions Verification or acceptance procedure **capped at 30 days (no derogation)**	**Capping at 60 days** in B2B transactions**.** Verification of acceptance procedure **capped at 30 days (no derogation)**	**Capping at 60 days in B2B transactions where the creditor is an SME.** Verification or acceptance procedure **capped at 30 days (no derogation).**
Lack of credit management skills and relevant training material for SMEs makes them more vulnerable to the risk of being paid late.	MS facilitate availability and access of SMEs to **credit management tools**, financial literacy training and **foster the use by SMEs of digital tools for timely payments**		

110. The verification procedure for assessing the compliance of the goods or services would be capped at 30 days. Therefore, the result would be a maximum of 60-day (30+30) payment term for all B2B transactions and where a verification procedure is required by the contract. The Court of Justice[83] emphasised that

[80] EP Resolution 2019

[81] B2B Comparative Study 2018

[82] https://www.economie.gouv.fr/dgccrf/Publications/Vie-pratique/fiches-pratiques/Delais-de-paiement#:~:text=Le%20d%C3%A9lai%20convenu%20entre%20les,abus%20manifeste%20au%20d%C3%A9triment%20du

[83] In case C-585/60, points 47 to 49, referring specifically to G2B contracts

verification procedures are often used to delay artificially the payment period[84] and therefore, their inclusion in the contract must be 'objectively justified by the particular nature of the contract in question or by certain of its characteristics'[85].

111. PO1 proposes different combinations of the same type of measures to make sure that payment terms are negotiated fairly.

112. PO1a includes measures to address the information asymmetry about payment performance of public authorities. Knowing whether a perspective public sector client is a good payer or not, is valuable information. The company could then factor it in in the tender or offer. The data made available through this measure would be included in the EU observatory of payments and support the Commission's enforcement activities.

113. Member States should boost availability and facilitate access of to credit management and financial literacy training for SMEs, to make them less vulnerable to late payment.

114. **Policy option 1b (PO1b)** would cap payment terms in B2B transactions at 60 days. It would allow to limit the impact on the freedom of contract, while reducing the room for discretion and unfairness. Verification procedure would be capped at 30 days. PO1b would set the maximum of 90 days for payment terms in B2B transactions, where the contract provides for a verification procedure (which must be objectively justified).

115. Measures to address the information asymmetry on payment performance and to boost availability and facilitate access of SMEs to credit management and financial literacy training would be the same as under PO1a.

116. **Policy option 1c (PO1c)** is similar to PO1b in capping payment terms in B2B transactions at 60 days. However, this limit would apply only to B2B transactions where the creditor is an SME. Identifying SMEs will rely on the criteria laid down in the SME Definition[86]. Payment terms in transactions between large businesses, or between SMEs and large businesses, where the SME is the debtor, would remain regulated according to the current provisions. This specific measure is already in place in Belgium and in Poland[87]. In the Netherlands it was applied from 2017 until 2022 (in 2022 the cap was brought from 60 to 30 days). Capping the verification procedure at 30 days aims to ensure a predictable payment framework for SMEs, so that they can expect that payments they are owed in B2B commercial transactions do not exceed 60 days - or 90 days if a verification procedure is included in the contract and objectively justified.

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[84] EP Resolution 2019

[85] ECJ preliminary ruling in case C-585/20, paragraph 48.

[86] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of SME. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361

[87] Belgium: Act of 14 August 2021, Poland: Act of 19 July 2019

117. Measures to address the information asymmetry on payment performance and to boost availability and facilitate access of SMEs to credit management and financial literacy training would be the same as under PO1a and PO1b.

5.2.2 Policy option 2: Facilitate timely payments

118. **Policy option 2 (PO2)** contributes to specific objective 2 (section 4.2.2). The measures under this policy option aim at combating late payments by ensuring that the rules are enforced, payment terms are respected, and administrative sanctions kick-in in case of no-compliance (see point 21 of the EP Resolution 2019).

119. Policy measures under PO2 provide for using stronger deterrents, setting up enforcement bodies, and verifying that payment to the main contractor has been passed onto the subcontractors in public works contracts. As a standalone option, these proposals would apply irrespective of the baseline for the setting of the payment terms. Some of the proposed measures directly respond to the EP Resolution of 2019 and the opinion of the Fit for Future platform 2021 (recommendation n.10).

120. The first measure proposed under **policy options 2a (PO2a) and 2b (PO2b)** consists in removing the current 'entitlement' to interests and compensation fees and making their payment legally automatic (see glossary). This means that businesses and public authorities, if they do not comply with the statutory payment terms or the terms agreed in the contract, shall be legally obliged to pay interests and flat fee compensations. Any negotiation, practice or clause to the contrary would be a violation of the rules. According to this measure, the only legal way to avoid paying interest and compensations is paying on time. Furthermore, it will be clarified that interests continue accruing until the legal obligation to pay is extinguished (see court case C-256/15 in Annex 11).

121. The subsequent set of measures consist in increasing the efficacy of the late payment compensation by exploring whether they should be adapted to inflation or not, and, for the EUR 40 flat fee compensation, whether introducing a staggered value according to the value of the invoice (as in the original proposal for the LPD, and as applied in Ireland and Poland) would be an effective solution or should the fee be revised to EUR 50 to account for past inflation.

122. Enforcement is a key issue identified in the drivers, which was neither addressed in Directive 2000/35/EC nor in the LPD. The EP Resolution 2021 recalled in this respect that the (then) 'proposal for a directive on unfair trading practices in business-to-business relationships in the food supply chain (COM(2018)0173) includes provisions on late payments […] and the designation by Member States of an enforcement authority to monitor compliance with the rules.' PO2a and PO2b differ in the degree of powers they entrust to the enforcement body.

123. Fostering better synergies with other EU policies, e.g. on public procurement, can strengthen the enforcement of the obligation to pay on time. The 1995 Recommendation and the 2019 EP Resolution indicated specific measures to

ensure this synergy. This measure was inspired by the recently introduced Spanish legislation 'Crea y Crece'[88] and is without prejudice to trade confidentiality agreements that might exist between main contractor and subcontractors.

Table 2: Policy option 2

Make timely payments happen		
Baseline	**2a**	**2b**
Under the current provisions, the creditor is not obliged to claim interests and compensations. This has led to adoption of national schemes, private practices and clauses whereby payment (even delayed payment) is made conditional upon the creditors' waiver of their rights to claim interests and compensations. In this way the LPD will continue to be deprived of its sole sanctioning tool, and deterrents will continue to be circumvented. More than 70% of businesses never claim interests and compensations when paid late. The application of the EUR 40 compensation for recovery costs has proven to be very difficult since the entering into force of the LPD. Only recently has the ECJ clarified that this compensation applies to each invoice for which late payment interests are claimed.	Making payment of interests automatic (eliminate the concept of 'entitlement') and clarify the ***'dies ad quem'*** and making payment of the flat fee compensation automatic	
	Leave the rate of interests for late payment as such (ECB+8%) but **adapt the flat fee compensation to inflation** (one time adaptation, to EUR 50)	Leave the rate of interests for late payment as such (ECB+8% - no change) but for the **flat fee compensation**, reintroduce a: 40 EUR for debts up to 1,000 EUR 70 EUR for debts between 1,000 and 10,000 EUR 100 EUR for debts of more than 10,000 EUR
	MS to designate bodies **responsible for the enforcement of the law**, carrying out investigations ex officio, acting on complaints, and empowered to issue administrative sanctions and publish the name of offenders ('name and shame'). **Use of digital tools for more effective enforcement.**	MS to designate bodies **monitoring the application of the law.**
Currently there are little synergies between prompt payment policy objectives and public procurement framework, although the EP stressed the need to put in place such synergies back in 2019. In fact, when contracting authorities or contracting entities pay their suppliers, there is no mechanism to ensure that this payment flows through the supply chains to subcontractors. The public procurement Directives foresee already that contracting authorities, once the contract has been	In public works contracts falling within the scope of the **public procurement directives***, contracting authorities and contracting entities (for the purpose of this impact assessment included as well when falling under the scope of the public procurement directives) shall verify that payment to the main contractor has been passed onto the subcontractors. For this purpose, the main contractor shall provide to the contracting authority a certificate or proof of payment to the subcontractors at each intermediate work certification. *) The threshold for public works contracts under the scope of	

[88] Law of 28 September 2022 on the Creation and Growth of businesses https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-15818, see in particular the amendments to Articles 216 and 217 of the Law on public contract " Obligación de comprobación del pago a los subcontratistas" ("Obligation to verify payment to subcontractors")

awarded, can identify the subcontractors in the supply chain. Despite this, there is no mechanism, obligation or tool ensuring information to the subcontractors that payment has been made to the main contractor. The provisions on direct payment to subcontractors are not apt to fill this gap because they are voluntary (only 18 MS out of 27 have transposed it) and their transposition has been varied (see Economisti study 2022).	Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EC is currently 5.382.000 EUR (subject to regular review by delegated acts).

5.2.3 Policy option 3: Strengthening redress mechanisms to ensure fair payment conditions and to empower SMEs

124. **Policy option 3 (PO3)** seeks to contribute to the specific objective 3 to complement and strengthen redress mechanisms to empower SMEs and ensure more fairness in commercial transactions.

125. The **policy options 3a (PO3a) and 3b (PO3b)** aim to remove ambiguity in definitions, reward and support prompt payment, eliminate possibilities for arbitrary interpretation of the law, and empower SMEs to challenge unfair conditions. The measures on ADR, the need to address the question of unfair contractual terms and practices through their applicable national law are inspired by the EP Resolution 2019 and the Fit for Future platform's opinion 2021 (recommendations 1, 2, 3 and 6).

126. **Policy options 3a (PO3a) and 3b (PO3b)** focus on empowering SMEs to challenge lack of fairness in payment conditions by providing means of redress alternative to court proceedings. The options explore the alternatives of appointing a national payment envoy (PO3a) or setting up a national mediation system to solve payment disputes (PO3b).

Table 3: Policy option 3

Empower SMEs and ensure more fairness in commercial transactions		
Baseline	**PO 3a**	**PO 3b**
Due to size or position in the supply chain, small businesses will continue to be more exposed to the risk of being paid late. The current ambiguity about 'unfairness' will continue as well as the current situation where it is always the creditor having to bear the burden of proving that a certain clause or a certain practice is unfair. With very limited alternatives to court proceedings, which can be time consuming, expensive, and can irremediably damage the	MS to appoint a **national payment envoy**	MS to set up a **national system of mediation** to solve payment disputes
	Require Member States to specifically address the question of unfair contractual terms and practices through their applicable national law.	

business relation, creditors will continue to be reluctant to take action against their debtors, and challenge unfair payment conditions or practices. The only remedy will be, in many cases, further delay payments to their own suppliers, so passing the late payment down the supply chain. Some unfair clauses are also hampering a wider uptake of faster forms of payments and e-payments (e.g. factoring, supply chain finance, fintech companies).	

127. PO3a puts forward appointing a payment envoy, based on similar solutions already in place in the Member States (e.g., France, Hungary, Slovakia) and in the UK (e.g. Small Business Commissioner)[89]. The envoy would be an interface between the government and businesses on payment delays and their impact on SMEs. The envoy could play an advisory role in the design of national policies and initiatives to combat late payments. They could play a role in raising awareness, providing information and education, and promoting, where available, national prompt payment codes. They could be a central point for collecting data on payment performance. By ensuring confidentiality to the victims of late payment, the envoy could gather intelligence about unfair payment practices[90]. Although the envoy would not be tasked with solving disputes or issuing administrative fines, Member States could decide to empower the envoy with these competences.

128. PO3b provides for setting up a national system of mediation. Recital 34 of the LPD requires Member States to encourage recourse to mediation or other means of ADR and quotes the Mediation Directive (2008/59/EC)[91]. The 2019 EP Resolution calls on Member States to set up national and/or regional 'free and confidential' mediation services 'accessible to all companies, as an alternative to court proceedings, to resolve payment disputes and maintain business relations'. The resolution also calls for the 'public funding of independent ombudsmen responsible for investigating late payment and non-payment disputes, assisting small businesses in resolving late payment and non-payment disputes, advising

[89] Economisti Study 2022. In France, in 2021, 70% of cases submitted to the "Médiateur des entreprises" resulted in a fully satisfactory solution for both parties. Almost 60% of cases referred to the Médiateur concern payment disputes. Average time of resolution of a dispute: 2 months. The UK Small Business Commissioner helped release GBP 8 million in contested payments owed to SMEs. Average time of resolution of complaints: 17 days.

[90] Stakeholders and SME representatives report that their SME members are very reluctant to complain about the unfair payment clauses or practices they are confronted with, out of fear of damaging business relations.

[91] Economisti Study 2022. Currently the use of mediation for resolving payment disputes is limited due to the heterogeneous implementation of the Mediation Directive in the EU. In Belgium, mediation is compulsory for disputes whose value does not exceed EUR 5 000, in Italy it is compulsory in inheritance matters, condominiums matters, and other subjects ***except*** commercial transactions. In complex contracts the necessary skills to solve payment disputes are often unavailable. For example, in construction projects, the mediator often has to have both technical and legal knowledge.

on action in the event of payment arrears and recommending solutions, particularly to SMEs'.

129. PO3a and PO3b put forward a proposal to Member States to specifically address the question of unfair contractual terms and practices through their applicable national law. This should avoid the risk of circumvention of the stricter new rules as result of unfair contractual terms or practices introduced for example by the stronger party in a contractual relationship. According to this approach, Member States would be required in the new legal instrument to provide for specific solutions preventing such circumvention.

130. The specific relationship between the LPD and the UTP might require better clarification. This could be done either through a revision of the UTP Directive or, alternatively, in the context of the revision of the LPD, without prejudice to all relevant legal considerations regarding, for example, the legal base or the choice of legal instrument. Provided that this clarification within the context of the LPD revision is legally feasible, this could be presented as follows in the new legal instrument:

1) The application of the revised legal text (lex generalis) to those commercial transactions for the supply of agri-food products which do not fall within the scope of the UTP directive. In particular, the UTP directive, in its Article 1 (2), excludes from the scope of the UTP directive commercial transactions for the supply of agri-food products between buyers and suppliers operating within the same "bracket" (e.g. within the brackets identified in letters from a) to e) of article 1.2 of the UTP Directive). Therefore, any of the PO1 and sub-options might clarify that payments for these specific transactions would fall within the scope of the new revised legal instrument (lex generalis).

2) To ensure maximum coherence, it might be clarified that the new maximum capping option under PO1b would be without prejudice to the commercial transactions falling within the scope of the UTP, with the exception of the payment period applicable to the supply of non-perishable food products, which are currently subject to a 60-days cap under the UTP Directive. Moreover, the maximum cap of payment periods at 30 days (PO1a) in the revised legal instrument should be in any case without prejudice to the specific rules applicable in the agri-food sector to value sharing agreements, payments in the context of the school scheme, and to certain payments in the must and wine sector[92].

3) The revised Directive or the new Regulation might also lay down an obligation aimed at ensuring cooperation and coordination between the enforcement authorities that are already in place as a result of the transposition and implementation of the UTP Directive and the enforcement authorities that will be set up as a result of the revision of the LPD (see PO2).

[92] These are specific exceptions already laid down in the UTP Directive

5.3 Form of the legal act

131. Regarding the choice of instrument, the options are adopting a regulation (option 1) or keeping the same legal instrument by revising the current directive (option 2).

132. The two options show some key differences.

133. In the case of the first option, where a regulation would repeal and replace the current directive, the provisions of the future act would be drafted in such a way that they are directly applicable. Such provisions would be directly applicable in all Member States since its entry into force. While national law would need to adjust to the EU regulation, there would be no need for a transposition. A regulation would be binding and the same rules would apply in all Member States. This could happen in particular as regards measures such as the setting of maximum payment terms, the duration of the verification procedures or the rate of late payment interests and the amount of the flat fee compensation. The regulation would also need to introduce directly applicable provisions regarding requirements to contractors to provide evidence on payments to subcontractors in public procurement works (see for more detail Option 2a). Possibly certain specific provisions could explicitly allow Member States to adopt more stringent provisions, where this is carefully calibrated so as to allow operators and national authorities to clearly know which provisions apply. As a minimum harmonisation instrument, the regulation would also lay down obligations and definitions concerning the designation of national enforcement bodies, national mediation systems, credit management and financial literacy training and unfair contractual practices and provisions, but it would be for the Member States to complement them as these provisions might not be directly applicable. The new regulation would also incorporate the existing provisions of the LPD which are not touched upon by the existing revision and which do not need to be revised.

134. In the case of the second option, where a directive would amend the existing LPD, the new legal instrument would limit itself to introducing the measures identified in the preferred option (see section 8) as amendments to the existing directive. Member States would then need to transpose the amended Directive into national law. Member States will still be allowed to either maintain or introduce measures that are more favourable to the creditor (e.g. shorter payment terms, or specific payment terms for identified sectors, or higher rates of late payment interests and flat fee compensation).

135. An assessment of the costs and benefits of each choice of legal form is applied to the preferred option in section 8.

5.4 Measures discarded at an early stage

136. The following policy measures were considered but discarded (reasoning in Annex 14):

1) making e-invoicing mandatory; notably due to the current Commission proposal COM (2022) 701 (dynamic baseline scenario) which already addresses this goal (Annex 22);
2) offsetting credits owed by the public authorities with debts owed to the public authorities (income taxes, local taxes); the LPD's legal base is not adequate and subsidiarity and competence issues would plead against such a measure: direct taxation and local taxation do not fall under EU competence;
3) transparency obligations for businesses and public authorities: discarded for political feasibility reasons, as this would require reporting obligations;
4) fostering synergies with public procurement by obliging contracting authorities to exclude from procurement those contractors with overall bad payment performance towards their subcontractors: as this would require evidence difficult to provide and check, and would thus be burdensome for public authorities and for businesses;
5) in G2B, requiring contracting authorities to accelerate payments for low value contracts beyond the current provisions of the LPD and not requiring verification procedures: as this would interfere with the subsidiarity and proportionality principles and with other existing EU law.

6 WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

137. All policy options described above will have mainly economic impacts. The social and environmental impacts are not assessed separately for policy options. The impact of all policy options is described both qualitatively and quantitatively, where possible. The methodology for arriving at quantitative impacts is described in Annex 4.

6.1 Economic impacts

138. All options will have significant economic impacts. Where the impacts differ per policy option, they are spelled out clearly. The policy options will have impacts on enterprises, including SMEs, and their competitiveness, as well as on public authorities. None of the policy options entail direct impact on citizens or consumers. The overall effect on the competitiveness and a proper and efficient functioning of the single market is likely to indirectly affect consumers, helping to guarantee a wide choice of products and to ensure that supplies reach consumers at reasonable prices. Some indirect positive impact is expected on consumers' purchasing power, following indirectly from the likely positive impact on employment. The overview of economic impacts is in Annex 25.

6.1.1 Policy Option 1: Fix the framework conditions to prevent late payments

6.1.1.1 Impacts on enterprises

6.1.1.1.1 Benefits

139. PO1 focuses on ensuring that payment terms agreed between parties are fair.

140. Considering that currently 73% of all companies have been asked to accept higher payment terms than they are comfortable with, the capping of payment terms can bring a real benefit to companies. It can reduce real payment times, reduce

negotiation times and empower particularly smaller businesses. It will also facilitate enforcement.

141. Quantifying the effect of capped payment terms on actual payment times relies on some estimations. In an optimistic scenario, payment times will tend to match payment terms. Under realistic scenario, some companies still pay after the agreed payment term. Currently, in every EU Member State, actual payment times are higher than payment terms agreed (see section 2). To map this effect, we assume payment times to go down proportionally to the reduction of the payment term. A pessimistic scenario assumes the reduction in payment terms to have no effect on payment times. This is a risk of PO1 in isolation because it includes no direct enforcement measures. However, evidence from the LPD suggests that the above-mentioned proportional reduction is the most likely even when PO1 is a self-standing option. After the 2011 LPD introduced capping on payment terms in G2B transactions, the actual payment times showed a significant downward trend. Payment delays by public authorities went down from 27.8 days in 2011 to 16.8 days in 2022, a reduction in 40%[93].

142. These assumptions bring the following reduction in payment duration for each sub-option:

1) PO1a (Capping at 30 days): Taking current average payment terms in B2B transactions of 39.3 days and actual payment times of 52.6 days[94] as a baseline, a 30 days capping will involve a reduction in payment terms for every EU company on average. In an optimistic scenario where payment times comply with the terms agreed, a 30-day cap would produce a reduction of 22.6 days of actual payment duration, or nearly 43%. In the realistic scenario of proportionally reduced payment times, a 30-day capping would lead to actual payment duration of 40.2 days, down by 12.4 days or 23.5% (or a reduction in payment delays from 13.3 days to 10.2 days, a reduction of 23.4%) – see Annex 4.

2) PO1b (Capping at 60 days): As current average payment terms and times in B2B transactions are already below 60 days, this option would not necessarily bring down the payment terms for the average EU company. Instead, this option would target only excessively long payment terms. Therefore, the benefits of this option are significantly lower than the option of capping at 30 days, but it would imply substantial benefits for a subset of companies. Estimating from the European Payment Report, currently 14.4% of all companies specify payment terms above 60 days[95]. While there is no precise data on how much payment delays this specific subset of companies faces, the JRC study on the economic impact of faster payments suggests that companies that were collecting payments in more than 60 days, on

[93] EPR 2022
[94] EPR 2022
[95] While this estimation is based on the EPR, the results from the SME Panels confirm this: 14.5% of all SMEs said they specify payment terms above 60 days.

average, show a 10% increase in cash flow four years after the enactment of the LPD[96].

3) PO1c (Capping at 60 days where the creditor is an SME): The benefits of this option are similar to the option of capping at 60 days (PO1b), but will affect a smaller subset of invoices. Calculating from the number of companies per size class and the average number of invoices issued by size class, we can estimate 66% of all invoices being issued by an SME[97]. This sub-option would therefore affect 66% of the invoices of the above-mentioned 14.4% of all companies.

143. Stakeholders largely support capping payment terms. The results are most clear in the SME panel, where 83% of SMEs support a cap on payment terms. SMEs are more split about the level for this cap: 36% support a cap at 30 days (up to 44% among micro-companies and self-employed), 28% support 60 days (up to 36% among small companies) and 17% support 45 days instead.

144. PC also shows broad stakeholder support for setting a maximum payment term in B2B transactions (59% in total, and the most popular option for each type of respondents, such as business associations, public authorities and individual businesses). However, the most popular options in the PC for payment terms are either to remain as they are (29%) or to be capped at 30 days (27%). The option of 60 days finds support of only 9.4% of respondents. Several stakeholders proposing 'Other options', express aversion to limiting freedom of contract. This suggests that those stakeholders who wish to see freedom of contract retained want to keep things as they are; whereas if the freedom of contract is restricted in any way, it should be used for the most effective option, hence the cap at 30 days.

145. PO1c finds little support overall, with only 2.5% of stakeholders in favour of limiting payment terms to 60 days only in transactions between large companies and SMEs. The only support to this option came from a few small business associations and individual EU citizens in the public consultation; no companies or public authorities expressly supported this option in the consultation.

146. In this option we have also analysed a potential alternative for exceptions for specific sectors. Introducing a sectoral approach finds relatively little favour among stakeholders (4.2% in the PC, and 12% of SMEs in the SME panel). Some stakeholders from retail, wholesale and textile sectors express opposition to uniform payment terms. According to these stakeholders, maximum payment terms should not be enforced in sectors with strong seasonality (e.g. textile), and capped payment terms would harm smaller companies who rely on long payment terms and would find it difficult to access financing otherwise (retail). Such sector

[96] JRC study 2022

[97] This estimation is an approximation as it does not take into account whether the invoices with long payment terms are more likely to be issued by an SME. However, according to the European Payment Report, there are relatively small differences between SMEs and large companies when setting long payment terms, so this approximation probably holds.

specificities could be addressed more adequately by sector-specific funding options from finance providers than by supplier credit.

147. We have assessed these arguments carefully. There is some evidence for certain sectors that routinely specify longer payment terms. Although the average payment term specified is fairly similar across most sectors, ranging from 37 to 42 days[98], among those companies pertaining to none of the listed sectors in the Intrum survey ('Other' sector), payment terms are significantly higher, at 59 days.

148. Business associations representing exclusively SMEs specifically argue against longer payment terms for large retailers or the construction sector. Arguments for the retail and textile sector should be weighted against the fact that sales in these sectors are made for cash. SME panel respondents do not support a sectoral approach either. Sectors with the highest number of replies are listed in the table below. 'It is necessary to establish exceptions for certain sectors due to the specificity of the supply chain or of the market' or 'I do not agree with a maximum payment term' is the preferred option for none of the sectors.

SME panel – sectoral preferences for capping:	30 days	60 days
Manufacturing	22%	35%
Construction	39%	30%
Other service activities	41%	27%
Wholesale and retail	38%	30%
Professional, scientific and technical activities	49%	18%
Mining and quarrying	27%	42%
Total across all sectors	36%	28%

149. However, against this it is important to weigh the cost of specifying different payment caps per sector or exempting certain sectors entirely, which will be further detailed under the section 6.1.1.1.2 on costs.

150. PO1a, PO1b and PO1c contain the capping of the verification or acceptance procedure at 30 days, without exception. This aims to prevent debtors from using long verification procedures to circumvent the maximum payment terms. SME panel shows that 66% of respondents have faced this practice. There is no data how widespread the practice is. One business association responding to the PC described the problem as 'unfortunately very common'. Capping this practice is therefore likely to further reduce actual payment duration, even if this cannot be easily quantified.

151. In addition to the direct reduction in payment terms, capping payment terms will lead to reductions of other costs for businesses, mainly for reducing the time needed for negotiating payment terms (41% of SMEs negotiate payment conditions on a case-by-case basis), saved costs due to less chasing of late payments, and a stronger market position for those enterprises (often smaller

[98] Intrum, European Payment Report 2022

ones) which are currently forced into terms they are uncomfortable with. The reduction in enforcement cost on companies from chasing fewer payments, for example, can be significant. The number of person-days per year a company spends on chasing late payments has been estimated from 5 days in Germany to more than 15 days in Spain[99]. Even if we only assume 5 days per year, under the above-mentioned expected reduction in late payments of 23.4%, a total of 227.4 million man-hours could be saved per year for the EU-27 economy. This would be a significant recurring enforcement cost saving of EUR 5 845,4 million.

152. Other of these effects are difficult to quantify but have the potential to strengthen the fairness of the EU economy, contributing to sustainable competitiveness. This is clearest in negotiations; where companies are currently forced to negotiate payment terms longer than they are comfortable with, when payment terms are capped the scope for negotiation and imposition of unfairly long terms by the dominant partner is severely limited. As parties will continue to be free to negotiate their contracts below the maximum payment terms, negotiation times will only be affected for companies that currently negotiate above the maximum payment terms, and companies that will align their payment terms to the new maximum instead of negotiating case-by-case. Parties will not be able to negotiate longer payment terms than defined in the maximum cap depending on the sub-option.

153. These benefits differ depending on the option chosen. PO1a (Capping at 30 days) will reduce negotiation times for every EU company on average. We assume that the SMEs that are currently paid within 30 days (44%) and that currently negotiate on a case-by-case basis (35%) might partially cease to do so and align to 30 days (conservatively 50% of those), therefore 8% of SMEs would see a reduction in negotiation time. In addition, for SMEs that are currently paid beyond 30 days and that were doing so based on negotiation, the capping would as well get rid of the negotiation part for 100% of them. This applies to the 45% of SMEs that are currently paid beyond 30 days (56% from SME panel): a total of 25% of SMEs. Taking these two cases together, overall, the avoidance of negotiation should benefit around 33% of SMEs.

154. PO1b (capping at 60 days) will only benefit the 14.4% of companies most affected by excessively long payment terms, and PO1c (capping at 60 days where the creditor is an SME) will only benefit 66% of negotiations conducted by these 14.4% of companies.

155. Besides the direct savings in terms of cost and time, there are other unquantifiable effects on businesses. Enterprises, particularly small market players, are empowered to make more informed decisions when signing a contract. They know what payment terms to expect regardless of the size or market position of the other party.

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[99] https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

156. Companies will also be able to benefit from the horizontal measures provided for in this PO. Access to credit management and digital financial literacy trainings can provide a direct benefit to SMEs, with the value of such trainings currently ranging between EUR 200 and EUR 1 800. It is left up to Member States to design the most suitable form of making available this training to SMEs, in line with existing provisions on state aid. This measure has found near-universal support in the stakeholder consultation: 73% of stakeholders support it, and it is the only measure not to receive a negative response. This support is widespread across all types of respondents, including business associations, public authorities and companies.

6.1.1.1.2 Costs

157. PO1 will impose some costs on businesses, particularly debtors.

158. Businesses that use long standard payment terms (either as their preferred or forced choice) will have to update their standard payment terms on invoices. This would only apply to those companies that do not negotiate on a case-by-case basis, as these companies currently do not use a standard template. The related one-off adjustment cost is relatively limited per company: updating standard terms is likely the same cost as processing a paper invoice (estimated by the ECB[100] at EUR 2.50 – 10.00), however it will only need to be done once to adapt the template. Although a small cost per company, this will affect a large number of companies depending on the sub-option chosen.

1) PO1a (Capping at 30 days) will affect all companies currently specifying payment terms longer than 30 days. According to EPR 2022, 42% of all companies currently do so (and this is broadly in line with the finding from the SME panel that 56% of SMEs currently do so). Excluding cases where this is the result of case-by-case negotiations (45% of SMEs according to the SME panel), this only applies to the companies where the payment terms longer than 30 days are the result of imposing own payment conditions (23% of SMEs), being imposed payment conditions (21%) or finally the result of sectoral standard practice (11%). Therefore, the one-off cost is assumed to be borne by 55% of SMEs that are currently paid beyond 30 days (42% of all companies): around 23% of companies. Conservatively assuming the top end of the ECB range, this would impose a total one-off adjustment cost of EUR 56.1 million.

2) PO1b (Capping at 60 days) would only affect the 14.4% of companies specifying payment terms longer than 60 days. The total one-off adjustment cost would be EUR 35.0 million.

3) PO1c (Capping at 60 days where the creditor is an SME) would only affect 66% of the invoices under the previous option. The total one-off adjustment cost can be estimated at EUR 23.1 million. However, an additional one-off administrative cost related to verification for a creditor may be required if the debtor wishes to verify that

[100] https://www.ecb.europa.eu/paym/intro/mip-online/2016/html/mip_qr_1_article_4_e-invoicing.en.html

the creditor is an SME. The evaluation of the SME Definition estimates this cost at 6.5 person-hours per SME to collect and provide information to prove their SME status[101]. Even assuming every SME would only have to prove it once already leads to an estimate of 15 million person-hours spent, or EUR 384 million assuming average EU hourly cost[102]. This verification cost therefore makes PO1c the costliest of the three choices under PO1, despite affecting only a relatively small subset of companies.

159. In the alternative consideration in PO1a for setting different caps for certain sectors or exempting certain sectors entirely, companies that wish to set long payment terms would face an additional one-off administrative cost of proving that they belong to a certain sector. This usually entails providing an extract from company register, which companies obtain on a regular basis for different business operations. This cost is largely considered as business as usual and its magnitude is insignificant.

160. In addition to the one-off costs specified above, debtors are likely to face consequences for their business operations. As late payments are a form of hassle-free credit, any reduction in payment duration will force the debtor to seek additional financing to meet the new payment terms. This will entail both one-off cost of dealing with the bank and recurring costs related to interests. However, the net interest costs of the new financing would likely be favourable to the debtor because the interest implicitly included in the prices of goods or services currently purchased on supplier credit is likely higher (see section 2.3). In addition, the need for additional financing is likely to be limited, because the debtors will benefit from being paid on time themselves. 65% of all respondents in the PC gave 'Late payments are a vicious circle (a company is paid late and then pays late in return)' as the top reason for late payments. This indicates that if debtors themselves are paid on time, they will find it easier to meet the payment terms to their creditors.

161. However, some debtors, including SMEs, deliberately rely on late payments at the moment to finance themselves with almost-interest-free credit. These debtors could face a recurring cost if they were unable to use this credit. The cost of this is hard to estimate because few companies openly state this as a reason for their late payments. An impact assessment on late payments by the Australian government may provide some indication[103]. This impact assessment estimates that annual trade credit from small to large businesses amounts to $AUD 216 billion. Converting this to EUR and extrapolating to the size of the EU economy, we can estimate a EUR 1.34 trillion trade credit from small to large businesses in the EU. Even assuming the above figure of 65% of late payments only being due to a vicious circle, if the remaining trade credit will have to be borrowed at market rates, debtors may still face a financing cost of tens of billions of euros per

[101] https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2021)279&lang=en
[102] Average EU-27 hourly labour rate of EUR 25.70, applied under the OIOO approach
[103] https://oia.pmc.gov.au/sites/default/files/posts/2020/05/payment_times_reporting_scheme_ris.pdf

year. Yet this effect is not a net cost because the reasoning does not consider that debtors are already paying an implicit interest on supplier credit. The debtor currently only avoids the need for this financing by forcing its suppliers to cover the financing cost instead. Seeing that interest rates for large businesses are usually lower than for small business, the same Australian impact assessment has found that despite the costs for debtors, there will be a sizeable net benefit to the Australian economy of $AUD 313 million per year.

162. Besides the monetary net benefits, this is also a question of sustainable competitiveness and fairness. While it may impose a financial cost on a debtor to pay their suppliers on time, this is preferable to the debtor imposing those financial costs on its suppliers. Even if the cost-benefit were exactly neutral, the fairer option would still be preferable.

163. Some indirect effects could arise from the measure to facilitate SMEs' access to credit management and financial literacy training. Commercial providers of such training courses may find a distorted playing field if Member States provide or subsidise such courses. This risk is reduced if Member States focus on providing access to commercially provided courses to SMEs (e.g. by subsiding part of the participation fees).

6.1.1.2 Impacts on SMEs and competitiveness

164. PO1 will have impacts on SMEs and the economy's competitiveness. All measures target either all companies or specifically SMEs (e.g. PO1c). No exclusion of scope for any measures is planned.

165. The initiative should strengthen overall competitiveness. Although reducing late payments may bring costs to debtors while providing benefits to creditors, the net effect of this is not zero-sum, but a measurable economic benefit. On average, the effect of the on aggregate cash flow amounts to a 0.9% increase for each differential day. This effect is more marked in the manufacturing and construction sectors, characterized by a strong presence of SMEs in the relevant supply chains[104]. There is also an unquantifiable benefit of reducing uncertainty and making business environment more predictable.

166. Therefore, the effect on price/cost competitiveness and innovation competitiveness is expected to be positive. With an increased aggregate cash flow in the economy, enterprises have more liquidity to invest in innovation or to pass cost reductions to consumers. Doing business is more predictable, and fairer, with every business paying for the liquidity they need and use. Cost of funding goes down, because banks directly fund the risks of their clients, which they understand well, rather than indirectly finance the unknown risk carried by their customers.

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[104] *Assessing the economic impact of faster payments in B2B commercial transactions. Final Report, JRC Study* https://publications.jrc.ec.europa.eu/repository/handle/JRC130205

167. On international competitiveness, there is some risk that non-EU companies that are not bound by maximum payment terms can undercut EU companies by offering long payment terms. However, the effect of this is estimated to be limited. Firstly, this effect will likely be cancelling itself between import and export transactions. Secondly, many non-EU countries such as Canada, the US, Türkiye and the UK already impose legislation on late payments as well. Thirdly, this effect has not really been visible within the EU, where some countries such as the Netherlands have imposed stricter legislation on payments than others. In terms of SME competitiveness, impacts on SMEs are likely to be more positive than for large enterprises. As stated in the problem definition, large enterprises are more likely than SMEs to pay late. Large enterprises are therefore somewhat more likely to bear the costs identified in this policy option, whereas SMEs are more likely to see the benefit.

168. SMEs strongly support the measures identified above, more than the respondents to the PC, where a clear comparison is possible. For example, on capping payment terms, SMEs strongly support a maximum payment term (82%), whereas 59% of stakeholders in the PC support this measure. All measures under this option receive either majority or at least plurality support among stakeholders and SMEs alike. This indicates that thanks to the identified 'virtuous circle' of prompt payments flowing up the supply chain, all businesses will ultimately see an improvement to their cash flow and to their competitiveness.

6.1.1.3 Impact on public authorities

6.1.1.3.1 Benefits

169. Benefits to public authorities in PO1 are limited. No particular cost savings are identified.

170. Indirect effects on public authorities' budget can be significant. Considering the impact of late payment on bankruptcies and employment, reducing late payment (by more than 23% under PO1a) could provide significant savings on public budget through higher tax revenue and reduced unemployment benefits.

6.1.1.3.2 Costs

171. PO1's costs to public authorities are relatively limited. Since the main measures concern the setting of payment terms in B2B transactions, public authorities do not have a direct cost to implement this measure.

172. In the 2015 evaluation of the LPD, Member States found the administrative costs associated with maximum payment terms to be negligible: 'All costs to public authorities as a result of the Directive are one-off and, on the whole, they are considered marginal by the authorities themselves'[105].

[105] Ex-Post Evaluation 2015

173. Verifying purchases within 30 days may require public authorities to streamline verification procedures. This is not a big change as the purchases must be verified anyway.

174. Providing access to SMEs to credit management and financial literacy training involves some adjustment cost for public authorities. The precise cost will depend on how Member States will structure their support, ranging from promotional campaigns to fully subsidising courses for SMEs in compliance with state aid rules. A full estimate of the cost can therefore not be given in monetary terms.

6.1.2 Policy Option 2: Foster timely payments

6.1.2.1 Impact on enterprises

6.1.2.1.1 Benefits

175. Under PO2, the impact on businesses is mainly a 'double-edged sword'. Increased compensation and its legally automatic payment will bring significant benefits to creditors who are paid late and help them pay their own debts on time. These benefits to creditors are a direct cost to their debtors who pay compensation. Debtors are likely to want to avoid paying this cost, either by paying on time or by avoiding their obligation to pay.

176. There are therefore, for both PO2a and PO2b, two extreme scenarios that we can assess: (i) no change in late payments and a substantial cost on debtors directly translating into a substantial benefit for creditors; and (ii) a full-scale change of all debtors paying on time to avoid paying interest and compensation fees. Realistically, neither scenario is going to play out 100%, but they are presented here as extreme cases for purposes of quantification, followed by a conservative estimate for a realistic scenario.

177. Making payment of compensation legally automatic would imply a substantial impact. Currently, creditors have to ask for the compensatory interest to be paid, and often avoid doing so for fear of jeopardising the business relationship. 54% of companies, even those familiar with the entitlement to compensation under the LPD, say they never ask for it, and a further 26% only sometimes ask for the compensation[106]. SME panel paints an even starker picture, with 80% never receiving interest or compensation, 8.5% rarely and only 1% often. Even under legally automatic payment, it would be unrealistic to assume 100% of compensation to be paid. Companies may still not seek redress if their debtor does not pay interest or compensation fees.

178. Yet even under very conservative assumptions, automatic payment of the compensation interest (ECB rate + 8%) would provide significant benefits of EUR 265.5 million to creditors. SME panel replies indicate that 8.5% companies currently rarely receive compensation. A conservative assumption that half of

[106] European Commission based on EPR 2022 data

them would receive their claims for compensation more regularly, would represent an increase in 4.25% of companies. We round 4.25% up to 5% assuming that this is the share of compensation interest successfully paid out. We take the value of unpaid turnover (as assumed in the Impact Assessment 2009, at EUR 1 864 billion; the value has likely changed but still serves to provide an order of magnitude[107]) as the basis for calculation of interest. We conservatively assume interest rate at 8%[108], and take the average delay of 13 days. See Annex 4.

179. PO2a and PO2b imply significant benefits to creditors from direct compensation fees. The share of invoices not paid on time varies significantly by Member State. However, assuming the best actual performance (i.e. Denmark, where in 2021 90% of payments were made on time[109]) would lead to the compensation fees to be applied to a total of 10% of the 15 billion B2B and G2B invoices every year. Assuming conservatively that only an extra 5% of companies will receive the flat fees once their payment is made automatic, we can see what a sizeable impact the consistent application of compensation fees would have (see Annex 4).

1) PO2a (adjusting EUR 40 flat fee to inflation): Adapting the flat fee to inflation (based on Eurostat HICP comparing 2022 to 2011) would lead to a new flat fee of 50 euros. The total benefit to the additional 5% of companies receiving the flat fee would equal EUR 3.75 billion. Those companies that already ask for the compensation fees currently would still obtain the EUR 10 extra per late invoice.

2) PO2b (EUR 40-100 depending on invoice volume): Total benefit to the additional 5% of companies receiving the compensation fee of EUR 3 billion – 7.5 billion, depending on volume of invoices. The companies who already claim compensation fees currently would still benefit from the increase depending on invoice volume.

180. These benefits would be a direct cost for the debtors who pay the interest and compensation fees. Many debtors would therefore try to avoid paying the interest and compensation fees by reducing their payment times. As a negative effect, in those countries which currently do not impose a maximum payment term, debtors might purposely negotiate particularly long payment terms in order to minimise chances of paying late. This would reduce 'late' payments as such, but at the cost of introducing unfairly long payment terms.

181. However, the benefit to businesses is clearer when looking at G2B payments. These already have maximum payment terms under the LPD. Governments are therefore more likely to pay on time and avoid compensation (interest and fees), similar to the effects after the LPD's entry into force. Payment delays by public authorities went down from 27.8 days in 2011 to 16.8 days in 2022, a reduction of

[107] B2B and G2B. Total amount of late payments has gone down since Impact Assessment 2009, but total turnover has increased. For an order-of-magnitude estimate, this is therefore still a reasonable assumption.
[108] Our conservative estimate assumes the minimum possible interest rate of 8%, which was in place for much of the past decade. The current rate equals 10.5%.
[109] D&B Payment Practices, 2022 - https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/

40% (which includes the spike in payment delays in recent years)[110]. Assuming a similar effect from automatic interest rates and increased compensation fees, a further 40% reduction to 10.1 days is possible.

182. The main benefit of this policy option, in the absence of a cap on payment terms, would therefore be a reduction in late payments by public authorities. In B2B payments, late payments are also likely to go down, but the risk of companies negotiating unfairly long payment terms is likely to limit the effect on actual payment times.

183. The SME panel reveals that in 80% of cases interest and the compensation fee are never automatically paid and they are rarely paid in 8% of cases. 15% of medium-sized companies replied that they rarely receive interest and compensation compared to 8% for SMEs on average.

184. In the SME panel, 77% of SMEs support banning practices and clauses that oblige creditors to waive their rights to late payment interest and compensation in exchange for immediate payment. This action is most supported by micros (80%).

185. Debtors are likely to try to avoid paying compensation in other ways too, e.g. by refusing to pay or threatening the business relationship. Particularly smaller players will find it difficult to enforce their claims by themselves. Enforcement of the correct application of interest and compensation fees needs to be done centrally by the Member States. Hence, this policy option puts forward enforcement bodies by Member States.

186. Most stakeholders (see Annex 2) are positive towards setting up enforcement bodies. There is no significant difference between enforcement bodies with sanctions power (PO2a) and those without (PO2b) (47% vs. 50%), The share of negative responses is similar for both (18%), which suggests that the minority opposition mainly comes from the cost to designating an enforcement body in the first place. The negative responses mainly come from business associations and public authorities, with few negative responses from companies themselves.

187. In the SME Panel, businesses were even more supportive of enforcement bodies. 84% of SMEs found this useful or very useful. For this action, no significant difference is found by size of companies or by size of debtor that mostly pay late.

1) PO2a (enforcement bodies empowered to issue administrative sanctions and publish the name of offenders): Such bodies would have the power to impose fines and sanctions on non-complying firms. In practice, fines would usually follow warnings, but warnings by an enforcement body will be more effective when accompanied by the threat of a fine. While it is hard to estimate to what precise reduction in late payments an enforcement body such as this can lead, there is an illustrative example from France. It is estimated that, since the introduction of the enforcement body in

[110] EPR 2022

France, average payment delays have gone down from 13.6 days to 11.2 days[111], i.e. a reduction of 17.8%. While a clear causality is difficult to prove, it provides some estimates as to the effects of stronger enforcement.

2) PO2b (enforcement bodies responsible for monitoring implementation): Enforcement bodies could be implemented without sanctioning powers. This would save costs for public authorities but would reduce benefits for businesses that are paid late because the deterrent effect would be much lower here than in PO2a.

188. In addition, PO2 focuses on public authorities setting good examples in payment behaviour, by ensuring that subcontractors in public tenders are paid promptly (which 57% of respondents, including business associations and direct responses from businesses, supported in the PC). This could bring benefits to businesses in public procurement procedures and make it more attractive for SMEs to participate in public tenders. Precise estimates are difficult to quantify, but the example of the UK shows that this policy led to an unblocking of GB 7.5 million over three years[112]. Converting this to euros and extrapolating to the EU-27, this could lead to unblocked payments of EUR 31 million per year.

189. This measure is focused on the construction sector because payment delays in the construction industry are systemic, largely because of the construction pyramid. The complex structures of contracting and subcontracting set the construction industry apart from almost all other industries. For the vast majority of projects, the prime contractor will subcontract various segments of the project to specialized trade contractors. **These trade contractors often perform upwards of 80%[113]**, and sometimes more, of the actual work on the project.

190. As in PO1, these measures together could lead to a sizeable reduction in enforcement cost for companies through reducing their cost of chasing late payers. Assuming the same number of 5 man-days per year as in PO1[114], under an expected reduction in late payments of 17.8%, a total of 21.6 million man-days could be saved per year for the EU-27 economy. This would be a significant recurring cost saving of 173 million man-hours.

191. Taken together, the deterrent from the interest rates and compensation fees combined with enforcement bodies and ensuring prompt payment in public contracts could therefore lead to a sizeable reduction in late payments. While precise estimates are difficult to quantify, based on the above-mentioned evidence we expect a reduction in payment times of up to 40% in G2B transactions under both PO2a and PO2b (mainly from the deterrent of interest and compensation),

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[111] https://www.senat.fr/questions/base/2018/qSEQ181007212.html
[112] https://www.gov.uk/guidance/prompt-payment-policy
[113] https://www.tpsgc-pwgsc.gc.ca/biens-property/divulgation-disclosure/psdic-ppci-eng.html
[114] https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

and up to 17.8% of reduction in B2B transactions under PO2a (mainly from stronger enforcement bodies).

6.1.2.1.2 Costs

192. The main cost on businesses under PO2 will fall on those debtors that currently pay late. The compensation amounts debtors are liable for if there is no change to current behaviour are enormous. Assuming that automatic payment of compensation would benefit an extra 5% of companies, debtors would pay EUR 265.5 million in interest and EUR 3.75 billion in fees. However, debtors can avoid this cost by paying on time. Debtors would need to obtain the financing needed but this financing would likely be cheaper than the implicit rate they are paying now (see section 2.3 and 8.1.2 for detailed explanation).

193. Under both PO2a and PO2b, some standard one-off adjustment cost will fall on all businesses; if the compensation fee is adapted, businesses will have to adapt their standard payment terms to the new sum. Using the same method as in PO1 and assuming a EUR 10 one-off adjustment cost per company, this one-off adjustment cost would impose a total cost of EUR 243 million for the EU-27.

194. Under PO2a, debtors are liable to administrative fines that enforcement bodies would impose. Extrapolating to the EU-27 from the example of the French B2B payment delays mission would suggest potential fines to firms paying late of around EUR 136.8 million per year. Debtors could avoid these fines by paying on time.

195. Contractors under public contracts will have to show that they have paid their own subcontractors on time. This could affect a relatively large number of companies. There are around 3.7 million companies active in the construction sector[115]. While there are no exact figures on how many of these companies work for the public sector as a main contractor, if we assume all companies working on civil engineering projects are under public contract, we can estimate about 18% of construction companies to be in a public contract, i.e. 666 000 companies[116]. Of these, 26% are main contractors[117]. This measure might therefore impose a cost on around 173 000 companies. Assuming that each of these companies has to provide this information once a year, and the time to collect this information is equal to 0.5 man-hours at EUR 25.7 average hourly rate, the overall recurring administrative cost amounts to EUR 2.2 million. The verification cost to contractors would consist in providing a self-declaration and an excerpt from accounting systems showing that all invoices related to the project had been paid. The measure would only apply to payments to immediate suppliers (Tier 2) of main contractors (Tier 1).

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[115] JRC estimates for 2022 based on Eurostat Structural Business Statistics.
[116] European Construction Industry Federation, Statistical Report, https://fiec-statistical-report.eu/
[117] European Construction Industry Federation, case study

6.1.2.2 Impacts on SMEs and competitiveness

196. This policy option and all its sub-options will have impacts on SMEs and the economy's competitiveness. All measures target all companies, and no exclusion of scope for any measures is proposed.

197. As in PO1, impacts are likely to be more positive for SMEs than for large enterprises. SMEs are particularly affected by non-payment of interest or compensation fees and are less likely to be able to enforce claims without the support of a public enforcement body.

198. Competitiveness is overall expected to be enhanced. As in PO1, reducing late payments will lead to an increase in aggregate cash flow, improved certainty about cash flow and reduced cost of chasing debtors (including the costs of judicial procedures).

199. On international competitiveness, there is some risk that companies outside the EU can accept late payments without automatic interest or compensation fees. However, this effect is not necessarily likely to lead to an actual undercutting of EU companies. Instead, the most likely effect is that also those EU companies competing internationally will refuse to claim the interest rates and compensation fees. This effect is already priced in for the above calculations, where the monetary value of interest and compensation fees only assumes a 5% increase in companies receiving interest and compensation, and where the effect on B2B relations is estimated to be smaller than for G2B. Furthermore, mismatches in the length of payment terms in international transactions are usually addressed by trade finance solutions e.g. cash-in-advance, letter of credit, documentary collections, open account and consignment[118] (see Annex 5), which significantly reduces the impact.

200. There may be some costs arising from PO2 to SMEs. SMEs, like any other business, will have to pay interest and compensation fees if they pay late. If SMEs find it difficult to enforce interest from debtors but must pay interest to creditors, where they pay late because they have been paid late, the automatic interest and compensation may affect SMEs more than large businesses.

201. This assessment is confirmed by the responses to the SME Panels. SMEs strongly support the measures identified above, more than the PC respondents, where a clear comparison is possible. For example, on setting up enforcement bodies, SMEs find this measure very useful (84%), whereas 47% of PC respondents support enforcement bodies with sanctioning power.

[118] https://www.trade.gov/methods-payment

6.1.2.3 Impacts on public authorities

6.1.2.3.1 Benefits

202. This policy option provides for no direct savings to public authorities.

203. The measure of ensuring prompt payments to subcontractors in public works contracts can improve the execution of public construction projects. The example of Canada, where a similar policy is in place, has shown that payment delays impede the ability of the federal government to complete its construction projects quickly and at the best value for the Canadian taxpayer[119]. Reducing payment delays in public work contracts therefore benefits the public authority.

6.1.2.3.2 Costs

204. Public authorities will incur several costs under PO2. A significant cost is expected to come from the requirement to designate enforcement bodies. Based on examples and estimations from Member States who responded to the Call for Evidence, an extrapolation to the EU-27 suggests a yearly adjustment cost of EUR 60-65 million when including all Member States (see Annex 4). Some Member States already have such enforcement bodies in place, e.g. France. While they would still bear the same yearly cost, this would not impose additional cost compared to the baseline. As only a few Member States have such enforcement bodies in place already, for the analysis of costs we therefore stick to the maximum cost of EUR 60-65 million, so as to use a conservative estimate and rather overestimate than underestimate the true costs.

205. Existing enforcement bodies can also take on those tasks. For example, bodies tasked with enforcing the UTP directive already deal with some aspects of late payments. Member States would therefore not need to set up new bodies, but it would be sufficient to make an existing body responsible for carrying out these tasks.

206. Public authorities that pay late will incur interest and compensation fees. They will either have to pay the compensation provided for or adjust their own payment behaviour.

207. PO2 also implies costs on public authorities in their own public tenders. Public authorities may check the payment behaviour of their contractors when verifying invoices. This would impose some verification time and cost e.g. contacting subcontractors.

[119] https://www.tpsgc-pwgsc.gc.ca/biens-property/divulgation-disclosure/psdic-ppci-eng.html

6.1.3 Policy Option 3: Empowering SMEs and ensuring more fairness in business transactions

6.1.3.1 Impacts on enterprises

6.1.3.1.1 Benefits

208. PO3 focuses mainly on ensuring that enterprises whose invoices are overdue have an effective and affordable means of redress to ensure these invoices are paid.

209. The main benefits to businesses from PO3 come from reduced enforcement costs to chase late payments. These are currently significant; according to some estimates, between 5 and 10% of administrative work for an SME consists of chasing late payments[120]. It is difficult to quantify how much of this is down to litigation costs in the courts.

210. Currently, many businesses do not take their cases to court, for fear of jeopardising a business relationship or because they cannot afford the upfront costs. In this case, alternative dispute resolution mechanisms may not produce any direct savings; however, they make it more likely for companies to seek redress in the first place.

211. Both PO3a and PO3b target the same objectives. Their effectiveness in reaching these benefits differs somewhat:

1) PO3a (national payment envoy): The envoy, (see 0), would not directly intervene in administrative disputes, unless Member States specifically empower them to do so. As the envoy's role would focus on providing advice and information, the direct benefits to businesses would not necessarily be monetary. Nonetheless, monetary benefits may materialise if the information provided leads to a recovery of unpaid debt. Extrapolating from the example of the UK's Small Business Commissioner[121] (see Annex 4 for full calculations and limitations linked to extrapolation), the intervention of a payment envoy could lead to around EUR 2.6 million in recovered debt across the EU-27.

2) PO3b (national mediation system): A national mediation system would more directly lead to monetary benefits for those businesses that currently rely on court litigation, and on access to dispute resolution for those businesses that currently avoid going to courts to recover unpaid debt. Extrapolating from the number of cases by the French médiateur des entreprises[122], such a system may provide mediation services for more than 70 000 companies across the EU-27. The French mediation service reaches an amicable conclusion in 70% of cases. While court fees vary significantly among

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[120] Plum Consulting 2017

[121] Office of the Small Business Commissioner, Annual Report and Accounts 2021-2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130182/Office_of_the_Small_Business_Commissioner_Annual_Report_and_Accounts_2021-22.pdf

[122] https://www.economie.gouv.fr/mediateur-entreprises-bilan-activite-2021

Member States, assuming a median court fee of EUR 550[123] this relatively modest number of enterprises supported may already lead to total enforcement cost savings of nearly EUR 27 million (taking into account the 70% success rate).

212. Both measures are equally supported. In the PC, 65% of stakeholders are positive towards a national mediation system, while 65% of SMEs in panels found the national payment envoy useful or very useful.

213. Apart from these measures focusing on avoiding court cases, PO3 foresees stronger legal protections for the creditor if a case ends up in court. Currently, unfair payment practices are poorly defined and it is up to the creditor to prove that a clause or contract was unfair.

214. The proposals to request Member States to specifically address the question of unfair contractual terms and practices through their applicable national law would provide direct benefit for the creditor. The creditor would save on the time needed to prove that a clause or practice is unfair. This time and cost saving for the creditor translates directly into a cost for the debtor who has to prove the clause or practice is not unfair. The idea would be to make it easier for a creditor to argue a case in court pursuant to the measures introduced by Member States. It is difficult to quantify this effect, as it relies mostly on transparency and the final measures to be adopted by Member States. A business will gain a better understanding of whether it is worth going to court if it can check on a list whether the payment practice they encountered is defined as unfair. This may also reduce the number of court cases; if a payment practice is openly listed as unfair according to national law, the debtor has a stronger incentive to avoid going to court in the first place.

215. PO3 will provide the smallest direct reduction of payment delays out of the three policy options proposed, as it targets only those payments that are already late and focuses on helping the creditors recover their debts. The SME panel has shown that 24% of SMEs rarely use mediation services, and 13% use them often. The measures presented above could, in a realistic scenario, aim to increase the share of companies 'often' using mediation to the share of those currently using it 'rarely', i.e. an increase of 11 percentage points. Assuming that the average payment delay when a company uses mediation services is reduced by 50%, PO3 might lead to a total reduction of payment delays by 5.5%.

6.1.3.1.2 Costs

216. The costs to businesses under this option are relatively limited. All parties benefit from mediation services and clear national rules on unfair practices; even debtors will have reduced costs if cases go to a mediation system rather than to court. Indirect effects could include a reduction in income for commercial providers of financial training or mediation.

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[123] Based on the 2021 EU Justice Scoreboard, https://op.europa.eu/en/publication-detail/-/publication/b2a115fd-3d1d-11ec-89db-01aa75ed71a1

6.1.3.2 Impact on SMEs and competitiveness

217. The measures under PO3 are targeted at SMEs. SMEs usually avoid going to court, for lack of financial means or fear of jeopardising business relationships, and SMEs are therefore most likely to benefit from mediation services or a national payment envoy.

218. Currently, relatively few SMEs use mediation or arbitration services (in the SME Panel, only 7.4% of SMEs stated they used mediation the last time they were paid late, and only 3% used arbitration). This is largely due to the fact that mediation services are not widespread. A national system of mediation would likely bring them closer to SMEs.

219. Competitiveness is overall expected to be enhanced. As in option PO1, reducing late payments will lead to an increase in aggregate cash flow, which will have a positive effect on price/cost competitiveness as well as innovation competitiveness. Both PO3a and PO3b are unlikely to have any effect on international competitiveness because they focus on providing alternative means of redress which companies are free to use or not.

6.1.3.3 Impacts on public authorities

6.1.3.3.1 Benefits

220. Public authorities are also likely to benefit if their own delayed payments are resolved through a mediation service rather than through court action. The effect of this is estimated to be fairly limited. The UK's Small Business Commissioner covers only B2B disputes and not disputes with public authorities.

221. In addition, public authorities will see a smaller burden on their judicial system if more cases end up solved in mediation services or avoid court cases.

6.1.3.3.2 Costs

222. The costs on public authorities stem mainly from having to set up and run the office of the national payment envoy or the national mediation service. Based on similar existing bodies, the cost of the sub-options on Member States can be quantified as follows:

1) PO3a (national payment envoy): Extrapolating from the case of the UK's Small Business Commissioner, such an office will pose a recurring cost on Member States of EUR 11.8 million per year.

2) PO3b (national mediation system): the Commission launched in 2023 a pilot project to design and implement mediation in the construction sector[124] in Belgium. Extrapolating from this pilot to all sectors and all EU Member States, we can estimate a recurring adjustment cost on Member States per year of between EUR 10.8 million

[124] Services - 127264-2023 - TED Tenders Electronic Daily (europa.eu)

and EUR 39.8 million. The difference mainly stems from whether companies' access to mediation is fully covered by the state (in compliance with state aid rules) or some cost would remain to be borne by the companies using the mediation service.

223. For both PO3a and PO3b, a few Member States already have such bodies or systems in place. However, as this is only the case for a few Member States, for the analysis of costs we stick to the maximum cost, so as to use a conservative estimate and rather overestimate than underestimate the true costs.

224. In addition, there are some one-off costs on public authorities in Member States to specifically address the question of unfair contractual terms and practices through their applicable national law. These one-off costs are estimated to be limited and can be covered by public authority staff under a 'business as usual' scenario.

6.2 Social impacts

225. All policy options will have a social impact, particularly on employment, fairness in business culture and wellbeing of entrepreneurs.

226. A reduction in late payment as estimated under all policy options above could lead to an increase in employment. The evidence for each day of reduced late payments is difficult to directly quantify. However, assuming the figure of 6 million jobs if all payments were made on time (see section 2), the estimated reduction of 23.4% under PO1a could lead to an increase in employment of nearly 1.5 million jobs, with the other policy options leading to correspondingly smaller increases. However, as it is up to the company to decide how to make use of the increased cash flow, and as some jobs may be safeguarded from reduced risks of bankruptcy, it is not feasible to provide a precise number.

227. Some social impacts are not possible to quantify. One of the main responses by entrepreneurs when asked about the impact of late payments is the effect it has on their wellbeing. For example, 92% of respondents in the SME panel responded that late payments affect their well-being, generate stress and anxiety. Similarly, the report of the UK's Small Business Commissioner raises the frequency with which mental health impacts were raised by businesses requesting their services.

228. Late payments also have a direct, albeit non quantifiable effect on entrepreneurship. In as much as no specific data is collected for the impact of late payments, the fear of bankruptcy is one of the main barriers reported to start an entrepreneurial career and may be used as a proxy. For example, both in France and Germany over 40% of persons that see good opportunities would not start a business for fear it might fail[125]. 80% of respondents to the SME panel confirmed that late payment heavily affects the survival of their business.

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[125] Global Entrepreneurship Monitor 2022/2023 Global Report, Table A3 - https://www.gemconsortium.org/reports/latest-global-report

6.3 Fundamental rights

229. None of the policy options proposed will infringe on EU fundamental rights.

230. PO1 will limit the freedom to conduct business by affecting contractual freedom between businesses to set their own payment terms.

6.4 Environmental impacts

231. None of the policy options will have a direct environmental impact. There might be some indirect effects, if prompt payments and the resulting higher cash flow allow companies to make investments in the green transition they would not otherwise have made. This effect is unquantifiable, however, as it depends on the company choice where to invest, which is not in the scope of the present initiative. To give some indication, in the SME panels, when asked whether late payments prevented their business from becoming more green, 28% of SMEs agreed, but 30% disagreed. Digital communication tools and certificates can help make deliveries of documents electronic and reduce the carbon footprint of mail deliveries.

232. None of the policy options will cause any significant harm to the environment.

7 HOW DO THE OPTIONS COMPARE?

233. This section compares the policy options against the impacts on the key stakeholders (enterprises and public authorities) as well as against relevant objectives in terms of their effectiveness, efficiency and proportionality. The baseline is represented as 0, with options compared to the baseline represented by '+/++/+++' or '-/--/---' to show net positive or negative impacts compared to the baseline option, respectively. The net impacts are assessed through a comparison between benefits and costs; '+/++/+++' therefore mean a net positive impact (i.e. higher benefits than costs), whereas '-/--/---' mean net negative impact (i.e. higher costs than benefits).

7.1 Comparison of options based on costs and benefits to enterprises and public authorities

Table 4: Summary of costs and benefits including net benefit/cost estimates

	Main benefits	Main costs	Net benefits/costs (see also comparative summary in table 5)
PO 1a (30-day payment cap, 30-day verification cap,	Reduction in payment delays of 23.4% for the average EU company, reduction in hassle costs of EUR 5.8 billion,	One-off adjustment cost of EUR 56.1 million Negligible costs to public authorities as capped payment	Businesses: one-off costs significantly outweighed by recurrent benefits in reduced payment delays and hassle costs

credit / digital training)	improved cash flow Reduced negotiation times for around 33% of SMEs and access to financial literacy training worth EUR 200-1800 per SME Public authorities benefit from indirect effects of reduced late payments on bankruptcies and employment	terms concern B2B transactions Some adjustment cost for public authorities to provide access to financial literacy and credit management training	Public authorities: limited costs balanced by indirect benefits
PO 1b (60-day payment cap, 30-day verification cap, credit / digital training)	Reduction in payment delays for 14.4% of EU companies, improved cash flow Reduced negotiation times for around 5% of SMEs and access to financial literacy training worth EUR 200-1800 per SME Public authorities benefit from indirect effects of reduced late payments on bankruptcies and employment	One-off adjustment cost of EUR 35.0 million Negligible costs to public authorities as capped payment terms concern B2B transactions Some adjustment cost for public authorities to provide access to financial literacy and credit management training	Businesses: one-off costs outweighed by recurrent benefits in reduced payment delays and hassle costs, but only affects a subset of companies Public authorities: limited costs balanced by indirect benefits
PO 1c (60-day payment cap in transaction with SME creditors, 30-day verification cap, credit / digital training)	Reduction in payment delays for 66% of invoices issued by 14.4% of companies, improved cash flow Reduced negotiation times for around 5% of SMEs and access to financial literacy training worth EUR 200-1800 per SME Public authorities benefit from indirect effects of reduced late payments on bankruptcies and employment	One-off adjustment cost of EUR 23.1 million; cost of verifying SME status of EUR 384 million Negligible costs to public authorities as capped payment terms concern B2B transactions Some adjustment cost for public authorities to provide access to financial literacy and credit management training	Businesses: for a subset of companies, recurrent benefits in reduced payment delays and hassle costs, but significant costs due to requirement to prove SME status Public authorities: limited costs balanced by indirect benefits
PO 2a (aut. payment of interest and flat fee compensation, flat fee compensation at EUR 50, designating strong enf. bodies, PP self-declaration of payment to subcontractors)	Strong enforcement accompanied by sanctions and fines, estimated to reduce payment delays by 17.8% Automatic payment of interests (EUR 265.5 million) and compensation fees (EUR 3.75 billion) Unblocking of payments to subcontractors (EUR 31 million per year) in public works contracts, and improved execution of public work	Regulatory fines imposed on debtors of up to EUR 136.8 million per year for the EU-27 One-off adjustment cost from updating standard payment terms of EUR 243 million Cost to the debtor of automatic interest and compensation fees (equivalent to benefit to the creditor) Cost to main contractors in public contracts from verifying their prompt payment to the public authority (EUR 2.2 million per year)	Businesses: significant recurrent benefits to creditors from automatic interest/compensation flanked with strong enforcement, outweighing one-off adjustment costs Public authorities: cost to run enforcement bodies and to pay interest/compensation, but weighed up by improved execution of public works contracts and potential revenue from regulatory fines

	projects Reduced hassle costs associated with chasing late payments, improved cash flow Income to public purse from regulatory fines imposed on debtors (EUR 136.8 million per year for the EU-27)	Cost on public authorities from having to pay interest and compensation fees to public contractors when paying late Cost of designating national enforcement bodies, estimated at EUR 60-65 million per year for the whole EU-27	
PO 2b (aut. payment of interest and flat fee compensation, staggered flat fee compensation, designating monitoring bodies, PP self-declaration of payment to subcontractors)	Automatic payment of interests (EUR 265.5 million) and compensation fees (EUR 3.0 – 7.5 billion) Deterrent from enforcement bodies Unblocking of payments to subcontractors (EUR 31 million per year) in public works contracts, and improved execution of public work projects Reduced hassle costs associated with chasing late payments, improved cash flow	One-off adjustment cost from updating standard payment terms of EUR 243 million Cost to the debtor of automatic interest and compensation fees (equivalent to benefit to the creditor) Cost to main contractors in public contracts from verifying their prompt payment to the public authority (EUR 2.2 million per year) Cost on public authorities from having to pay interest and compensation fees to public contractors when paying late Cost of designating national enforcement bodies without sanctioning powers	Businesses: significant recurrent benefits to creditors from automatic interest/compensation, outweighing one-off adjustment costs, but limited enforcement Public authorities: cost to run enforcement bodies and to pay interest/compensation, only partly weighed up by improved execution of public works contracts
PO 3a (national payment envoy, MS to address unfair terms and practices)	EUR 2.6 million per year in recovered debt across EU-27 Reduced burden on judicial system through avoided court cases	No additional cost to businesses Cost to public authorities of running national payment envoys, estimated at EUR 11.8 million per year for the whole EU-27	Businesses: positive effect from payment envoys at no additional cost Public authorities: cost to run payment envoys, only partly weighed up by reduced burden on judicial system
PO 3b (national system of mediation, MS to address unfair terms and practices)	Cost savings of EUR 27 million per year from avoided court cases Reduction in payment delays of 5.5% Reduced burden on judicial system through avoided court cases Public authorities can cheaper solve their own disputes through mediation services instead of being taken to court	No additional cost to businesses Cost to public authorities of running mediation system, estimated at EUR 10.8-39.8 million per year for the whole EU-27	Businesses: significant positive effect from mediation systems at no additional cost Public authorities: cost to run mediation systems, weighed up by reduced burden on judicial system and solving G2B disputes through mediation

Table 5: Comparison of options based on net impacts (benefits minus costs) for enterprises and public authorities

	Net impacts on businesses	Net impacts on public authorities
PO 1a (30-day payment cap, 30-day verification cap, credit / digital training)	++	0
PO 1b (60-day payment cap, 30-day verification cap, credit / digital training)	+	0
PO 1c (60-day payment cap in transaction with SME creditors, 30-day verification cap, credit / digital training)	-	0
PO 2a (aut. payment of interest and flat fee compensation, flat fee compensation at EUR 50, designating strong enf. bodies, PP self-declaration of payment to subcontractors)	++	0
PO 2b (aut. payment of interest and flat fee compensation, staggered flat fee compensation, designating monitoring bodies, PP self-declaration of payment to subcontractors)	+	-
PO 3a (national payment envoy, MS to address unfair terms and practices)	+	-
PO 3b (national system of mediation, MS to address unfair terms and practices)	++	0

7.1.1 Policy Option 1

234. Looking at PO1, it becomes clear that PO1a will bring the largest benefits on businesses. PO1a with its cap of 30 days will affect most EU companies because currently average payment terms are above 30 days. PO1b will affect fewer companies than PO1a (PO1b affects only those companies specifying payment terms above 60 days), and PO1c in turn affects fewer companies than PO1b (only those invoices where the creditor is an SME). Benefits to businesses are correspondingly lower in PO1b and lowest in PO1c, but each option will bring benefits for a smaller subset of companies compared to the baseline.

235. Initial adjustment costs to businesses are highest in PO1a, where most companies are affected. Although direct adjustment costs are slightly higher for PO1b than PO1c (see section 6), this relatively small difference is overshadowed by the cost resulting from the need for the creditor to verify that they are an SME. PO1c is therefore shown as the only one of the three options with a net negative impact.

236. For public authorities, there are no substantial differences among PO1a, PO1b and PO1c. Benefits to public authorities under each option are expected to be limited, and the costs imposed relatively small, focusing mainly on publishing their payment information.

7.1.2 Policy Option 2

237. In PO2, the main benefits to businesses come from increased collection of interest and fees, as well as improved enforcement. Therefore, PO2a is judged to bring more benefits than PO2b. Although the precise amounts of interest rates and compensation fees differ relatively little between the two options, the accompanying measure of stronger enforcement including administrative fines in PO2a makes it more likely for companies to actually collect the compensation they are owed.

238. Under PO2 direct monetary benefits translate directly into direct costs to the debtor that has to pay the compensation. If less compensation is collected, the reduced benefits translate into reduced cost for the debtor. Nonetheless, benefits are higher than costs in both PO2a and PO2b, as the costs on the debtor are entirely avoidable by paying on time, while the benefits to the creditor materialise regardless of whether the debtor pays interest or pays on time.

239. Costs to public authorities are higher under PO2a as the enforcement bodies need more resources to impose administrative fines. PO2b will only impose a cost to designate the enforcement body.

7.1.3 Policy Option 3

240. Under PO3b, businesses will benefit more from a fully-fledged mediation system than a national payment envoy (PO3a). The costs to businesses are negligible in either scenario and can lead to cost savings for both creditors and debtors, who will avoid court costs.

241. For public authorities, the cost of PO3b is potentially higher than PO3a as the mediation system requires more resources. However, the benefits to public authorities are also higher under PO3b as a mediation system may also avoid court disputes where the public authority itself has paid late and aims to find an amicable resolution with its creditor. PO3b is therefore estimated to have a neutral effect on public authorities, whereas PO3a imposes a small budgetary negative impact.

7.2 Comparison based on effectiveness, efficiency, proportionality, coherence and subsidiarity

242. The table below reflects a Commission services' assessment based on the in-house expertise and the sources used to prepare this impact assessment report.

Table 6: Comparison based on effectiveness, efficiency, proportionality, coherence and subsidiarity

	Effectiveness	Efficiency	Proportionality	Coherence	Subsidiarity

PO1a	+++	++	+	+	-
PO1b	++	+	+	+	-
PO1c	+	-	-	+	-
PO2a	+++	+	+	++	+
PO2b	++	+	+	++	+
PO3a	+	0	++	++	++
PO3b	++	+	++	++	++

7.2.1 Effectiveness

243. The most effective policy options in terms of meeting policy objectives are PO1a and PO2a. They provide the most direct benefits to businesses and have the potential to reduce payment delays the most. They are most effective in preventing late payments from occurring and making timely payments actually happen. PO1a, through reducing the average payment term for most EU companies, is likely to lead to a significant reduction in payment times. PO2a has the potential for a significant reduction in G2B payment delays and provides compensation to creditors when payment terms are not respected, flanked by national enforcement systems.

244. However, both policy options, when implemented as self-standing options, will pose some risks. PO1a, when implemented without strong enforcement bodies, poses the risk of companies not respecting the agreed-upon maximum payment terms and paying late. PO2a poses the converse risk: when implemented without capped payment terms, it provides businesses with an incentive to negotiate unfairly long payment terms to avoid having to pay interest, compensation or administrative fines.

245. PO3b is the most effective choice under PO3. By offering a nationwide mediation system and requesting Member States to specifically address the question of unfair contractual terms and practices through their applicable national law, it allows companies to avoid going to court when chasing late payments and offers a clearer incentive to avoid a court case. However, as this option only targets those payments that are already delayed and supports companies in effectively chasing their debtors, the overall effectiveness in reducing payment delays is estimated to be significantly smaller than for PO1a and PO2a.

246. With regard to meeting the specific policy objectives, each stand-alone policy option mostly addresses one of the specific objectives. PO1 (and its sub-options) is mostly focused on addressing the specific objective of preventing late payment from occurring, PO2 (and its sub-options) on facilitating timely payment, and PO3 (and its sub-options) on empowering SMEs and ensuring more fairness in commercial transactions.

7.2.2 *Efficiency*

247. Almost all options achieve their goals relatively efficiently. The negative standouts in terms of efficiency are PO1c and PO3a. PO1c targets a relatively small subset of companies, only those that specify payment terms above 60 days and where the creditor is an SME but imposes disproportionately high cost (administrative burden) for the creditor having to prove that they are an SME. PO3a imposes very few costs on businesses, but the recurring costs on Member States to set up a national payment envoy are difficult to justify with the limited benefits this will bring to reduce late payments overall.

248. All other options are efficient, as they contribute to the objectives at appropriate cost. PO1a is judged to be more cost-effective than PO1b. While PO1a imposes a higher one-off cost, it will also bring recurring benefits to a larger group of enterprises and thus provide a stronger contribution to the objectives, whereas PO1b imposes a smaller one-off cost but will only bring benefits to a subset of companies. Juxtaposing the one-off cost with recurring benefits shows PO1a as more efficient.

249. PO2a and PO2b are judged to be similarly efficient, with PO2a posing higher recurring costs on public authorities in designating enforcement bodies with sanctioning powers; while PO2b poses lighter recurring costs on Member States through less powerful enforcement bodies, but at the trade-off of a reduced deterrent to businesses paying late.

250. PO3b achieves its smaller effectiveness with a limited cost on businesses and public authorities.

7.2.3 *Proportionality*

251. The initiative will contribute to achieving Commission's priority to deliver 'economy that works for the people'. It follows from the President's 2022 SOTEU speech and will aim to strengthen the competitiveness of EU companies and a better functioning of the single market. It aims at increasing fairness in commercial relations along the supply chains. It will support the commitment to implementing four SDGs.

252. All options respect the principle of proportionality. They impose only the cost on businesses that is necessary to achieve the objectives and leave room for discretion to Member States in how enforcement bodies are designated. The only exception to this is PO1c, where the verification that the creditor is an SME poses disproportionate cost for no clear benefit compared to PO1b. PO3a and PO3b leave more room for interpretation to Member States in terms of how payment envoys or mediation systems are structured.

7.2.4 *Coherence*

253. All policy options are coherent with other EU legislation, and the differences between them in terms of coherence are not substantial. Where potential issues

arise, the different sub-options (e.g. capping at 30 or 60 days) show no significant difference as to overall coherence.

254. PO1 and PO2 (and all its sub-options) could pose some risks of inconsistencies with the UTP directive, where the general rule of maximum payment terms is established in the LPD whereas the exceptional rule of the UTP directive will be applicable in the agri-food sector as an exception. To avoid such risks, as explained in paragraph 130 above, there are two options: a revision of the UTP Directive or , alternatively, and without prejudice to all relevant legal considerations, the proposal of the new legal instrument replacing the LPD might clarify the relationship UTP-LPD and align as closely as possible with the UTP directive (see section 5 for more details).

255. PO2's measure on main contractors having to pay their subcontractors on time implies some interplay with the Public Procurement Directives. The measures have been specifically drafted so as to be fully in line with the Public Procurement Directives.

256. PO3 is fully coherent with other EU legislation and recommendations in the field of mediation.

7.2.5 Subsidiarity

257. The principle of subsidiarity is fully respected across all policy options. All options impose only the cost on Member States and businesses that is necessary to achieve the objectives and leave room for discretion to Member States wherever possible, e.g. in how enforcement bodies are designated.

258. PO1 is ranked lower on subsidiarity as it leaves no discretion to Member States in terms of maximum payment terms to avoid different rules across the EU. However, PO1 leaves it up to Member States how precisely to facilitate SMEs' access to financial literacy and credit management trainings.

259. PO2 sets overall levels of compensation and interest to ensure similar levels of compensation across the EU but leaves it to the Member States to designate enforcement bodies and (for Member States not in the euro area) how precisely to implement the interest rates for delayed payments. PO3 leaves the most room for interpretation to Member States, as they can decide how payment envoys or mediation systems are structured.

8 PREFERRED OPTION

260. The assessment of each policy option reveals that each one has the potential for benefits but also poses some risks when implemented as a self-standing option. To provide the most complete policy response to the general and specific objectives, the preferred option is not any single policy option presented so far. Based on our analysis, we propose a package of measures, bringing together the most effective sub-options from PO1, PO2 and PO3. These sub-options fulfil the

efficiency criterion both as standalone and in combination, because of lack of overlaps in the specific objectives they target. Combining them will allow to ensure a single efficient and proportionate revision of rules on late payment.

261. The preferred package (**Error! Reference source not found.**) consists of the m easures put forward under PO1a, PO2a and PO3b.

Table 7: Preferred policy package

Preferred policy package	PO
Capping at 30 days in B2B transactions	1a
Verification or acceptance procedure capped at 30 days (no derogation)	1a
MS facilitate availability and access of SMEs to credit management tools, financial literacy training and foster the use by SMEs of digital tools for timely payments	1a
Making payment of interests automatic (eliminate the concept of 'entitlement'), clarify dies ad quem, making payment of the flat fee compensation automatic	2a
Leave the rate of interests for late payment as such (ECB+8%) but adapt the flat fee compensation to inflation to EUR 50	2a
MS to designate bodies responsible for the enforcement of the law, carrying out investigations ex officio, acting on complaints, and empowered to issue administrative sanctions and publish the name of offenders ('name and shame'). Use of digital tools for more effective enforcement.	2a
In public works contracts falling within the scope of the PP Directives*, contracting authorities shall verify that payment to the main contractor has been passed onto the subcontractors	2a
MS to set up a national system of mediation to solve payment disputes in commercial transactions	3b
Requesting Member States to specifically address the question of unfair contractual terms and practices through their applicable national law	3b

262. The measures have been identified based on the comparison of the sub-options under the three options with the view to best addressing the general objective and the specific objectives while satisfying the criteria for effectiveness, efficiency and proportionality and having the overall best net impact on key affected stakeholders (enterprises and public authorities).

263. The package joins together the most effective sub-options from each PO, as assessed in Section 7. Such combination of measures can better support the achievement of the general and specific objectives, reaching greater effectiveness, than each policy option in isolation. However, some benefits also partially overlap, as e.g. a company that is already reducing its payment times due to the maximum payment terms may not reduce it further by the additional threat of automatic interest. The reduction across the three policy options has not been added up directly, but has been combined to arrive at 35%. We therefore conservatively assume that a 35% reduction in late payment is realistic by consolidating the reductions in payment delays of 23.4% from PO1, 17.8% from PO2 and 5.5% from PO3 (see section 9). We arrive at this estimate by assuming the full effect of the 23.4% reduction, but only take 50% of the reduction from PO2 and PO3 as these would already be partially covered by the 23.4%. This estimate is conservative so as not to overestimate the benefits. The calculation is fully explained in Annex 4.

264. The package has several advantages compared to each policy option considered in isolation, and largely eliminates the risks inherent to each policy option. Capping payment terms as in PO1a is likely to be significantly more effective when it is accompanied by strong enforcement measures and deterrents against paying late, as provided for in PO2a. The dissuasive power of automatic payment of interest

and compensation will increase when companies' ability to circumvent these provisions by negotiating unfairly long payment terms is restrained. PO2a therefore gains in effectiveness when combined with PO1a.

265. Measures considered under PO3b will provide additional support to the package. In isolation, PO3b shows low effectiveness compared to the other policy options. When considered together with other policy options, PO3b provides useful flanking measures for those cases where late payments occur despite measures put forward under policy options PO1a and PO2a. PO3b provides effective means of redress to the creditor for those cases.

266. The consolidated impact of this package will build upon the impacts presented in section 6 but will achieve more synergies. No trade-offs related to combining policy options have been identified. The summary of costs, benefits and impacts on stakeholders of the preferred combination of policy options is presented in Annex 3.

267. This package option is built from the most efficient and effective sub-options as analysed in section 7. While another combination of measures would theoretically be possible, any other possible combination would be built from less effective and efficient sub-options. This is therefore the only package presented as the preferred option and it is not further compared to other possible combinations.

268. As outlined in this report and for the sake of ensuring legal coherence, the specific relationship between the existing UTP and the revised legal text on late payments might need to be clearly presented in the recitals and articles of the new proposal, provided that this option is legally feasible, with regards to all relevant legal considerations, such as the use of the legal instrument identified and the relevant legal basis. This is without prejudice to the option of providing such clarification in the context of a revision of the UTP. In case this clarification and alignment is legally feasible the new legal instrument might clarify the following:

1) The overall relationship between the UTP directive and the late payment new instrument;

2) the introduction of the legal instrument would be without prejudice to the rule in the UTP directive allowing Member States to introduce shorter payment periods when transposing the blacklist of prohibited practices of the UTP directive in their national legislation;

3) the maximum cap period of 30 days would also be applicable to non-perishable food products (these food products are currently subject to a 60-days cap under the UTP directive);

4) the 30 days cap in the new late payment legal instrument would be without prejudice to the specific rules applicable in the agri-food sector to value sharing agreements, payments in the context of the school scheme, and to certain payments in the must and wine sector;

5) the relationship between the enforcement authorities that would be established in the late payment new legal instrument and in the UTP directive; in particular, the new legal proposal would need to require that these enforcement authorities coordinate amongst each other, including through exchange of information obligations.

8.1 Impact on businesses

8.1.1 Benefits

269. The benefits for businesses, particularly those paid late, will go beyond those outlined in Section 6 for each individual PO. The reduction in payment terms is likely to lead to a reduction of payment times, thanks to the introduction of strong enforcement mechanisms. Similarly, creditors will obtain the same benefits as presented in PO2, but without the drawbacks of larger market players imposing unfairly long payment terms on them. Creditors who get paid on time will have significantly reduced enforcement costs from chasing debtors: 5 man-days per company, for a consolidated 35% reduction, equal to 340.2 million man-hours, equal to EUR 8.74 billion (see Annex 4) and trying to negotiate short payment terms (33% of SMEs, not quantifiable). The net benefit on the entire economy will be significant. Despite imposing a cost on debtors, by making them pay on time, the economic evidence shows that this is not a zero-sum game. The proposal aims to make sure that each company pays itself for the liquidity it needs. Currently, weaker, smaller and riskier companies, which obtain funding at a cost that is proportionate to their levels of risk, fund companies with lower level of risk, for whom it is possible to obtain financing at a lower price. Redistributing financing cost on fair terms, to include stronger market players, would not only strengthen the message that each company is paying for themselves but also it would bring the overall cost of financing down. This follows from the fact that the funding granted to debtors would likely be at lower prices than the one granted today to creditors. Debtors would also benefit from increased certainty and predictability of cash flows from their own debtors, being able to better match in time cash inflows and outflows, and from reduced negotiation times. The value of a company's participation in financial / digital literacy training is estimated between EUR 200 and EUR 1 800, but the aggregate EU-27 benefit will depend on the choices made by Member States' public authorities. Automatic payment of compensation (PO2) represents benefits to creditors and a cost to debtors and strong enforcement is estimated to reduce late payment delays by 17.8%. Direct monetary benefits to the creditor that receives interest payment are estimated at EUR 265.5 million (see Annex 4). Benefits for creditors from the revised compensation fee (to EUR 50) amount to EUR 3.75 billion and are a direct cost to debtors, which can be avoided by paying on time. Prompt payments to subcontractors in public works contracts could unblock up to EUR 31 million of payments a year. Companies are also likely to benefit from some of the provisions under PO3b, particularly from having disputes resolved through mediation systems at a much lower cost than court proceedings. PO3b would allow companies to save EUR 27 million in avoided court cases per year and would bring about a further 5.5% reduction in payment delays.

270. Besides the purely monetary net value of costs and benefits, this option will contribute to increasing fairness in business relations. It will also strengthen the degree of certainty and predictability in the internal market. The costs for debtors mostly directly benefit creditors and are closer aligned with the flow of goods and/or services in commercial transactions. They contribute to a fairer market distribution, where each market player pays for the liquidity they use. Moreover, several non-monetary benefits will accrue to businesses. A reduction in late payments will have a positive effect on the well-being of entrepreneurs.

8.1.2 Costs

271. The preferred package imposes costs on businesses. Businesses will need to bear the one-off costs presented in Section 6, although with some synergies: both PO1a and PO2a showed the one-off adjustment costs of updating standard terms to reflect maximum payment terms (EUR 56.1 million) and adjusted compensation fees (EUR 243 million), but if both policy options are adopted together, both changes can be made with one adjustment (EUR 243 million). Beyond the one-off costs, this preferred package imposes on debtors recurring enforcement cost of automatic payment of compensation (EUR 228.3 million interest, EUR 3.23 billion fees) – a direct benefit for creditors – and a recurring enforcement cost of direct regulatory fines (EUR 136.8 million) (see Annex 4). Debtors can avoid these costs by paying on time. They will incur one-off adjustment cost of negotiating funding with their bank and lose hassle-free supplier credit. The one-off adjustment cost is considered as business-as-usual in the context of their banking relationship. Debtors will likely save on recurring interest expenses which would decrease to reflect their credit rating, compared to the implicit interest cost they bear indirectly through creditors, reflecting creditors' credit rating. It is not possible to reasonably estimate this impact. Despite these costs on debtors, the overall net economic benefit will be positive because cash flows will become more predictable and easier to manage for companies. Administrative cost on main contractors in public works contracts for providing proof of payment to subcontractors amount to EUR 2.2 million for the whole EU. Indirect costs could include reductions of income for commercial providers of financial training or mediation.

272. The analysis of impact on SMEs is in Annex 15 and on competitiveness in Annex 5.

8.2 Impacts on public authorities

273. The preferred option will confer several benefits to public authorities. The main benefit stems from the overall expected reduction in late payments, which means fewer bankruptcies and associated costs to the public purse. The administrative fines that national enforcement bodies may collect from companies paying late are estimated at up to EUR 136.8 million. Moreover, public authorities should benefit from the mediation systems provided in PO3b, both directly (if the public authority wishes to settle a dispute with a supplier) and indirectly (through relief on the judicial system).

274. Public authorities will face some costs. We consider that recurring enforcement costs of verifying all purchases within 30 days can be covered with existing resources (business-as-usual). Enforcement costs for public authorities are mostly one-off and negligible (Ex post evaluation 2015). Providing access to credit management and financial / digital literacy training involves some adjustment cost which will depend on how Member States structure their support, which is why no reasonable estimate can be given. Recurring enforcement cost estimates for automatic payment of compensation interest and fees in G2B transactions equal respectively EUR 37.2 million and EUR 0.53 billion p.a. These costs can be avoided by paying on time. The revision of standard terms to include new compensation fees assumed EUR 10 per entity, as in PO2. Those Member States that do not have enforcement bodies or mediation systems in place will have to designate and run them, incurring one-off adjustment and recurring enforcement costs estimated at EUR 60-65 million p.a. (enforcement bodies) and at EUR 10-40 million p.a. (mediation services). Verifying that subcontractors are paid on time in public works contracts under PP directives is left to Member States' discretion, a possible recurring enforcement cost would not require additional resources. Finally, some adjustment cost would be incurred for addressing the question of unfair contractual terms and practices through their applicable national law. This cost depends on rule-setting mechanisms, which vary by Member State (e.g. federal or not) and is therefore difficult to quantify.

8.3 Policy options related to the form of the legal act

275. The measures contained in the Preferred Option can be implemented by either a Regulation or a Directive. The different legal instruments both show certain advantages and certain disadvantages when applied to the measures of the Preferred Option.

8.3.1 Advantages and drawbacks of a regulation

276. A regulation would contain directly applicable rules on establishing a maximum payment term of 30 days in B2B transactions and a maximum of 30 days for the verification procedure, as well as directly applicable rules that establish the interests and compensation are automatic and increase the compensation to 50 euros. It would also contain a directly applicable rule regarding the obligation of contractors to demonstrate to the contracting authorities that payment to their subcontractors has taken place or reasons why this has not happened.

277. The advantages of these directly applicable rules are that they would be directly applicable in all Member States since its entry into force. While national law would need to adjust to the EU regulation, there would be no need for a transposition, thereby facilitating enforcement. A regulation would be binding so the same rules would apply in all Member States, also facilitating legal certainty and control by the European Court of Justice. This would deepen the single market and facilitate its management.

278. On the other hand, a regulation would in principle leave less space for Member States to implement specific national rules. That would mean that Member States

could no longer establish shorter payment terms, sector-specific rules nor shorter delays for the verification procedure, if finally no possibility is given to Member States in these areas to adopt more stringent provisions. Furthermore, with the directly applicable provisions of the regulation, interest rates are calculated as ECB main refinancing rate +8% and Member States would no longer have freedom to establish higher interest rates. This would also imply that existing national measures that go beyond the rules contained in the regulation would have to be removed unless such discretion is finally given to Member States.

279. Possibly certain specific provisions could explicitly allow Member States to adopt more stringent provisions, where this is carefully calibrated so as to allow operators and national authorities to clearly know which provisions apply. In particular, the regulation would lay down such type of other new obligations on Member States, namely the obligation to provide credit management and financial literacy training and facilitate SMEs access to them, the designation of enforcement bodies with the identification of their powers and competences, the obligation to set up mediation services to solve payment disputes, the effect of certain unfair payment clauses or practices. As these provisions are not directly applicable, it would be up to the Member States to further design them and implement them.

8.3.2 Advantages and drawbacks of a Directive

280. A directive would amend the existing LPD, limited to introducing the specific proposals identified in the Preferred Option. It would leave margin of manoeuvre for Member States, namely, regarding the 30 days maximum payment term, in which case Member States would remain free to introduce stricter measures, more favourable to the creditor. The rules on interests and compensation will be automatic and the compensation will be increased to 50 euros, as under the option of the regulation. However, with a Directive, Member States would continue to remain free to apply higher interest rates as long as the formula ECB main rate + 8% is respected.

281. The advantage of a directive is that it would give additional flexibility to Member States to adopt stricter rules than the EU rules or additional measures that are more beneficial for the creditor (e.g. shorter payment terms, or specific payment terms for identified sectors). Revising the rules with a directive would also be simpler, as it would be based on the already existing directive. Furthermore, existing national measures, that were adopted as part of the transposition of the LPD or as part of its implementation that do not exceed the caps and values laid down in the new identified options could be maintained.

282. The disadvantages of a directive include the time needed to transpose the directive into national law. In addition, there is a risk of “gold-plating” as, for example, Member States would remain free to introduce verification procedures for contracts even where these procedures might not be actually needed.

8.3.3 Assessment of the legal choice against effectiveness, efficiency, proportionality, coherence and subsidiarity

Table 8: Comparison based on effectiveness, efficiency, proportionality, coherence and subsidiarity

	Effectiveness	Efficiency	Proportionality	Coherence	Subsidiarity
Regulation	+++	++	+	+	-
Directive	++	+	+	++	+

283. Both a regulation and a directive are effective, efficient and coherent legal instruments to achieve the objectives of the above-stated policy measures. A regulation is judged to be more effective than a directive as it is directly applicable; enforcement against common rules across the EU would be simpler for businesses to understand. A regulation is also judged to be more efficient than a directive, as it would be applicable without having to wait for transposition into national law.

284. A directive is assessed to be more coherent with other EU and national legislation than a regulation, as it would, in principle, not require the repeal of existing stricter national legislation. Similarly, a directive is deemed to be more respectful of the principle of subsidiarity, as it would allow Member States the flexibility to adopt additional measures which are more beneficial to the creditor and would provide more freedom to Member States in the implementation.

285. Overall, in light of the increased effectiveness and efficiency, the preferred form for the legal act is that of a regulation. It would take effect more quickly, be more easily enforceable and offer clear rules for businesses, applicable across the entire EU; it would in essence offer quicker relief for SMEs.

8.4 REFIT (simplification and improved efficiency)

286. Simplification and improvements should follow from the change of legal instrument to a regulation. A regulation would be directly applicable in all Member States and would facilitate enforcement by not requiring transposition checks and not entailing infringement proceedings. A regulation would be binding in its entirety so the same rules would apply in all Member States, also facilitating legal certainty and control by the European Court of Justice. This would deepen the single market and facilitate its functioning for companies and management for the Commission and Member States' public authorities.

8.5 Application of the 'one in, one out' approach

287. Businesses will need to bear the one-off adjustment cost of updating standard terms to reflect maximum payment terms and adjusted compensation fees (estimated at EUR 243 million).The other quantifiable administrative cost related to one-in-one-out concerns the measure related to verification that payment to the main contractor has been passed onto the subcontractors in public works contracts. This recurring administrative cost for businesses has been estimated at EUR 2.2 million. This will mostly affect large or mid-sized companies. The

magnitude of impact is considered insignificant (0.5 man-hour, per company, per year). No quantifiable administrative cost savings seem to stem from the preferred policy option.

9 HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

288. The degree of success of the initiative will be measured according to the targets set out below.

Table 9: The targets for future assessment

Indicator	Target	Baseline
Reduce by 35% the proportion of companies which report late payments as an issue; the progress will be measured against the benchmark value from the 2022 SAFE survey for all companies	28%	43%
Reduce by 35% the proportion of companies from individual size classes, which report late payments as an issue; the progress will be measured against the benchmark values from the 2022 SAFE survey for size classes (in 2022 between 40% and 48% of companies from each size class reported regular or occasional occurrences of late payments[126]);	m: 26% S: 29% M: 31%	m: 40% S: 44% M: 47%

289. The Commission would monitor and evaluate the impacts of the proposed policy option on late payments after four years from its entry into force. The application of the EU rules and their impact could be monitored based on annual reports usually produced by Member States on their own initiative[127]. Such reports usually include detail on the payment performance of B2B in Member States and the compliance with the rules set at EU level, as well as the activity of enforcement authorities in terms of e.g. the number of complaints received and the number of investigations launched. The annual reports should be discussed by the Commission and the national competent authorities. The current pilot EU payment observatory could also support with thematic reports where necessary.

290. Further information including a non-exhaustive list of possible monitoring indicators is shown in Annex 24.

[126] SAFE Survey, 2022

[127] France: Rapport Annuel de l'Observatoire des délais de paiement (Banque de France) https://publications.banque-france.fr/liste-chronologique/rapport-de-lobservatoire-des-delais-de-paiement
Spain: https://www.hacienda.gob.es/es ES/CDI/Paginas/PeriodoMedioPago/PeriodoMedioPago.aspx
Portugal : https://www.dgo.gov.pt/noticias/Paginas/PMP.aspx
Italy: https://www.mef.gov.it/operazione-trasparenza/pagamenti/ind_temp/index.html
Italy: https://www.mef.gov.it/focus/Pagamento-debiti-della-PA-ai-creditori/
Belgium:https://bosa.belgium.be/fr/themes/budget-et-comptabilite/la-comptabilite-publique/suivi-des-delais-de-paiement
Netherlands: the Ministry for the Economy reports regularly to the Parliament information about the payment performance of the Dutch provinces.

A. ANNEX 1: PROCEDURAL INFORMATION

1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

291. This Impact Assessment Report was prepared by DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW.A.2 SME unit).

292. The DECIDE Planning reference of the initiative 'Revision of EU rules on late payments (Late Payments Directive)' is PLAN/2022/1955. The initiative is in the 2023 Commission Work Programme under the heading 'A Europe fit for the digital age – SME relief'.

2. ORGANISATION AND TIMING

293. Three Inter-Service Steering Group (ISSG) meetings, consisting of representatives from various Directorates-General of the Commission, were held in 2022 and 2023 during the preparation stage of this impact assessment.

294. The first meeting took place on 24 November 2022, attended by the Secretariat General, the Legal Service, AGRI, EMPL, ENER, GROW and REFORM. Also JRC attended.

295. The second meeting was held on 9 March 2023, attended by the Secretariat General, AGRI, COMP, ECFIN, EISMEA, ENER, GROW, JUST, REFORM and TAXUD. The Legal Service was excused but sent comments by email prior to the meeting.

296. The third meeting was held on 28 March 2023. Representatives from the Secretariat General, the Legal Service, AGRI, COMP, ECFIN, EISMEA, FISMA, JUST, TAXUD, and GROW were present.

297. All the meetings were chaired by DG GROW.

298. DG GROW has considered the comments made by DGs in the intermediate and final version of the IA.

3. CONSULTATION OF THE REGULATORY SCRUTINY BOARD

299. An Upstream meeting with the Regulatory Scrutiny Board was held on 17 February 2023. The impact assessment was submitted to the RSB on 12 April 2023. The impact assessment was discussed with the RSB on 10 May 2023, and the RSB issued a positive opinion with reservations on 12 May 2023. Based on the RSB recommendations, the impact assessment has been revised in accordance with the following points.

RSB Recommendations	Revisions introduced
(B) Summary of findings	

	(1) The report does not sufficiently explain the choice of a Regulation rather than a Directive as the preferred legal instrument to address the identified problems.	The report has been significantly revised to include the choice of a regulation vs. a directive as a fully assessed policy choice in section 8. Section 8 has been revised to show clearly how a Regulation or a Directive would apply to the policy measures contained in the Preferred Option. Furthermore, section 5.3 has been revised to explain clearly the differences between a Regulation and a Directive.
300.	(2) It does not sufficiently assess and compare the impacts of the options as a Regulation or as a Directive respectively.	The two options for the legal form have been compared to each other against the criteria of effectiveness, efficiency, coherence, proportionality and subsidiarity in section 8. Advantages and drawbacks for each choice have been explicitly added in order to allow for an informed political choice.
301.	**(C) What to improve**	
302.	(1) The report should clearly outline those provisions that would be directly applicable and those that leave discretion to Member States. It should clarify how these provisions fit best in one legal instrument or another (Regulation or Directive). In the case of the definition of 'unfair practices', it should explain how leaving this to Member States is compatible with the need for legal certainty.	The possible legal instruments (Regulation and Directive) have been explicitly clarified and described in sections 5.3 and 8. Section 5.3 now clearly explains how a regulation would differ from a directive. Section 8 now explicitly describes how each policy measure would be applied both under a regulation and under a directive. For the definition of unfair practices, the report has been revised to clarify how leaving this to Member States is compatible with a regulation.
303.	(2) The report should assess the impacts related to the choice of legal delivery instrument and compare the options in terms of effectiveness, efficiency and coherence under each instrument. To inform better the policy choice, it should better describe the advantages and disadvantages of the preferred legal instrument.	Section 8 has been substantially revised to include a full comparison of the choice of legal delivery instrument against the criteria of effectiveness, efficiency, coherence, proportionality and subsidiarity. Advantages and disadvantages of both legal instruments have been added to section 8. The preferred legal instrument now follows directly from the comparison above in order to fully inform the policy choice.
304.	(3) The coherence of the options	The report now clearly outlines the

	with the Directive on unfair trading practices in the agricultural and food supply should be presented clearly.	interplay between the proposed new late payments instrument and the UTP Directive in section 5. In addition, section 7 now explains more clearly the coherence of the proposed policy options with other EU legislation, including with the UTP Directive.
305.	(4) The report should strengthen its subsidiarity analysis. It should provide evidence that Member States cannot address the identified problems on their own and show that there is an actual risk of market fragmentation in the absence of EU-level action.	Section 7 has been revised to assess all policy options against subsidiarity. All policy options, including the choice of legal instrument, are now assessed as to how well they respect the principle of subsidiarity, and why the Preferred Option only addresses the issues that Member States cannot adequately address on their own.
306.	(5) The report should provide a clear split between Business-to-Business and Government-to-Business transactions throughout the document, in particular for the problem definition and the problem drivers.	Section 2 has been revised to highlight more explicitly the differences between Business-to-Business and Government-to-Business transactions. Throughout the document, where relevant data is presented, it has been highlighted more clearly which data refers to B2B and G2B transactions.
307.	(6) The report should strengthen the impact analysis. It should further explain and justify the assumption of the expected reduction in late payments under the preferred combination of options. It should also provide a summary of the costs and benefits for all options, including net benefit/cost estimates and Benefit Cost Ratios.	The impact analysis has been strengthened. The assumptions underlying the expected reduction under the preferred combination of options have been explicitly spelled out in Section 8 and the associated calculations have been introduced in Annex 4. A summary table of the costs and benefits for all options, including net benefit/cost estimates and benefit cost ratios has been introduced at the beginning of Section 7.
308.	(7) The report should improve the comparison of options based on effectiveness, efficiency, coherence, and proportionality with a clearer justification of the scoring. Effectiveness of options should be assessed against their delivery on the specific objectives.	A full comparison of all options against coherence and subsidiarity has been added to section 7. The explanation of options and the summary table at the start of section 7 now more clearly explain the justification of the scoring.

4. EVIDENCE, SOURCES AND QUALITY

309. The impact assessment draws on an extensive amount of desk research, external studies, an evaluation carried out in 2015 and wide-ranging consultations described in detail in Annex 2. The input from these consultations was collected and processed by the experts in the SME Unit of DG GROW (GROW A2).

310. Data and information were collected, amongst others, from the following sources:

Table 10: Sources of information

Sources	Information/Summary
Formal evaluation of Directive	*Ex-post Evaluation of the Late Payment Directive* https://publications.europa.eu/en/publication-detail/-/publication/400ecc74-9a54-11e5-b3b7-01aa75ed71a1 This is the final report of the evaluation of the Late Payment Directive 2011/7/EU – carried out by an external contractor in 2015. The study considered the following evaluation dimensions: relevance, effectiveness, efficiency, coherence and complementarity, and EU added value – shortly after the deadline for transposition (16/3/2013).
Commission Report to the EP and the EC on the implementation (2016)	*Commission Report to the European Parliament and to the Council on the implementation of the Late Payment Directive (and supporting SWD):* COM (2016) 534 final This report was provided in response to the requirement established under Article 11 of Directive 2011/7/EU in order to monitor progress on the implementation of the Directive and to ensure that it is on track to deliver its expected benefits.
Late Payments and Firms`: Evidence from the EU, JRC Study (2018)	*Conti, M., Elia, L., Ferrara, A. and Ferraresi, M., Governments` Late Payments and Firms` Survival: Evidence from the European Union, JRC Study* https://publications.jrc.ec.europa.eu/repository/handle/JRC121059 The study examined to what extent stricter regulations addressing payment backlogs, brought about by the EU directive on late payments, have affected firms' performance. The focus is on government-to-business activities and on the firms' responses to the introduction of these regulations.
B2B transactions: comparative analysis of legal vs. soft-law instruments for improving payment behaviour (2018)	*Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour* https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1/language-en/format-PDF/source-103408786 The study made a mapping of measures (hard law and soft measures) implemented by Member States to support their national transposition of the Directives. The contractor extrapolated from them a set of recommendations indicating as to whether the provisions of the Directive, relevant to B2B transactions, are fit for purpose or whether other actions and policies, outside the scope of the Directive, can actively support the achievement of its objectives in the B2B environment.
EP Resolution on the implementation of the Late Payment Directive (adopted 2019)	*European Parliament Resolution on the implementation of the Late Payment Directive* https://www.europarl.europa.eu/doceo/document/TA-8-2019-0042_EN.html

Sources	Information/Summary
Opinion of the Fit for Future Platform on the Late Payment Directive (2021)	Opinion of the Fit for Future Platform on the Late Payment Directive https://ec.europa.eu/info/sites/default/files/final_opinion_2021_sbgr2_06_late_payments.pdf
Building a responsible payment culture, EC study (2022)	*Building a responsible payment culture – improving the effectiveness of the Late Payment Directive.*https://op.europa.eu/en/publication-detail/-/publication/cb4bc1bd-1467-11ed-8fa0-01aa75ed71a1/language-en/format-PDF/source-search The study collected evidence and provided inputs on a series of possible actions aimed at fostering the effectiveness of the LPD. The work was articulated in 6 thematic areas, dealing respectively with: (i) identifying the conditions for the creation of an EU observatory on payment behaviour; (ii) facilitating the uptake of financial tools addressing the issues originated by poor payment behaviour and fostering the use of e-invoicing; (iii) facilitating access to credit information on prospective clients; (iv) implementing synergies between public procurement and prompt payment objectives; (v) fostering the use of Alternative Dispute Resolution tools to settle payment delays disputes; and (vi) enhancing SMEs' credit management capabilities. The study relied on a combination of desk work and interactions with stakeholders, including: (i) the review of over 250 documentary sources and some 150 websites; (ii) interviews with representatives of more than 100 entities (Member States authorities, business associations & professional groupings, enterprises, academicians, etc.); (iii) two targeted consultations with ADR professionals and public procurement authorities, and (iv) a consultation with some 700 SMEs, implemented through the Enterprise Europe Network.
Assessing the economic impact of faster payments in B2B transactions, JRC Study (2022)	*Ferrara A., Ferraresi M. (2022), Assessing the economic impact of faster payments in B2B commercial transactions. Final Report, JRC Study* https://publications.jrc.ec.europa.eu/repository/handle/JRC130205 The present study sets an empirical framework to estimate the economic impact of capping the payment term in B2B commercial transactions to 30 and 60 days, considering a panel of nine European countries. It implements the statistical technique known as difference-in-differences (DiD) to estimate the impact of the LPD-B2B, on firms' performance. Results indicate that the LPD has been associated with higher cash flow in firms that were experiencing longer time to collect their credits in the past.
SME Performance review	SME Performance Review (europa.eu) The SME performance review is one of the main tools the European Commission uses to monitor and assess countries' progress in implementing the SME strategy and the Small Business Act. With an emphasis on the priorities under the SME strategy and the SBA, the review brings comprehensive information on the performance of SMEs.
European Payment Report – INTRUM (different years)	https://www.intrum.com/publications/european-payment-report/ The European Payment Report (EPR) describes the impact late payments has on the development and growth among European businesses. The insights are based on a survey of more than 11,000 companies in 29 European countries. The survey is conducted annually, based on a set of fixed questions combined with a set of questions on a relevant topic.

Sources	Information/Summary
SAFE survey – European Central Bank	https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/index.en.html The survey on the access to finance of enterprises (SAFE) provides information on the latest developments in the financial situation of enterprises, and documents trends in the need for and availability of external financing. The survey results are broken down by firm size, branch of economic activity, country, firm age, financial autonomy and ownership. The survey is conducted twice a year.
Eurobarometer surveys	https://europa.eu/eurobarometer/surveys/detail/2244 Eurobarometer is the polling instrument used by the European Commission, the European Parliament and other EU institutions and agencies to monitor regularly the state of public opinion in Europe on issues related to the European Union as well as attitudes on subjects of political or social nature. Eurobarometer provides quality and relevant data for experts in public opinion, researchers, media and the public. For this impact assessment, we have consulted the survey on SMEs, start-ups, scale-ups and entrepreneurship – which also includes questions on payment behavior.
D&B payment survey 2022	https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/ Dun & Bradstreet publishes annual reports outlining the international picture of payment practices. Data is collected from a large variety of countries and economic areas (e.g. Belgium, the Netherlands, Luxembourg, Germany, France, the UK, Spain, Portugal, Ireland, Slovenia, Poland, Finland, Russia, Türkiye, Greece, Bulgaria, Romania, Serbia, Croatia, Sweden, Hungary, Denmark, Czech Republic, Slovakia, Switzerland and Egypt, but also China Mainland, Taiwan Region, Hong Kong SAR, Philippines, Singapore, Thailand, India, Israel, UAE, Mexico, United States, Canada, Singapore). For each market the patterns of commercial transactions are analyzed in detail, paying attention to any changes compared with the previous years.
The effect of inflation on late payments, 2023, to be published (SPR)	https://single-market-economy.ec.europa.eu/smes/sme-strategy/sme-performance-review_en The study present a granular analysis of the economic impact of a sustained high inflationary environment on the EUs' 23 million SMEs. Based on this analysis, the study identifies SME groupings at particular risk and maps and proposes policy responses on the national as well as the EU level, on the level of the 14 industrial ecosystems, with a view to identify a set of good policy practices and recommendations for policy makers. This study covers the EU Member States.
Atradius, Payment Practice Barometer, 2017	Atradius conducts annual reviews of international corporate payment practices through a survey called the 'Atradius Payment Practices Barometer'. Several regional (eg Western Europe, Eastern Europe, etc…) but also sectoral reports are published every year, surveying many aspects of companies' behavior in relation to payments and the impact on business decisions.

B. ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

311. In accordance with the consultation strategy, the objective of the consultation activities was to gather data evidence and stakeholder views on a possible revision of the late payment directive.

312. Feedback obtained from stakeholders via the different tools mentioned below will contribute to the analysis (triangulation of information) together with evidence from different sources including desk-research.

313. This annex is structured in two main chapters:

314. **Chapter I – Consultation activities and sources of information** presents the description of the methodology that the services of the Commission have used e.g. PC, SME panel, consultations of Member States and expert groups, studies, interviews. It also provides information on the main stakeholders' groups.

315. **Chapter II – Result of the consultation activities** analyses the results of the consultation activities by the main dimensions of the policy options as presented in the impact assessment.

CHAPTER I - CONSULTATION ACTIVITIES AND SOURCES OF INFORMATION

1. STAKEHOLDER GROUPS RELEVANT FOR THE CONSULTATION ACTIVITIES

316. According with the consultation strategy, the relevant stakeholder groups are:

1) **Authorities in Member States** (national, regional, local authorities);
2) **Business associations and representatives,** and in particular SME associations/organisations at the EU and national level, including from sectors where working capital requirements are high;
3) **The Late Payment Expert group,** composed of representatives of Member States, in charge of the implementation of the LPD;
4) **The Industrial Forum**, composed of representatives of national Ministries of Economy/Industry, sectoral organisations, SME organisations, civil society, NGOs, the EESC and the Committee of the Regions.

2. CONSULTATION ACTIVITIES AND OTHER INFORMATION SOURCES

317. The services of the Commission have used a wide range of methodological tools for the consultation activities for this initiative. Consultations started in 2023. In particular the following activities were carried out:

2.1. THE COMMISSION PUBLISHED A **CALL FOR EVIDENCE** ON THE INITIATIVE.

318. The feedback period started 12 January 2023 with a deadline for **feedback from stakeholders** by 17 March 2023. In total, 137 stakeholders provided feedback. Amongst the respondents there were business associations (42), companies (28), public authorities (26), citizen (24) and other organisations (17). They were from Italy (23), France (21), Spain (17), Belgium (17), Austria (10), Luxembourg (8) and Slovakia (7). There was a small number of contributions from 12 other Member States and few from non-EU countries. (Summary available in section 3 of this annex).

2.2. **PUBLIC CONSULTATION** (THE SUMMARY REPORT IS AVAILABLE ONLINE[128])

319. The consultation was published on 12 January 2023 and responses were accepted until 17 March 2023. 117 organisations and individuals responded to the consultation. Most responses came from Germany and Belgium (14,5%), followed by Italy (13,7%), France (12,8%) and the Spain (12%). There was a small number of replies from most other Member States. Few responses were also received from non-EU countries.

320. 18 public authorities from 7 Member States, Austria, Czechia, Estonia, Germany, Italy, Netherlands and Slovenia participated in this consultation. 22,2% of responses (26 out of 117) came from companies. 12 were large companies (250 or more employees),6 medium (50 to 249 employees), 3 small (10 to 49 employees) and 5 micro (1 to 9 employees). All responding companies were registered in a Member State (Austria, Bulgaria, Czechia, France, Germany, Greece, Malta, Poland, Romania, Spain and Sweden,) and one in Switzerland.

321. Some questions were targeted at companies. It was also possible to provide additional information through open questions. Respondents made use of these options and not all replied to all questions.

2.3. SME PANEL CONSULTATION[129]

322. This consultation took place between 26 January and 16 March 2023. In total, 939 SMEs replied to this consultation in the EU Survey webpage. Most responses came from Spain (457), Italy (182), Poland (110), followed by Romania (48),

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[128] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13665-Late-payments-update-of-EU-rules/public-consultation_en

[129] The SME panel is a tool that allows Commission service to reach SMEs in a targeted way and are organised in cooperation with the partners in the Enterprise Europe Network, a support network for small and medium-sized enterprises (SMEs) bringing together, among others, chambers of commerce and industry, regional development organisations or innovation support organisations.

Portugal (43), France (27), Austria (19) and Hungary (10). There were a few replies from Belgium, Bulgaria, Czechia, Denmark, Germany, Greece, Latvia, Lithuania and Finland and a couple or individual responses from some other Member States and non-EU countries (Estonia, Ireland, and Norway).

323. In terms of their size, 40,3% were micro companies with 1 to 9 employees (378 out of 939), 37% small companies with 10 to 49 employees (347), 13,6% medium companies with 50 to 249 employees (128) and 9,2% self-employed (86).

324. The results of the SME panel are presented in a specific report, Annex 16 They were also used for the SME Test, Annex 15.

2.4. MEETINGS

325. In line with the consultation strategy, a large number of meetings took place, either bilateral with individual stakeholders or with designated groups of experts:

1) European business associations representing companies and in particular SME such as SMEunited, BusinessEurope, Eurocommerce, Eurochambres, Cooperatives Europe, Family Business Europe, European Builders Confederation
2) National business organisations such as CEPYME (Spain), Confcommercio (Italy), IAPMEI (Portugal), Association Française des Credit Managers & Conseils, Dutch Royal Metaalunie
3) Members of other EU institutions such as EP members (Renew group), EESC (employers group) or national institutions such as the Assemblée Nationale (France).
4) Specialised groups such as the Industrial Forum or the SME Envoys Network
5) 2 hybrid meetings were held with the Commission **Late Payment Expert group** (E02710) bringing together Member State representatives from Ministries responsible for company law issues on 10 October 2022 and 13 January 2023[130].

326. The list of bilateral meetings is included in Annex 21.

CHAPTER II – RESULT OF THE CONSULTATION ACTIVITIES

327. The first section of this chapter analyses the results of the consultation activities. Where the views of different stakeholder groups on the same topic were substantially different, they are analysed and presented separately.

328. The second section presents a summary of the feedback received by stakeholders on the call for evidence.

3. SECTION 1: ANALYSIS OF RESULTS

329. For ease of presentation, the results are regrouped under the policy options of the impact assessment.

[130] Register of Commission expert groups and other similar entities (europa.eu)

3.1. INTRODUCTION – SIZE OF THE PROBLEM

330. Late payments heavily affect businesses and in particular SMEs.

331. According to the result of the SME Panel, the number of invoices sent to the clients which are paid late is quite significant as only 3,4% of the respondents (32 out of 939) stated that no invoices were paid late. The majority (45,3% or 425) declared that between 1 and 10% of their invoices are paid late, 272 (29%) replied that between 10 and 25% of the invoices are paid late, 120 (12,8%) declared between 25% and 50% and 66 (7%° reported that more than 50% of their invoices are not paid on time. This is reflected by the replies concerning the turnover. Only 3,3% of the respondents (31 out of 939) stated that their business turnover was not affected by the late payment of the invoices. 395 (42,1%) respondents replied that 1 to 10% of the turnover was affected, 255 (27,2%) between 10 and 25%, 145 (15,4%) between 25% and 50% and 84 (8,9%) more than 50%.

332. A very large majority of the respondents strongly agreed or agreed that late payments affect their wellbeing and generate stress and anxiety (91,7% or 861), affect the survival of their business (80,3% or 754) and affect their trust in the market (78,5% or 737).

3.2. POLICY OPTION 1: PREVENT LATE PAYMENTS

333. The respondents to the SME Panel largely supported the proposal to setting a limit for the maximum number of days for payment terms in B2B (82,7%, 777 out of 939 respondents considered it very useful/useful).

334. There is a preference for capping the payments terms at 30 days or at 60 days in B2B transactions. 36,4 % (341 out of 939) participants to the SME Panel preferred 30 days as maximum payment term, in particular the ones active in professional, scientific and technical activities (49% of them selected it), other services activities (41%), construction sector (39%) and wholesale and retail (38%). 27,8% (261) of the SMEs indicated 60 days, in particular the ones active in mining and quarrying (42%) and manufacturing (35%). Only 7,5% (70) of respondents did not agree with setting a maximum payment term.

335. In fact, this is also the current normal practice reported by the respondents to the Panel. In general, they ask for payments within 30 days of the date of the invoice (43,8% of respondents or 411 out of 939) or within 30 to 60 days (41,7% or 392).

336. On their side, the results of the PC show that 36,7% (43) of the 117 respondents think that the payments terms should be capped for all B2B transactions without exceptions, and more specifically at 30 days (27,3% or 32) or 60 days (9,4% or 11). There are significant differences among companies (58% of them are in favour of 30 or 60 days capping), public authorities (33% in favour) and business organisations (24% in favour). 29% of the respondents, a little bit more business association (35%) and companies (31%) than public authorities (28%), think that the payments terms should remain unchanged. Only 8,6% (10, business

associations only) think that they should be capped at 30 (6%) or 60 days (2,6%) for payments from large companies to SMEs only.

337. The results of the PC also show a wide support to the proposal to provide training on credit management and financial literacy (73,5% or 86 out of 117 of respondents think that this could have very positive or positive impact) and to improve availability of measures dedicated to foster digital skills in particular in SME (71,8%, 84 out of 117). 46,1% (54 out of 117) of the respondents supported the setting up of a permanent European Observatory of payments managed by the Commission to monitor payment performance and trends in payments.

338. The other consultation activities (feedback to the call for evidence, position papers and bilateral meetings) showed that there is a significant majority supporting the capping. They were mostly business associations representing in particular SMEs (for example SMEunited, European Builders Confederation and ESBA) and companies (especially SMEs) but also some public authorities and citizens. Generally, they support a limit of 30 days or less for payment terms B2B transactions. Some stakeholders despite favouring a general capping also favour certain level of flexibility when it comes to certain specific sectors or to allow an agreement between the creditor and the debtor under certain conditions. Most of them agree for an extra 30 days (60 days total), although some push for more days by claiming for respect to the 'freedom of contract' principle between its participants. Only few are against establishing limits to payments of invoices. Most of them claim for respect to the principles of 'freedom of contract' and 'private autonomy' to sustain their arguments. They are in general national business associations or similar bodies (for example, AT and DK chambers, Confcommercio from IT) and a couple of citizens and public administrations (national and local PA from IT, DE, MT, FI). On the concept of 'Gross unfairness', the positions in favour of capping payment terms, also favour its abolition from the directive; while does against capping are also against of any clarification or guidance on this concept.

339. Overall, the stakeholders support the proposal to provide training on credit management and financial literacy. They were mostly business associations (for example CECOP and DK chamber of commerce). They propose the sourcing of better education to inform best practice, and to build this into all small business training and support. Also, they propose facilitating availability and access to credit management training and financial literacy (digital as well) for SMEs. Nevertheless, one stakeholder (AT federal economic chamber of commerce) positioned against it. They fear that it is only a small step from 'promoting the use of digital payment instruments to their mandatory use' so such measures could have a negative impact on SMEs, as they may not yet rely on fully digital systems and lead to high technical retrofitting costs'.

340. The European Observatory of payments was also supported by the majority of stakeholders, mostly business association (for example CEPYME and EUF) and public authorities (for example from BE and NL). They argue that the collection and publication of data on average payment periods and payment performance will help to monitor and enhance compliance and to improve the liquidity

position of SMEs. However, there are also some (mostly citizens) that oppose, as they argue that it would induce additional cost and unnecessary funding.

3.3. POLICY OPTION 2: FOSTER TIMELY PAYMENTS

341. The interests and the compensation are rarely paid. 80,3% (754 out of 939) respondents to the SME Panel stated that the EUR 40 compensation and interests are never paid automatically by their clients in case of late payments.

342. This is confirmed by the results of the PC. Only a minority of the companies participating to the consultations (25%, 7 out of 28) claims regularly interests on late payment: 7,1% always does it, another 7,1% does it very often and 10,7% does it frequently. Normally the interests are rarely (39,3%, 11 out of 28) or even never (35,7%, 10 out of 28) requested. The situation is even worst for the flat fee compensation. Only 10,7% (3 out of 28) claims it frequently while 25% (7 out of 28) rarely do it and the majority (57,1%, 16 out of 28) never do it. None replied always or very often. In both cases the main reason to not claim interests/compensation was the fear to lose the customer (mentioned 12 times).

343. The companies participating to the PC have mixed opinions on the adequacy of the interests and the compensation: 28,6% (8 out of 28) think they are adequate while 32,1% (9) would like to increase both of them to reflect the inflation and/or increase their effectiveness as deterrents against late payment delays. Only 14,3% (4) would prefer to increase only the compensation and 7,1% (2) only the interests. The large majority (60,7% or 17 out of 28) agrees that the interest on late payment and the flat fee compensation of a minimum of EUR 40 per invoice should be applied automatically, as soon as the debtor is late with the payment. Only 17,9% (5) is against and another 21,4% (6) don't know.

344. In the public consultation 67 respondents out of 117 (no differences between business organisations and companies) agreed on the proposal that public authorities should put in place mechanisms to verify that main contractors are complying with the rules on prompt payment when paying subcontractors, in particular when a subcontractor is an SME.

345. The large majority of stakeholders participating to the other consultation activities supported the proposal to make the payment of interests automatic. They were mostly businees associations (for example APORMED from PT and the European Builders Confederation), companies (especialy SMEs which strongly support this proposal) and some public authorities. They support a system of penalties (for exemple CEPYME), agree on adapting the flat fee compensation and that Member States should set up enforcement bodies (for example ES region). Finally they think that contracting autorities should ensure that subcontractors in public tenders are paid on time. This is supported in particual by some Spanish business organisations and ESBA. ESBA proposes that 'it should become a standard clause in public tendered contracts that the company that is awarded the public contract must pay their sub-contractors on the same terms that they are to be paid under the contract or penalties will apply'.

346. Only few are against these proposals and they are mainly local public authorities (for example IT cities) and a couple of business organisation (example the AT federal economic chamber) as they think that they could be additional burdens on the economy and the creation of monitoring bodies at EU or national level should be 'rejected in view of the already efficient enforcement possibilities of ordinary legal remedies or other redress instruments'.

3.4. POLICY OPTION 3: BETTER BALANCE BETWEEN LARGE AND SMALL OPERATORS, TO ENSURE FAIR PAYMENT CONDITIONS AND EMPOWER SMES

347. These proposals are largely supported by the results of the consultation activities.

348. 84% (789 out of 939) of the respondents to the SME Panel consider very useful/useful that EU countries set up enforcement bodies with the power to investigate and receive complaints, and to issue administrative fines for repeated bad payment behaviour. 65,2% (612) found very useful/useful that EU countries appoint a national ombudsperson for SMEs (or similar body) to bring the issue of late payments to political attention and liaise with businesses and governmental bodies.

349. According to the SME panel, the mediation was never used to solve disputes on late payment by 51,9% (487 out of 939) of the respondents..

350. The SME Panel gives also an overview of unfair payment practices used to circumvent the agreed payment deadlines. The most used is to modify retroactively key contractual provisions (e.g., on price, quantity or quality of goods/services, delivery times, etc.) in order to postpone the payment as 68,1% of respondents (640 out of 939) experienced it at least once and only 23,4% (220) never experienced it. Other used unfair practices are to deliberately delay the acceptance of services provided and/or of goods delivered (66,3% of respondent, 622, encountered it at least once) and deliberately contest the invoice (58,2%, 547). A less used practice is pay with financial products as only 45,4% (426) of respondents incurred in this at least once.

351. 92,9% (26 out of 28) of the companies participating to the PC consider very useful/useful the proposal that prompt payment should be an additional criterion when awarding public funding and 89,3% (25) that public procurement procedures should include timely payment of suppliers as a criterion. 71,4% (20) consider very useful/useful that the European Commission lay down minimum common criteria on prompt payment codes.

352. All the proposals of this option are in general supported by the stakeholders participating to the other consultation acitivites, in particular by business associations. They think that Member States should appoint a responsible authority to monitor compliance and intervene at the request of small businesses or their organisations and, if necessary, impose sanctions for non-compliance (SMEunited). They also think that prompt payments should be an award criterion in public tenders (for example Sinf from SE, CEPYME from ES, CECOP). The proposal to set-up a National Payment Envoy is also supported. The idea to

introduce a national mediation system received positive opinions as it is seen as a quick way to solve disputes (ES chambers of commerce) and because 'alternative dispute resolution mechanisms to solve payment disputes must be encouraged' (Eurocommerce). Finally, stakeholders (mostly SMEs) provided examples of unfair payment practices aimed at artificially extending the payment deadline. They think that these practices should be discouraged.

353. Only in a couple of cases (Confcommercio from IT and AT federal economic chamber) negative opions were provided.

4. SECTION 2: FEEDBACK ON THE CALL FOR EVIDENCE

354. Stakeholders who provided feedback to the inception impact assessment expressed in general support for the revision of the late payment directive. They in general agreed with the problem definition and confirmed the need to tackle the identified issues.

355. They mostly supported the proposal to capping the payments terms at 30 days in B2B transactions, in particular the business organisation representing SMEs and the companies (again especially SMEs). Only few the stakeholders were against the capping, in particular some national business associations and some public administrations.

356. The stakeholders, mostly business associations and public authorities, also supported the proposals to provide training on credit management and financial literacy and to set-up the European Observatory of payment. Only few were against these initiatives, mostly citizens and a couple of business associations.

357. The large majority of stakeholders, especially bsuiness associations, supported the proposal to make the payment of interests automatic and to introduce a system of penalties They also agree on adapting the flat fee compensation and that Member States should set up enforcement bodies. Finally they think that contracting authorities should ensure that subcontractors in public tenders are paid on time. Only few, in particular local public authorities, are against these proposals.

358. They think, especially business organisations and company (SMEs), that Member States should appoint a responsible authority to monitor compliance and that prompt payments should be an award criterion in public tenders. The proposal to set-up a National Payment Envoy is also supported. The idea to introduce a national mediation system received positive opinions. Finally, they think that unfair practices to deliberately extend the payments deadlines should be discouraged. Only in a couple of case negative opinions were provided.

C. ANNEX 3: WHO IS AFFECTED AND HOW?

1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

359. **Businesses** would, on an aggregate level, be positively affected by this initiative. Reduced payment times, estimated at 35%, will liberate cash flow and provide companies with liquidity. Smaller market players will be less likely to be forced into unfair payment terms and will have effective means of redress when they are paid late. Creditors who get paid on time will have significantly reduced administrative costs from chasing debtors and trying to negotiate short payment terms.

360. This initiative imposes some costs on businesses. Most costs affecting all businesses are one-off, such as updating standard invoices to reflect new payment terms and adjusted compensation fees. Recurring costs are mainly borne by debtors that currently pay late. They are liable for increased payment of compensation and interest, potential administrative fines, and the loss of hassle-free credit when forced to pay on time. It is important to note that debtors can avoid most of these costs by paying on time.

361. Beyond purely that this option will contribute monetary weighing up of costs and benefits, it should be underlined to fairness in business relations. This initiative seeks to ensure that each party of a commercial transaction is paying for the liquidity they use. Even if debtors face some costs of late payment, these are mostly directly benefitting the creditor, thus contributing to a fairer market distribution. Moreover, several non-monetary benefits will accrue to businesses. A reduction in late payments will have a positive effect on the well-being of entrepreneurs.

362. **Public authorities** would face some costs to designate and run the enforcement and mediation bodies foreseen in this initiative, estimated at EUR 70-105 million per year for the EU-27 (EUR 60-65 million for enforcement bodies and EUR 10-40 million for mediation services). Moreover, public authorities benefit from mediation systems, both directly (if the public authority wishes to settle a dispute with a supplier) and indirectly (through reduced burden on the judicial system). An indirect benefit stems from the overall expected reduction in late payments, which means fewer bankruptcies and associated costs to the public purse. Public authorities would have to verify all invoices within 30 days and obtain assurance that subcontractors are paid on time in public works contracts falling under the scope of the public procurement directives.

363. **Citizens/consumers** are not directly affected by this initiative. They may be indirectly affected if the increased cash flow for companies and increased

competitiveness lead to better choice and lower prices for consumers but this is not a direct focus of this initiative.

2. SUMMARY OF COSTS AND BENEFITS

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
	Direct benefits	
Capping at 30 days in B2B transactions Verification or acceptance procedure capped at 30 days (no derogation)	Capping payment terms reduces the cost to a company of negotiating payment terms (estimated 33% of companies) and/or being forced to accept longer payment terms than they are comfortable with. It will also lead to an estimated 35% reduction in actual payment times when combined with enforcement and sanctions, leading to an EUR 8.74 billion cost saving on hassle-costs for creditors. The evidence also shows that the economic benefits exceed the direct cost for debtors, bringing the overall cost of financing down and better predictability of cash flows.	We conservatively assume that a 35% reduction in late payment is realistic by consolidating the reductions in payment delays of 23.4% from PO1, 17.8% from PO2 and 5.5% from PO3. The preferred option would lead to an overall expected reduction in late payments with fewer associated costs to the public purse.
MS facilitate availability and access of SMEs to credit management and financial / digital literacy training	Easier access for SMEs to credit management and financial literacy training. The value of a company's participation in financial literacy training is estimated between EUR 200 and EUR 1 800, but the aggregate EU-27 benefit will depend on the choices made by Member States' public authorities.	
Making payment of interests legally automatic (eliminate the concept of 'entitlement')**;** Leave the rate of interests for late payment as such (ECB+8%)	Increased deterrent to paying late. Reduced costs for companies being paid late by avoiding them having to negotiate on interest. Direct monetary benefits to the creditor that receives interest payment estimated at EUR 265.5 million – assumptions in Annex 4 - reflecting a direct cost to debtors (redistributive effect between companies in B2B transactions, transfers from public authorities to companies under G2B transactions).	Legally automatic payment of interest compensation represents benefits to creditors and a cost to debtors if invoices are not paid on time.
Adapt the flat fee compensation to reflect past inflation (to the level of EUR 50), and make its payment legally automatic	Increased deterrent to paying late. Direct monetary benefits to the creditor that receives compensation payment estimated at EUR 3.75 billion, reflecting a direct cost to debtors (redistributive effect between companies in B2B transactions, transfers from public authorities to companies under G2B transactions).	Legally automatic payment of compensation fees represents benefits to creditors and a cost to debtors.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
MS to designate bodies responsible for the enforcement of the Directive, carrying out investigations ex officio , acting on complaints, and empowered to issue administrative sanctions and publish the name of offenders ('name and shame')	Businesses that are paid late have an official body to turn to and to enforce their claim. Strong enforcement is estimated to reduce late payment delays by 17.8% (which is accounted for under the consolidated 35% reduction referred to in line 1 (30-day capping) of this table.	The administrative fines are estimated at EUR 136.8 million per year
Contracting authorities in PP ensure that subcontractors are paid for all *public work contracts*	Public authorities procuring goods or services through public work contracts lead by example and verify that payment to the main contractor has been passed onto the subcontractors. Companies working for public work contractors on subcontracts (Tier 2 subcontractors) have additional guarantees to be paid on time. Prompt payments to subcontractors in public works contracts could unblock up to EUR 31 million of payments a year.	
MS to set up a national system of mediation	Reduced hassle and litigation costs on the creditor when enforcing the payment and associated fees and interests. Avoided court cases and relief on the judicial system. Benefit is estimated as EUR 27 million in avoided court cases and a 5.5% reduction in payment delays contributing to the consolidated reduction of 35%, referred to in line 1 (30-day capping) of this table. Public authorities would also benefit, both directly and indirectly (see below).	
Indirect benefits		
MS to designate bodies responsible for the enforcement of the Directive, carrying out investigations ex officio, acting on complaints, and empowered to issue administrative sanctions and publish the name of offenders ('name and shame').	An indirect benefit stems from the overall increased fairness of business relations and strengthened sustainable competitiveness, achieved thanks to expected 35% reduction in late payments, which means fewer bankruptcies, lay-offs and associated costs to the public purse.	
Administrative cost savings related to the 'one in, one out' approach*		
(direct/indirect)		

(1) Estimates are gross values relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in

*regulatory costs, please describe details as to how the saving arises (e.g. reductions in adjustment costs, administrative costs, regulatory charges, enforcement costs, etc.;); (4) Cost savings related to the 'one in, one out' approach are detailed in Tool #58 and #59 of the 'better regulation' toolbox. * if relevant*

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Capping at 30 days in B2B transactions Verification or acceptance procedure capped at 30 days (no derogation)	Direct adjustment costs			Adjustment cost of updating general payment terms and invoices because of capping payment terms in B2B transactions at 30 days: EUR 56.1 million. The amount is included in the cost of revision of standard payment terms required for adapting the compensation fee to inflation (EUR 243 million) representing synergies from a single revision.			
	Direct administrative costs						
	Direct regulatory fees and charges						
	Direct enforcement costs					Negligible cost assumed based on input from public authorities into the Evaluation study 2015.	Verification of purchases withing 30 days can be covered with existing resources – no additional cost under business-as-usual scenario.
	Indirect costs						

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
MS facilitate availability and access of SMEs to credit management and financial / digital literacy training	Direct adjustment costs						Cost to run training programmes and information campaigns. These costs are not quantified because they will depend on choices and arrangements made by Member States.
	Direct administrative costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs				Possible adverse effect on the income of commercial providers of financial training.		
Making payment of interests automatic (eliminate the concept of 'entitlement') and clarify *dies ad quem*	Direct adjustment costs						
	Direct administrative costs						
	Direct regulatory fees and charges						

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
	Direct enforcement costs				Cost on debtors who pay late. Debtors can avoid these costs by paying on time. Costs of automatic payment of interest compensation: EUR 228.3 million. These costs for B2B are based on the 14% / 86% allocation keys between public procurement's and private sector's share of GDP. These costs for business are also a benefit for business (redistributed from businesses to businesses). Assumptions and calculation in Annex 4.		Cost on debtors who pay late. Debtors can avoid these costs by paying on time. Costs of automatic payment of interest compensation: EUR 37.2 million. These costs for G2B are based on the 14% / 86% allocation keys between public procurement's and private sector's share of GDP. These costs are transferred from public debtors to business creditors. Assumptions and calculation in Annex 4.
	Indirect costs						

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Leave the rate of interests for late payment as such (ECB+8%) but adapt the flat fee compensation to inflation	Direct adjustment costs			Adjustment of invoices and terms, the cost of updating general payment terms/invoices: EUR 243 million. This amount includes the EUR 56.1 million cost for adaptations of standard terms doe to the introduction of the 30-day cap.		Adjustment of invoices and terms: EUR 10 per public entity.	
	Direct administrative costs						
	Direct regulatory fees and charges						

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Leave the rate of interests for late payment as such (ECB+8%) but adapt the flat fee compensation to inflation	Direct enforcement costs				Cost on debtors who pay late. Debtors can avoid these costs by paying on time. Costs of automatic payment of compensation fees: EUR 3.23 billion. These costs for B2B are based on the 14% / 86% allocation keys between public procurement's and private sector's share of GDP. These costs for business are also a benefit for business (redistributed from businesses to businesses). Assumptions and calculation in Annex 4.		Cost on debtors who pay late. Debtors can avoid these costs by paying on time. Costs of automatic payment of compensation fees: EUR 0.53 billion. These costs for G2B are based on the 14% / 86% allocation keys between public procurement's and private sector's share of GDP. These costs are transferred from public debtors to creditor businesses. Assumptions and calculation in Annex 4.
	Indirect costs						
MS to designate bodies responsible for the enforcement of the Directive, carrying out investigation	Direct adjustment costs					Cost for designating the enforcement body. Estimate included in the annual recurrent cost.	
	Direct administrative costs						

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
s ex officio, acting on complaints, and empowered to issue administrative sanctions and publish the name of offenders ('name and shame')	Direct regulatory fees and charges				Cost of regulatory fines for business debtors, estimated at EUR 136.8 million (Annex 4). Debtors can avoid these costs by paying on time.		
	Direct enforcement costs						Cost of running the enforcement body, estimated at EUR 60-65 million p.a. for all EU-27.
	Indirect costs						
Contracting authorities in PP ensure that subcontractors are paid for all *public work contracts*	Direct adjustment costs						
	Direct administrative costs				Contractors to disclose payment information; EUR 2.2 million p.a. for EU-27.		
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
MS to set up a national system of mediation	Direct adjustment costs					Cost to set up or designate mediation system.	
	Direct administrative costs						
	Direct regulatory fees and charges						

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
	Direct enforcement costs						Cost to run mediation system, estimated at EUR 10-40 million p.a.
	Indirect costs				Possible adverse effect on the income of commercial providers of mediation services.		
Requirement for MS to address the question of unfair payment terms and practices	Direct adjustment costs					MS would bear some cost related to setting the rules and actions on unfair payment terms and practices	
	Direct administrative costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs			EUR 243 million, related to updating standard payment terms/invoices to reflect the capping at 30 days and the adaptation of compensation fees.			

II. Overview of costs – Preferred option						
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
	Indirect adjustment costs				Possible adverse effect on the income of commercial providers of financial / digital training and mediation services.		
	Administrative costs (for offsetting)				EUR 2.2 million		

(1) Estimates (gross values) to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (adjustment costs, administrative costs, regulatory charges, enforcement costs, indirect costs;). (4) Administrative costs for offsetting as explained in Tool #58 and #59 of the 'better regulation' toolbox. The total adjustment costs should equal the sum of the adjustment costs presented in the upper part of the table (whenever they are quantifiable and/or can be monetised). Measures taken with a view to compensate adjustment costs to the greatest extent possible are presented in the section of the impact assessment report presenting the preferred option.

3. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG8 decent work and economic growth	This initiative will contribute indirectly to economic growth as it will enhance the business environment in the Single Market	Target 8.3: Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services.
SDG3 Ensure healthy lives and promote well-being for all at all ages	The initiative has the potential to contribute directly to the well-being of entrepreneurs. From the stakeholder consultation (SME panel) it is obvious that late payment (uncertainty of income flow and ultimately potential bankruptcy) impacts a large % of the respondents.	Target 3.4: By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being.
SDG 4 Quality education	The initiative will support ensuring equal access for all women and men to credit management and financial literacy training.	Target 4.3: By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG 9 Industry, innovation and infrastructure	The initiative is planned to boost fairness by increasing SME access to financial services, including affordable credit, and their integration into value chains and markets.	Target: 9.3 Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets.

D. ANNEX 4: ANALYTICAL METHODS

364. This Annex explains in detail the methodology underpinning the calculations of the impact of the different policy options.

365. The calculations are based on a wide variety of sources, including survey data (e.g. Intrum, SAFE), actual payment data (e.g. ECB, D&B), and in-depth thematic studies (e.g. JRC) to maximise robustness. Nonetheless, all calculations rely to some degree on estimation as to the number of companies affected. Shares of companies reported in surveys, in particular, can be prone to limited sample sizes and a certain self-selection effect. To minimise these risks, wherever possible different survey results were compared to each other and the results from the SME Panels.

366. The total number of companies, including companies per size class, is based on JRC nowcasts done in the context of the SME Performance Review, based on Eurostat Structural Business Statistics 2008-2020 and the National Accounts Database 2021-2022.

367. The economic effects of late payments have been based on a number of economic studies. The JRC study 'Assessing the economic impact of faster payments in B2B commercial transactions'[131] finds that, on average, reducing late payments yields an increase in aggregate cash flow of approximately 3.69 million euro, roughly a 0.9% increase, for each day of reduction of payment duration. It arrives at this conclusion by studying a large number (1 255 000) of companies and comparing those highly exposed to the 2011 LPD with those less exposed to quantify the effect the EU LPD had on companies. It finds that aggregate cash flow in the set of exposed companies has increased by 66% thanks to the introduction of the LPD (EUR 332 million compared to EUR 200 million in the estimation sample). The analysis indicates that the effects could potentially be more significant for small (10 to 50 employees) sized companies but he effects of payment term reductions can be considered general to all sectors and countries but with a larger impact on those where payment terms are longer. The 0.9% increase in cash flow per day of reduced payment ties is to be taken as a general average for all company sizes, countries and sectors.

368. In certain instances, particularly when estimating the costs and effectiveness of mediation services or ombudsmen, the impact assessment had to rely on the few examples of Member States or non-EU countries which have already set up such systems (e.g. the UK, France). On the basis of such individual countries, data on costs and benefits was then extrapolated to the EU economy, based on the numbers of enterprises.

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131 https://op.europa.eu/en/publication-detail/-/publication/fa844000-356a-11ed-9c68-01aa75ed71a1/language-en/format-PDF/source-search

369. Extrapolating from only a few Member States to the whole EU economy brings some limitations, as it assumes similar payment situations and compliance behaviour across the whole EU. The impact assessment recognises these limitations and, when extrapolating, avoids giving exact cost numbers and rather gives a range of costs to reflect the uncertainties regarding extrapolations.

370. In order to maximise robustness of extrapolations, comparisons to other sources have been made wherever possible. For example, when assessing the cost of enforcement bodies, the estimates made by France and Finland have been extrapolated to the EU economy independently (based on the cost estimate provided by these two Member States and extrapolated taking into account number of companies in different Member States), and both extrapolations lead to roughly similar results. In other cases, e.g. when assessing the effectiveness of mediation services, experiences from the UK have been complemented by results from the SME Panel and other surveys to estimate how many SMEs may be affected.

371. The Impact Assessment for the 2011 LPD[132] estimated that each day of reduction in late payment that the Directive delivers, saves European companies EUR 158 million in finance costs that they would otherwise have incurred. This figure is arrived at through estimating a total of 1 864 billion in unpaid turnover (based on a survey of companies asking them to estimate their total value of unpaid turnover), and assumes that each day of late payments has to be financed through the overdraft facilities offered by their financial institution. It assumes the interest rate given by the ECB for 'revolving loans and overdrafts, convenience and extended credit card credit'[133]. As this estimate is based on a large number of assumptions, the results need to be interpreted with caution and should only be seen as an indication of the order of magnitude of costs related to late payments rather than a precise figure.

372. Several studies aim to estimate the relation between late payments and bankruptcies. Some studies have indicated that in Belgium and France, 25% of bankruptcies are linked to late payments[134]. Similarly, a study by the Banque de France has indicated that late payments increase the risk of bankruptcy by 25-40%[135]. In the construction industry, late payments have been identified as one of the main causes of bankruptcy[136]. While the exact figures vary between studies

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[132] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN

[133] http://sdw.ecb.europa.eu/reports.do?node=1000002883

[134] BE: https://justice.belgium.be/fr/nouvelles/communiques_de_presse/lutte_contre_le_retard_de_paiement_dans_les_transactions_0; FR: https://www.latribune.fr/economie/france/entreprises-25-des-faillites-sont-liees-a-des-retards-de-paiement-483579.html

[135] https://publications.banque-france.fr/les-retards-de-paiement-des-clients-impactent-ils-la-probabilite-de-defaillance-des-entreprises

[136] European Construction Sector Observatory, Late Payments in the Construction Sector: Analytical Report, 2020,

and the methodology varies between surveys and analyses of balance sheets, the overall trend linking late payments to bankruptcies is clear.

373. The total number of B2B and G2B invoices has been estimated based on several studies. The Study on the evaluation of invoicing rules of Directive 2006/112/EC[137] estimates that about 18.4 billion invoices were issued each year by EU enterprises. This figure includes the UK; a corresponding number for the EU-27 was calculated by excluding the UK on the basis of its approximate share of GDP of 15%. This calculation leads to an estimation of about 15 billion invoices per year.

374. This is complemented by the 2016 ECB report[138] (also including the UK) E-invoicing: bringing the payment process fully into the digital age: In Europe, according to research, the annual invoice volume is estimated to reach 36 billion invoices in 2016. Approximately half of this number are invoices to consumers; the other half to businesses and the public sector. As above, these figures confirm an estimate of about 18 billion invoices in B2B and G2B, and excluding the UK as above confirms the estimate of about 15 billion.

375. The **Study on the evaluation of invoicing rules of Directive 2006/112/EC**[139] also calculates the number of invoices per size class. Table 11 below shows the estimated average volume of invoices per year by size class. These figures, together with the JRC figures on total number of companies above, were used to estimate the total number of invoices per size class.

Table 11: Volume of invoices issued and received by EU firms (annual average, 2017)

Volume of invoices issued and received by EU firms (annual average, 2017)

Business size	Issued	Received
Micro enterprises	343	391
Small enterprises	1,783	1,388
Medium enterprises	8,699	5,589
Large enterprises	142,726	102,351

Source: Authors' elaboration on business survey.

376. Neither EUROSTAT nor the ECB report on payment terms or payment delays so, in order to build the comparisons on actual payment duration, this Impact Assessment replies on external sources. There are several organisations that collect consistent and regular information on payment delays at European level:

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https://www.fiec.eu/application/files/6616/0259/5873/2020_Analytical_Report_Late_Payment_in_Construction.pdf

[137] Study on the evaluation of invoicing rules of Directive 2006/112/EC, 2019, https://op.europa.eu/en/publication-detail/-/publication/486f3631-2db1-11e9-8d04-01aa75ed71a1/language-en/format-PDF

[138] https://www.ecb.europa.eu/paym/intro/mip-online/2016/html/mip_qr_1_article_4_e-invoicing.en.html

[139] Study on the evaluation of invoicing rules of Directive 2006/112/EC, 2019, https://op.europa.eu/en/publication-detail/-/publication/486f3631-2db1-11e9-8d04-01aa75ed71a1/language-en/format-PDF

Atradius[140], Dun and Bradstreet[141] and Intrum[142] are the most widely cited and used. The European Commission's SAFE (Survey on the access to finance of enterprises)[143] also collects some information on late payments.

377. All of them are based on information collected from surveys or extractions of data from their customers databases. It is important also to note that most sources refer to payment delays as those beyond the agreed terms between parties – irrespective of the terms agreed.

378. In as much as it is survey based, a substantial part of the numerical analysis in this section and this study is based on the reports of Intrum which is the source that unequivocally collects total payment duration.

1. POLICY OPTION 1

379. The costs and benefits of capping payment terms at different maximum terms have been estimated as follows.

380. Current average payment terms in B2B transactions are at 39.3 days; actual payment times are 52.6 days[144]. To simulate a proportionate reduction of actual payment times to a new maximum payment term of 30 days (under PO1a), the simple proportion of 30 divided by 39.3 days has been applied to actual payment duration of 52.6 days:

$$(30 / 39.3) * 52.6 = 40.2$$

381. To estimate the share of companies specifying payment terms of more than 60 days, Intrum's European Payment Report[145] was used. As this report only asks for a band of payment terms specified (51-75 days, above 75 days, etc.), a precise estimate of how many companies are specifying payment terms above 60 days was not possible. We therefore looked at all companies paying in more than 50 days (24%) and assumed these companies were equally distributed in the 51-75 band, with 40% of the 24% specifying payment terms of 51-60 days, and 60% of the 24% specifying payment terms above 60 days. This assumption leads to a

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[140] Atradius Payment Practices Barometer, https://atradiuscollections.com/global/reports/payment-practices-barometer-b2b-payment-practices-trends-western-europe-2022.html, and https://group.atradius.com/publications/payment-practices-barometer/b2b-payment-practices-trends-eastern-europe-2022.html

[141] Cribis D&B Payment Study 2022

[142] Intrum, European Payment Report 2022, https://www.intrum.com/publications/european-payment-report/

[143] European Commission, Survey on the access to finance of enterprises, https://single-market-economy.ec.europa.eu/access-finance/data-and-surveys-safe_en

[144] Intrum, European Payment Report 2022, https://www.intrum.com/publications/european-payment-report/

[145] Intrum, European Payment Report 2022, https://www.intrum.com/publications/european-payment-report/

result of 14.4% of all companies specifying payment terms above 60 days (impacted by PO1b). This assumption is confirmed by the results of the SME Panel, where 14.5% of companies responded they specify payment terms of 60 days and above.

382. To calculate the share of invoices where the creditor is an SME and impacted by PO1c, the above-mentioned figures on invoices per size class and number of companies per size class were used, leading to the following table:

Table 12: Calculation of share of invoices where the creditor is an SME and affected by PO1c

size class (employees)	Number of companies	Invoices issued per company per year	Total invoices	Percentage share
0 - 9	22 744 173	343	7 801 251 339	43,07%
10 - 49	1 332 200	1 783	2 375 312 600	13,12%
50 - 249	204 786	8 699	1 781 433 414	9,84%
250 +	43 112	142 726	6 153 203 312	33,97%
Total	24 324 271		18 111 200 665	100,00%
All SMEs	24 281 159		11 957 997 353	66,03%

383. To estimate the reduction in hassle costs, estimates from the study 'The Domino Effect: the impact of late payments'[146] were used. The study estimates the average number of man days needed by SMEs to chase up late payments. Although it covers only few EU countries, among the EU countries present the values range from just over 5 days for Germany to nearly 18 days in Spain. For a conservative estimate, we used the 5 days for Germany for the calculation and multiplied this figure by the total number of enterprises in the EU-27 (24.3 million), arriving at 121.5 million person-days currently spent chasing late payments. The reduction of 23.4% in late payments as calculated above was proportionally applied to this share of person-days, leading to an estimate of 28 million man-days saved per year.

384. For estimating the share of SMEs currently negotiating their payment terms, information from the SME Panel was used. Two cases were distinguished:

1) SMEs that already have payment terms shorter than 30 days (but may have to negotiate to achieve them): We multiplied the share of SMEs currently paid within 30 days (44%) with the share of those SMEs currently negotiating on a case-by-case

[146] https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

basis (35%), and assumed conservatively that 50% of their negotiation would cease to be necessary because of the cap in place, i.e. 44% * 35% * 50% = 7.7% of all SMEs.

2) SMEs that have payment terms above 30 days: 100% of their negotiation would cease. This applies to the 56% of SMEs currently paid beyond 30 days and the share of those SMEs negotiating on a case-by-case basis (45%), i.e. 25.2% of all SMEs.

385. The shares of SMEs negotiating on a case-by-case basis are different in each of the cases: 35% of those SMEs specifying payment terms below 30 days negotiate, whereas 45% of those SMEs specifying terms above 30 days negotiate.

386. Taking these two cases together leads to an estimate of 32.9% of all SMEs benefitting from reduced negotiation times.

387. Companies will continue to be free to negotiate terms below the maximum cap. Negotiation times are therefore conservatively estimated to remain the same for the companies not specified under the above paragraphs.

388. To estimate the one-off adjustment costs for companies from adjusting their standard template, we relied on ECB data for the costs of processing a paper invoice and applied this to estimate the cost of adjusting a standard template. We used the high end given by the ECB range (EUR 2.50-10.00)[147]. For each sub-option, we multiplied this cost by the number of companies affected (23% in PO1a, 14.4% in PO1b, and 66% of 14.4% = 9.5% for PO1c).

389. To estimate the cost of proving SME status in PO1c, we relied on the number of companies affected (9.5% of 24.3 million = 2.3 million) and multiplied it with the 6.5 person-hours estimated in the SME Definition[148] to reach a total of 14.95 million person-hours. This was multiplied by the average EU hourly labour cost (EUR 25.70)[149] to estimate a monetary value.

390. To extrapolate from the Australian impact assessment[150], a $AUD to EUR exchange rate of 1:0.62 was used, as well as a number of 2.57 million businesses active in Australia[151] (i.e. 10.6% of the number of EU companies).

2. POLICY OPTION 2

391. To arrive at the value of interest rate payments, we conservatively assumed an interest rate of 8% and a total value of unpaid turnover of 1 864 billion euros[152].

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[147] https://www.ecb.europa.eu/paym/intro/mip-online/2016/html/mip_qr_1_article_4_e-invoicing.en.html

[148] https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2021)279&lang=en

[149] Average EU-27 rate used under the OIOO approach

[150] https://oia.pmc.gov.au/sites/default/files/posts/2020/05/payment_times_reporting_scheme_ris.pdf

[151] https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release

[152] As estimated in the 2011 LPD Impact Assessment, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN. The value has likely increased since then due to increased company turnover, but still serves to provide an order of magnitude.

We applied the 8% interest to this total turnover, assuming a late payment of 13 days (average from the Intrum European Payment Report), leading to the following calculation:

$1\,864 * 10^9 * 0.08 * (13 / 365) = 5.31 * 10^9$

392. To estimate the effect of only an additional 5% of companies receiving the automatic interest payments, we therefore multiplied the above figure with 0.05 to arrive at 265.5 million.

393. The corresponding cost of these EUR 265.5 million automatic interest payments is divided between businesses and public authorities based on allocation keys, reflecting the contribution of public procurement (14%) and business sector (remaining 86%) to GDP.

EUR 37.2 million=EUR 265 million*0.14 – cost in G2B transactions

EUR 228.3 million=EUR 265 million*0.86 – cost in B2B transactions

394. To arrive at the inflation-adjusted value of the EUR 40 flat fee, we based ourselves on Eurostat's annual Harmonised Index of Consumer Prices[153], comparing the EU-27 2022 value to the 2011 value (year of adoption of the current LPD) and multiplying the 40 euros with the inflation rate from 2011-2022:

$40 * (118.82 / 95.69) = 49.67$

395. This value was rounded up to 50 euros.

396. For the total value of compensation fees, we assumed the above-mentioned 15 billion invoices and 10% of invoices being paid late[154]. We multiplied the resulting 1.5 billion invoices with the proposed flat fee (40/70/100 euros or 50 euros, respectively) to arrive at 60, 105 and 150 billion or 75 billion, respectively. We then calculated 5% of these shares to reflect the conservative assumption that an additional 5% of companies would receive the compensation fees.

1) PO2a (adjusting flat fee to inflation, i.e. new EUR 50 flat fee): $1.5 * 10^9 * 50 * 5\% = 3.75 * 10^9$.
2) PO2b (EUR 40/70/100 staggered fee): lower end $1.5 * 10^9 * 40 * 5\% = 3 * 10^9$; higher end $1.5 * 10^9 * 100 * 5\% = 7.5 * 10^9$.

397. The corresponding cost of these EUR 3.75 million automatic compensation fee payments is divided between businesses and public authorities based on allocation keys, reflecting the contribution of public procurement (14%) and business sector (remaining 86%) to GDP.

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[153] https://ec.europa.eu/eurostat/databrowser/view/prc_hicp_aind/default/table?lang=en
[154] CRIBIS D&B, Payment Study 2022

EUR 0.53 billion = EUR 3.75 billion * 0.14 – cost in G2B transactions

EUR 3.22 billion = EUR 3.75 billion * 0.86 – cost in B2B transactions

398. For the cost of enforcement bodies, we extrapolated from the two submissions to the Call for Evidence by France and Finland, estimating their cost for running a late payment enforcement body. France estimated a yearly cost of EUR 8.41 million, while Finland estimated a cost of EUR 680 000 per year.

399. Extrapolating from either of these figures gives a very similar estimate for the total cost to all EU-27 Member States. As France accounts for about 13.3% of all EU enterprises, extrapolating the cost given by the French authorities to the whole EU gives a cost estimate of EUR 63.0 million; extrapolating from Finland, which accounts for 1.0% of all EU enterprises, leads to an EU figure of EUR 65.4 million.

400. The potential administrative fines to companies were estimated in the same way, extrapolating from France's submission of EUR 18.2 million fines collected per year, to arrive at EUR 136.8 million per year for the EU-27.

401. France also estimated the reduction of late payments due to its enforcement body, estimating that since introduction of the enforcement body, average payment delays have gone down from 13.6 days to 11.2 days[155].

'Selon les chiffres du rapport de l'année 2017 de l'Observatoire des délais de paiement, l'entrée en vigueur de la loi du 17 mars 2014 précitée et du régime de sanctions administratives en matière de délais de paiement interentreprises, ainsi que la pression de contrôle soutenue exercée par la DGCCRF en la matière, ont entraîné une nette amélioration du délai de paiement moyen. En effet, selon ces chiffres, la situation des délais de paiement s'est globalement améliorée de manière continue depuis le 2ème trimestre 2015. Entre cette période et le 3ème trimestre 2017, le retard moyen de paiement est passé de 13,6 jours à 11,2 jours toutes catégories confondues (acheteurs publics et privés), soit un niveau inférieur à la moyenne européenne, établie à 13,1 jours. En outre, depuis le 1er trimestre 2015, la part des paiements sans retard est passée de 36,8 % à 43,6 % et la part des retards supérieurs à quinze jours, de 31,3 % à 26,9 %'.

402. For the extrapolation to the EU-27 of the UK's Prompt Payment Policy to subcontractors, we based ourselves on the UK government figures showing that between 2015-2018, GBP 7.5 million in payments were unblocked[156]. Converting this into euros (exchange rate of 1.13) and extrapolating to the EU-27 on the basis of number of companies (the UK's number of enterprises is 9.1% that of the EU-27) leads to a figure of 93 million, which we divided by three to arrive at a figure per year.

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[155] https://www.senat.fr/questions/base/2018/qSEQ181007212.html

[156] https://www.gov.uk/guidance/prompt-payment-policy

403. To estimate the number of main contractors in public contracts, we multiplied the total number of companies in the construction sector (3.7 million) with the share of construction companies in public contracts (18%) to arrive at 666 000 companies. Of these, we took the share of companies that are main contractors (26%)[157] to arrive at a final number of 173 000 companies directly affected by having to pay their subcontractors on time.

404. To estimate the adjustment cost to reflect the update to standard terms to include new compensation fees, we assumed the same EUR 10 as in PO1 and applied it to all 24.3 million companies.

3. POLICY OPTION 3

405. To compare costs and effectiveness of National Payment Envoys and a national mediation system, we used the examples of the UK's Office of the Small Business Commissioner and France's Médiateur des entreprises and extrapolating from these examples. The extrapolation was based on the number of companies in each country compared to the EU-27 (13.3% for France, 9.1% for the UK).

406. For the costs of the UK Small Business Commissioner, we used its 2021-2022 annual operating grant of £946,298[158], converted into euros. For the benefits of this office, we based ourselves on the same Annual Report highlighting that 'As a result of our direct intervention, £205,775.80 was paid to small businesses'.

407. For the benefits of the French médiateur des entreprises, its annual report for 2021 was used as well as the number of companies supported in 2020[159]. To estimate the potential savings from avoiding court action, we based ourselves on the median figure for the court fee to start judicial proceedings in a specific commercial case from the 2021 EU Justice Scoreboard[160]. This cost figure was multiplied by the total number of enterprises potentially supported, as well as with the 70% success rate given by the médiateur des entreprises.

408. To estimate the cost of a mediation system, the proposition for a pilot project 'ADR Tools in B2B Payment Disputes' was used as reference. In this project, a pilot mediation system for the construction sector in Belgium was proposed. The cost of such a pilot for three years is estimated at between 175,650 EUR and 648,150 EUR. In Belgium, 18.5% of all companies are active in the construction sector, and Belgium accounts for 2.9% of all EU companies. Extrapolating from the pilot and calculating a final figure per year rather than for three years therefore gives an EU-wide cost of 10.8 million – 39.8 million EUR.

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[157] European Construction Industry Federation

[158] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130182/Office_of_the_Small_Business_Commissioner_Annual_Report_and_Accounts_2021-22.pdf

[159] https://presse.economie.gouv.fr/15-03-2022-le-mediateur-des-entreprises-publie-le-bilan-dactivite-2021-et-revient-sur-les-12-ans-daction-au-service-des-acteurs-economiques/

[160] https://op.europa.eu/en/publication-detail/-/publication/b2a115fd-3d1d-11ec-89db-01aa75ed71a1

4. PREFERRED POLICY OPTION

409. To calculate the combined reduction of late payments in the Preferred Option, we assume some overlap in the benefits of each policy option. A company might be induced independently to pay on time by payment terms below 30 days, or by automatic compensation, if only one of the measures was adopted, but will not reduce its payment times twice as much if both measures are adopted. We therefore assumed the full effect of the largest reduction (PO1, 23.4%), but only take 50% of the two smaller reductions (PO2, 17.8% and PO3, 5.5%), as these would already be partially covered under the 23.4%. This leads us to a calculation of 23.4 + 0.5 * 17.8 + 0.5 * 5.5 = 35.05.

410. To arrive at the monetary amount reflecting a consolidated 35% reduction in payment delays, equal to EUR 340.2 million, we follow the same reasoning as for the 23.4% reduction described in this Annex under PO1.

411. To estimate the reduction in hassle costs, estimates from the study 'The Domino Effect: the impact of late payments'[161] were used. The study estimates the average number of man days needed by SMEs to chase up late payments. Although it covers only few EU countries, among the EU countries present the values range from just over 5 days for Germany to nearly 18 days in Spain. For a conservative estimate, we used the 5 days for Germany for the calculation and multiplied this figure by the total number of enterprises in the EU-27 (24.3 million), arriving at 121.5 million man-days currently spent chasing late payments. The reduction of 35% in late payments is calculated as follows:

5 days * 8 hours * 24 300 000 companies * 0.35 reduction = 340.2 million man-hours

340.2 million man-hours * EUR 25.70 average hourly labour rate (OIOO approach) = EUR 8 743 million

[161] https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

E. ANNEX 5: COMPETITIVENESS CHECK

1. OVERVIEW OF IMPACTS ON COMPETITIVENESS

Dimensions of Competitiveness	Impact of the initiative (++ / + / 0 / - / -- / n.a.)	References to sub-sections of the main report or annexes
Cost and price competitiveness	+	Sections 6.1.1.2, 6.1.2.2, 6.1.3.2, and
Capacity to innovate	+	Sections 6.1.1.2, 6.1.2.2, 6.1.3.2, and
International competitiveness	0	Sections 6.1.1.2, 6.1.2.2, 6.1.3.2, and
SME competitiveness	+	Annex 15 and Annex 16

2. SYNTHETIC ASSESSMENT

412. The effect of the preferred option on price/cost competitiveness and innovation competitiveness is expected to be positive. With an increased aggregate cash flow in the economy, enterprises have more liquidity to invest in innovation or to pass cost reductions to consumers.

413. Cost competitiveness is expected to improve. The redistribution of the liquidity in the economy is fairer because every business is paying for the liquidity they need and use. Financial liquidity goes to the end-user and is neither lent not borrowed along the supply chain. Cost of funding goes down, because banks directly fund the risks of their clients, which they understand well, rather than indirectly finance the unknown risk carried by their clients' customers. Assuming debtor's stronger bargaining power (in a relationship in which they impose late payment on creditors), it should be cheaper for debtors to borrow money than it is for their creditors. Debtors would obtain financing for a market price reflecting their credit rating, rather than a hidden, implicit interest rate paid by their creditors and passed on to the debtors in the price. Minor adjustment cost for debtors to apply and obtain the right amount of finance for their activities is considered business-as-usual. Economy-wide, the cost of funding should go down by the spread between the cost of creditors' and debtors' financing. Conditions for doing business would be more predictable, resulting in a more favourable business environment.

414. Capacity to innovate in a more stable and predictable doing business conditions would improve. Companies' long-term business plans would not need to account for the risk of late payment, and the associated increased risk of bankruptcy, to the extent to which they do now. This would make it possible for companies to better plan in the long-term, making investments and innovation easier.

415. On international competitiveness, companies carrying out import or export transactions are bound to face mismatches in the length of payment terms (between their accounts payable and receivable). Companies will need to manage

the risks stemming from the payment terms mismatches, e.g. by agreeing with their international partners on the law applicable to the contract, which will define which party is assuming those risks. It is then left to the party to find an appropriate solution to funding that mismatch. We are assuming that these risks, including the risk of not being paid, are addressed under market conditions by providers of trade finance (cash-in-advance, letter of credit, documentary collections, open account and consignment[162]). These trade finance solutions limit substantially the impact of the introduction of a mandatory cap on payment terms.

416. In addition, there is a risk that non-EU companies that are not bound by maximum payment terms can undercut EU companies by offering long payment terms in a non-EU market. However, the effect of this is also estimated to be further limited. Many EU partner countries, such as Canada, the US, Türkiye and the UK already impose legislation on late payments as well. Finally, this effect has not really been visible within the EU, where some countries such as the Netherlands have imposed stricter legislation on payments than others. It is also possible that EU companies selling internationally will refuse to claim the interest rates and compensation fees. SMEs in Türkiye (52%) are those more likely to find payment delays as a challenge. SMEs in the EU (35%) are more likely than SMEs in the US (29%), Canada (24%) or Japan (8%) to say that payment delays are among the biggest problems their enterprise faces[163].

417. In terms of 'late payments', there does not seem to be a relevant trade dimension nor a conflict with WTO or international rules as the contracting party, as referred to above, should agree in the contract which legislation applies. The intention to review the LPD notably to introduce the proposed changes would therefore not have a significant impact. This analysis is also confirmed pursuant to the scrutiny of bilateral FTA agreements that the EU has signed - there are no specific mentions to late payments which could have resulted in additional commitments. In fact, the LPD states that its provisions can be applied to a commercial transaction between the EU and non-EU based buyer/seller. The provisions of the LPD could apply in this case and it depends on which agreement was made when setting up the contract with regards to which legislation applies to the transaction in case of a dispute – national law transposing the LPD or the legislation of the other country.

418. The impact on SME competitiveness is positive. The initiative is expected to benefit all market players, but a more positive impact on SMEs than for large enterprises is expected. Since large enterprises are more likely than SMEs to pay late, they are therefore somewhat more likely to bear some costs identified in the preferred policy option.

419. See Annex 15 and Annex 16 for a detailed analysis of impact on SMEs.

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[162] https://www.trade.gov/methods-payment

[163] 2020 Eurobarometer survey https://europa.eu/eurobarometer/surveys/detail/2244

F. ANNEX 6: 30 YEARS OF EU ACTION TO COMBAT LATE PAYMENTS IN COMMERCIAL TRANSACTIONS

420. The issue of payment delays in commercial transactions has been on the agenda of the EU for more than 30 years.

421. In November 1992 the Commission produced a staff working paper 'on the problem of the time taken to make payments in commercial transactions'[164]. In April 1993, the European Parliament adopted a Resolution calling on the Commission to make specific proposals 'without delay' to combat the issue of late payments in commercial transactions[165]. Subsequently, in June 1993, the ECOSOC adopted an Opinion on the Commission's staff working paper of 1992, calling on the Commission to take action at EU level[166].In May 1995, the Commission adopted a 'Recommendation on payment periods in commercial transactions'[167] requesting Member States to take the necessary legal and practical steps' to ensure compliance to payment terms agreed in contracts and improve payment performance of public authorities. The Recommendation indicated the specific actions that Member States should put in place to combat late payments: improve transparency of payment periods in contractual relations, improve training and access to information for businesses, guarantee appropriate redress procedures for businesses, reduce the fiscal effects of late payments for SMEs, monitoring regularly the payment performance of public authorities at all levels, simplify payment procedures in public works contracts, ensure prompt payment to subcontractors.

422. In its Resolution of July 1996[168] the European Parliament expressed strong doubts about the appropriateness of the non-binding approach (a Recommendation) by the Commission and called on the Commission to present a proposal for a Directive 'as soon as possible'.

423. In its Communication on late payments in commercial transactions of 1997[169], the Commission highlighted that 'very little or no action' had been taken by the Member States in response to its Recommendation of 1995, and that payment performance had worsened across the EU. The Communication emphasised that 'increasingly long payment periods have serious consequences for all European

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[164] SEC 1992 2214 of 18.11.1992

[165] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1993:150:FULL&from=EN

[166] Point 4.3.2 of the Opinion: "*When an imbalance in the relative strength of the parties, resulting from a dominant position, leads to unfair practices, consisting mainly of imposing inequitable trading conditions, it is up to the Commission to take action on the basis of article 86 of the Treaty*" https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51993AC0714&from=EN

[167] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31995H0198

[168] A4-0161 /96 — Resolution on the Commission Recommendation on payment periods in commercial transactions (C(95) 1075-C4-0 198 /95)

[169] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C1997/216/07&from=EN

firms, in particular SMEs whose cash-flow, profitability and competitiveness are undermined. The competitive position of SMEs as suppliers to large firms can be distorted by deliberately long payment delays by large firms.'

424. Against this background, Directive 2000/35/EC was adopted. However, already 6 years after its adoption, it became evident that the Directive was not achieving its objectives. In 2006, a study in 10 Member States indicated that 98% of all economic operators experienced late payment. Other surveys pointed out that over 30% of turnover was paid late to around 44% of the larger companies. The situation was worse for smaller enterprises: 59% were paid late for more than 30% of their turnover. Also, the impact of the Directive on payments by public authorities was not satisfactory. Nine years after the entry into force of the Directive, average payment delays by public authorities in Italy had increased from 138 days to 170 days in one year[170]. This is the background that led to the adoption of the LPD.

1. IDENTIFICATION OF PROBLEMS WITH THE IMPLEMENTATION OF THE LPD

425. Regular exchanges with Member States on the implementation of the LPD have taken place since 2012, e.g. through the Late Payment Expert group. The SME envoys' network including business associations has continuously monitored the functioning of the LPD. Infringement procedures have provided in-depth knowledge about market players' unfair practices and contract clauses used to circumvent the application of the LPD.

426. Over the years 2014 to 2022, the LPD – either as a whole or through focussing on specific aspects – has been evaluated in several instances. The extensive evidence that has thus been collected, has provided input into this impact assessment.

427. The LPD was evaluated in 2015[171] and several of its aspects were assessed in 2016[172], 2017[173], 2018[174], 2019[175], 2021[176] and 2022[177].

428. These assessments have identified a set of shortcomings, which were grouped as follows:

1) Regulatory gaps and ambiguous rules:

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170 The data indicated are quoted from the "Impact assessment accompanying the proposal for the recast of Directive 2000/35/EC" (SEC 2009 316)

171 Ex-post evaluation

172 Commission Report to the EP and the Council

173 JRC 2021

174 B2B comparative study 2018

175 EP Resolution 2019

176 F4F Opinion 2021

177 Commission Study 2021, JRC 2022 study

a) Lack of maximum payment terms in B2B transactions. Contrary to payments by public authorities (G2B), the Directive does not fix a maximum payment term between business (B2B), but only a "reference" of 30 days. This has resulted in excessively long payment terms, imposed on weaker or smaller economic operators by larger companies. By setting up payment terms excessively or unfairly long, debtors can easily circumvent the obligation of paying on time.
b) No clear definition of "unfair" practices or clauses. Several provisions of the Directive make reference to the concept of "grossly unfair" (for example in the negotiation of payment terms in B2B transactions). However, the Directive does not define this concept, making it extremely difficult for a creditor to prove that a specific contractual clause or practice is grossly unfair. There are also a number of unfair practices in place which have the ultimate effect of circumventing the Directive's obligations; for example, practices banning assignments of receivables, which hamper factoring as well as other novel and digital forms of payment.
c) No clarity concerning flat fee compensation (article 6). Debtors have interpreted this requirement as applying to individual "contracts" (which can include multiple invoices) rather than to individual invoices. The matter was clarified by the ECJ in a recent preliminary ruling (Case-585/20).
d) No clarity concerning verification procedures, especially their duration. The rules on verification procedures also need to take into consideration the case law in the recent ECJ ruling in Case C-585/20.
e) Lack of "tools" for monitoring and enforcing compliance. The Directive lacks rules that support (i) the monitoring of compliance (for example, collection of data on average payment periods or average payment terms in both B2B and G2B transactions), (ii) enforcement of the rules and (iii) transparency about payment performance. .
f) Lack of suitable means of redress. The Directive does not provide small creditors with adequate tools to take action against their debtors. In fact, the only measure envisaged in the Directive, i.e. legal action, can be too costly and time-consuming, and could cause serious damage to business relations between the parties.

2) Asymmetry of bargaining power between large and smaller operators. Due to size or position in the supply chain, smaller businesses are more vulnerable to the risk of being paid late. In fact often smaller companies have imposed on them payment terms that are longer than they are comfortable with, out of fear of losing a contract or a commercial partner (a fear factor). Also, as payment delays are passed down from clients to suppliers, smaller suppliers at the end of supply chains are paid late due to this "domino effect".

3) Pervasive culture of bad payment because prompt payment is not incentivised or rewarded. Delaying payments is an intentional practice, since it is a form of financing at zero cost and no administrative hassle. This situation persists in times of economic stability and deteriorates in times of economic downturn, when access to financing is more difficult. Lack of effective synergies with other relevant policies (e.g. public procurement, regional and structural funds) prevents public (and EU) money from supporting fair payment in commercial transactions. The Directive lacks rules and

tools to make prompt payments the “norm” in commercial transactions and to marginalise bad payment behaviour. This requirement is particularly relevant now, since the National Recovery and Resilience Plans in the Member States will be implemented primarily through public procurement.

G. ANNEX 7: EU PAYMENT OBSERVATORY

1. BACKGROUND

429. Currently, there is a wide 'data community', i.e. authorities, associations, businesses and other entities collecting and publicly disseminating extensive information on payment performance. Some Member States have put in place methodologies for measuring the payment performance of their public sector, often subsequent to infringement proceedings opened by the Commission concerning bad application of the LPD[178]. The information collected is published regularly online. Furthermore, France has been monitoring since 1991 the payment performance of public authorities and businesses, thanks to the Observatoire des délais de Paiement[179]. The French Observatoire is structured around a wide partnership of public authorities (public hospitals, local authorities, central government), business federations, employers, SMEs associations, sector associations. In its over 30 years of existence, the success of the Observatory has led to creation of a 'payment culture', by keeping a high level of attention on the issue of late payment in the French political debate, and establishing a standing platform of public dialogue, cooperation, exchange among stakeholders on late payment issues, both in the public and private sectors.

430. At EU level, large private groups, specialized in corporate analysis, credit information or debt collection[180] collect and publish data about payment performance of businesses and public authorities. Thanks to their capillary presence in the EU (and worldwide), these companies have access to large amount of data (e.g. invoices of businesses), and their publications on payment behaviour have become a reference for the operators. At sector level, business federations often collect very useful information on payment performance[181]. The activity of national stakeholder platforms[182], and SMEs representatives[183] is also very useful. While the multiplicity of sources is testimony to the importance of the issue of late payments, it is difficult to gain a comprehensive and consistent overview of developments at the EU level from the information currently available, due to differences in the indicators, sampling, and methodologies used, as well as in the sector and geographic coverage. The EP Resolution 2019 identified that the lack of a coherent and systemic monitoring tool at EU level of payment performance has hampered the effective application of the LPD. The EP

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[178] Spain: https://www.hacienda.gob.es/es ES/CDI/Paginas/PeriodoMedioPago/PeriodoMedioPago.aspx
Portugal: https://www.dgo.gov.pt/noticias/Paginas/PMP.aspx
Italy: https://www.mef.gov.it/operazione-trasparenza/pagamenti/ind_temp/index.html
https://www.mef.gov.it/focus/Pagamento-debiti-della-PA-ai-creditori/
Belgium: https://bosa.belgium.be/fr/themes/budget-et-comptabilite/la-comptabilite-publique/suivi-des-delais-de-paiement

[179] https://publications.banque-france.fr/liste-chronologique/rapport-de-lobservatoire-des-delais-de-paiement

[180] For example D&B, Atradius, Intrum, Euler Hermes, Graydon and their subsidiaries in the Member States

[181] For example: Confindustria Dispositivi Medici (Italy): https://www.confindustriadm.it/tempi-di-pagamento/; CGIA Mestre: http://www.cgiamestre.com/tag/ritardi-nei-pagamenti/

[182] For example:E.g.: Plataforma Multisectorial contra la Morosidad (Spain): http://www.pmcm.es/

[183] CGIA Mestre (Italy) http://www.cgiamestre.com/tag/ritardi-nei-pagamenti/

Resolution 2019 emphasized that 'the introduction of enhanced transparency concerning payment behaviour could discourage late payment and … act as an incentive for public entities and businesses to improve their payment practices'.

431. Against this background, the SME Strategy[184] of 2020 stated that 'the Commission will support the implementation of the Late Payment Directive by equipping it with strong monitoring and enforcement tools. These could include a virtual observatory for monitoring payment delays…'. The Updated Industrial Strategy 2021 also announced the extension of the pilot phase in construction[185] to the other ecosystems[186]. The 2021 Fit for Future Platform Opinion recommended among other actions, strengthening transparency about payment terms. The monitoring of public authorities' and businesses' payment discipline in the Member States is also included in some National Recovery and Resilience Plans. For example, in Spain, the law 'Crea y Crece'[187] is the flagship initiative for relaunching the business environment under the Spanish National Recovery Plan. This law foresees the setting up of a national Observatory of late payments (Observatorio Estadal de la Morosidad).

432. These developments led to setting up of the EU Payment Observatory. This is currently being set up by EISMEA (contracting authority) under the supervision of DG GROW, with the assistance of an external Contractor, selected through an open public tender. The contract, for a duration of two years, and possibility of renewal for other two years, started in January 2023. Overall cost for 4 years: 1,3 MIO EUR.

2. PURPOSE OF THE EU PAYMENT OBSERVATORY

433. The purpose of the EU Observatory is to address the needs identified above by pulling together the existing information already available in the public domain, and create a central reference point in the EU to monitor payment performance in commercial transactions G2B and B2B. This tool, unique in its kind, will benefit economic operators, public authorities, businesses organizations, academia, as well as the Commission services (e.g. Semester Country reports, infringement procedures, monitoring the implementation of the LPD).

3. FUNCTIONS OF THE EU PAYMENT OBSERVATORY

434. The EU Payment Observatory performs three key functions:

435. **Function 1: Data Collection and Validation**. This function entails collecting, validating and consolidating data on payment performance from various existing sources. This function will facilitate monitoring of trends and developments

[184] COM (2020) 103 - An SME Strategy for a sustainable and digital Europe
[185] https://single-market-economy.ec.europa.eu/sectors/construction/observatory_en
[186] https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_1885
[187] https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-15818

concerning payments in commercial transactions B2B and G2B. Data to be collected, monitored and updated regularly include indicators such as average payment period, average payment delay, payment of interests and compensations, drivers of late payment, unfair payment practices or clauses, recourse to court proceedings or alternative dispute resolution, the effects of economic shocks on payment discipline and impact on supply chains, etc… Geographic coverage is EU 27+UK.

436. **Function 2: Repository**. This function entails collecting and classifying documents and information on policy measures, both legal and voluntary, and any other relevant initiative, put in place by public authorities or business organisations or other entities to combat late payments in commercial transactions and, more generally, to promote a prompt payment culture in the business environment.

437. **Function 3: Data Analysis and Dissemination** This function entails the analysis of data collected and validated under Function 1, the information collected under Function 2 and their dissemination through both the publication of analytical and thematic reports, newsletters, and the organization of events (Annual conference, webinars). For the data analysis, the contract lays down strict requirements to ensure data accuracy and reliability. In the Data Analysis function, the Contractor is required to fill gaps, extrapolate and interpret the data, aggregate and disaggregate data, carry out economic analysis, provide aggregated indexes

4. INTERACTING WITH THE EU PAYMENT OBSERVATORY. THE WEBSITE.

438. Access to and interaction with the Observatory takes place through a Website, hosted on Europa, that will go live around May-June 2023. The Website shall consist of different sections that reflect the 3 functions indicated above. With an appropriate interactive software (i.e., a 'database management system'), it shall be possible to search the database in order to extract information on a specific theme There will be a library section providing access to studies and relevant legislation. This is linked to the Repository function of the Observatory. There will be a section on analysis (with access to the Annual Report and Thematic reports) and dissemination events (Annual conference, webinars, links to previous events, newsletters). This is linked to function 3 of the Observatory, i.e. data analysis and dissemination

5. THE GOVERNANCE AND MANAGEMENT FRAMEWORK OF THE EU PAYMENT OBSERVATORY

439. The Commission (through EISMEA, contracting authority) sets up and manages the Observatory, with the support of the Contractor, approves the Annual work Plan of the Observatory, sets up links with other bodies (SME envoys, LPD Expert Group, etc), chairs the 'Stakeholder Forum'.

440. The Stakeholders' Forum is the 'tool' channelling stakeholder participation and active contribution to the EU Observatory. This Forum plays at the same time an advisory and operational support role. It is composed by representatives of the

‘data community’ referred to in Section 1 of this annex and provides proposals for the Annual Work Plan drafted by the Contractor and prior to its approval by the Commission, provides timely inputs into the Contractor’s operational activities, such as informing about new policy initiatives, changes of methodology, identification of new indicators, contributes to dissemination activities, such as the participation and/or organisation of webinars.

441. The composition of the Forum (currently 27 members) includes representatives from the following categories:

1) Member States’ authorities responsible for collecting data on payment performance of their public authorities and any other relevant data on payment behaviour in commercial transactions.
2) Entities collecting data and producing reports or other publications on late payments/payment behaviour. These include commercial entities active in credit information, credit management and debt collection markets (e.g. Dun&Bradstreet, Intrum, Atradius, etc.) as well as their EU-level professional groupings (e.g. FECMA, FEBIS, CRIBIS, INFORMA…);
3) EU-level business associations representing the interests of various types of enterprises/sectors as well as professional groupings involved in themes related to payment behaviour (e.g. SMEunited, Business Europe, Eurocommerce, Eurochambres etc…).
4) Other entities with confirmed experience in data collection and analysis of the late payment phenomenon both in the EU (e.g. academia, civil society entities).

H. ANNEX 8: MEDIATION IN PAYMENT DISPUTES

442. Judicial redress is the main method used to address late payments in business relationships. However, judicial procedures are costly, lengthy, and often damage the business relationship between the parties.

443. Alternative Dispute Resolution ('hereinafter ADR')/ mediation constitutes a middle ground between the maintenance of cordial commercial relationships and the creation of a damaging legal conflict before civil and commercial jurisdictions. Therefore, ADR/Mediation can constitute a real option and alternative to judicial procedures. Its expected benefits are to ensure there is redress when late payments occur between businesses and that such procedures are fast, efficient, cost-effective and that the business relationship between the parties is not damaged.

444. Recital 34 of Directive 2011/7/EU on combating late payments in commercial transactions[188] (the 'Directive') stipulates that 'in order to facilitate compliance with the provisions of this Directive', Member States should encourage recourse to mediation or other means of ADR, and explicitely quotes Directive 2008/52/EC on Mediation in Civil and Commercial matters (the 'Mediation Directive')[189].

445. In 2019, the European Parliament's ('EP') Resolution[190] on the implementation of the Directive calls on the Member States, with the support of businesses' associations, to set up national and/or regional 'free and confidential' mediation services 'accessible to all companies, as an alternative to court proceedings, to resolve payment disputes and maintain business relations, but also to educate the companies about their rights and remedies against late payment. The EP Resolution also calls for the 'public funding of independent ombudsmen responsible for investigating late payment and non-payment disputes, assisting small businesses in resolving late payment and non-payment disputes, advising on action in the event of payment arrears and recommending solutions, particularly to SMEs'. Finally , the EP Resolution calls on the Member States and on the Commission to ensure that SMEs have 'effective access to justice in matters relating to the recovery of debts in cross-border transactions'.

446. Mediation/ADR is already in place in some Member States and has proven to be efficient. For example, the French 'Mediateur des Entreprises' helps the parties to a dispute finding the solution by themselves. It aims at restoring confidence/trust

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188 Directive 2011/07/EU: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:048:0001:0010:en:PDF

189 Directive 2008/52/EC : https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0052

190 EP Resolution "Combating Late Payments in commercial transactions" https://www.europarl.europa.eu/doceo/document/TA-8-2019-0042_EN.html

between the parties and create a new culture of payments on time and create a fairer business environment. It ensures the agreement achieved by the parties is 'legally and financially balanced' and it saves the relationship between the parties. In France, 60% of the parties involved in a dispute with a help of a the Mediateur, have continue working together after settling the dispute. The rate of success of the 'Mediateur des Entreprises' is also very high, as around 70% of the agreements reached in a mediation are implemented by the parties. Finally, it is a very useful tool for SMEs, as shown by the fact that 92% of the disputes are initiated by SMEs/micro SMEs. The Late Payment Directive, which sets measures to fight late payment and to improve businesses' competitiveness, establishes that Member States shall encourage recourse to mediation or other means of alternative dispute resolution, in order to ensure compliance with the aforementioned Directive.[191] Against this background, the Commission is now acting in order to incentivise the uptake of ADR/mediation in this field, as an alternative to judicial dispute settlement.

447. A stakeholder's consultation[192:] on the use of ADR/Mediation carried out in the context of the Commission's Study on 'Building a Responsible Payment Culture in the EU: Improving the effectiveness of the Late Payment Directive (2011/7/EU)'[193] concluded that ADR solutions are largely considered as the right tool to remedy the impact of unfair payment practices because of their shorter duration, better cost effectiveness and less harm to the business relation. Many stakeholders, in fact, consider ADR/Mediation as a win-win solution and that it should be better promoted to help SMEs solve their payment disputes.

448. In addition, evidence across Member States suggests that ADR instruments are not yet commonly used by SMEs'.[194] The main barriers to the uptake of ADR/Mediation in B2B payment disputes were also identified: (i) the absence of a contractual clause on the use of ADR/Mediation in payment contracts; (ii) the

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[191] Directive 2011/7/EU on combating late payment in commercial transactions, adopted on 16 February 2011, recital 34.

[192] This included targeted interviews with stakeholders active in the ADR/Mediation sector, representatives of businesses and academics, a review of the existing literature on ADR/Mediation in commercial relationships, and a Targeted Consultation aimed at ADR/Mediation professionals. Milieu Consulting conducted a Targeted Consultation (TC) aimed at ADR/Mediation professionals in the European Union and in other neighbouring states (the UK) on the use of ADR/Mediation in B2B payment disputes. The targeted consultation results also suggest a strong effectiveness of ADR/Mediation in solving B2B payment disputes. To the question "What are the most common outcomes of payment disputes using ADR/Mediation?", reaching a solution implemented by the parties was the most common outcome for 72% of respondents, while more than 88% reported that the most common outcome included the achievement of a solution (with or without knowledge of the implementation of the solution by the parties).

[193] European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Study on building a responsible payment culture in the EU : improving the effectiveness of the Late Payment Directive (2011/7/EU), Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2873/34185

[194] Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1/language-en/format-PDF/source-103408786 - page 10

lack of awareness of companies on the ADR/Mediation tools available to resolve their payment disputes, which are not part of the traditional jurisdictional system; (iii) the absence of mandatory mediation/ADR prior to court actions in national legislations. The conclusion is that there is a need to continue raising awareness among businesses on the guarantees and benefits of the ADR/Mediation tools in comparison to jurisdictional dispute settlement.

449. Against this background, the Commission launched a pilot project in order to incentivise the uptake of ADR in the field of late payments, as an alternative to judicial dispute settlement. The pilot project will entail (i) making available of standard clauses for mediation; (ii) creation of a specialist mediation scheme in the construction sector that includes training of mediators; (iii) awareness raising activities.

1) Preparation and making available of standard contractual clauses to include in the contracts, setting up the voluntary contractual commitment to attend mediation sessions in payment disputes prior to any jurisdictional dispute resolution:
   a) Many SMEs face the lack of knowledge to insert clauses on mediation in their business contracts.
   b) The Contractor of the Pilot Project will have to perform a mapping of the current existing standard clauses in each EU 27 Member States and draft contractual standard clauses for mediation in case of payment disputes.
2) The creation of a pilot specialist mediation scheme to address payment disputes in commercial transactions in the construction sector, which shall include also specific training for mediators:
   a) Identification of the most relevant best practices on mediation schemes for payments disputes and then formulating the appropriate recommendations regarding the necessary effort (training, investment, developments) to be put in the specialist mediator scheme; development of a code of good conduct to be used as a guide and a harmonising tool for the work of all mediators active in the construction sector.
   b) Development of a specialist mediation scheme on payment disputes in the construction sector in at least one Members State; including a training scheme for selecting and training at least 15 specialist mediators on payment disputes in the construction sector in the chosen Member State/States. Also ensure that the mediators actually deliver mediation sessions to help SMEs solve their payment disputes.
3) Awareness raising activities and development of a project webpage:
   a) Ensure there widespread, reliable information regarding the benefits and use of ADR/mediation, and how to access mediation when the need arises.
   b) Organising activities of promotion and awareness-raising (including workshops and conferences)
   c) Creating and maintaining content for a dedicated web section, containing all necessary information on the advantages and disadvantages of alternative dispute

resolution and providing a tool to find a suitable (and specialised) mediator in construction sector. The web section is thought to be an effective one-stop shop for information, including some standard contractual clauses.

450. The ultimate objective of the Pilot Project is to develop a mediation scheme for payment disputes in construction sector that can be easily replicated, *mutatis mutandis*, in other Member states and other sectors. The project will last for 2 years.

I. ANNEX 9: BEST PRACTICES IN ENFORCEMENT OF PROMPT PAYMENT RULES

1. FRANCE : THE ACTIVITY OF THE DGCCRF

451. DGCCRF (Direction générale de la concurrence, de la consommation et de la répression des fraudes of the French Ministry of the Economy) is, among other competences, responsible for monitoring compliance with the rules of the Commercial Code relating to payment terms[195]. Article L. 441-10 of the French Commercial Code provides for the sanction of non-compliance with the legal rules relating to payment deadlines by an administrative fine of a maximum amount of 75,000EUR for a natural person and 2 million EUR for a legal person. This sanction is published on line ('name-and-shame')[196]. Unfair practices or clauses having the effect of unduly delaying the starting point of payment deadlines ('délais cachés') are also punished with the same sanctions. The amount of the fine is doubled in the event of repetition of the breach within two years from the date on which the first sanction decision became final.

452. The following are examples of sanctions published by DG CCRF between January-March 2023.

Amende de 1 600 000 € prononcée à l'encontre de la société VEOLIA EAU (numéro de SIRET 57202552610945)

En application des articles L. 441-16 a) et L. 470-2 V du code de commerce, une amende de 1 600 000 € a été prononcée par la Direction régionale et interdépartementale de l'économie, de l'emploi, du travail et des solidarités (DRIEETS) d'Ile-de-France à l'encontre de la société VEOLIA EAU pour des retards dans le paiement des factures de ses fournisseurs. La constatation de ces retards a été effectuée par les services de la DRIEETS dans le cadre d'une enquête lancée par la DGCCRF sur le respect des règles du code de commerce en matière de délais de paiement.

L'amende susmentionnée se rapporte à des manquements commis pendant une période antérieure à la situation d'urgence sanitaire consécutive à l'épidémie du Covid-19.

[195] DGCCCRF is also in charge of (a) detecting anticompetition and unfair practices and agreements, (b) ensuring correct behaviour of contracting authorities in public procurement, (c) consumer protection (safety and economic interests)

[196] https://www.economie.gouv.fr/dgccrf/sanctions-delais-paiement#:~:text=L'article%20L.,euros%20pour%20une%20personne%20morale.

Amende de 480 000 € prononcée à l'encontre de la société ENI GAS & POWER FRANCE (numéro de SIRET 45122569200024)

En application des articles L. 441-16 a) et L. 470-2 du code de commerce, une amende de 480 000 € a été prononcée par la Direction régionale et interdépartementale de l'économie, de l'emploi, du travail et des solidarités (DRIEETS) d'Ile-de-France à l'encontre de la société ENI GAS & POWER FRANCE pour des retards dans le paiement des factures de ses fournisseurs. La constatation de ces retards a été effectuée par les services de la DRIEETS dans le cadre d'une enquête lancée par la DGCCRF sur le respect des règles du code de commerce en matière de délais de paiement.

L'amende susmentionnée se rapporte à des manquements commis pendant une période antérieure à la situation d'urgence sanitaire consécutive à l'épidémie du Covid-19.

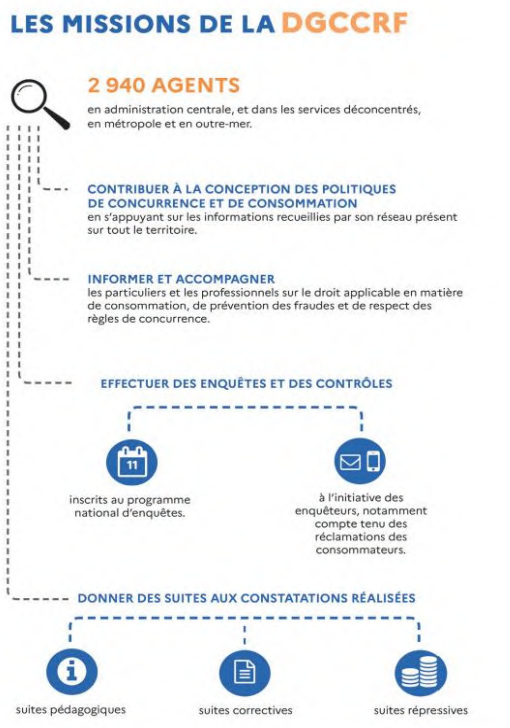
Amende de 80 000 € prononcée à l'encontre de la société COCA COLA PRODUCTION (numéro de SIRET 34518442800018)

En application des articles L. 441-16 a) et L. 470-2 du code de commerce, une amende de 80 000 € a été prononcée par la Direction régionale de l'économie, de l'emploi, du travail et des solidarités (DREETS) Hauts-de-France à l'encontre de la société COCA COLA PRODUCTION pour des retards dans le paiement des factures de ses fournisseurs. La constatation de ces retards a été effectuée par les services de la DREETS dans le cadre d'une enquête lancée par la DGCCRF sur le respect des règles du code de commerce en matière de délais de paiement.

453. Since the entry into force of Law No. 2015-990 of August 6, 2015 for growth, activity and equal economic opportunities, DGCCRF agents have been competent to control and sanction public companies that do not respect the maximum payment period set in Articles R. 2192-11 et seq. and R. 3133-11 et seq. of the Public Procurement Code (i.e. 60 days from the date of receipt of the request for payment by the public company). The amount of the maximum fine is currently 2 million EUR for legal persons[197] The DGCCRF relies on a capillary organisation throughout the national territory, including the French Oversea departments, thanks to the departmental directorates (DREETS, DREETS-Outremer, DDETS-PP or DDPP)[198].

[197] Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique

[198] https://www.economie.gouv.fr/dgccrf/coordonnees-des-DREETS-DRIEETS
https://www.economie.gouv.fr/dgccrf/coordonnees-des-DDPP-et-DDETSPP
https://hauts-de-france.dreets.gouv.fr/Controle-des-delais-de-paiement-interprofessionnels-dans-les-Hauts-de-France



Source: DGCCRF: Repères: Les contrôles de la DGCCRF

454. Investigations are initiated either on the basis of complaints, or ex officio. The powers of investigation of the DGCCRF and its departmental ramifications, are laid down in the law[199], and can be grouped in two main categories: ordinary powers (e.g. obtain documents, copies of contracts and invoices; 'mystery shopping') and powers granted ad hoc by a Court order (e.g. search of the enterprise's premises). Corrective and remedial measures are grouped in three categories: 1) 'Educational', in case of low-severity breaches or offences, consisting, in general, of a written warning to the enterprise. 2) 'Corrective' consisting in a formal injunction addressed to the enterprise requesting the adoption and implementation, within an identified deadline, of measures to correct the identified breach. 3) 'Sanctions' in case of more serious degree of offences.

455. Investigations and sanctions are only one part of the mission of DGCCRF. It should also be emphasised the extensive educational/preventive work carried out

[199] https://www.economie.gouv.fr/files/2021-05/controles-dgccrf-pouvoirs-enquete-sanction_0.pdf
https://www.berton-associes.fr/blog/droit-des-affaires/controles-de-la-repression-des-fraudes-dgccrf/

to inform and provide guidance to businesses to ensure correct compliance with the rules.

456. In 2021, the DGCCRF inspected 1.272 establishments as part of its investigations into the compliance with payment terms, out of which 17 public companies and 610 companies having benefited from a loan guaranteed by the State (PGE). Measures adopted were distributed as follows: 48% warnings, 7% in injunctions, 45% sanctions[200].

457. In 2022, the operational costs of the branch of the DGCCRF dedicated to the control of compliance with prompt payment rules in B2B transactions were EUR 8.41 million. Administrative sanctions collected for late payment in 2022: EUR 18.2 million[201]

2. SPAIN: PENALTY REGIME FOR LATE PAYMENT IN THE ROAD HAULAGE SECTOR

458. In October 2021, Spain adopted a law on the reorganization of the road haulage sector, including specific measures to combat late payment [202]

459. The explanatory memorandum of the law indicates that the fight against late payment in the field of transport is a priority 'in the policies of the European Union'. It recognizes that the different reforms carried out in this area have been insufficient or ineffective, in such a way that the average payment period in the sector is 90 days, which causes serious damage to a highly fragmented sector

460. The purpose of the reform is to penalize non-compliance with the maximum payment term of 60 days in B2B transactions, as laid down in the Spanish national law transposing the LPD[203]: According to the road haulage law, the 'default' payment term is 30 days, i.e. this is the payment term that applies if no specific agreement on the payment term has been made in the contract. Payment terms longer than 30 days have to be explicitly agreed in writing. Payment terms of more than 60 days are prohibited. The law applies to all road haulage contracts, except those in which the debtor is a consumer and the value of the contract is below EUR 3 000.

461. In case of non-compliance the law lays down a detailed scale of sanctions that vary according to the amount owed (see box below). Additional penalties are issued in case of reiteration of the offense or in case of extremely long delays,

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[200] https://www.economie.gouv.fr/files/2022-07/ra-dgccrf-21-digital.pdf?v=1669741133

[201] Information provided by DGCCRF to the Commission services via the Late Payment Expert Group.

[202] Ley 13/2021 de Ordenación de los Transportes Terrestres, https://www.boe.es/buscar/act.php?id=BOE-A-2021-16029

203 Law 3/2004 por la que se establecen medidas de lucha contra la morosidad en las operaciones comerciales. https://www.boe.es/eli/es/l/2004/12/29/3/con

such as the impounding of the vehicle until the payment of the corresponding pecuniary sanction is made.

€401 to €600 penalty when the price of transport is less than €1,000.
€601 to €800 penalty when the price of transport is between €1,000 and €1,500
€801 to €1,000 penalty when the transport price is between €1,501 and €3,000
€1001 to €2,000 penalty when the price of transport is between €3,001 and €4,000
€2001 to €4,000 penalty when the transport price is between €4,001 and €6,000
€4001 to €6,000 penalty when the price of transport is greater than €6,000.
€6001 to €18,000 penalty for repeat offenders.
Up to a €30,000 penalty in cases in which the legal payment term is exceeded by more than 120 days, or when non- payment is considered to significantly affect the economic capacity of the aggravated company

462. The law foresees that companies that have been found as non-compliant and sanctioned shall be reported on line ('name and shame') in the website of the Ministry of Transport. In 2022, the ministry launched the anonymous complaints mailbox service to report possible infringements or non-compliance and thus help make the inspection more agile and effective[204].

[204] https://www.mitma.gob.es/el-ministerio/sala-de-prensa/noticias/jue-01122022-0944

J. ANNEX 10: INDICATIVE LIST OF EXAMPLES OF UNFAIR PAYMENT PRACTICES

463. The LPD (Recital 28) states that the abuse of freedom of contract to the disadvantage of the creditor, to the sole purpose of increasing the debtors' liquidity, should be prohibited, as it is grossly unfair to the creditor.

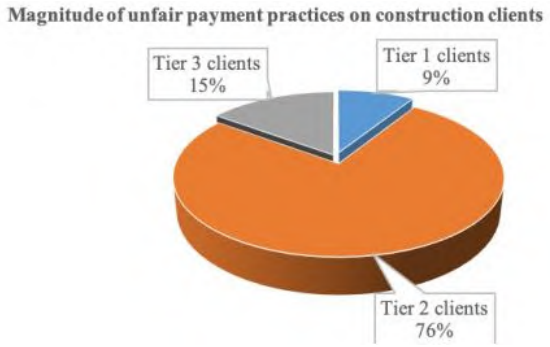
464. Unfair payment practices or provisions are nonetheless very common in commercial partnerships where the number of alternative buyers is much smaller than the number of alternative suppliers. This situation makes it easy for buyers to dictate terms and make take-it-or-leave-it offers. This also explains why small businesses are reluctant to use the LPD's remedies as a way to obtain redress or prevent unfair contractual behaviour. It also explains the so called 'fear factor', often reported by small suppliers, who are reluctant to take steps to tackle unfair behaviour, or even claim interests and compensations when they are paid late.

1. UNFAIR PAYMENT PRACTICES IN THE CONSTRUCTION SECTOR [205]

465. The EU construction sector epitomises under many extents how unfair payment practices spread along supply chains and affect SMEs. Tier 1 contractors (large contractors, clients of large public works contracts) often exert considerable commercial pressure on subcontractors (Tier 2) to agree longer payment terms in order to boost their cash flow. On the contrary, Tier 2 and Tier 3 subcontractors are often reluctant to challenge current unfair payment practices, because of clients-contractor relationships and fear of being dropout from the supply chain.

466. Generically, contractual payments procedures allow for weekly or monthly remittance of money to supply chain; but distribution of payments to subcontractors Tier 1 to Tier 2 contractors are often lopsided. The cascade payment method in construction also known as hierarchical contractual framework gives Tier 1 contractor dominant bargaining position over subcontractors' payment. Yet, it is a common practice to see subcontractors that carryout over 74% of major work, wait for 60 days to receive payments due to commercial influence of Tier 1 contractors and unfair payment practices.

[205] Swai, L., Arewa, A. and Ugulu, R. A. 2020. *Unfair Payment Issues in Construction: Re-thinking Alternative Payment Method for Tier-1 Contractors to Subcontractors*. International Conference on Civil Infrastructure and Construction (CIC2020).



2. MOST COMMON UNFAIR PRACTICES BOTH IN G2B AND B2B TRANSACTIONS

467. Identifying unfair payment practices and clauses is not an easy task. The overwhelming majority of SMEs are extremely reluctant to report these clauses and practices even to the business associations that are supposed to represent and protect them, under Article 7 (5) of the LPD, out of fear of losing clients and businesses opportunities. Those SMEs who report, prefer to stay anonymous[206].

468. The following list has been drawn on the basis of existing literature[207], contributions from business associations[208], practices identified by the Commission in the course of infringement procedures, and anecdotal evidence provided to the Commissions services by SME stakeholders. This list, far from capturing the overall extent of existing unfair practices and clauses, provides however an insight into how these practices work:

1) Contingent clauses: i.e. the debtor makes the payment to the creditor contingent on future events that do not depend on the creditor. Typical examples are 'Paid-when-paid' or 'Paid-if-paid' clauses, or similar clauses consisting in making payment to the creditor conditional to payment received by the debtor.

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[206] Information provided to the Commission services by SME United and national business associations in the Member States: UNIZO (Belgium), PIMEC (Spain), Plataforma Multisectorial contra la Morosidad (Spain), ANCE (Italy)

[207] https://www.law.kuleuven.be/personal/mstorme/european-private-law_en.pdf, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/436040/bis-15-248-challenging-grossly-unfair-payment-terms-and-practices-summary-of-responses.pdf https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745639/creating-a-responsible-payment-culture-call-for-evidence.pdf https://www.economie.gouv.fr/files/directions_services/cepc/etude0902051.pdf https://www.lexpress.fr/entrepreneurs/gestion-fiscalite/retard-de-paiement-les-faux-pretextes-et-comment-s-en-proteger_1518967.html https://www.keglerbrown.com/content/uploads/2019/10/Contingent-Payment-Clauses-in-the-50-States-2020.pdf
Omotayo, TS and Danvers-Watson, O and Oyegoke, AS, 2022 *Subcontractor trust issues on payment and valuation practices in UK private projects*. Journal of Financial Management of Property and Construction.

[208] EBC (European Builders' Confederation) - Call for Evidence Feedback: F3389200

2) Delisting, 'De-shelving' or removal from clients' list of suppliers, or other unfavourable marketing consequences if suppliers does not accept payment terms imposed by the debtor.
3) Abuse of the verification procedure to avoid or delay payments.
    (1) Negotiate the date of reception of goods or the provision of services , or of the beginning or the end of the verification procedure to ascertain their conformity, to the detriment of the creditor with the ultimate result of extending the payment period
    (2) Clauses whereby the debtor is the sole arbiter of whether the required quality has been achieved; allowing for arbitrary deductions from the value of work performed or goods provided. Similarly: Disparaging without any evidence the quality of the good or of the services provided to delay payment
4) Altering dates: Debtor requiring the creditor to postpone the date of the invoice or request of payment , despite the fact that the verification was completed and successful [209]
5) Unilateral change of payment terms by the debtor, to the detriment of the creditor, often with little or no notice.
6) Unilateral Discounting: Debtor applying unilaterally (or requesting) discounts on the principal as a condition for paying within the agreed deadline ('early bird' clause). Similarly, discounts requested or applied unilaterally by the debtor as a condition to pay, after the payment has become overdue (e.g.: 'haircut clauses', 'clawback clauses').
7) Ban on assignments of the credit (e.g. factoring), once the service or good has been delivered or performed, and the debtor has accepted it
8) In G2B transactions: Ban on execution of executive order of payments issued by a Court
9) Payment of excessive fees to cash payment under supply chain finance schemes[210];

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[209] The LPD explicitly prohibits this practice in G2B transactions (Article 4(3) (b) of the LPD). Nevertheless, despite the prohibition, this practice is quite common – see ANCE : Osservatorio Congiunturale pagamenti della PA, 2018

[210] The practice of "*confirming con anticipo obligatorio*" in payments B2B in Spain http://www.pmcm.es/blog/post/pmcm-denuncia-nueva-modalidad-de-confirming-anticipo-obligatorio-que-elude-las-obligaciones-de-pago-a-proveedores
https://pmcm.es/la-pmcm-constata-un-abuso-del-confirming-por-parte-de-las-companias-espanolas/
In these cases, a financial institution (e.g. a bank, instructed by the debtor) is in charge of managing and paying the invoices of the debtor. However, the creditor, in order to claim its payment to the financial institution within the deadline agreed with the debtor, has to pay excessive fees or discounts. These fees diminish progressively in time: the later the creditor claims its payment, the lesser the fees or discounts to be paid. The effect of this practice is negative under two points of view: 1) Payment periods are extended inordinately (see Call for Evidence, Feedback reference: F3386750) - A payment negotiated at 60 days in reality is paid after 120 or even 240 days (4 times more the agreed payment term). 2) In the accounts of the debtor, the invoice appears as having been paid the moment the "confirming" or the instruction to the financial institution has been made. In this way the debt is not detected in any statistics or calculation of

10) Unnecessary procedures: Imposing artificially long or convoluted administrative requirements in order to get paid, or for issuing and accepting the invoice[211]
11) Waiving rights as a condition to get paid: Creditors imposed to waive their rights to claim interests and compensations as a condition to get paid, often in conjunction with non-recourse clauses.

469. Member States could improve the business environment by addressing late payment practices[212] through voluntary/soft law measures such as: 1) rewarding prompt payment in public procurement, granting support, or administering EU funds in line with the applicable rules [213] [214]; 2) laying down an EU code of good payment behaviour to support national payment codes[215].

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average payment periods, or reporting. Furthermore, in the debtor's balance, these operations are not even considered as "financial debt".

[211] Public authorities often proceed with abusive rejections of payments if there is any difference between the amount requested by the contractor and the amount initially accepted, which obliges the enterprise to issue a new invoice with a new payment deadline, thus artificially prolonging the overall payment time. This situation is unfortunately very common, where a problem with the rounding of a few cents or euros results in the rejection of the invoice, which leads the company to issue a new invoice with a new payment deadline. (EBC- Call for Evidence)

[212] EP Resolution 2019

[213] 93% of respondents in the SME panel agreed that prompt payment should be included as a criterion for obtaining financial support. The Spanish law Crea y Crece already includes such requirement.

[214] Almost 90% of respondents in the SME panel agreed that prompt payment performance should be included as a criterion for participating in public procurement tenders.

[215] Almost 72% of respondents in the SME panel agreed that this measure is very useful/useful

K. ANNEX 11: RELEVANT CASE LAW OF THE ECJ

470. The case law of the Court of Justice concerning the LPD, either exclusively or jointly with Directive 2000/35/EC, includes several preliminary rulings[216] and one judgement in the framework of an ongoing infringement procedure. It should be emphasised that most of the preliminary rulings concern the application of interests and the 'flat fee' compensation for recovery costs of at least EUR 40.

471. For the purposes of this Impact Assessment, the following case-law of the ECJ deserves a special attention:

1. PRELIMINARY RULING IN CASE C-585/20[217] PRONOUNCED ON 20 OCTOBER 2022

472. This ruling touches upon three key issues: the application of the flat fee compensation of EUR 40 minimum per invoice or per contract (or judicial claim), the use of the verification procedure in public procurement contracts, and whether VAT should also be included for the calculation of the late payment interests, regardless of whether VAT has already been paid to the State. On these three points, the ECJ provided the following interpretation:

1) Article 6 (1) of the LPD should be interpreted that the flat fee compensation of EUR 40 or equivalent is due for 'each commercial transaction not remunerated on the due date, evidenced in an invoice, including when this invoice is presented, among other invoices, in a single administrative or judicial complaint'

2) Article .4(3) of the LPD should be interpreted as it opposes a national regulation laying down a general procedure for verification or acceptance of the goods or services provided with the contract's requirement for all commercial transactions between companies and public authorities,

3) Article 2(8) of the LPD should be interpreted that 'amount due' referred to in that provision shall also include VAT for the basis of the calculation of the late payment interests, regardless of whether, 'on the date on which the delay payment occurs, the taxable person has already paid this amount to the Treasury'

2. JUDGEMENT IN CASE C-122/18[218] PRONOUNCED ON 28 JANUARY 2020

473. In Case C-122/18, the Court clarified that paying on time is an 'obligation of result', not an 'obligation of means'. More specifically the obligation to pay on time, i.e. within the statutory deadline, has to be 'effectively' and proactively pursued by the authorities. According to the Italian authorities, defendants in the

[216] C 701/22, C677/22, C 419/22, C-406/21, C-370/21, C-585/20, C-327/20, C-299/19, C-199/19, C-722/18, C-131/18, C-328/17, C-287/17, C-330/16, C-324/16, C-256/15, C-555/14, C-104/14

[217] *BFF Finance Iberia SAU vs Gerencia Regional de Salud de la Junta de Castilla y León,*

[218] *Commission vs Repubblica Italiana*

case, the obligation imposed by Article 4(3) and (4) of the LPD 'puts the public authorities not under obligations to achieve a specified result, but at most under obligations as to the means employed'. The ECJ thoroughly rejected this argument. According to the ECJ, in fact, 'it cannot be accepted' the interpretation of the Italian Republic, according to which Articles 4(3) and (4) of the LPD 'impose on Member States only the obligation to ensure that the statutory and contractual payment periods applicable to commercial transactions involving public authorities are in conformity with those provisions and to provide, in the event of non-compliance ...for the right of a creditor... to obtain statutory interest for late payment but does not impose the obligation to ensure that those public authorities effectively comply with those periods'.

3. PRELIMINARY RULING IN CASE C-256/15[219], PRONOUNCED ON 15 DECEMBER 2016

474. In this case, that concerned the interpretation of Directive 2000/35/EC, the Court noted that the Directive does not harmonise all aspects relating to interest for late payment. In Article 3, it regulates only some aspects, namely the entitlement to interest in the event of late payment, the date from which the interest is due (*dies a quo*), the rate of interest, the creditor's right to seek compensation for the recovery costs incurred through late payment, and the consequences of the use of contractual terms that are grossly unfair to the creditor.

475. In particular, the Court highlighted that Directive 2000/35/EU does not include rules relating to the period during which interest for late payment runs or to the maximum amount of interest (*dies ad quem*). On this basis the Court declared that Directive 2000/35/EU must be interpreted as not precluding national provisions whereby interest for late payment accrued but not paid ceases to run when the amount of the interest equals the principal amount (*ne ultra alterum tantum*[220])

219 Drago Nemec v Republika Slovenija

220 This principle is present in some national civil or commercial codes, for example in Slovenia: Article 376 of the Obligacijski zakonik , or in Austria: § 1335 ABGB.

L. ANNEX 12: CREDIT MANAGEMENT AND FINANCIAL LITERACY

476. Credit management is a complex activity, requiring a diversified set of skills in various areas, including: (i) an excellent understanding of the role of trade credit in promoting sales, coupled with a strong customer orientation and also digital skills in a more complex digitalised environment; (ii) an equally excellent understanding of financial constraints and key financial parameters; (iii) teamwork spirit and diplomatic abilities, in order to be able to reconcile the opposite views of the marketing/sales department (naturally interested in 'pushing' sales) and of the accounting/financial department (whose prime concern is 'financial stability'); and (iv) an ability to think in terms of general strategy while at the same time mastering the details of specific transactions. While experience plays an important role, a solid background is essential, and this requires specialized training.

1. TRAINING FOR CREDIT MANAGEMENT PROFESSIONALS

477. Extensive credit management training (or training for credit management professionals) is normally offered by credit managers' associations, sometimes in collaboration with higher education institutions. A key player in the provision of credit management training is the UK-based Chartered Institute of Credit Management (CICM).[221] Established in 1939, CICM is the largest professional body in Europe and its certified qualification are widely regarded as the 'gold standard' in the profession. Professional training is also offered by the national associations of credit managers, which are grouped under the Federation of European Credit Management Associations (FECMA)[222]. In some countries, credit management training is also offered by business schools

478. An overview of training courses for credit management professionals offered by a representative sample of organizations is provided below[223].

Exhibit 11.5 Overview of Selected Training for Credit Management Professionals

Organisation	Description

[221] See www.cicm.com
[222] See https://www.fecma.eu/home
[223] Economisti Associati, Nomisma, Crif, Milieu : Building a responsible payment culture in the EU – Improving the effectiveness of the Late Payment Directive (2011/7/EU)

Organisation	Description
Chartered Institute of Credit Management (CICM) - United Kingdom	Through its Credit Academy, CICM provides training leading to regulated a *comprehensive range of training options* and Ofqual[224]-regulated qualifications that have become the recognized standard in the credit profession. CICM qualifications are subdivided into entry, intermediate and advanced level, and can be obtained for *three different area of expertise* (Credit & Collections Qualifications, Money and Debt Advice, and Enforcement). In addition to the above qualifications CICM organises conferences and regional events to support and keep up to date its members. Finally, CICM provides also educational material free of charge (e.g. 15 cash flow management guides).
Credit, Finance & Accounting Academy GmbH (CREFIA Academy) - Germany[225]	CREFIA Academy is joint venture between the German association of credit managers (Bundesverband Credit Management) and the Bochum University of Applied Sciences. CREFIA offers a *training course for Certified Credit Manager*, subdivided into 12 modules addressing the fundamentals of credit management (legal conditional framework of credit management, risk management, external business diagnostics, credit policy and credit collections, etc.). This is a one-year programme (250 teaching hours), costing EUR 5 890 for members of the credit management association, EUR 6 490 for non-members. In addition, in collaboration with Creditreform (a leading provider of credit information services), CREFIA also offers *continuing education programs* for Certified Business Analyst; Certified Credit Consultant; Certified Debt Collector.
LUISS Business School & Academy ASK - Italy[226]	LUISS Business School offers an *Executive Programme in Credit Management*. Developed in collaboration with Ask (a management consulting firm specialising in credit management), the programme aims at providing the fundamental 'technical tools' required for credit management positions and is structured in 6 modules, dealing with risk analysis techniques, financial analysis, financial and legal aspects of credit management, negotiation techniques, and compliance issues. The course does not lead automatically to any certified qualification, but participants received credits that can be used to this effect. Implemented in person or online, the program lasts 2 months and costs EUR 4 000.
Vereniging voor Credit Management (VVCM) – the Netherlands[227]	VVCM offers *three training courses in credit management* leading to certifications recognized by CPION (Centrum Post Initieel Onderwijs Nederland), namely: (i) Certified Credit Practitioner (CCP); (ii) Certified Credit Controller (CCC); (iii) Certified Credit Manager (CCM). Duration and cost range from 30 weeks and EUR 3 850 for the CCP to one year and EUR 6 295 for the CCM. VVCM also offers *continuing education* for Registered Credit Managers on specific topics such as: 'financial intelligence' for credit managers; harmonization of European payments; accounting for credit managers; relationship between credit management and cash & treasury management. Participants are awarded with the Registered Credit Manager title and are subsequently signed up in an exclusive register.
Polish Institute of Credit Management (PICM) - Poland[228]	PICM is the Polish association of credit managers, member of FECMA. PICM's standard *Credit Management Training Programme* is divided into three main parts: (i) basic concepts of credit risk; (ii) credit risk assessment and credit management departments' functions within an enterprise; and (iii) methodology of evaluating creditworthiness of an enterprise. The approach is characterized by a high degree of customization and duration and costs depend upon the on location and number of participants.

[224] https://www.gov.uk/government/organisations/ofqual
[225] See www.crefia.de
[226] See https://businessschool.luiss.it/program-credit-management/
[227] See https://verenigingvoorcreditmanagement.nl/
[228] See https://picm.pl/en/

Organisation	Description
Association Française des Credit Managers et Conseils (AFDCC) - France[229]	AFDCC is the French member of FECMA. The association offers *half a dozen diploma and certification courses* ('formations diplômantes et certifiantes') for various professional profiles (Agent de recouvrement, Chargé de recouvrement, Analyste Crédit). Courses leading to a certified qualification last one year (500 – 550 hours). The 'formations diplômantes' have a duration of 7-9 days and the cost is in the order of EUR 2 550 – 3 050 for members (~ 20% more for non-members). AFDCC is also sponsoring a *Master in Credit Management*, hosted by Université Rennes1. The course has duration of one year (about 440 hours) and its cost is about EUR 15,000 (susceptible of being subsidized by a special vocational training mechanism).

479. The initiatives described above are essential to deliver knowledge and skills to the community of credit professionals and to build the ground for a sound credit management culture. Setting high standards and sharing best practices can help the businesses where trainees work or for which they provide services to be more conscious about the costs of credit and linked aspects such as risk assessment, payment terms, and recovery of payments.

480. However, this type of training is unlikely to benefit SMEs, either directly or indirectly, for two reasons. First, the cost of courses (ranging from EUR 4 000 up to EUR 15 000) and their long duration (generally, at least 2 weeks and up to one year) are scarcely compatible with the limited resources of smaller businesses, who therefore are unlikely to participate in significant numbers. Second, and most important, the recruitment of credit managers certified through one of these courses is simply not an option for many small businesses. Professional credit managers are expensive (in France, Germany, Italy, and Spain the annual entry wage is in the order of EUR 40 000 – 60 000, whereas mid-career professionals may earn up to EUR 70 – 85 000)[230] and for a small firm the cost would not be commensurate with the benefits.

481. Having said that, however, extensive credit management training is vital to create a critical mass of training providers for SMEs and/or for implementing 'train-the-trainer' schemes.

2. OTHER CREDIT MANAGEMENT TRAINING INITIATIVES[231]

482. Next to extensive credit management training there are also training initiatives mostly of short duration either focusing on specific aspects of credit management or providing a general introduction to the theme. They can cater both credit management professionals in need of upgrading their skills as well as the broader business community, including SMEs owners/managers and their employees.

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[229] See full catalogue: https://www.afdcc.fr/wp-content/uploads/2021/11/CF2022/

[230] For more details, Economisti Study 2022

[231] For more details, Economisti Study 2022

483. It has to be emphasized that the availability of these trainings differs substantially homogeneous across the EU (and UK)

484. France. In France, the offer of training courses in credit management is quite broad and_diversified. This appears to be due to two interrelated factors, namely the great attention paid to the issue of late payment and the activism displayed by the AFDCC in promoting a credit management culture (and therefore the services of its members). AFDCC is a major player: indeed its 2022 catalogue includes no less than 37 short term courses, some offered more than once and in various locations. These courses cover both financial and legal aspects (e.g. '*Gérer les situations de recouvrement difficile', 'Guide pratique du recouvrement contentieux'*, etc.), typically last 1 or 2 days, and carry a cost in the EUR 760 – 1 200 range (with a 30% increase for non-members). Other providers include public entities, such as the Conservatoire national des arts et métiers (CNAM) and the Centre National de la Formation Conseil en Entreprise (CNFCE); business associations, namely the Confédération des petites et moyennes entreprises (CPME), and some commercial entities (KPMG). These courses have a duration of 1 to 3 days, and are implemented in person or online, with costs typically ranging between EUR 700 for 1-day courses and EUR 1 300 – 1 400 for 2-3 days. Public subsidies or tax rebates for the employers are available to reduce the cost of these trainings, namely through the 'Contribution à la Formation Professionnelle[232]' mechanism.

485. Germany. The German market for credit management training shows some similarities with France's but with a more limited role of public entities. Training is offered by CREFIA (see above), some commercial providers and Chambers of Commerce. CREFIA currently focuses on 1/2-day workshops on 'Working Capital Management' and related topics ('Credit Policy', 'Receivables Realization', etc.). Among commercial providers, the Technische Akademie Wuppertal (TAW) offers one day seminars in 'Effective receivables management' and related topics (e.g. 'Registration of claims and enforcement of claims in insolvency proceedings') (EUR 00)) and half a dozen courses in Receivables Manager, based on 3 modules. Similar seminars are also offered by a couple of private companies, NWB Verlag and wvib Schwarzwald AG. One day workshops are also implemented by several chambers of commerce (e.g. networking events on liquidity organized by IHK Reutlingen, seminar on 'Efficient accounts receivable and receivables management' held by IHK Darmstadt, seminar on 'Professional receivables management' by IHK Akademy Koblenz). The IHK system also delivers training for formal certification in credit management through a specialized subsidiary (DIHK-Bildungs-gGmbH). Costs show some differences across the various providers. Chambers of commerce are the least expensive, with EUR 300 – 350 per seminar. CREFIA's 1–2-day workshops sell for EUR 400 – 600 (20% higher for non-members), whereas commercial

[232] https://www.urssaf.fr/portail/home/espaces-dedies/contributions-de-formation-profe/la-contribution-a-la-formation-p.html

providers are predictably the most expensive, with EUR 700 for one-day seminars and EUR 1 800 for longer courses.

486. Spain. The Spanish market for credit management training seems to be quite small, with very few players. The national credit management association, Asociación Gerentes de Crédito, is not directly involved in training activities but rather cooperates with a couple of consulting firms, Pere Brachfield Credit & Risk Consultants and Rosas & Nash, and one law firm (Del Cerro Leon Royo Abogados). The main actor is Pere Brachfield, whose principal is well known in Spain for his activities in support of better payment practices. The range of training courses currently on offer is fairly limited, consisting of a *Máster Profesional en Créditos, Riesgos y Recobro de impagados* (14 weeks, 125 hours) and a couple of webinars ('*Claves para un Recobro Exitoso de Impagado*s' and '*Neurocobranzas*', the latter focusing on psychological aspects of credit recovery). Master courses costs are EUR 1 350 and the webinars costing around EUR 200 each. Pere Brachfield is also active in the provision of mentoring and coaching, but elements gathered during interviews suggest that this market is shrinking and mostly comprised of sizeable enterprises ('*we have very few SME clients*').

487. Italy. In Italy the offer of credit management training falls somewhere in between France and Germany on the one hand and Spain on the other. In 2021, the national association of credit managers, Associazione Credit Managers Italia (ACMI), had a catalogue with 30 plus training courses and webinars. However, along with initiatives squarely focusing on credit management and related themes ('basics of credit management', 'judicial recovery', 'techniques for phone collection', etc.) the catalogue also included courses on other, less obvious topics (e.g. how to work with Excel spreadsheets or how the enhance presentation skills). A more focused offer is provided by commercial providers and business schools. For instance, Ask Advisory, a management consultancy, has a 2022 catalogue including 12 short training courses specifically dealing with credit management. An Executive Course in Credit Management (32 hours, spanning over 12 days) is offered by CUOA, a business school, while Cegos' catalogue includes four 1-2 days training ('*Credit Management: la strategia per la gestione del rischio crediti', 'Tecniche di comunicazione per un recupero crediti efficace'*, etc.). Chambers of commerce and business associations are involved in financial education for MSME, but courses tend to focus on more bread-and-butter issues (basic financial analysis, budgeting, etc.), with credit management not being addressed or being mentioned only in passing. Finally, webinars and e-learning materials are organized/made available by some providers of credit information and other business intelligence services (CERVED and CRIF). Information on costs is not always available, but prices appear to be lower than in France and Germany, with ACMI 1-2-day courses/webinars typically in the EUR 250 – 350 range for members (50-60% more for non-members), Cegos 1-2-day trainings selling at EUR 800 – 1 600, and CUOA's executive programme selling for EUR 1 800. As in France, partial subsidization may be available under various public schemes (e.g. *voucher formazione*, in Lombardy and Emilia-Romagna).

488. Malta. A very interesting best practice is represented by Malta, where the Malta Association for Credit Management (MACM)[233] has been very active in proactively promoting the adoption of best practices in credit management also by SME. MACM's experience is briefly summarized below:

Malta: MACM's Experience

Established in 2001, MACM is a professional association of credit managers, member of FECMA. Like its sister associations, MACM is primarily involved in fostering the development of the credit management profession. In this context, MACM has a longstanding relationship with CICM, and it has been accredited to deliver CICM training courses leading to officially recognized qualifications. **However, MACM has also been quite active in promoting the adoption of credit management practices in SMEs**, through the organization of awareness raising workshops, the delivery of training courses, and the development of dedicated materials, the latter being extensively used by MACM members in their work with small business clients. MACM has also been very active on the theme of late payments, through the organization of events on the LPD, the running of periodical surveys, and the cooperation with government authorities, namely with the development of materials disseminated on line).[234]

489. United Kingdom. The UK market is dominated by CICM and commercial providers, with the distinctive feature of a prevalence on online delivery and e-learning modalities. Besides training for certified credit manager and related qualifications (see above), CICM also delivers several virtual workshops of variable duration, covering topics of interest for both people already working in credit management and a more general business audience ('Collections for the new Credit Future', 'Best Practice Skills to Assess Credit Risk', etc.). Commercial providers include consultancies and training centres, some of which specifically focusing on credit management training (Credit Management Training Ltd and Credit Management Group). Their offer mostly consists of short e-learning modules, each lasting 2-4 hours and covering very practical aspects of the credit management process (from 'Impactful collection letters and emails' to 'Customers behaviours to deal with'). Prices for individual modules are at £ 120 – 150, with full packages costing around £ 1,000.

3. SUMMARY OF THE ANALYSIS [235]

490. Currently, the offer of management training available in the EU is extensive, with several high-profile service providers, offering both structured courses providing formal qualifications and shorter trainings. The problem is that this offer is extremely uneven across the EU: there is a limited number of Member States with a highly developed credit management training industry and a majority where this activity is not as developed.

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[233] https://www.macm.org.mt/home

[234] https://www.macm.org.mt/macmlibrary?ag=Credit%20Guidelines

[235] Economisti Study 2022

491. Another problem that has been identified is that the current offer is not suitable to smaller businesses, because of their cost and duration, the majority of users being mid-caps, and large enterprises.

492. Finally, there is a lack of mechanisms proactively promoting the adoption of best practices by SMEs. This is largely due to the highly specific nature of credit management, a theme that cannot be easily handled by the '*generalist*' staff of a typical chamber of commerce or business association, and the commercial nature of many suppliers of training. However, the experience of MACM shows that it is indeed possible to adopt a proactive approach, capable of reconciling the business orientation of the credit management profession with public policy objectives.

M. ANNEX 13: RATES OF STATUTORY INTERESTS

493. Rates established according to Art 2(6) of the LPD

Member State	1 January - 30 June 2023
AUSTRIA	11.08%
BELGIUM	10.50%
BULGARIA	10.00%
CROATIA	10.50%
CYPRUS	10.50%
CZECHIA	15.00%
DENMARK	9.90%
ESTONIA	10.50%
FINLAND	10.50%
FRANCE	12.50%
GERMANY	10.62%
GREECE	10.50%
HUNGARY	21.00%
IRELAND	10.50%
ITALY	10.50%
LATVIA	10.50%
LITHUANIA	10.50%
LUXEMBOURG	10.50%
MALTA	10.50%
NETHERLANDS	12.00%
POLAND (health sector)	14.75%
POLAND (other sectors)	16.75%
PORTUGAL	10.50%
ROMANIA	15.00%
SLOVAKIA	10.50%
SLOVENIA	10.50%
SPAIN	10.50%
SWEDEN	11.00%

N. ANNEX 14: OPTIONS DISCARDED AT AN EARLIER STAGE (IN DEPTH DESCRIPTION)

1. MANDATORY USE OF E-INVOICING IN PAYMENTS

494. With the adoption of proposal COM(2022) 701[236] amending the VAT Directive and introducing a more widespread use of e-invoicing, this point is now to be considered as part of the (dynamic) baseline scenario. In addition the legal base for COM (2022) 701 is Article 113 TFEU, whereas the legal base for this initiative is Article 114 TFEU, therefore there is also an issue of legal feasibility.

495. It should be emphasised that the proposal will use e-invoicing in commercial transactions as the basis for the introduction of a real-time and transaction-based reporting system to improve tax collection and fight tax fraud and tax avoidance. Further, the introduction of a reporting system based on e-invoicing aims to reduce businesses' administrative costs[237]. Its impact on payment behaviour must be regarded only as a possible, ancillary effect[238].

496. Some studies appear to suggest that e-invoicing has even had the effect of extending payment periods[239]. The Economisti Study 2022 concluded that in B2B transactions e-invoicing is potentially a facilitator of better payment behaviour but in itself it is unlikely to have a significant impact in changing or improving

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[236] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0701

[237] Economisti Study 2022 highlights that e-invoicing limits errors in the invoice and thus preventing possible payment disputes: " *According to Freedz, an e-invoicing platform "the reliability of the data limits errors and invoice rejections, and therefore the sources of disputes with your suppliers") as well as by Basware, a leading player in accounts payable automation and procure-to-pay solutions ("You'll also decrease the likelihood of time-consuming invoice disputes since automated invoice processing uses automatic data extraction to ultimately reduce the chances of manual entry errors*")

[238] Economisti Study 2022. In the Study refereferences are made to some dedicated studies carried out in France on htis matter 1) Ministère de l'Économie, des Finances et de la Relance, Rapport de la Direction Générale des Finances publiques - La TVA à l'ère du digital en France, Octobre 2020 (page 53). which clearly guards against excessive expectations regarding the effects of e-invoicing on payment behaviour ("*Or pour l'ensemble des acteurs rencontrés … le simple envoi dématérialisé des factures n'est pas de nature à diminuer mécaniquement la part des paiements excédant les délais légaux*.")

[239] O'Neill B, Late payment practices: is this the ticking time bomb of the UK Economy? An analysis into the payment practice data of UK large corporates, 28 January 2020, accessible at https://towardsdatascience.com/late-payment-practices-is-this-the-ticking-time-bomb-of-the-uk-economy-5b958e4dd109 . Published in early 2020 and based on the payment performance data declared by large companies under UK legislation, the study found that enterprises making use of e-invoicing had marginally longer payment times, with an average of 40 days, compared with 36 days for businesses not using e-invoices. At the same time, users of e-invoices were marginally more punctual in their payments to suppliers, with 28% of invoices paid late compared with 30% of late payments for enterprises not using e-invoices

that behaviour in absence of other factors, namely better enforcement[240]. As noted by Spanish stakeholders at the time of the passing of the national law introducing e-invoicing in commercial transactions 'La factura electrónica deja constancia del retraso, pero por sí sola no mejora los plazos'[241].

497. This conclusion is also confirmed by the evidence of the impact of e-invoicing in G2B payments at least in countries traditionally characterised by poor payment behaviour of their public authorities, such as Italy and Spain. In these Member States, the introduction of e-invoicing, in contracts where the public authority is a debtor, which is an obligation under Directive 2014/55/EU and whose roll-out was accelerated by the infringement procedures launched by the Commission[242], was instrumental to ascertain the magnitude of the amounts owed by public administrations, which in turn made it possible to monitor the situation and adopt corrective actions.

498. The results of the SME Panel consultation on the use of e-invoicing are as follows:

Table 13: Results of SME panel consultation on e-invoicing

7. Which of the following options best describes your experience with e-invoicing?	Answers	%
e-invoicing helps us to receive payments on time	291	31.0%
e-invoicing does not help us to receive payments on time	415	44.2%
We do not use e-invoicing	168	17.9%
Don't know	65	6.9%
Total	**939**	**100.0%**

2. A SYSTEM OF MANDATORY OFFSETTING OF DEBTS OWED TO THE STATE WITH CREDITS OWED BY THE STATE

499. The 2019 EP Resolution 'urged' the Commission and the Member States to consider mandatory forms of adequate compensation, such as offsetting as an additional measure to protect the liquidity of SMEs and prevent bankruptcies.

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[240] *"Overall, it can be concluded that in B2B transactions e-invoicing does contribute to create the conditions for prompt payments, but its role remains secondary, and the impact is likely to be small, if not supported by other accompanying measures and better enforcement of the rules."*

[241] "e-invoicing certifies the delay, but on its own it does not improve payment periods" in Otiniano Pulido C, Enmiendas a Crea y Crece: lo que piden los negocios, CincoDías, 18 Enero 2022, accessible at https://cincodias.elpais.com/cincodias/2022/01/17/companias/1642434771_076547.html

[242] The Commission opened an infringement procedure against Italy in 2014 and Spain in 2015 for payment delays of their public authorities. The procedures are still ongoing.

500. This measure would consist in offsetting the debts owed to 'the State' by a legal person or enterprise (in the form of, for example, local taxes, revenue, social contributions) with credits that the State owes to them (in the specific, unpaid debts).

501. In the consultations carried out in the context of this Impact Assessment, some stakeholders have also made reference to this specific measure[243].

502. There are several obstacles for this measure:

1) Legal competence/subsidiarity. Issues such as local taxation or direct taxation, are matters that do not fall within the powers conferred to the EU institutions by the Treaty. Also, in the area of social security, the general principle is that each Member States is free to design its own national security system[244].
2) Even speculating that the EU institutions might be empowered to take action in this area[245], there are complex technical aspects that would generate an inordinate administrative burden, and ultimately would run counter the very objective of ensuring prompt payment
   a) Firstly, the 'synallagmatic' relation, that defines the type of relations covered by LPD ('commercial transactions'), is not present any longer. Offsetting would entail in fact the introduction, in the relation debtor-creditor, of new parties (other local authorities for example), who would have their revenue reduced without the benefit of receiving goods or services in exchange.
   b) Secondly, the implementation of such system would be extremely difficult in Member States with a federal administration, and would possibly raise constitutional problems
   c) Thirdly, the offsetting might actually disincentive prompt payment by the authorities. They would be more prone to 'hold on' to liquidity as much as possible, since they could be subject to offset debts from other authorities.
   d) Fourthly, tax payers would delay payment of their taxes in the expectation of a future offsetting, with disastrous consequences on the revenue.
   e) Finally the costs for public finance that would derive from the management of the massive flow of data as well as from the need for an adequate monitoring, certification and control system cannot be ignored, given the vast number of public administrations involved and the variety of types of debt involved

3) The subject was discussed with the Member States representatives in the context of the Late Payment Expert Group meeting, The national representatives expressed strong reservations against this option.

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243 Call for Evidence Feedbacks F3389200, F3389163

244 https://www.europarl.europa.eu/factsheets/en/sheet/55/social-security-cover-in-other-eu-member-states

245 By, for example, invoking Article 352 TFEU, which requires nevertheless unanimity in the Council

3. MANDATORY REPORTING ON PAYMENT PRACTICES FOR BUSINESSES AND PUBLIC AUTHORITIES

503. The 2019 EP Resolution explicitly states that[246] 'the introduction of enhanced transparency concerning payment behaviour could discourage late payment; believes that access to this information can act as an incentive for public entities and businesses to improve their payment practices and uphold their monetary obligations; encourages the Member States to consider different possible forms of mandatory publication of information on payment behaviour, such as databases or registers, for both the private and public sectors'.

504. Mandatory reporting obligations on payment performance and practices for businesses and public authorities have been in place for quite a number of years in the UK. Firstly, UK public authorities are required to publish their payment performance against an identified benchmark (90% of undisputed and valid invoices from SMEs within 5 days and 100% of all undisputed and valid invoices to be paid within 30 days) [247]. Secondly, large businesses are required, since 2017[248], to publish their payment practices, thirdly, since 2019 businesses bidding for government contracts in excess of £5 million a year are required to provide confirmation that they have systems in place to ensure that organisations in their supply chain are paid on time. If these requirements are not demonstrated, contracting authorities may exclude the organisation from bidding[249].

505. In Poland, as from 2023, large businesses (i.e. those exceeding 50 million EUR annual income) are obliged to report information on their payment terms. These reports are publicly available[250].

506. The SME Panel carried out for the purposes of this impact assessment report indicated that 71,6% of respondents consider mandatory reporting for businesses on their payment performance as very useful or useful.

507. Despite the above, the option of introducing reporting obligations for businesses and public authorities has been discarded on the grounds of political feasibility. On 16 March 2023, the Commission presented its strategy to boost long-term competitiveness. One of the key pillars is the creation of a regulatory framework suitable for competitiveness and growth, which includes a target of 25%

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[246] EP Resolution 2019, point 4.

[247] https://www.gov.uk/guidance/prompt-payment-policy

[248] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831507/payment-practices-performance-reporting-requirements.pdf

[249] https://www.gov.uk/government/publications/procurement-policy-note-0821/procurement-policy-note-0821-taking-account-of-a-bidders-approach-to-payment-in-the-procurement-of-major-government-contracts

250 https://www.biznes.gov.pl/pl/opisy-procedur/-/proc/125

reduction of reporting requirements on businesses introduced by EU legislation[251].

508. Disclosures on payment practices are laid down in Corporate Sustainability Reporting Directive[252] (CSRD).

509. According to the CSRD, all large companies and all companies with securities listed on EU regular markets[253], as well as listed SMEs (following a three-year lead-in period), except for micro-enterprises, are required to disclose sustainability information. This helps investors, civil society organisations, consumers, and other stakeholders to evaluate the sustainability performance of companies, subject to the criteria or perspective of 'double materiality'.

3.1. DOUBLE MATERIALITY

510. CSRD requires undertakings to report both on the impacts of the activities of the undertaking on people and the environment (impact materiality), and on how sustainability matters affect the undertaking (financial materiality). More specifically:

1) A sustainability matter is material from a financial perspective if it triggers or may trigger material financial effects on the undertaking (when it generates risks or opportunities that have an influence (or are likely to have an influence) on the undertaking's cash flows, performance, position, development, cost of capital or access to finance in the short, medium- and long-term time horizons.).
2) A sustainability matter is material from an impact perspective when it pertains to the undertaking's material actual or potential, positive or negative impacts on people or the environment over the short-, medium- and long-term time horizons. A material sustainability matter from an impact perspective includes impacts caused or contributed to by the undertaking and impacts which are directly linked to the undertaking's operations, products, and services through its business relationships.

511. Undertakings should consider each materiality perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective.

512. If the undertaking concludes that a topic is not material and therefore it omits all the Disclosure Requirements in a topical ESRS, it shall briefly explain the conclusions of its materiality assessment for the topic.

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[251] https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1668

[252] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022L2464

[253] The disclosure requirements of the CSRD proposal would not apply to SMEs with transferable securities listed on SME growth markets or multilateral trading facilities.

513. Companies subject to the CSRD will have to report according to European Sustainability Reporting Standards (ESRS). The draft standards are developed by the European Financial Reporting Advisory Group (EFRAG)[254]. The standards will be tailored to EU policies, while building on and contributing to international standardisation initiatives. The Commission will adopt standards through delegated acts. A first set of standards will be adopted by 30 June 2023, based on the draft standards published by EFRAG in November 2022[255]. Sector-specific standards as well as simplified standards for listed SMEs will have to be adopted by June 2024. Standards will come into force no earlier than 4 months after their adoption and will have to be reviewed every 3 years.

3.2. PAYMENT PRACTICES' DISCLOSURE

514. CSRD recognises that 'information about the management of the undertaking and the quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, helps users to understand an undertaking's risks and impacts related to sustainability matters. Information about relationships with suppliers includes payment practices relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs referred to in Directive 2011/7/EU of the European Parliament and of the Council' and that 'Increasing the amount of information about payment practices should empower other undertakings to identify prompt and reliable payers, detect unfair payment practices, access information about the businesses they trade with, and negotiate fairer payment terms'.

515. Therefore, payment practices have been singled out as a specific category of information that has to be included in the governance factors of the sustainability reporting standards. 'The management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices, especially with regard to late payment to small and medium-sized undertakings'.

EFRAG draft standard ESRS G1 Business conduct, Disclosure Requirement G1-6

Draft ESRS G1 Business Conduct covers all governance-related disclosures, including payment practices. ESRS G1 has to be read in conjunction with ESRS 1 General Principles and ESRS General requirements. In ESRS 2, EFRAG proposes that some governance disclosures included in this ESRS G1 are subject to materiality assessment (i.e. they have to be disclosed only if material for the company in question –the double materiality principle applies-), namely the payment practices disclosure.

'31. The undertaking shall provide information on its payment practices to support transparency about these practices given the importance of timely cash flows to business partners, especially with respect to late payments to small and medium enterprises (SMEs).

[254] https://www.efrag.org/
[255] First Set of draft ESRS - EFRAG

32. The objective of this Disclosure Requirement is to provide insights on the contractual payment terms and the average actual payment terms especially as to how these impact SMEs and specifically with respect to late payments to SMEs.

33. The disclosure under paragraph 31 shall include:

(a) the average time the undertaking takes to pay an invoice from the date when the contractual or legal term of payment starts to be calculated, in number of days;

(b) a description of the undertaking's standard payment terms in number of days by main category of suppliers and the percentage of its payments aligned with these standard terms;

(c) the number of legal proceedings (currently outstanding) during the reporting period for late payments; and

(d) complementary information necessary to provide sufficient context.

AR 15. In some cases, the undertaking's standard contractual payment terms may differ significantly depending on country or type of supplier. In such cases, information about the standard terms per main categories of suppliers or country or geographical region could be examples of additional contextual information to explain the disclosures in paragraph 33 (b).

AR 16. An example of what the description of standard contract term disclosures in paragraph 33 (b) could look like:

ABC's standard contract payment terms are payment on invoice for wholesalers which encompass approximately 80% of its annual invoices. It pays for services received within 30 days after receipt of the invoice which are about 5% of its annual invoices. The remainder of its invoices are paid within 60 days of receipt except for those in country X which in accordance with the marketplace standards are paid within 90 days of receipt.'

516. At the moment of the submission of this Impact assessment, discussions are ongoing within the Commission services and with EFRAG to address the content of these draft standards, an in particular elements which are currently not addressed (e.g. definition how double materiality will affect the actual reporting (see above), how payment terms are negotiated, information about percentage of payments within the standard contractual payment terms, information about percentage of payment made later than the contractual payment term, information about interests and compensation paid, alternative dispute resolution procedures offered to settle payment disputes).

4. ENSURING SYNERGIES WITH PUBLIC PROCUREMENT PROCEDURES BASED ON ARTICLE 57(4) (G)

517. The 2019 EP Resolution pleaded for better synergies between public procurement framework and late payment objectives. In particular, the Resolution stressed 'the importance of public procurement as a means of improving the functioning of the single market; calls for consideration of enhanced synergies between the Late Payment Directive and public procurement rules, in particular the possibility for contracting authorities to take action to enable the exclusion of non-performing contractors from future procurements if subcontractors are not paid in time by the

main contractor when it is required to do so' with explicit reference to Article 57 (4) (g) of Directive 2014/24/EU.

518. This option has been discarded on the grounds of legal and technical feasibility. The issue was indeed assessed in the Economisti Study 2022, which presented the complexity of this solution, and its several legal uncertainties. The information below is extracted from the Economisti Study.

519. Article 57(4)(g) of Directive 2014/24/EU provides an instrument for public authorities to sanction economic operators, by excluding them from participating in the tendering procedure, when the economic operators have shown to be deficient in performing substantive requirements under prior public contracts. As indicated above, with a view to enhancing synergies between LPD and public procurement rules,

Article 57(4)(g) Directive 2014/24/EU

Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:
[…]
g) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;

520. Conditions for Applicability. The application of the exclusion ground under Article 57(4)(g) is subject to many conditions, which makes it in practice an unlikely tool for combating late payment in public procurement. Based on the Court of Justice of the European Union's (CJEU) interpretation of Article 57(4)(g),256 a public authority can only exclude an economic operator from a public procurement procedure:

1) if that economic operator was excluded in a previous tendering procedure;
2) on the grounds that the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under that prior contract which led to early termination of that prior contract; and
3) after that, the subsequent public authority, after conducting its own evaluation of the integrity and reliability of the economic operator, considers that such deficiencies entail breaking the relationship of trust with the economic operator in question.

521. To use the exclusion ground set out in Article 57(4)(g) as a means to combat late payment, it will thus be necessary to become a practice or a standard that public

[256] Case C-267/18 of 3 October 2019, Delta, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0267

authorities stipulate, in the contracts with economic operators, conditions on direct and prompt payment of subcontractors, so that payment conditions are considered as substantive requirements.

522. Nevertheless, even when the practice of making payment conditions a substantive requirement is introduced, the burdens to exclude a contractor because of non-compliance with payment conditions are very high. As indicated above, non-compliance has to be of such level that it can be considered as a 'significant or persistent deficiency', which can be considered by a subsequent public authority as entailing the breaking of the relationship of trust with the economic operator in question.

523. The above analysis is broadly supported by the views and evidence provided by national authorities participating in the Targeted Consultation. Indeed, none of the members of the Expert Group on Public Procurement provided any evidence of cases of exclusion happening on those grounds. There are however some differences in the positions voiced by Member States.

524. Some Member States (Austria, Bulgaria, Malta, Poland, Portugal, Romania) dispute the very idea that Article 57(4)(g) could be interpreted as to exclude bad payers. This is typically the case of countries that emphasise the distinction between 'public' nature of contracts between contracting authorities and main contractors and 'civil/commercial law' nature of contracts between main contractors and their subcontractors/suppliers. In some cases, the arguments offered are reminiscent of those put forward to motivate the non-adoption of the clause on the direct payment to subcontractors.

525. Other countries do not exclude a priori the possibility of relying on Article 57 (4) (g), but they emphasise the need to meet the necessary prior conditions and/or highlight the heavy burden of proof involved. However, also in these cases no evidence was provided regarding the actual use of the provision.

526. In 3 Member States (Italy, Hungary, and Spain), as well as in the UK, the exclusion of bad payers from public procurement is indeed envisaged. However, this is not linked to Article 57(4)(g) but is based on specific provisions adopted by national authorities.

527. Finally, in Croatia and France, the issue of excluding bad payers based on Article 57(4)(g) is deemed to be immaterial given the widespread recourse to direct payment to subcontractors. In Croatia, national authorities consider that '[s]ince there is an obligation for contracting authority to pay directly to subcontractors … this reason for the exclusion of the economic operator for non-payment or late payment to the subcontractor is not applicable.' Likewise, French authorities noted that 'To the best of our knowledge this provision has never been interpreted as to allow the exclusion of bidders that have not respected the payment terms with their subcontractors. However, the question is unlikely to arise as, as said above, in most French public contracts, subcontractors receive direct payment from the contracting authority.'

5. IN G2B CONTRACTS, ACCELERATE PAYMENTS FOR LOW VALUE CONTRACTS NOT REQUIRING A VERIFICATION PROCEDURE

528. In Ireland public authorities commit to pay their suppliers in 15 days (see Annex 23). On this basis, it was initially considered to explore and assess an option to accelerate payments in some specific public contracts, i.e. those conferred on the basis of direct purchasing and that are most likely awarded to micro or small contractors. The objective was to speed up injection of liquidity for these smaller operators. The focus was also on those contracts not requiring a verification procedure, to simplify the effectiveness of this measure. However, this option immediately encountered the following legal difficulties:

1) It would require intervention of the EU in an area that is not currently regulated by the EU Public Procurement Directives. To do so, it should be demonstrated the cross-border damage to justify the need of EU intervention. At the moment the Commission does not dispose of such evidence.
2) It would create inconsistencies with the implementation of the UTP Directive in the agrifood sector, for example in those low value contracts consisting in the supply of food (e.g. a catering contract).

O. ANNEX 15: SME TEST

1. MAIN CONCLUSIONS OF THE SME TEST

529. SMEs are within the scope of this legislative initiative and are also the intended main beneficiaries of this revision. This initiative is considered highly relevant for SMEs, as it affects all EU SMEs.

530. Looking at companies as creditors, companies from all size classes report regular and/or occasional occurrences of late payments but getting paid on time affects SMEs disproportionately compared to larger companies. Late payments are an obstacle to growth especially in micro-enterprises, also in terms of employment. SMEs in the EU (35%) are more likely than SMEs in the US (29%), Canada (24%) or Japan (8%) to say that payment delays are among the biggest problems their enterprise faces.

531. The recent problems (e.g. COVID-19, rising energy prices, inflation etc.) had a negative impact on the payment behaviour of the clients for almost half of SMEs. Currently, only 3% of SMEs have all invoices or turnover paid on time and a higher percentage of SMEs have more than 50% of their invoices (7%) or turnover (9%) paid late.

532. In the SME panel, 72% of SMEs are not comfortable when clients require to agree to accept payment 60 days or more from the date of the invoice, with no significant differences by size of vendor. 44% of SMEs asks to be paid within 30

days and 42% within 60 days, with marked differences by size of company, as many more smaller companies[257] ask to be paid within 30 days.

533. Regarding unfair payment practices, around 1 out of 4 SMEs is always or often confronted with "clients that modify retroactively key contractual provisions in order to postpone the payment", with "clients deliberately delaying the acceptance of services/goods" and with "clients that pay with financial products so that in order to claim payment within the agreed contractual terms, they have to pay fees and/or discounts". Paying interests and the EUR 40 compensation is never used in 80% of cases.

534. 5-10% of total administrative work for an SME, equal to 6-10 man-days (Plum Consulting 2017), is spent on average chasing late payments. SME panel reveals that to tackle late payments, one third of SMEs spent more than 100 hours and one third of SMEs more than EUR 1 000 per year in informal actions, while 42% of SMEs spent more than 20 hours (with 17% spending more than 100 hours) and 43% spent more than EUR 1000 in formal actions. On the remedies side, the majority of SMEs solve late payment problems directly with the other business.

535. Looking at companies as debtors, the payment behaviour of large companies significantly differs from that of smaller enterprises, as the larger the company is, the worse payment performance it is likely to exhibit.

536. The most used way to define payment conditions is negotiation on a case-by-case basis (41%), but -especially when there is a difference in size (also between SMEs)- SMEs either impose (30%) or are imposed (17%) payment terms to/from clients.

537. For the vast majority of SMEs, late payment affects the well-being of entrepreneurs, generating stress and anxiety.

1.1. PREFERRED POLICY OPTION

538. The preferred option (PO1A, 2A, 3B) is supported by SMEs in the SME panel and through the public consultation. Overall, all sizes of SMEs can benefit from the preferred option, even though microenterprises should be less affected by the costs and obtain more benefits compared to other size classes (for instance, while capping is strongly supported by SMEs, the 30 days capping is more favoured by microenterprises). As microenterprises are more affected by late payments than other sizes of SMEs, those expected benefits are more likely to translate into better performance of companies with 0-9 employees.

[257] 83% of self-employed and 50% of micros ask to be paid within 30 days (around 30% for small and medium), 50% of small and medium-sized companies ask to be paid within 60 days (38% for micros and 18% for self-employed).

1.2. POLICY OPTION 1 - FIX THE FRAMEWORK CONDITIONS TO PREVENT LATE PAYMENTS

539. Capping payment terms (and therefore the deletion of the concept of "grossly unfair") is broadly supported by the SME community and would likely benefit at least 3 out of 4 SMEs of all sizes. Around 41% of SMEs on average would particularly benefit from capping at 30 days, with broader coverage for micros (50%), while 35% of SMEs on average would particularly benefit from capping at 60 days, with broader coverage for small and medium-sized companies (43%).

540. Capping of the verification / acceptance procedure at 30 days would likely benefit between 25% and 66% of SMEs, with broader coverage for small and medium-sized companies.

541. Access to credit management and financial literacy trainings can provide a direct benefit to SMEs and it has found near-universal support in the stakeholder consultation.

1.3. POLICY OPTION 2 - FOSTER TIMELY PAYMENT

542. While making payment of interests and compensation mandatory will benefit creditors of all sizes, without changes in payment behaviour its costs could affect more the companies that are more likely to be late payers, therefore large, but also small and medium companies.

543. The appointment of enforcement bodies empowered to issue administrative sanctions and publish the name of offenders is the most favoured among all options. This option would mostly benefit companies that are more frequently paid late, therefore SMEs in general. Given that the likelihood of paying late increases with the size of the company, especially micros should be less affected by this option in terms of costs (fines). Would enforcement bodies be responsible only for monitoring implementation, benefits would be reduced for businesses that are paid late as their deterrent effect is lower, but will also lower additional costs for late payers (mainly large companies and small and medium companies).

544. Ensuring that subcontractors in public tenders are paid promptly is supported by the SME community. Contractors of above EU thresholds works contracts will have to show that they have paid their own subcontractors on time. Those administrative costs may likely be born only by a limited quota of SMEs winning above-EU threshold works contracts; the option would help making sure that around ¼ of the aggregated value, which goes indirectly to SMEs, is paid promptly.

1.4. POLICY OPTION 3 - EMPOWERING SMES AND ENSURING MORE FAIRNESS IN BUSINESS TRANSACTIONS

545. This option targets only those payments that are already late and focuses on helping the creditors recover their debts. SMEs usually avoid going to court, for lack of financial means or fear of jeopardising business relationships. The main

benefits to businesses come from reduced enforcement costs to chase late payments. The costs to businesses are relatively limited, as all parties benefit from mediation services and clear definitions of unfair practices; even debtors will have reduced costs if cases go to a mediation system rather than to court.

546. Having a National Payment Envoy would very likely benefit mainly SMEs, but it is less supported by bigger SMEs and when large companies are those that mostly pay late.

547. Introducing national mediation systems would more directly lead to monetary benefits for those businesses that currently rely on court litigation, and on access to dispute resolution for those businesses that currently avoid going to courts to recover unpaid debt. Currently, relatively few SMEs use mediation (7%) or arbitration (3%) services, but this is also because mediation services are not widespread.

548. Should Member States specifically address the question of unfair contractual terms and practices through their applicable national law, time and cost saving for the creditor would translate directly into a cost for the debtor who has to prove the clause or practice is not unfair.

2. STEP 1/4: IDENTIFICATION OF AFFECTED BUSINESSES

549. SMEs are within the scope of this legislative initiative and are also the intended main beneficiaries of this revision.

2.1. LATE PAYMENTS IN SMES VS LARGE COMPANIES

550. Companies from all size classes report regular and/or occasional occurrences of late payments as creditors[258]. In some studies, SMEs and large companies also report comparable levels of payment terms and payment delays.

551. On the other hand, SMEs have more limited access to liquidity than public authorities or large businesses and getting paid on time affects SMEs disproportionately compared to larger companies:

1) Late payments are a main challenge for 22% of large companies compared to 35% of SMEs in the EU.[259]
2) Late payments' consequences are more widespread among SMEs compared with large companies[260]:
   a) payment to suppliers (32% SMEs vs 20% large companies)

[258] 2022 SAFE survey report "Although the differences are relatively small, problems with late payments do increase with company size, ranging from 40% for micros to 48% for large enterprises." https://single-market-economy.ec.europa.eu/access-finance/data-and-surveys-safe_en
[259] 2020 Eurobarometer survey https://europa.eu/eurobarometer/surveys/detail/2244
[260] 2022 SAFE survey report https://single-market-economy.ec.europa.eu/access-finance/data-and-surveys-safe_en

b) investments or new recruitment (22% SMEs vs 10% large companies)
c) production or operations (21% SMEs vs 10% large companies)
d) repayment of loans / need for additional financing (15% SMEs vs 10% large companies)

3) A 2009 project in Poland found medium-sized and large companies much more effective in managing their costs entailed by late payments and that they can reduce them to less than 4% of total costs, with large companies reaching on average only 3.3%, i.e. by over 70% less than in micro-businesses. In general, micro companies pay the highest cost of payment delays of their business partners, which is why they are the most affected by the problem. Even in small companies with 10–49 members of staff, costs of late payments are much lower and they amount to ca. 5.5% of total costs, i.e., by ca. 1/3 less than in micro companies (standing at 8% of their total costs)[261],[262].

552. Payment behaviour of large companies significantly differs from that of smaller enterprises, as the larger the company is, the worse payment performance it is likely to exhibit:

1) On average, 51% of micro-enterprises pay their invoices by the due date, while the same is true for 48% of small enterprises, 42% of medium-sized enterprises and only 35% of large enterprises. [263]
2) A 2021[264] study, covering 36 countries around the world, shows that microenterprises, and in some markets small companies, show the best payment behaviour. The percentage of punctual payers decreases as business size rises.
3) The SME panel confirms that micro-businesses are overall the least likely to pay late (26%). It also finds that[265]:

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[261] "Under the *Portfolio of accounts receivable of Polish enterprises study* the authors examined costs born by enterprises as a consequence of late payments. Within the framework of the study, costs of late payments to enterprises include: (1) losses resulting from non-payment, (2) costs of interest, (3) costs of debt monitoring and collection, (4) costs of extensive legal procedures designed to reduce the exposure to payment delays, (5) costs of withdrawing from some highly risky markets." Payment delays: their reasons, scale and consequences, Waldemar Rogowski 2017 ((PDF) Payment Delays: Their Reasons, Scale and Consequences (researchgate.net))

[262] "The level of costs of small companies present in the study may be slightly overestimated as the study is based on companies using the services of the National Debt Register of Biuro Informacji Gospodarczej SA. While large companies automatically use this service, in the case of small companies it is possible that using the services of economic information bureaus occurs as a consequence of negative experiences with contractors, and often only companies that have encountered problems with debt recovery on a larger scale explore the customer assessment path in this way" https://for.org.pl/pliki/artykuly/2628_zatoryraport.pdf

[263] D&B 2022 Payment Study https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/

[264] Global Trade Credit Payments Study - CRIBIS & Dun & Bradstreet (dnb.co.uk)

[265] Figures are influenced by the average composition of the clientele of different sizes of companies (for instance, self-employed might have less frequently contracts with large companies than with micros) and by the relative size of creditor and debtor.

a) Small and medium-sized companies are those less likely to find that micro-businesses most frequently pay late (14 and 15%), while 43% of self-employed are the most likely to experience delays from micros;

b) Small and medium-sized companies are those most likely to find small and medium-sized companies (52-48%) and large companies (34-37%) as late payers.

2.2. SMEs SETTING PAYMENT TERMS

553. In the SME panel, a similar percentage of SMEs asks to be paid within 30 days (44%) or 60 days (42%), with marked differences by size of company, as many more smaller companies[266] ask to be paid within 30 days. 72% of SMEs are not comfortable when clients require to agree to accept payment 60 days or more from the date of the invoice, with no significant differences by size of vendor.

554. Regarding current practices in setting payment conditions, the SME panel finds that:

1) Overall, the way most used to define payment conditions is negotiation on a case-by-case basis (41%), with some exceptions for self-employed and medium-sized companies (especially those that find micros are more frequently late payers).
2) 30% impose specific payment conditions to the client. This is more frequent when the client is smaller than the vendor; the bigger the difference in size with clients that are found to be more frequently bad payers, the more companies dictate their own conditions. The highest effect is seen with medium sized companies imposing their payment conditions to micros when those are found to be more frequently late payers (68%).
3) 17% of SMEs report that payment conditions are dictated by their clients. This is more frequent when the client is bigger than the vendor; the bigger the client is and the more frequently it is found to be a late payer, the more they are found to dictate payment conditions. The highest effect is found for medium sized companies having payment conditions dictated by their large clients when those are found to be more frequently late payers (28%).
4) The use of standard payment conditions is a limited practice (12% of SMEs).

2.3. MAGNITUDE OF LATE PAYMENT PROBLEMS IN SMEs

555. Late payments are the second most critical barrier for growth and for the twin transition of SMEs (after administrative burden), with no statistically significant differences between start-ups and scale-ups (whether or not they are SMEs).[267]

556. Only 3% of SMEs have all invoices or turnover paid on time and a higher percentage of SMEs have more than 50% of their invoices (7%) or turnover (9%)

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[266] 83% of self-employed and 50% of micros ask to be paid within 30 days (around 30% for small and medium), 50% of small and medium-sized companies ask to be paid within 60 days (38% for micros and 18% for self-employed).

[267] 2020 Eurobarometer survey https://europa.eu/eurobarometer/surveys/detail/2244

paid late. The bulk of SMEs have 0-10% of their invoices (45%) or turnover (42%) paid late. Another important quota of SMEs have 10-25% of their invoices (30%) or turnover (27%) paid late. The rest of SMEs have 25-50% of their invoices (13%) or turnover (15%) paid late.[268]

557. Payments overdue by more than 60 days are considered the most dangerous for the regular performance of enterprises.[269]

558. The recent problems (e.g. COVID-19, rising energy prices, inflation etc.) had a negative impact on the payment behaviour of the clients. 47% of participants noticed a deterioration (50% of small and 58% of medium-sized companies) while 40% did not notice any change (44% of micros).[270]

2.4. WIDER IMPACT OF LATE PAYMENTS ON SMES

559. Late payments affects[271]:

1) the well being, generate stress and anxiety for 92% of respondents
2) the survival of their business (80%)
3) their trust in the market (79%)
4) the recruiting of new staff (45%) and the laying off of staff (18%)
5) doing more cross-border business in the EU Single Market (34%)

560. Micros (48%) and small companies (49%) are more affected in terms of recruiting new staff compared to self-employed (30%) and medium-sized companies (34%).

561. Dealing with late payments generates costs in terms of hours spent and monetary costs for informal actions (e.g. sending reminders, costs of registered mail, post stamps, making phone calls) and formal steps (e.g. recruiting a lawyer, costs of the lawyer, costs of court proceedings, cost of the bailiff, looking for a mediator, cost of a mediator attending court proceedings, looking for a debt collection company, costs of the debt collection company):

1) In terms of informal actions, the SME panel finds that one third of SMEs spent between 20 and 99 hours and another third even more than 100 hours, and one third of SMEs spent between 100 and EUR 999 for informal costs and another third more than EUR 1000 per year.

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[268] SME panel report
[269] Payment delays: their reasons, scale and consequences, Waldemar Rogowski 2017 ((PDF) Payment Delays: Their Reasons, Scale and Consequences (researchgate.net))
[270] SME panel report
[271] SME panel report

2) In terms of formal actions, the SME panel finds that 22% SMEs spent between 1 and 19 hours, 25% between 20 and 99 hours and 17% more than 100 hours, and 16% between 100 and EUR 999 for informal costs and 43% spent more than EUR 1000.

2.5. UNFAIR PAYMENT PRACTICES EXPERIENCED BY SMEs[272]

562. The LPD introduced -but did not impose- the fairness practice of paying *interests and the EUR 40 compensation*. This practice is never used in the 80% of cases and rarely in 8% of cases. Interest and compensation are more frequently never paid when the late payer is most frequently a large (87% compared to 70% when the late payer is most frequently a micro-company).

563. Around 1 out of 4 SMEs is always or often confronted with the following unfair payment practices:

1) Clients modify retroactively key contractual provisions (e.g. on price, quantity or quality of goods/services, delivery times, etc.) in order to postpone the payment (never happens for 23% of SMEs).
2) Clients deliberately delay the acceptance of services provided and/or of goods delivered (never happens for 25% of SMEs).
3) Clients pay with financial products (e.g reverse factoring, "confirming") so that in order to claim payment within the agreed contractual terms, they have to pay fees and/or discounts (never happens for 43% of SMEs).

564. Deliberately contest the invoice is less used: 15% of SMEs experience it always or often and respectively 33% and 43% of respondents never or rarely incurred in these practices.

565. All these unfair payment practices are experienced by a higher quota of SMEs that find large companies to be most frequently late payers. When micro-enterprises are mostly late payers, it is much more likely that SMEs have never experienced those practices.

2.6. SMEs' PAYMENT DELAYS DISPUTES[273]

566. Only 30% of SMEs did not have disputes related to late payment, while 8% has often disputes and 58% rarely. There is a clear link with the size of the company, as the bigger the SMEs the more likely it is to have had disputes.

567. On the remedies side, the most used one by far was the direct solution with the other business. 60% of respondents used this solution normally and 16% at least once; it is considered at the same time cheaper (60% of SMEs) and faster (54% of SMEs).

568. The other remedies are less used, especially by smaller SMEs:

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[272] SME panel report
[273] SME panel report

1) court proceedings was never used by 38% of respondents.
2) mediation was never used by 52% of SMEs.
3) arbitration was never used by 67% of SMEs.

569. When asked about the last time the SME tried to resolve a late payment issue, only 7% of SMEs replied that they preferred not to take any action at all, while 47% solved the issue directly with the client and 18% took the matter to court.

2.7. Relationship between e-invoicing and late payment in SMEs

570. The SME panel finds that, for all size classes, there are more companies that find e-invoicing not helpful (44% on average) rather than helpful (31%). This is especially the case for micros (48% vs 29%). 18% of SME respondents do not use e-invoicing (26% of self-employed, 16% of micros and 19% of small companies).

2.8. A closer look at micros

571. Late payments are more likely to be a critical barrier for companies with less employees and with lower turnover.[274] Late payments are an obstacle to growth especially in micro-enterprises. [275]

572. The SME panel tells us that micros are the least likely to pay late compared to other SMEs and, when they are mostly found late payers, they are most likely to never use unfair payment practices.

573. Focusing on companies that have 1-9 employees, 82% of micros are never automatically paid the interest and compensation and, when they are mostly found late payers, 15% of their SME clients are often or rarely paid interest and compensation (higher than other size-classes of SMEs). Only 3% of SMEs have invoices always paid on time. A considerable quota of micros have more than 25% of their invoices (21%) and their turnover (26%) paid late.

574. 36% of micros have never had disputes with their late-payers client and 47% have never used courts proceedings. The last time they tried to resolve a dispute, 44% solved the issue with the other business, 14% took the matter to court, 10% preferred not to take any action at all and 10% used mediation.

575. 48% of micros agree that late payments prevent them from recruiting staff and 20% that they had to lay off staff because of late payments (the highest combined effect compared to other sizes of SMEs). 82% of micros find that late payments affect the survival of their business and 93% that it affects their well-being, generating stress and anxiety.

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[274] 2020 Eurobarometer survey https://europa.eu/eurobarometer/surveys/detail/2244

[275] Payment delays: their reasons, scale and consequences, Waldemar Rogowski 2017 ((PDF) Payment Delays: Their Reasons, Scale and Consequences (researchgate.net))

2.9. LATE PAYMENT INTERNATIONAL ASPECTS

576. SMEs in Türkiye (52%) are those more likely to find payment delays as a challenge. SMEs in the EU (35%) are more likely than SMEs in the US (29%), Canada (24%) or Japan (8%) to say that payment delays are among the biggest problems their enterprise faces. [276]

577. SME exporters are more likely to have experienced problems due to late payment than non-exporters (49-40%)[277].

578. In the context of cross-border retail payments, B2B payments by small and medium-sized enterprises (SMEs) are smaller and less frequent compared to large payments by multinational corporations[278]. SMEs experience difficulties even for transactions between more developed regions (e.g. Europe and North America), and further obstacles arise in connection with emerging market economies (EMEs), lower-volume "corridors" (i.e. which countries and currencies a payment can be made from and to) and new payees.

579. In developed countries, on average, firms with fewer than 250 employees account for 78% of exporters but only 34% of exports; trade flows of micro firms and SMEs are heavily tilted toward services (accounting for 68% of total exports and 83% per cent of total imports). A WTO review of main obstacles to international trade for SMEs finds poor access to finance and slow payment mechanisms to be one of the four main obstacles[279].

580. This initiative is considered highly relevant for SMEs, as it affects all EU SMEs.

3. STEP 2/4: CONSULTATION OF SME STAKEHOLDERS

3.1. PUBLIC CONSULTATION

Policy option 1: Prevent late payments

581. The results of the PC show that 37% of respondents think that the payments terms should be capped for all B2B transactions without exceptions, and more specifically at 30 days (27%) and 60 days (9%), with no significant differences among companies and business organisations. 29% of the respondents, mostly business association (19) and a minority of companies (only 8), think that the payments terms should remain unchanged. Only 9% (10, business associations only) think that they should be capped at 30 (6%) or 60 days (2,6%) for payments from large companies to SMEs only.

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[276] 2020 Eurobarometer survey https://europa.eu/eurobarometer/surveys/detail/2244

[277] 2022 SAFE survey report https://single-market-economy.ec.europa.eu/access-finance/data-and-surveys-safe_en

[278] Bank for international settlements 2018 https://www.bis.org/cpmi/publ/d173.pdf

[279] World Trade Report 2016 https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf

582. The other consultation activities (feedback to the call for evidence, position papers and bilateral meetings) showed that there is a significant majority supporting the capping and the abolition of the concept of "grossly unfair". They were mostly business associations representing in particular SMEs (for example SMEunited and ESBA) and companies (especially SMEs) but also some public authorities and citizens. Generally, they support a limit of 30 days or less for payment terms B2B transactions. Some stakeholders -despite favouring a general capping- also favour certain level of flexibility when it comes to certain specific sectors or to allow an agreement between the creditor and the debtor under certain conditions. Most of them agree for an extra 30 days (60 days total), although some push for more days by claiming for respect to the "freedom of contract" principle between its participants. Only few, among which national business associations or similar bodies (for example, AT and DK chambers, Confcommercio from IT), are against establishing limits to payments of invoices.

583. Overall, the stakeholders support the proposal to provide training on credit management and financial literacy. They were mostly business associations (for example CECOP and DK chamber of commerce).

Policy option 2: Foster timely payments

584. Companies in the PC state that normally the interests are rarely (39%) or even never (36%) requested. The situation is even worst for the flat fee compensation, where (25%) rarely do it and the majority (57%) never do it. The companies participating to the PC have mixed opinions on the adequacy of the interests and the compensation. The large majority (61%) agrees that the interest on late payment and the flat fee compensation of a minimum of EUR 40 per invoice should be applied automatically, as soon as the debtor is late with the payment.

585. In the PC 67 respondents out of 117 (no differences between business organisations and companies) agreed on the proposal that public authorities should put in place mechanisms to verify that main contractors are complying with the rules on prompt payment when paying subcontractors, in particular when a subcontractor is an SME.

586. The large majority of stakeholders participating to the other consultation activities supported the proposal to make the payment of interests automatic. They were mostly business associations, companies (especially SMEs which strongly support this proposal) and some public authorities. They support a system of penalties, agree on adapting the flat fee compensation and that Member States should set up enforcement bodies. Finally they think that contracting authorities should ensure that subcontractors in public tenders are paid on time. This is supported by some Spanish business organisations and ESBA. ESBA proposes that 'it should become a standard clause in public tendered contracts that the company that is awarded the public contract must pay their sub-contractors on the same terms that they are to be paid under the contract or penalties will apply'.

587. 93% of the companies participating to the PC consider very useful/useful the proposal that prompt payment should be an additional criterion when awarding public funding and 89 that public procurement procedures should include timely payment of suppliers as a criterion. 71% consider very useful/useful that the European Commission lay down minimum common criteria on prompt payment codes.

Policy option 3: Better balance between large and small operators, to ensure fair payment conditions and empower SMEs:

588. All the proposals of this option are in general supported by the stakeholders participating to the other consultation activities, in particular by business associations. They think that Member States should appoint a responsible authority to monitor compliance and intervene at the request of small businesses or their organisations and, if necessary, impose sanctions for non-compliance (SMEunited). They also think that prompt payments should be an award criterion in public tenders (for example Sinf from SE, CEPYME from ES, CECOP). The proposal to set-up a National Payment Envoy is also supported. The idea to introduce a national mediation system received positive opinions as it is seen as a quick way to solve disputes (ES chambers of commerce) and because 'alternative dispute resolution mechanisms to solve payment disputes must be encouraged' (Eurocommerce). Finally, stakeholders (mostly SMEs) provided examples of unfair payment practices aimed at artificially extending the payment deadline. They think that these practices should be discouraged. Only in a couple of cases (Confcommercio from Italy and Austrian federal economic chamber) negative opinions were provided.

3.2. SME PANEL

589. In the SME panel, the vast majority of SMEs supports very strongly:

1) setting up *enforcement bodies* with the power to investigate and receive complaints, and to issue administrative fines for repeated bad payment behaviour (**84%**).
2) setting a limit on the *maximum number of days in payment terms for all B2B transactions* (**83%**), especially SMEs that find large companies mostly paying late (87%). Specifically, regarding the **capping of payments**:
   a) highest support is found for capping at *30 days* (36%), with more support from smaller SMEs (44%), and when large companies mostly pay late (41%), and
   b) capping at *60 days* (28%), with more support from bigger SMEs -especially small (36%)-, and when large companies mostly pay late (32%).
3) banning practices and clauses that oblige creditors to waive their rights to late payment interest and compensation in exchange for immediate payment (**77%**), especially micros (80%) and SMEs that find large companies mostly paying late (80%).

4) transparency obligations, for large businesses only, to report regularly on their payment performance (**72%**), especially SMEs that find large companies mostly paying late (80%).

590. 65% of SMEs support the appointment national ombudspersons for SMEs (or similar body) to bring the issue of late payments to political attention and liaise with businesses and governmental bodies. This action is less supported by bigger SMEs and when large companies mostly pay late.

4. STEP 3/4: ASSESSMENT OF THE IMPACT ON SMEs

4.1. PREFERRED POLICY OPTION

591. The preferred option (PO1A, 2A, 3B) is supported by SMEs in the SME panel and through the PC. Overall, all sizes of SMEs can benefit from the preferred option, even though microenterprises should be less affected by the costs and obtain more benefits compared to other size classes (for instance, while capping is strongly supported by SMEs, the 30 days capping is more favoured by microenterprises). As microenterprises are more affected by late payments than other sizes of SMEs, those expected benefits are more likely translate into better performance of companies with 0-9 employees.

4.2. POLICY OPTION 1 - FIX THE FRAMEWORK CONDITIONS TO PREVENT LATE PAYMENTS

592. From the SME panel we note that:

1) 72% of SMEs are not comfortable when clients require them to agree to accept payment 60 days or more from the date of the invoice,
2) only 7% of SMEs in the SME panel do not agree with a maximum payment term (12% of medium-sized companies),
3) 83% of SMEs finds that setting a limit on the maximum number of days that can be defined in payment terms for all B2B transactions would be useful (27%) or very useful (56%).

593. Therefore, we retain that capping payment terms and therefore the deletion of the concept of "grossly unfair", which are also broadly supported in other consultation activities, would benefit at least 3 out of 4 SMEs of all sizes.

594. Large enterprises are more likely to bear the costs identified in PO1, whereas SMEs are more likely to see the benefits. If we consider the different conditions for large companies and SMEs in accessing finance combined with their overall difference in profitability, overall, a net benefit can be estimated. The majority of non-EU jurisdictions that have adopted prompt payment legislation do not apply the principle of "grossly unfair".

595. PO1a (Capping at 30 days): In an optimistic scenario where payment times comply with the terms agreed, reduction of 22.6 days of actual payment duration, or nearly 43%; in a more realistic scenario of proportionally reduced payment

times, reduction of 12.4 days or 23.5%. We can estimate that around 41% of SMEs on average will particularly benefit from capping at 30 days, with broader effects on micros (50%)[280]. In addition, the effects on negotiation should benefit at least around 33% of SMEs, from different points of view [list the points of view and the origin of 33% does not show in the footnote][281].

596. PO1b (Capping at 60 days): It would target long payment terms. Currently 14.4% of all companies specify payment terms above 60 days (consistent also with 14.5% in the SME panel). The JRC study on the economic impact of faster payments suggests a 10% increase in cash flow for those companies who currently set payment terms above 60 days.

597. We estimate that 35% of SMEs on average will particularly benefit from capping at 60 days, with broader effects on small and medium-sized companies (43%).[282]

598. PO1c (Capping at 60 days where the creditor is an SME): benefits will affect a smaller subset of invoices, estimated at 66% of all invoices issued by 14.4% of all companies.

599. PO1a and PO1c also contain the capping of the verification or acceptance procedure at 30 days, without exception. According to the SME panel, this additional capping would likely benefit between 25% and 66% of SMEs (22-58% for micros, and 27-74% of small and medium-sized companies).[283]

600. MS facilitate availability and access of SMEs to credit management tools, financial literacy training and foster the use by SMEs of digital tools for timely payments: access to credit management and financial literacy trainings can provide a direct benefit to SMEs and it has found near-universal support in the stakeholder consultation.

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[280] According to the SME panel, the quota of SMEs that are not against the capping of payment terms and that support a 30 days capping is 37% (44% of micros, 31% of small and 27% of medium-sized companies); the quota of SMEs that ask for payments within 30 days is 44% (56% of micros, 32% of small and 30% of medium-sized companies) -we assume that this is the payment term they are comfortable with-. The estimate is the average between the two.

[281] "43% of companies have experienced a problem caused by a lack of competition when carrying out their business: the most common specific difficulties experienced are high prices and powerful suppliers being able to impose unfair selling conditions (both 57%)." Eurobarometer "SMEs' expectations for an effective competition policy" of October 2022

[282] According to the SME panel, the quota of SMEs that are not against the capping of payment terms and that supports a 60 days capping is 28% (18% of micros, 37% of small and 31% of medium-sized companies); the quota of SMEs that ask for payments within 60 days is 42% (33% of micros, 49% of small and 53% of medium-sized companies) -we assume that this is the payment term they are comfortable with-. The estimate is the average between the two.

[283] In the SME panel, 66% of SMEs encountered at least once clients that deliberately delay the acceptance of services provided and/or of goods delivered, with 25% of SMEs encountering this practice always or often.

4.3. POLICY OPTION 2: FOSTER TIMELY PAYMENT

601. Making payment of interests automatic (eliminate the concept of "entitlement") and clarify the "dies ad quem" and making payment of the flat fee compensation automatic: increased compensation fees and automatic payment of interest rates will bring significant benefits to creditors who are paid late and, without changes in payment behaviour, a direct cost to debtors who pay the interest and compensation fees. SMEs will have to pay interest and compensation fees if they pay late. If SMEs find it difficult to enforce interest from larger market players and must pay interest for paying late themselves, they may be more affected by the automatic interest and compensation than large businesses.

602. 54% of companies say they never ask for interest, and a further 26% only sometimes ask for the compensation.[284] 80% of SMEs never receive automatically interest or compensation, 8.5% rarely and only 1% often.[285] Annex 4 estimates that in 66% of invoices the creditor in an SME (43% micros, 13% small 10% medium) while in 34% of invoices the creditor is a large company. Only 4% of SMEs have all their invoices paid on time, while 94% have invoices paid late.[286] Even under automatic payment, it would be unrealistic to assume 100% of interest is being successfully paid out. Companies may still not seek redress if their debtor does not pay interest or compensation fees[287]. 77% of SMEs supported banning practices and clauses that oblige creditors to waive their rights to late payment interest and compensation in exchange for immediate payment. It is difficult to estimate what percentage of SMEs would benefit from this option, but while it will benefit creditors of all sizes, (without changes in payment behaviour) its costs could affect more the companies that are more likely to be late payers (large, but also small and medium companies). To be noted that several non-EU jurisdictions that have adopted prompt payment legislation apply automatic interest (see Annex 18).

603. PO2a (enforcement bodies empowered to issue administrative sanctions and publish the name of offenders): In France it has been estimated that, since the introduction of the enforcement body, average payment delays have been reduced by 17.8%. This option would mostly benefit companies that are more frequently paid late. We cannot find a clear correlation with the size of the SME; small companies seem to be those whose invoices are most likely to be paid late[288] and at the same time small and medium-sized companies are those more likely to be

[284] EPR 2022

[285] SME panel

[286] In the SME panel, among those SMEs that are not opposed to banning practices and clauses that oblige creditors to waive their rights to late payment interest and compensation in exchange for immediate payment, only 6% of micros, 1% of small and 3% of medium-sized companies have all their invoices payed on time.

[287] Currently, 7% of SMEs preferred not to take any action at all the last time they had to solve a late payment issue.

[288] 98% of small companies have invoices paid late, against 91% of micros and 95% of medium-sized companies.

found late payers by SMEs. Potential fines to firms paying late are estimated at EUR 136.8 million per year. Given that the likelihood of paying late increases with the size of the company, especially micros should be less affected by this option in terms of costs.

604. PO2b (enforcement bodies responsible for monitoring implementation): compared to PO2a, this option will reduce benefits for businesses that are paid late as the deterrent effect is much lower here than in PO2a, but will also lower additional costs for late payers (mainly large companies and small and medium companies).

605. PO2 also includes:

1) Ensuring that subcontractors in public tenders are paid promptly: this option is supported by 57% of stakeholders, including business associations and direct responses from businesses. Contractors of above EU thresholds works contracts will have to show that they have paid their own subcontractors on time; 73% of those contractors are estimated to be SMEs, accounting for 26% of aggregated value (which shifts to 51% if awards above EUR 100 million are excluded).[289] In general, as the contract value increases, the share won by SMEs decreases.[290] Enterprises in the construction industry are generally engaged in a subcontracting relationship to a relatively high share (45%) compared to other sectors (26% as main contractors and 28% as subcontractors).[291] Therefore, while 73% of companies that fall into the scope of this option are likely SMEs, we estimate that only 20% of SMEs that are main contractors would likely bear its costs. On the benefits' side, 49% of aggregated value of these public contracts goes to SMEs. To be noted that rules exist or are being

[289] The proportion of above-threshold public procurement contracts awarded to SMEs in the EU28 in the 2011-2017 for above-threshold works is estimated at 73% (with a high share -32%- to small enterprises) for an overall aggregated value of 26% (13% to small enterprises). Although micro-enterprises would normally have insufficient resources to act as general contractors for above-threshold public works, they still have the opportunity to win parts of the construction when the contract has been broken down into lots. For contracts -not limited to works- above EU thresholds, the total direct and indirect participation of SMEs in terms of aggregated value was estimated to be 49% for the EU-28 (Analysis of the SMEs' participation in public procurement and the measures to support it, 2019)

[290] The distribution of works contracts has itself two peaks: the first is at around EUR 500 000, and is to a large extent covering CANs that were broken down into lots, and the second is at EUR 5 million, dominated by contracts with no subdivision into lots. SMEs begin to become considerably disadvantaged with a contract value of around EUR 1 million for public works. Once the contract value becomes larger, on average main contractors are less likely to employ SMEs, regardless of their role as partner, subcontractor, or supplier. (Analysis of the SMEs' participation in public procurement and the measures to support it, 2019)

[291] The construction industry is dominated by a large number of small companies that provide subcontracting services to their larger counterparts (Edum-Fotwe and McCaffer, 1999); 45% of the micro firms in the construction sector are engaged in any subcontracting relation and about 51% of both small and medium-sized enterprises. It has been estimated that 26% of construction companies are main contractors in a subcontracting relationship and 28% are subcontractors (with an overlap between the two). (Report on EU SMEs and subcontracting, 2009)

introduced in other non-EU jurisdictions to specifically improve the timing of payments in the supply chain of the construction sector, especially for public contracts - with the objective of also decreasing the overall cost of public works for the tax-payer (see also Annex 18).

2) Adapting the compensation fee: Some standard one-off adjustment cost will fall on all businesses with a total cost of EUR 243 million for the EU-27. There are no specific considerations linked to the size of the business in terms of costs. Benefits will be mostly felt by the same companies identified for PO2a and PO2b.

4.4. POLICY OPTION 3: EMPOWERING SMES AND ENSURING MORE FAIRNESS IN BUSINESS TRANSACTIONS

606. The main benefits to businesses for PO3 come from reduced enforcement costs to chase late payments, which are estimated between 5 and 10% of total administrative work for an SME. It is difficult to quantify how much of this is down to litigation costs in the courts. The measures under this Policy Option are particularly targeted at SMEs. It is usually SMEs that avoid going to court, for lack of financial means or fear of jeopardising business relationships, and SMEs are therefore most likely to benefit from mediation services or a national payment envoy.

607. PO3 will provide the smallest direct reduction of payment delays, as it targets only those payments that are already late and focuses on helping the creditors recover their debts. The costs to businesses under this option are relatively limited, as all parties benefit from mediation services and clear definitions of unfair practices; even debtors will have reduced costs if cases go to a mediation system rather than to court.

608. PO3a (National Payment Envoy): the intervention of a Payment Envoy could lead to around EUR 2.6 million in recovered debt across the EU-27. It would very likely benefit mainly SMEs; it is supported by 65% of SMEs in the SME panel (less supported by bigger SMEs and when large companies are those that mostly pay late).

609. PO3b (national mediation system): this option would more directly lead to monetary benefits for those businesses that currently rely on court litigation, and on access to dispute resolution for those businesses that currently avoid going to courts to recover unpaid debt. This Policy Option might lead to a total reduction of payment delays by 5.5%. Total enforcement cost savings could amount to nearly EUR 27 million (taking into account a 70% success rate). Currently, relatively few SMEs use mediation or arbitration services (in the SME Panel, only 7.4% of SMEs stated they used mediation the last time they were paid late, and only 3% used arbitration), but this is largely because mediation services are not widespread. A national system of mediation is likely to make it more accessible to SMEs. To be noted that several non-EU jurisdictions have introduced or are considering introducing prompt payment legislation for the construction sector that includes arbitration (see Annex 18).

610. PO3 also includes an option, which is beneficial for SMEs, to request Member States to specifically address the question of unfair contractual terms and practices through their applicable national law. Time and cost saving for the creditor would translate directly into a cost for the debtor who has to prove the clause or practice is not unfair.

5. STEP 4/4: MINIMISING NEGATIVE IMPACTS ON SMES

611. Policy options in this proposal have been designed with SMEs in mind.

P. ANNEX 16: RESULTS OF THE SME PANEL CONSULTATION ON THE REVISION OF THE LATE PAYMENT DIRECTIVE

1. BACKGROUND

612. This SME Panel consultation is part of the European Commission's preparatory work for the revision of the Late Payment Directive (2011/7/EU)[292], planned for adoption in Q3 2023.

613. SMEs are one of the main stakeholders of this initiative as they are particularly affected by late payments. That is why it was important for the Commission services to gather information about SMEs' views on the revision of the Directive.

614. This consultation aimed to collect information on the following aspects of late payments:

1) the main features of payment terms used by businesses;
2) businesses' experience of unfair payment practices;
3) businesses' handling of disputes about payment delays;
4) businesses' views on possible policy measures to combat late payments.

615. This consultation was targeted at small and medium-sized enterprises (SMEs) active in any sector of the economy. It focused only on payment conditions for business-to-business (B2B) transactions.

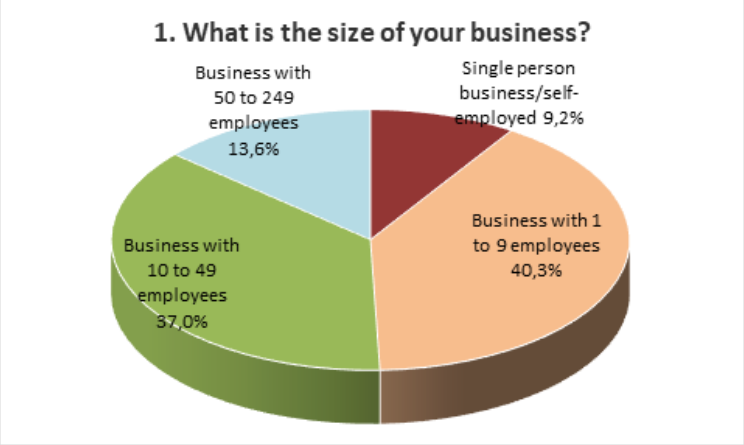
2. SHORT SUMMARY OF THE RESULTS OF THE SURVEY

2.1. OVERVIEW OF RESPONDENTS

616. In total, 939 SMEs replied to this consultation in the EU Survey webpage.

617. In terms of their size, 40% were micro companies with 1 to 9 employees (378 out of 939), 37% small companies with 10 to 49 employees (347), 14% medium companies with 50 to 249 employees (128) and 9% self-employed (86).

[292] https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive_en



618. The SME Panel was publicised by the Enterprise Europe Network. SMEs from the European countries participating to the Network could participate[293]. Most responses came from Spain (457), Italy (182), Poland (110), followed by Romania (48), Portugal (43), France (27), Austria (19) and Hungary (10). There were a few replies from Belgium, Bulgaria, Czechia, Denmark, Germany, Greece, Latvia, Lithuania and Finland and a couple or individual responses from some other countries (Estonia, Ireland and Norway).

619. The most represented sector of activity was manufacturing (246 out of 939) followed by construction (174), other services activities (147), wholesale and retail trade (96). professional, scientific and technical activities (71),

620. 45% of the respondents (420 out of 939) stated that small and medium-sized companies are the ones which pay mostly late (with a higher prevalence among small and medium-sized businesses – around 50%).

621. 30 % (279) pointed out that, among their clients, large companies are those that mostly pay late (with increasing prevalence as the size of the creditor increases – from around 21% self-employed to around 37% medium-sized companies).

622. 26% (240) found that micros mostly pay late (with the highest prevalence among self-employed around 43%).

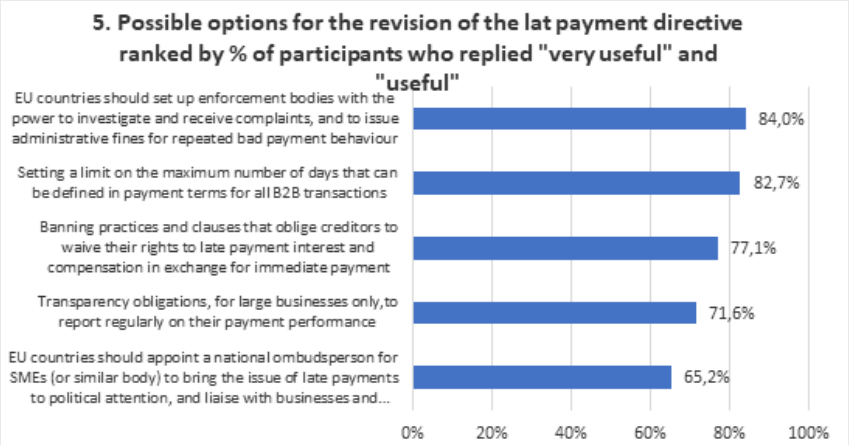
2.2. POLICY MEASURES TO COMBAT LATE PAYMENTS

623. The respondents were asked to indicate how useful could be some options for policy measures to be proposed in the context of a possible revision of the EU

[293] This included the 27 EU member states, UK, Iceland, Liechtenstein, Norway, Switzerland, Montenegro, North Macedonia, Albania, Serbia, Türkiye, Bosnia and Herzegovina, Ukraine and Moldova.

rules on combating late payments. All of them obtained a majority of positive and very positive opinions. In particular:

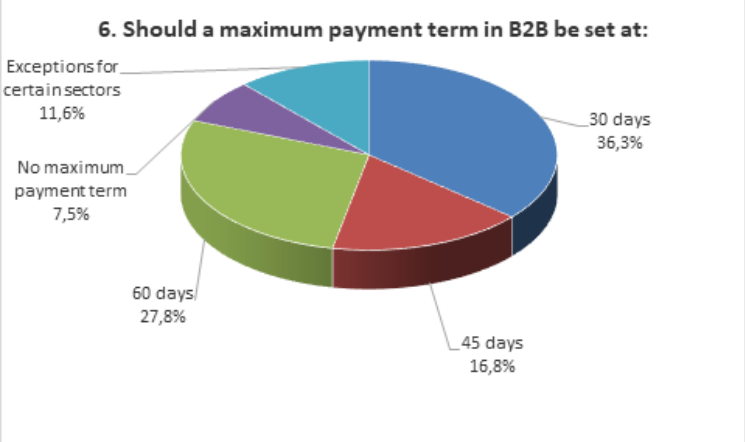
1) 84% of SMEs (789 out of 939) supported the stronger enforcement of rules (EU countries should set up enforcement bodies with the power to investigate and receive complaints, and to issue administrative fines for repeated bad payment behaviour). For this action, no significant difference is found by size of companies or by size of debtor that mostly pay late.
2) 83% of SMEs (777) supported setting a limit on the maximum number of days that can be defined in payment terms for all B2B transactions. For this action, no significant difference is found by size of companies, while it is most popular when large companies mostly pay late (around 87%).
3) 77% of SMEs (724) supported banning practices and clauses that oblige creditors to waive their rights to late payment interest and compensation in exchange for immediate payment. This action is most supported by micros (around 80%), and when large companies mostly pay late (around 80%).
4) 72% of SMEs (672) supported transparency obligations, for large businesses only, to report regularly on their payment performance. This action is less supported by self-employed (around 65%), while it is most popular when large companies mostly pay late (around 80%).
5) 65% of SMEs (612) supported the appointment national ombudspersons for SMEs (or similar body) to bring the issue of late payments to political attention, and liaise with businesses and governmental bodies. This action is less supported by bigger SMEs and when large companies mostly pay late.



624. Specifically, regarding the capping of payments:

1) 36% of SMEs (341) supported capping at 30 days (with more support from smaller SMEs – around 44%, and when large companies mostly pay late – around 41%)

2) 17% of SMEs (158) supported capping at 45 days (very low support from self-employed – around 8%)
3) 28% of SMEs (261) supported capping at 60 days (with more support from bigger SMEs, especially small – around 36%, and when large companies mostly pay late – around 32%)
4) 8% (70) did not agree with a maximum payment term (with more support from medium-sized -around 12%)
5) 12% (109) would favour exceptions for certain sectors due to the specificity of the supply chain or of the market (with more support when micros mostly pay late – around 21%)

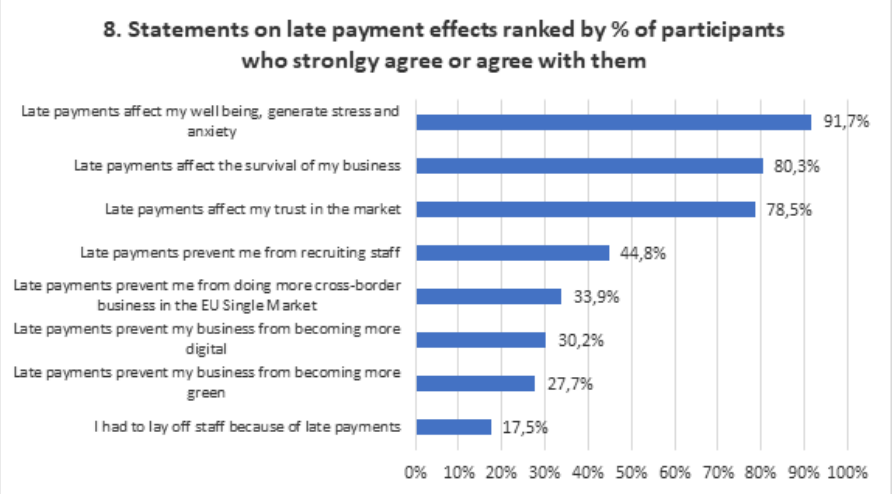


625. On e-invoicing, there was no broad agreement on its effectiveness towards prompt payment. For all size classes, there were more companies that find e-invoicing not helpful rather than helpful. In detail, 44% (415) stated that e-invoicing did not help, 31% of respondents (291) said that e-invoicing helped them to receive payments on time, 18% (168) did not use this facility and 7% (65) did not know.

2.3. WIDER IMPACT OF LATE PAYMENTS

626. Almost all respondents (92% or 861 out of 939) strongly agreed or agreed that late payments have an important impact on the well being of the entrepreneurs and generate stress and anxiety and 80% (754) that this heavily affects the survival of their business.

627. 79% strongly agree or agreed (737) that late payments affect their trust in the market. 45% (421) said that because late payment they did not recruit new staff and 33,9% (318) did not do cross-border business in the EU Single Market because late payment. The impact on becoming more digital (284 out of 939) or green (260) is apparently lower as well as on laying off staff (only 164 strongly agreed or agreed).



2.4. SETTING PAYMENT TERMS

628. 41% (383 out of 939) of respondents reported that they negotiate payment terms case by case and this is most frequent among small companies (47%). 30% (283) stated that they have their owns specific payment conditions and this is most frequent among self-employed (44%) and medium-sized companies (34%). 17% (160) affirmed that payment conditions are dictated by their clients and this is most frequent among micros (19%), while less the case for self-employed. 12% (113) said that in their sector payment conditions are standard and they follow them. This is relatively more frequent among self-employed (14%) and medium-sized companies (14%).

629. According to size of client that is found to mostly pay late, the average distribution for SMEs is the following:

1) When clients that mostly pay late are micros:
   a) 41% of SMEs have their own specific payment conditions and ask clients to adhere to them
   b) 38% of SMEs negotiate payment conditions on a case-by-case basis
   c) 11% of SMEs state that in their sector payment conditions are standard and they adhere to them
   d) 10% of SMEs state that payment conditions are dictated by their clients.
2) When clients that mostly pay late are small and medium-sized companies:
   a) 43% of SMEs negotiate payment conditions on a case-by-case basis
   b) 29% of SMEs have their own specific payment conditions and ask clients to adhere to them
   c) 16% of SMEs state that payment conditions are dictated by their clients.

d) 12% of SMEs state that in their sector payment conditions are standard and they adhere to them

3) When clients that mostly pay late are large companies:

a) 39% of SMEs negotiate payment conditions on a case-by-case basis

b) 24% of SMEs have their own specific payment conditions and ask clients to adhere to them

c) 24% of SMEs state that payment conditions are dictated by their clients.

d) 14% of SMEs state that in their sector payment conditions are standard and they adhere to them

630. Looking at differences by size of vendor:

1) Micros:

a) Large companies are most frequently late payers: 36% of micros negotiate payment conditions on a case-by-case basis and 26% have payment conditions dictated by clients.

b) SMEs are most frequently late payers: 41% of micros negotiate payment conditions on a case-by-case basis and 30% ask clients to adhere to their specific payment conditions.

c) Micros are most frequently late payers: 41% of micros negotiate payment conditions on a case-by-case basis and 35% ask clients to adhere to their specific payment conditions

2) Small companies:

a) Large companies are most frequently late payers: 42% of companies negotiate payment conditions on a case-by-case basis, 26% ask clients to adhere to their specific payment conditions and 22% have payment conditions dictated by clients.

b) SMEs are most frequently late payers: 49% of companies negotiate payment conditions on a case-by-case basis and 25% ask clients to adhere to their specific payment conditions.

c) Micros are most frequently late payers: 47% of companies negotiate payment conditions on a case-by-case basis and 35% ask clients to adhere to their specific payment conditions

3) Medium companies:

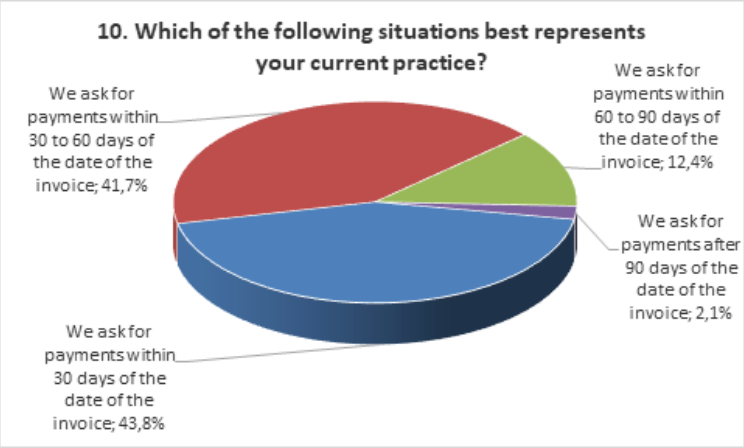
a) Large companies are most frequently late payers: 38% of companies negotiate payment conditions on a case-by-case basis, 28% have payment conditions dictated by clients and 21% ask clients to adhere to their specific payment conditions.

b) SMEs are most frequently late payers: 39% of companies negotiate payment conditions on a case-by-case basis and 32% ask clients to adhere to their specific payment conditions.

c) Micros are most frequently late payers: 68% of companies ask clients to adhere to their specific payment conditions and 16% negotiate payment conditions on a case-by-case basis and

631. In general respondents ask for payments within 30 days of the date of the invoice (44% or 411) or within 30 to 60 days (42% or 392). There are differences by size of company as 83% of self-employed and 50% of micros ask to be paid within 30 days (around 30% for small and medium) and 50% of small and medium-sized companies ask to be paid within 60 days (38% for micros and 18% for self-employed).

632. Only a small minority asks payments within 60 and 90 days or after 90 days (12% or 116 and 2% or 20 respectively). There are small differences as up to 18% for small companies ask to be paid within 60 and 90 days and up to 4% medium-sized companies ask to be paid after 90 days.

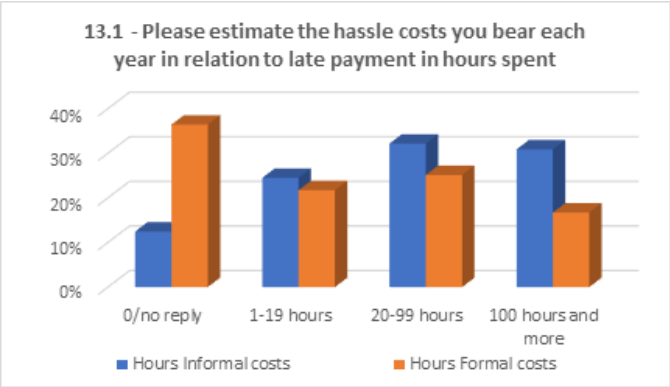


633. Also, a large majority (679 out of 939, 72%) is not comfortable when the clients require them to agree to accept payment 60 days or more from the date of the invoice, with no differences among size classes.

634. Among the reasons for accepting longer payment terms SMEs mostly mentioned the need to retain a client (562), to secure new clients (326) or to safeguard the market position (308) and when there is no other choice (307).

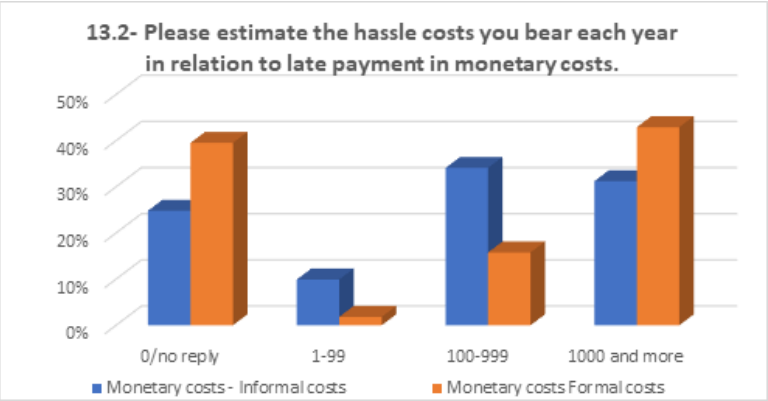
2.5. THE SCALE OF LATE PAYMENT PROBLEM

635. Dealing with late payments generates costs in terms of hours spent for informal actions (e.g. sending reminders, making phone calls) and formal steps (e.g. recruiting a lawyer, attending court proceedings, looking for a debt collection company, looking for a mediator). 24% (230 out of 939) SMEs declared between 1 and 19 hours spent for informal actions in relation to late payment, 32% (302) between 20 and 99 hours and 31% (290) even more than 100 hours. Similar situation for the formal actions: 22% (204) spent between 1 and 19 hours, 25% (236) between 20 and 99 hours and 17% (157) more than 100 hours.



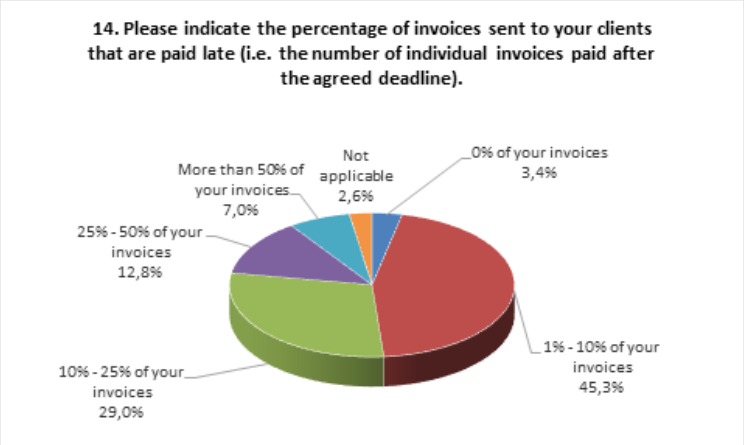
636. Late payments generate also monetary costs, informal (e.g. costs of registered mail, post stamps, cost of phone calls) and formal (e.g. costs of the lawyer, costs of court proceedings, cost of the bailiff, costs of the debt collection company, cost of a mediator). In this case only 10% (93 out of 939) of respondents spent less than EUR 100 per year for informal costs and 2% (17) less than EUR 100 for formal costs. 34% (320) spent between 100 and EUR 999 for informal costs and

16% (148) for formal costs. Finally, 31% (293) and 43% (403) spent more than EUR 1000 per year respectively for informal and formal costs.

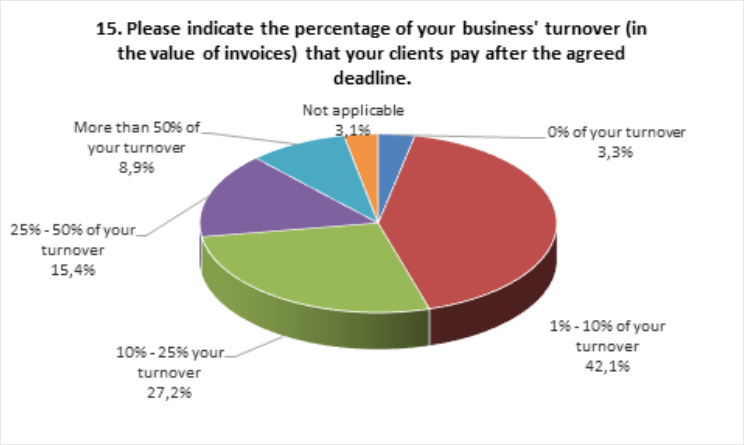


637. The number of invoices sent to the clients which are paid late are quite significant as only 32 respondents stated that no invoices were paid late. The majority of SMEs (45% or 425 out of 939) declared that between 1 and 10% of their invoices are paid late, 272 (29%) replied that between 10 and 25% of the invoices are paid late, 120 (13%) declared between 25% and 50% and 66 (7%) reported that more than 50% of their invoices are not paid on time.

638. 63% of self-employed replied that the quota of invoices paid late is limited to 25% of invoices sent, while this happens for 79% of small companies.



639. This is reflected by the replies concerning the turnover. Only 31 respondents (3%) stated that their business turnover was not affected by the late payment of the invoices. 395 respondents (42%) replied that 1 to 10% of the turnover was affected, 255 (27%) between 10 and 25%, 145 (15%) between 25% and 50% and 84 (9%) more than 50%. No significant differences are found by size of company.



640. The recent problems (e.g. COVID-19, rising energy prices, inflation etc.) had a negative impact on the payment behaviour of the clients. 47% (440) of participants noticed a deterioration (50% of small and 58% of medium-sized companies) while 40% (372) did not notice any change (44% of micros).

2.6. UNFAIR PAYMENT PRACTICES

641. The most reported unfair practice is to "modify retroactively key contractual provisions (e.g., on price, quantity or quality of goods/services, delivery times, etc.) in order to postpone the payment" as 68% (640 out of 939) of respondents experienced it at least once and only 23% (220) never experienced it. This practice is experienced often when the late payer is most frequently a large (26%) or medium/small company (25%) compared to micros (18%).

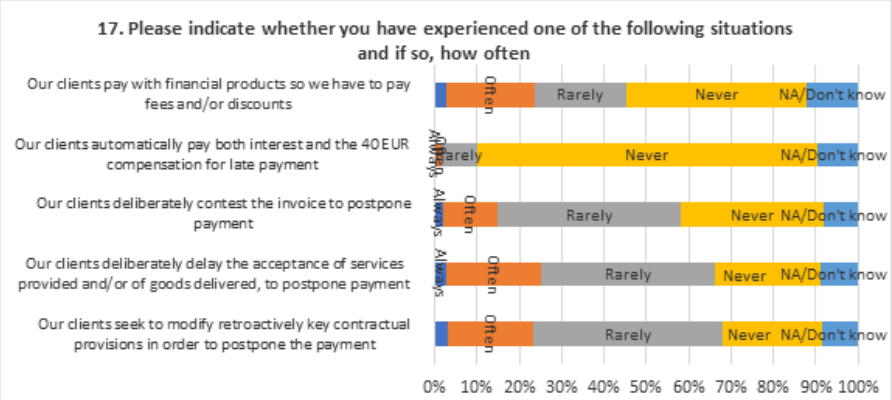
642. 43% (400) of SMEs replied that their clients never "pay with financial products (e.g reverse factoring, "confirming") so that in order to claim payment within the agreed contractual terms, they have to pay fees and/or discounts" (45% of SMEs experienced it at least once). When micros are most frequently late payers, this practice is never experienced by 54% of SMEs (against 33% when the late payer is most frequently a large company).

643. Another used unfair practice is to "deliberately delay the acceptance of services provided and/or of goods delivered to postpone payment" (66% of respondent, 622, encountered it at least once). Small and medium-sized companies are those more likely to have experienced it at least once (74%). This practice is

experienced more often when the late payer is most frequently a large company (36%). On average 25% (235) of the respondents never experiences this practice and 31% of them never experienced it when the late payer is most frequently a micro-company.

644. "Deliberately contest the invoice" is less used as respectively 33% (315) and 43% (406) of respondents never or rarely incurred in this practice (58% or 547 experienced it at least once). Medium-sized companies are those more likely to be often confronted with the contestation of the invoice (18% compared to 13% of the SME average). This practice is experienced often when the late payer is most frequently a large company (20%).

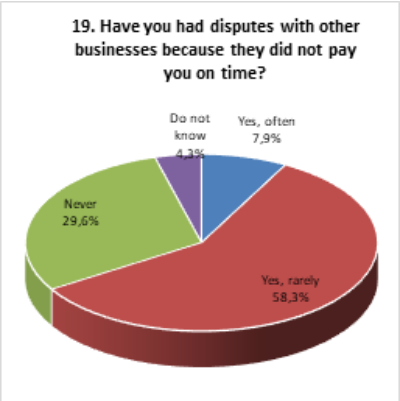
645. The interests and the EUR 40 compensation are never paid automatically in the 80% of cases (754 out of 939) and rarely in 8% of cases (79). 15% of medium-sized companies replied that they rarely receive interest and compensation. Interest and compensation are more frequently never paid when the late payer is most frequently a large company (87% compared to 70% when the late payer is most frequently a micro-company).

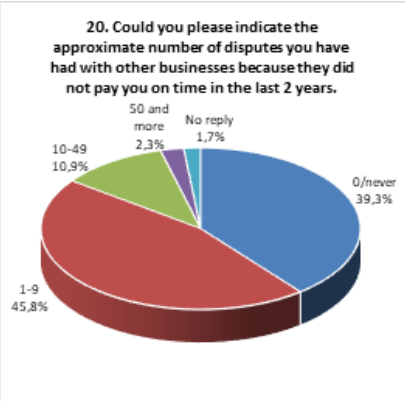


2.7. DISPUTE ABOUT PAYMENT DELAYS

646. Only 30% (278 out of 939) of respondents did not have disputes related to late payment while 66% (621) had at least one (58% or 547 rarely and 8% or 74 often). The bigger the SMEs the more likely it is to have had disputes; medium-sized companies are more likely to often have disputes (13%), while self-employed and micros are more likely to have never had disputes (47% and 36%).

647. In the last two years 46% (430) respondents had between 1 and 9 disputes, 11% (102) between 10 and 49 disputes and 39% (369) had no disputes.





648. On the remedies side, the most used one by far was the direct solution with the other business. 60% of respondents (563) used this solution normally and 16% (150) at least once.

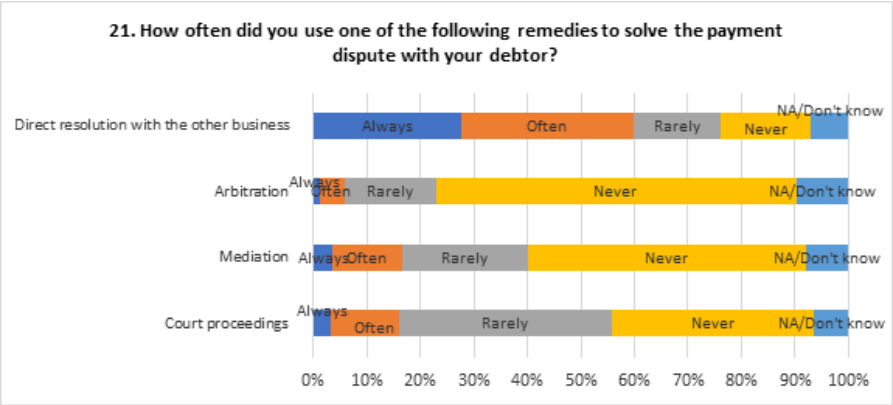
649. This solution was considered at the same time cheaper (60% or 568 of SMEs) and faster (54% or 509 of SMEs).

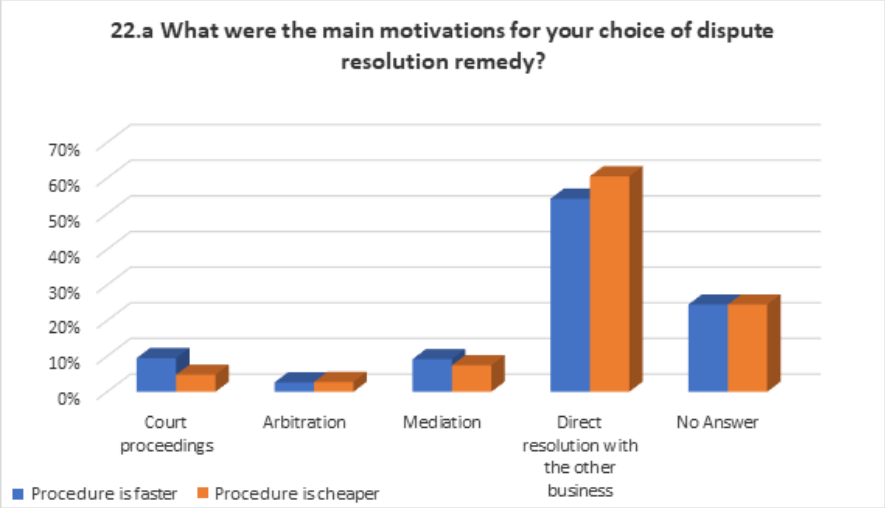
650. The other remedies are not used so often as court proceedings was never used by 38% of respondents (354). The smaller the company, the less this remedy is used: 60% of self-employed, 47% of micros, 28% of small and 20% of medium-seized companies never used it.

651. Mediation was never used by 52% of SMEs (487) and arbitration by 67% (631).

652. All remedies are more frequently used by larger SMEs.

653. When asked about the last time the SME tried to resolve a late payment issue, only 7% of SMEs (68) replied that they preferred not to take any action at all (but only 2% of medium-sized companies), while 47% (442) solved the issue directly with the client and 18% (170) took the matter to court.


21. How often did you use one of the following remedies to solve the payment dispute with your debtor?
Direct resolution with the other business
Arbitration
Mediation
Court proceedings
Always
Often
Rarely
Never
NA/Don't know
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%


22.a What were the main motivations for your choice of dispute resolution remedy?
70%
60%
50%
40%
30%
20%
10%
0%
Court proceedings
Arbitration
Mediation
Direct resolution with the other business
No Answer
Procedure is faster
Procedure is cheaper

Q. ANNEX 17: MAPPING LATE PAYMENT IN THE EU

1. LATE PAYMENT DELAYS IN DAYS

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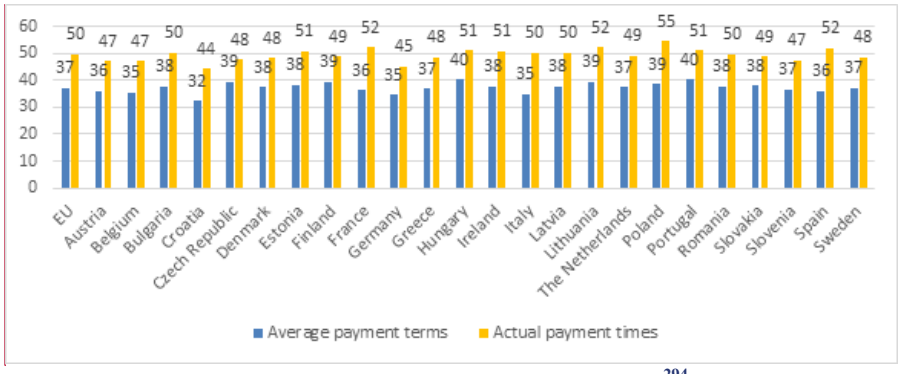
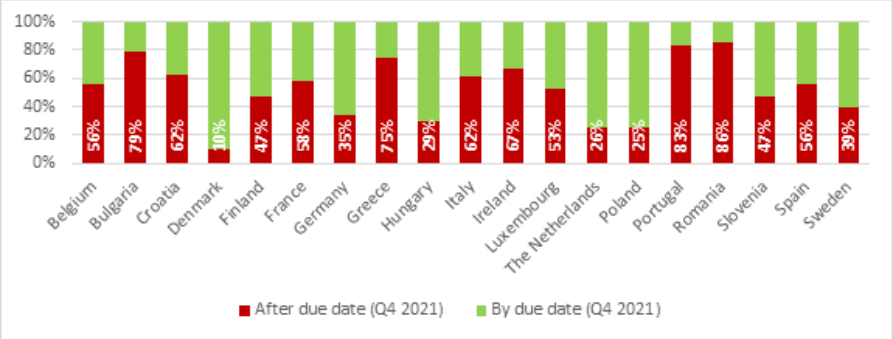


Figure 6: Payment terms and actual payment duration as creditor, in 2022[294]

2. LATE PAYMENT IN MEMBER STATES

654. Late payments are widespread in the business environment across the EU. In 11 out of 19 EU Member States listed in Figure 6, more than 50% of payments were made late in Q4 2021.

Figure 7: Share of timely payments in EU Member States for which data is available[295]

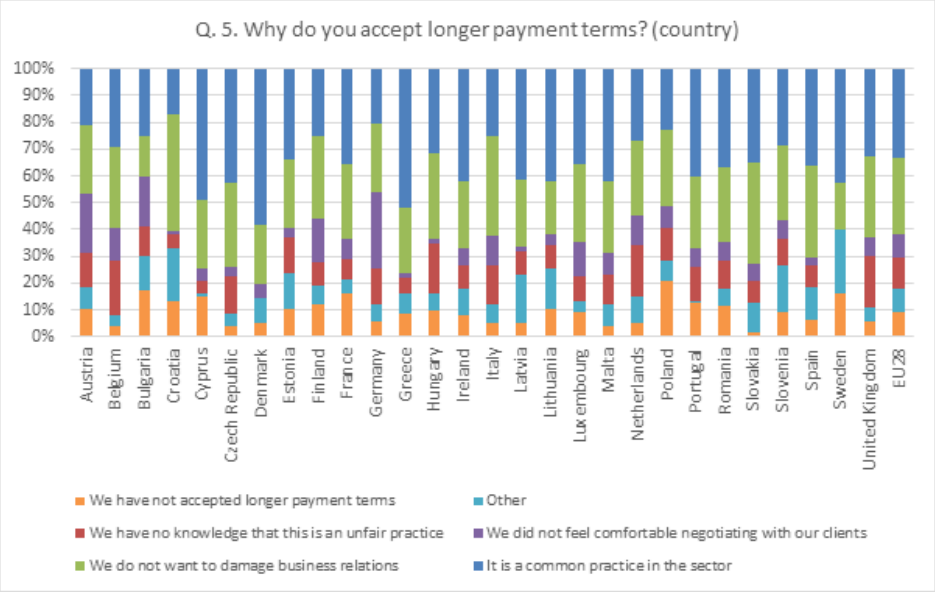


[294] Source: EPR 2022, average of actual payment duration in business-to-consumers, business-to-business and public authorities. Note: Cyprus, Luxembourg and Malta are not included in the 2022 report

[295] Source: D&B payment survey 2022 https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/

655. Longer payment terms in B2B transactions came up even in countries with prompt payment traditions and drew the attention of regulators. The Dutch authorities noticed an increase in the share of 60-day agreed payment terms between 2004 (0.7%) and 2014 (1.2%)[296]. The national law capping payment terms in B2B transactions with SME creditors at 60 days, adopted in 2017, did not improve the situation. Another reform of the law entered into force in July 2022[297], bringing down the initial 60 days to 30. Insufficient enforcement mechanisms were identified as a factor[298], and introducing monitoring and control measures are currently under consideration[299]. In Sweden, a government review showed that average payment terms have increased in all sectors since 2006. The share of agreed payment terms of 60 days or more reached 4% of all invoices in 2016[300].

Figure 8: Reasons for accepting longer payment terms[301]



[296] https://open.overheid.nl/documenten/ronl-7605121f-911b-4479-bd59-16bc5c05ef5b/pdf
[297] https://business.gov.nl/amendment/legal-payment-term-large-companies-reduced-30-days/
[298] https://open.overheid.nl/documenten/ronl-7605121f-911b-4479-bd59-16bc5c05ef5b/pdf

[299] Study under preparation by Andersson Elffers Felix – www.aef.nl
[300] Swedish government, June 2016, Kartläggning av betalningstider i näringslivet. Available at: http://www.regeringen.se/4ae354/contentassets/a63b746fefc7447194413dd08ad184c6/kartlaggning-av-betaltider-i-naringslivet-2016-slutlig-rapport.pdf
[301] Source: Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1/language-en/format-PDF/source-103408786

3. LATE PAYMENT IN SECTORS

Figure 9: Share of companies reporting average payment times above 50 days and above 75 days, by sector[302]

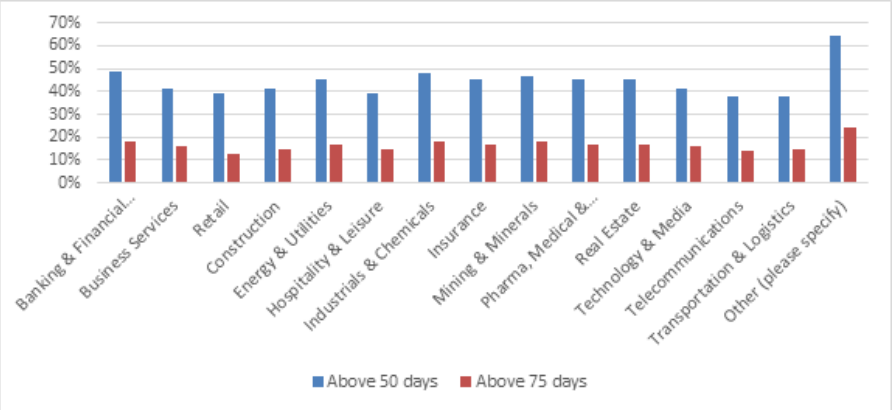
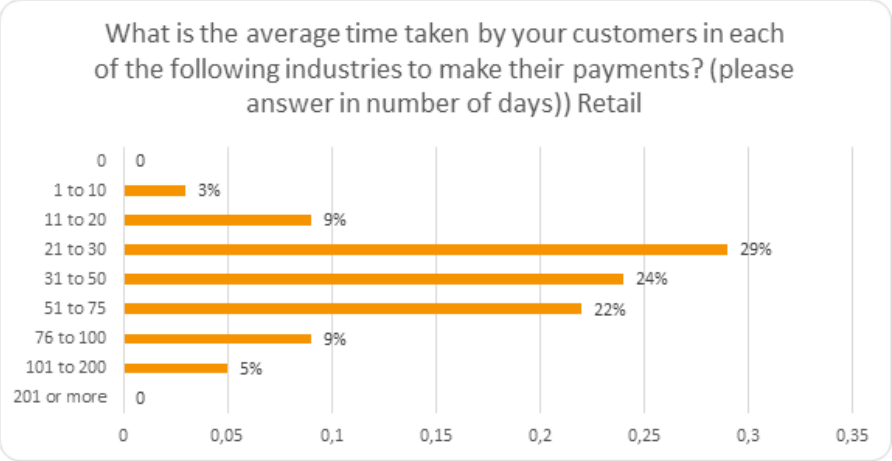


Figure 10: 60% suppliers of the retail sector declare getting paid after more than 30 days (EPR 2022)



[302] Source: Intrum, European Payment Report 2022. Average actual payment times reported in business-to-business transactions. Note: Data is not available in Cyprus, Luxembourg and Malta.

Figure 11: 31% of suppliers to the construction sector declare gettin paid in 30 days (EPR 2022)

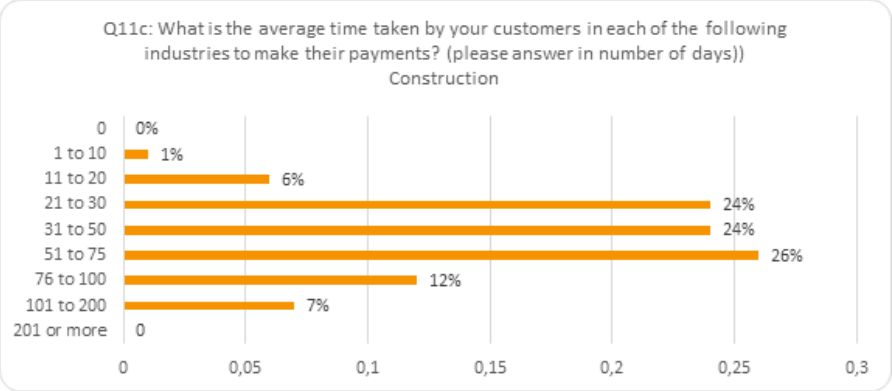
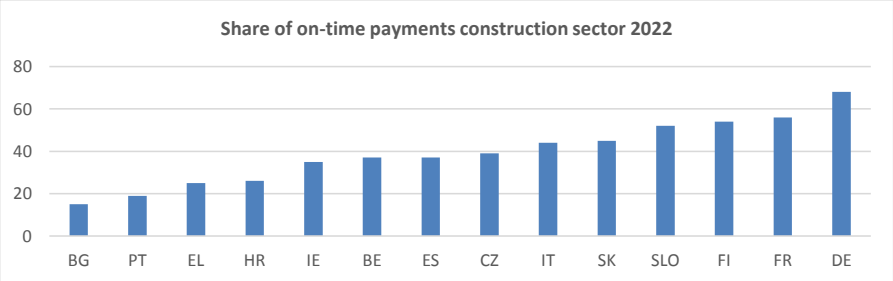


Figure 12: Share of on-time payments in construction sector in 2022[303]



[303] Source: DG GROW based on D&B Payment Survey, 2022 https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/

Figure 13: 11% of public sector's suppliers are paid within 30 days (EPR 2022)

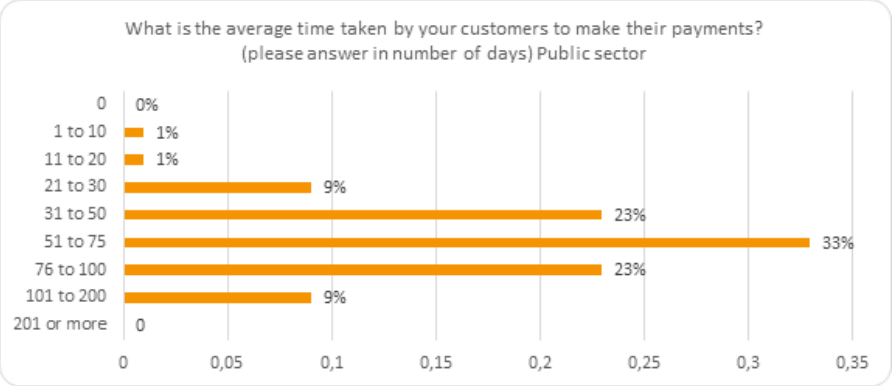
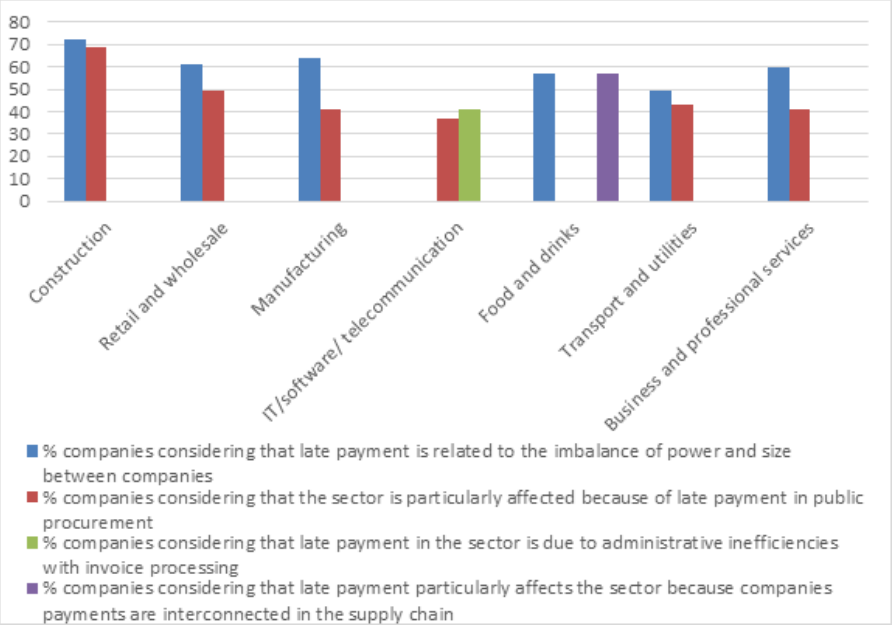


Figure 14: Causes of late payment by sector[304]

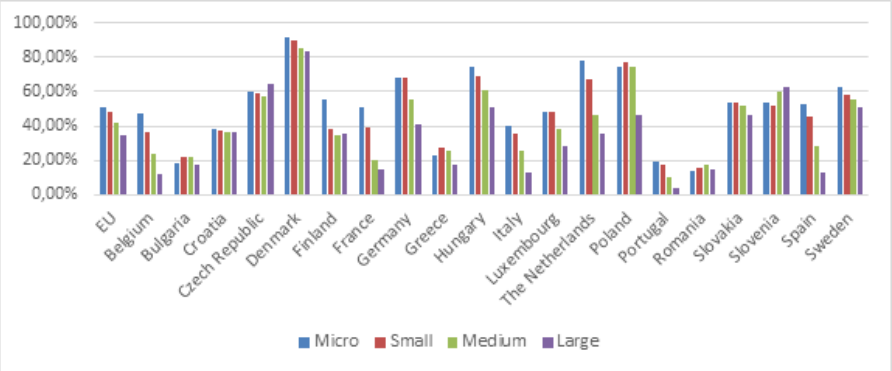


[304] Source: Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1/language-en/format-PDF/source-103408786

4. LATE PAYMENT BY SIZE-CLASS

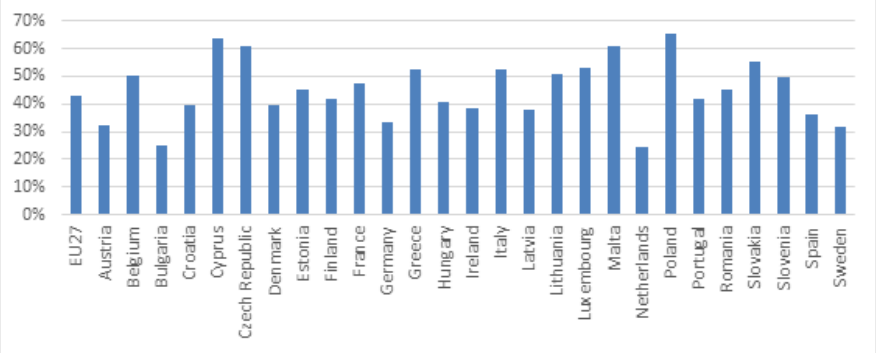
656. Payment discipline by size-class is not uniform across the EU. While large companies tend to pay later than SMEs, in Slovenia and Czech Rep large companies pay the fastest. Late payment seems to be a big issue especially in large countries.

Figure 15: Share of companies paying their invoice by the due date, by size class, 2022[305]



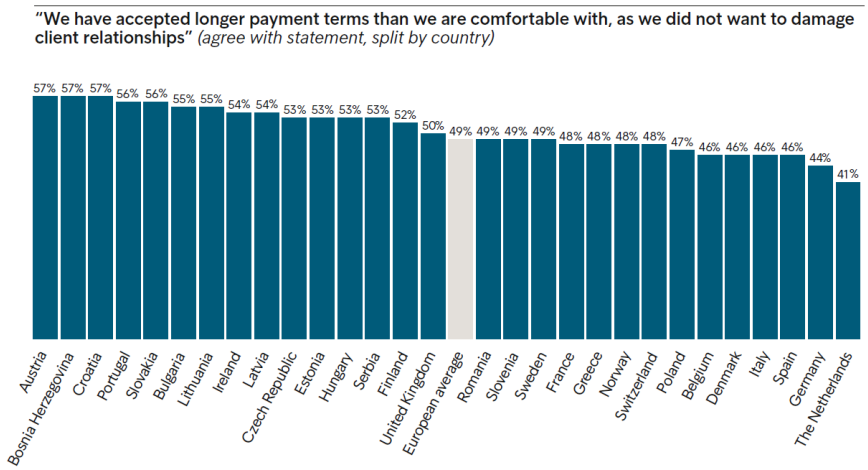
5. PROBLEMS DUE TO LATE PAYMENT

Figure 16: Share of companies reporting problems due to late payment from any private or public entities 2022[306]



[305] Source: CRIBIS D&B Payment Study 2022 - https://www.dnb.com/en-ch/knowledge/study/payment-study-2022-download/
[306] SAFE Survey 2022

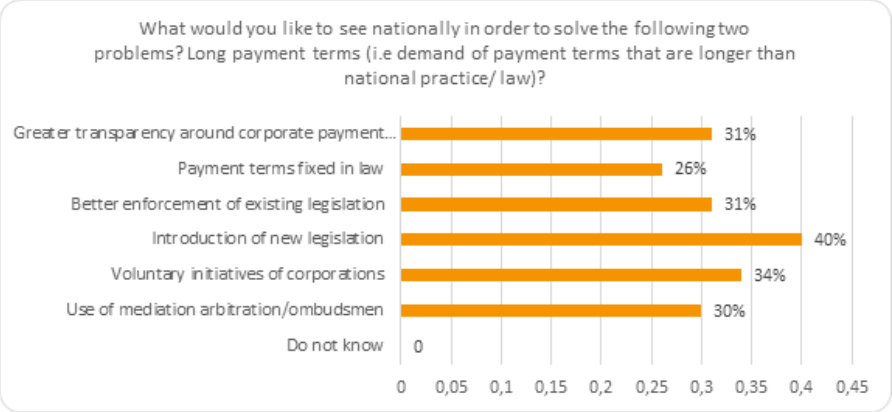
Figure 17: Supply chain bullying in Europe in 2021[307]



657. Many companies suffer from an 'intention-behaviour gap': 69% of firms – large and small – admit that they 'rarely think about the negative impact that their own late payments *might have on suppliers'* and nearly 30% acknowledge that they pay their suppliers later than they would accept from their own customers[308].

6. DESIRED SOLUTIONS TO LATE PAYMENT

Figure 18: New legislation is the first choice for addressing late payment (EPR 2022)



[307] Intrum, European Payment Report 2021
[308] https://www.intrum.com/publications/european-payment-report/european-payment-report-2021/

R. ANNEX 18: PROMPT PAYMENT IN SOME EU TRADING PARTNERS

1. SIZE OF THE PROBLEM

658. The figure below shows the average payment periods in 2020 worldwide and per sector (measured in day sales outstanding, DSO)[309]. Figure 19[310] DSO in 2020 by country and sectors.

Figure 2: Heatmap of DSO in 2020 by country and by sector (number of days)

2020	Retail	Food	Other services	Transportation	Telecom	Oil & gas	Personal & recreational goods	Household goods	Financials	Metals	Utilities	Paper	Business services	Chemicals	Technology	Auto	Pharma	Aero	Electronics	Construction	Machinery & eq	Country average
China	22	31	67	50	80	95	67	72	58	73	77	89	92	84	115	116	91	133	113	127	136	94
Italy	74	63	102	68	79	106	60	81	98	-	96	76	122	76	117	81	75	63	103	94	88	89
Greece	45	91	85	33	-	20	59	85	54	95	106	82	128	-	122	-	-	-	102	90	94	83
Turkey	19	69	70	60	74	33	68	96	62	82	51	98	106	75	105	92	100	160	97	105	84	82
Spain	13	61	82	-	57	84	55	-	-	51	83	60	118	-	83	36	69	76	-	120	79	80
Morocco	57	62	71	96	-	36	-	-	-	96	74	-	-	-	117	-	93	-	-	60	-	79
Saudi Arabia	31	52	52	66	89	45	163	87	85	70	72	111	104	80	158	-	-	-	-	73	153	77
Taiwan	24	41	21	33	40	61	61	59	44	67	52	78	65	77	81	86	68	107	80	65	95	75
Japan	23	51	33	49	78	52	57	68	42	87	46	90	63	96	67	65	92	114	77	110	104	70
France	39	49	81	56	64	97	39	57	109	50	73	58	80	74	82	53	65	77	75	75	82	69
Brazil	59	41	44	37	126	52	121	83	50	48	70	52	76	44	88	61	106	54	-	109	88	69
India	51	41	55	64	67	61	66	66	74	61	71	58	91	71	84	61	84	95	78	80	85	69
Portugal	-	-	54	-	78	-	-	-	-	-	71	46	55	-	90	-	-	-	-	110	-	68
Singapore	24	46	31	66	25	85	92	61	130	77	91	62	65	81	65	71	56	68	65	72	95	66
Romania	39	73	17	-	-	61	-	28	-	73	60	76	58	37	-	79	145	63	-	75	79	66
Hong Kong	30	40	42	48	45	73	58	61	70	53	72	67	67	85	73	84	100	139	70	70	91	64
Chile	74	65	53	64	-	-	64	50	52	65	60	67	58	75	-	-	-	-	-	65	-	62
Bulgaria	-	40	29	-	-	-	69	88	78	59	33	66	69	94	134	59	78	46	-	79	60	62
South Korea	28	41	50	36	77	65	45	49	66	68	64	61	44	57	57	69	76	63	58	58	70	59
Sweden	20	42	34	30	51	72	61	45	47	50	28	51	56	84	67	41	70	63	53	51	62	58
Belgium	-	51	48	56	47	-	41	42	-	34	-	-	116	42	88	-	77	-	44	55	61	57
Poland	19	45	53	40	53	36	51	57	66	49	44	53	73	44	76	30	62	59	54	66	78	57
Russia	8	40	40	20	-	40	-	104	50	49	53	51	-	26	-	41	104	68	93	72	82	55
Denmark	30	32	61	41	-	55	28	36	-	-	-	-	46	-	70	-	61	-	37	42	64	54
Norway	6	44	21	26	35	60	-	53	66	41	77	49	97	47	66	-	64	-	54	58	62	53
U.S.	16	37	44	32	44	52	44	43	53	54	57	42	56	57	62	58	65	54	60	58	61	53
Switzerland	22	41	43	53	-	-	49	47	-	57	46	56	61	66	53	-	62	-	47	46	60	53
Canada	17	41	64	45	46	59	33	53	49	48	43	37	57	53	57	59	69	46	48	55	67	53
Austria	-	59	-	73	-	55	38	-	-	36	84	-	-	-	44	-	-	58	-	67	63	52
United Kingdom	15	42	41	55	49	50	42	40	67	50	64	61	54	72	61	71	72	40	58	46	63	51
Germany	19	44	37	51	51	49	46	68	38	43	49	22	69	50	58	67	55	61	62	42	50	50
Australia	20	43	37	37	36	45	60	50	45	46	63	43	50	68	59	38	71	48	65	51	61	50
South Africa	20	49	34	32	33	51	27	56	44	39	-	54	58	57	69	-	96	-	66	36	51	47
Netherlands	25	44	56	-	-	30	-	49	59	22	-	-	44	51	49	-	42	-	57	44	55	45
Finland	13	35	29	27	-	-	40	56	36	26	47	41	47	-	59	63	50	56	52	29	52	44
New Zealand	11	38	25	36	29	31	27	-	27	74	32	-	33	-	51	-	55	-	-	-	56	37
Sector average	26	43	47	47	56	58	58	61	61	62	64	66	68	72	74	75	76	77	77	82	92	66

Sources: Bloomberg, Euler Hermes, Allianz Research

[309] Days sales outstanding (DSO) is the average number of days it takes a company to receive payment and it is calculated as follows: DSO= (average amount of the account receivable/revenue) * 365 days. A high DSO number suggests that a company is experiencing delays in receiving payments, which can result in a cash flow problem. A low DSO indicates that the company is getting its payments quickly. The DSO has a direct impact on the Working Capital Requirement of a company, on the cash and on the overall risk to have unpaid invoices and bad debts. Lower is a company's DSO, lower is its WCR. The results are better cash flow and profitability (source: Investopedia)

[310] https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/economic-research/publications/specials/en/2021/july/2021_07_22_WCR.pdf

659. Although *China* was the worst performer, four EU Member States are listed among the 10 worst payment performers in the world. At the same time three other EU Member States ranked amongst the top 10 performers worldwide.

660. *Australia* – Every year, late payments lock more than AUS$ 19 billion away from Australian SMEs. Poor cash flow is responsible for 90% of SME bankruptcies. The average share of timely payments to SMEs equals 38%[311].

661. *UK* - In 2021, 50% of invoices issued by small businesses were paid late. 12% of them were paid more than a month after they due date, costing SMEs £684m a year[312].

662. In 2022, US SMEs were owed on average $304,066 by late-paying customers. 81% considered late payments to have become severer since 2021. SMEs in the US were spending on average 14 hours per week chasing debtors[313].

663. The WTO Agreement on Government Procurement (GPA)[314] is a plurilateral instrument regulating the conduct of international trade in government procurement markets. The GPA provides flexibility for parties to implement specific measures relating to procurement practices, which can be taken in the application of general rules to facilitate SME participation. Examples include the prompt payment of suppliers. Such measures may be needed to overcome potential barriers to SME participation that may persist despite a generally open and transparent system.

664. *The Netherlands* - Evidence[315] indicates that some EU undertakings accept longer payment terms and unfair payment conditions from international (non-EU) partners. A share of EU late payments may be due to bad practices being 'imported' from outside the EU, and later spreading inside the EU following the domino effect.

2. POLICY RESPONSE

665. Many countries address late payments problems towards small companies, both in B2B and G2B transactions, through behavioural or disclosure legislation, in

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[311] https://www.ordermentum.com/blog/the-true-cost-of-late-payments

[312] https://www.icaew.com/insights/viewpoints-on-the-news/2022/oct-2022/the-impact-of-late-payments-on-small-businesses

[313] https://www.chaserhq.com/blog/87-of-businesses-paid-late-insights-from-2022-late-payments-report

[314] The revised GPA came into force in April 2014. The GPA intends to bring more competition, transparency and procedural fairness in the procurement markets it covers. The GPA also serves broader purposes of promoting good governance, the efficient and effective management of public resources, and the attainment of best value for money in national procurement systems. The basic approach of the GPA is to leave options for each government to decide on, as long as general principles of transparency and non-discrimination are complied with.

[315] https://open.overheid.nl/documenten/ronl-7605121f-911b-4479-bd59-16bc5c05ef5b/pdf

some cases with specific rules for the construction sector addressing also late payment in the supply chain.

2.1. AUSTRALIA

666. Since 2017, the Business Council of Australia promotes the **Australian Supplier Payment Code**[316] where members commit to pay eligible Australian small business suppliers on time and within 30 days of receiving a correct invoice, and help suppliers implement new technologies and practices to speed up invoicing. Each signatory is required to put in place clear, fair and efficient processes for dealing with complaints and disputes about payment times and practices, which should be used to resolve complaints and disputes in the first instance. In January 2019, the Code had 101 signatories with collective annual revenue of over $550 billion. In April 2023, there are 155 signatories.

667. An **independent review**[317] **of the Code** was finalised in 2019. The review states that, unless a more widespread adoption of the Code -primarily by large and medium-sized businesses and governments with large numbers of small business suppliers and payment times beyond 30 days- improves payment times to small businesses, there is the prospect of payment regulation. Some major entities yet to sign the Code cited the following concerns during the review: compliance risk and the potential impact on reputation, the challenges and costs of identifying a small business supplier[318], uncertainty about how exemptions work[319], and time needed to change to complex internal payments systems and processes. Regarding the size of the business supplier, the review recommended the establishment of a small business register and to encourage signatories to adopt the 'turnover' definition of a small business and phasing out the 'headcount' definition. The review recommended the application of the 'mutually agreed terms' exemption for payment beyond 30 days to be subject to a 'good faith and fair dealings provision' test, so that suppliers "are afforded both fairness of process (good faith) and fairness in outcomes (fair dealings)", mirroring the same provision proposed by the independent review of the Food and Grocery Code of Conduct. The review clarified that supply chain financing cannot be used to get around the 30 days terms requirement by setting terms above 30 days and then paying in less than 30 days (i.e. by paying a lesser sum, discounted at the signatory's cost of funds). It also recommended government to develop a regular statistical series of payment times data across the economy, including payment times to small businesses, which could be developed in consultation with business information and accounting software providers.

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[316] https://www.bca.com.au/supplier_payment_code

[317] Review of the Australian Supplier Payment Code, January 2019

[318] The review recommended the establishment of a small business register and to encourage signatories to adopt the 'turnover' definition of a small business and phasing out the 'headcount' definition.

[319] The review recommended the application of the 'mutually agreed terms' exemption for payment beyond 30 days to be subject to a 'good faith and fair dealings provision' test, so that suppliers "are afforded both fairness of process (good faith) and fairness in outcomes (fair dealings)".

668. The ***Australian government policy RMG 417***[320]**,** which came into effect 1 January 2020 and was changed in 2022, requires that, when a Non-corporate Commonwealth Entity (NCE) and a supplier both have the capability to deliver and receive e-invoices through the Pan-European Public Procurement On-Line framework and have agreed to use this method of invoicing, have to pay e-invoices within 5 days, and within 20 calendar days for all other invoices. Where a NCE has not made payment in full within the maximum payment terms, it must calculate interest, and pay that interest to the supplier if the amount accrued is more than A$100.

669. The Australian Small Business and Family Enterprise Ombudsman has investigated commercial payment terms to SMEs and proposed a 30 day maximum term. No law has yet been proposed, rather reporting requirements have been introduced: the ***2020 Payment Times Reporting Act***[321], obliges large companies and government enterprises[322] to regularly report publicly on payment terms and practices towards their small business suppliers[323].

670. The Western Australian Building and Construction Industry (Security of Payment) Act 2021 and the NSW Building and Construction Industry Security of Payment Act 1999[324] limit payment terms respectively to 20 and 15 business days after a payment claim is made by a main contractor and to 25 and 20 business days by a subcontractor.

2.2. CANADA

671. *Canada* - Prompt payment and mandatory adjudication legislation is being introduced across Canada to address payment delays in the construction supply chain.

672. In the federal context, under the Financial Administration Act, the Treasury Board Payment Directive, and the federal government Contracting Policy, there is an ordinary course of payment environment established that can fairly be characterized as fundamentally based upon the core principles of prompt payment. In particular a 30-day from invoice payment cycle, payment of

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[320] https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417/part-1-policy-and-practice

[321] Payment Times Reporting Scheme | Treasury.gov.au - https://treasury.gov.au/small-business/PTRS https://www.legislation.gov.au/Details/C2021C00531

[322] Income greater than $100m p/a; or Income greater than $10m p/a if the entity is part of a group with a combined total income of greater than $100m p/a.

[323] Reporting has to include: Standard payment periods to small businesses (including the most common, shortest & longest). The proportion (by total number & total value) of small business invoices paid within the following payment brackets from the issue date of invoice: less than 21 days, 21-30 days, 31-60 days, 61-90 days, 91-120 days, 120+ days. The proportion (by value) of procurement from small business suppliers. Details of use/offers of supply chain finance to small businesses.

[324] https://legislation.nsw.gov.au/view/html/inforce/current/act-1999-046

undisputed amounts, and mandatory interest which assists in ensuring that payments are made by the federal government promptly.[325]

673. The ***Federal Prompt Payment for Construction Work Act***[326] was passed in 2019, but is not yet in force. It addresses the non-payment of contractors and subcontractors performing construction work for federal construction projects (with adjudication limited to payment disputes). It makes payment of interests on overdue amounts mandatory; it gives the right to terminate a construction contract for non-payment; it includes rights to information. Once in force, it will not exempt existing contracts but give a one-year deferral period.

674. Some provinces are in a preparatory phase and 4 provinces (Ontario, Saskatchewan, Alberta, Nova Scotia) have in the meantime introduced and/or enacted prompt payment acts for the construction sector[327]:

1) *Ontario*: since October 2019, swift payment deadlines, requiring the owner either to pay within 28 calendar days or to dispute within 14 calendar days, describing the reasons for non-payment; the contractor must either pay its subcontractors within 7 calendar days of receipt of payment or send notices of dispute within 7 calendar days; adjudication is mandatory and has been introduced as a quick interim method to resolve disputes on a construction project.
2) *Saskatchewan*: since March 2022, the Amendment Act and Amendment regulations introduced a prompt payment and adjudication regime similar to Ontario's regime. The new Saskatchewan Construction Dispute Resolution Office (SCDRO) will act as the official adjudication authority and the ADR Institute of Saskatchewan Inc. will work with the SCDRO to provide adjudicators. The prompt payment and adjudication regime does not apply to architects, engineers, land surveyors and persons providing services or materials for any improvement with respect to a mine or mineral resource (including any activities regarding exploration, development, production, decommissioning or reclamation) or an improvement related to infrastructure in connection with the generation, transmission or distribution of electrical energy.
3) *Alberta*: since August 2022, introduction of prompt payment, adjudication, an extension of lien registration periods. Adjudication may not always be used, as parties may not refer a dispute to adjudication if an action in court has already been commenced. The act does not permit the use of contractual 'paid when paid' clauses, or other payment terms, to extend payment deadlines. Existing contracts have until 2024 to make their terms comply with the new provisions. Monthly billings required for construction projects, at least every 31 days.

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[325] Singleton Reynolds Report, 2018, https://www.cca-acc.com/wp-content/uploads/2020/09/Building-a-Federal-Framework-Report.pdf

[326] Limiting payment terms for federal projects to 42 days being, 28 days for payment to the prime contractor, 7 days for following payments to subcontractors and a further 7 days for those sub-contractors to pay their suppliers. https://laws.justice.gc.ca/eng/acts/F-7.7/FullText.html
https://www.cca-acc.com/advocacy/critical-issues/prompt-payment/

[327] https://www.osler.com/en/resources/in-focus/canadian-prompt-payment-and-construction-law-reforms
https://www.on-sitemag.com/features/prompt-payment-the-state-of-play-across-canada/

4) *Nova Scotia*: since October 2022, Government has the authority to appoint an external body to adjudicate disputes between developers and their contractors and subcontractors. Amendments to the Builders' Lien Act will allow the new authority to collect and manage fees to cover the costs associated with adjudicating disputes. It will also define the body's duties and powers related to training adjudicators and setting and collecting adjudication fees. The legislation further strengthens the prompt payment process by: defining the scope of disputes that can be referred to adjudication to include disputes related to the value of services or materials provided under a contract and disputes related to payment under a contract; setting out parameters for the timing of decisions.

2.3. CHINA

675. Article 161 of the Contract Law of the People's Republic of China provides that if the payment time is not stated and additional agreement cannot be reached then payment is due on delivery.[328]

2.4. INDIA

676. The Micro, Small and Medium Enterprises Development (MSMED) Act 2006[329] limits payment terms to SMEs to 45 days and has penalties including fines and imprisonment. Firms dealing with SMEDs are required to report to the government on the amount and reasons for late payment.

677. As per rule 149 of the General Financial Rules 2017, the Indian government's e-marketplace for government procurement (GEM) currently requires payment of suppliers within 10 days. Interest will be charged from the first day beyond the 10 day period until the payment is made. The amount collected from the late payment levy would be deposited in an account maintained by the GeM and shall be used for the education of sellers and buyers or any other purposes related to GeM or public procurement.[330]

2.5. JAPAN

678. The ***Prevention of Delay in Payment under Government Contracts*** (Act No. 256 of 1949) sets a maximum term of 40 days for government construction projects, and 30 days for other services to public entities. If the terms are not specified in contract then the default payment term is 15 days from receipt of invoice.

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[328] "The buyer shall effect the payment at the agreed time. If the time for payment is not stipulated or not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the buyer shall pay at the same time as it takes delivery of the targeted matter or receives the document for taking delivery of the targeted matter." http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21908031.htm

[329] https://legislative.gov.in/sites/default/files/A2006-27.pdf

[330] https://economictimes.indiatimes.com/news/economy/policy/finance-ministry-to-levy-1-late-payment-interest-on-government-e-marketplace/articleshow/76775259.cms

679. The ***Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers*** by the Japanese Fair Trade Commission does not apply specific maximum payment terms to the industry but it does restrict delayed payment in response to certain disputes[331].

680. The ***1956 Subcontract Act***[1] sets payments from larger companies to smaller 'subcontractors' at a maximum term of 60 days from the day of delivery, regardless of whether or not the work has been inspected in detail. Company size thresholds and payment criteria vary across industries. Interest for delay applies automatically[332]. The Act also bans a list of unfair practices[333].The Fair Trade Commission and the Director-General of the Small and Medium Sized Enterprise Agency have powers of inspection and can require a main contractor to submit a report on its transactions. Administrative sanctions are foreseen[2].

2.6. NEW ZEALAND

681. The **Construction Contracts Act**[334] was introduced in **2002** and amended in **2015**. It helps to ensure a fair, balanced and appropriate payment regime, provides a process for dealing with payments and disputes under a construction contract, provides enforcement mechanisms to recover any unmade payments and protects retention money withheld under commercial construction contracts. The Act rendered conditional payment provisions such as 'pay-when-paid' and 'pay-if-paid' clauses in a construction contract ineffective. The default date for a progress payment or any other type of payment under a construction contract for construction work carried out under that contract is 20 working days after the payment claim is served on the payer. It establishes a statutory right to progress payments and a mechanism for determining the number of payments under the contract, the interval between those payments, the amount of each of those payments and the date when each of those payments becomes due. It includes a not-mandatory adjudication regime.

682. The **Fair Trading Amendment Act 2021** places new obligations on businesses and provides new protections for consumers and small businesses. It: prohibits

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[331] https://taulia.com/payment-terms/japan/

[332] The statutory interest rate for commercial transactions is 3%, as set out in article 404 of the civil code. The rate is applicable to 31 March 2023, and is reviewed every three years.

[333] Such as: refusing to receive the work from a subcontractor without reasons attributable to the subcontractor; failing to make payment of subcontract proceeds after the lapse of the date of payment; reducing the amount of subcontract proceeds without reasons attributable to the subcontractor; causing a subcontractor to take back the goods relating to its work after receiving the work from the said subcontractor without reasons attributable to the subcontractor; unjustly setting subcontract proceeds at a level conspicuously lower than the price ordinarily paid for the same or similar content of work; coercing the subcontractor to purchase designated goods or to use designated services except in such cases where it is necessary to standardize or to improve the content of the work performed by a subcontractor or where there are other justifiable grounds; or reducing the volume of transactions, suspending transactions or giving some other disadvantageous treatment because the subcontractor informed the Fair Trade Commission or the Director-General of the Small and Medium Sized Enterprise Agency of such a fact, etc.

[334] https://www.legislation.govt.nz/act/public/2002/0046/latest/DLM163059.html

unconscionable conduct in trade[335] and extends unfair contract terms provisions to cover standard form (common types of take-it-or-leave-it standard form contracts, like those for power and phone) small trade contracts (with a value below $250,000 in a given year). The Commerce Commission can take action to stop a business using an unfair term in a contract, can apply to the court to have a term declared unfair and if a court decides the term is unfair, that part of the contract will not be legally binding on parties.[336]

683. New Zealand is in the process of passing the **Business Payment Practice Bill[337],** first introduced on 25/10/2022, which will require companies with annual turnover of more than $33 million to report on their payment practices every six months.

684. The New Zealand government launched a public consultation in 2020 on the subject of **improving business-to-business payment practices** and may in the future introduce new laws limiting government and commercial payment terms. The discussion paper[338] is based on the premise that agreed payment terms should reflect the ability of twenty-first century technology to process invoices almost immediately. It also quotes the Australian study[339] that shows the costs to their economy of large businesses effectively using small ones for cheap credit is $2.54 billion over 10 years. Xero's Small Business Insights for January- September 2019 show that small business invoices on their platform are paid 8.6 days late on average. Xero estimates New Zealand small businesses are owed about $7.4 billion total in unpaid invoices. The discussion paper puts forward the following:

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[335] If found guilty of unconscionable conduct, businesses can be convicted and fined up to $600,000 and individuals can be liable for fines of up to $200,000. New Zealand courts are likely to interpret the meaning of unconscionable conduct in a similar way to the Australian courts, as Australian law already includes a similar prohibition. They have interpreted unconscionable conduct as being serious misconduct that is so far outside accepted standards of commercial conduct as to be against good conscience. Good business conscience is measured against the values and norms of modern society and expectations of what is right and proper according to those values and norms. Those values and norms can include acting honestly, fairly and without deception or unfair pressure. This is conduct that is more than just hard commercial bargaining but clearly unfair and unreasonable. The courts may consider a range of factors in assessing whether certain conduct is unconscionable and some of these factors are listed in the legislation (s8(1) of the Fair Trading Act). In summary, these are:

the relative bargaining strength of the parties
the extent to which the parties acted in good faith
whether the affected party could protect their own interests given their characteristics and circumstances
whether the affected party could understand documents provided to them
the use of undue influence, pressure or unfair tactics by the business
whether the business made clear to the affected person anything the business might do that would adversely impact the affected person's interests or create a risk for them.

[336] https://comcom.govt.nz/business/your-obligations-as-a-business/changes-to-fair-trading-laws

[337] https://bills.parliament.nz/v/6/c1f6efb7-814b-4def-a8d4-3b0d9407b9e2?Tab=history

[338] https://www.mbie.govt.nz/dmsdocument/11212-discussion-paper-improving-business-to-business-payment-practices

[339] https://www.xero.com/small-business-insights/wp-content/uploads/2019/06/xsbi-report-paying-the-price.pdf

1) 20 days maximum payment term applying to a contract for the supply of goods and services between entities that are in trade;

2) Running from the later of the day on which the goods of services to which the payment relates are provided and the day on which the purchaser is notified of the amount of the payment (i.e. receives an invoice).

3) If a verification is needed, then the 20 days would run from the end of the verification procedure, with the verification period capped at a specified number of days in the legislation. The 'verification period cap' could be contracted out of if to do so would not be grossly unfair to the supplier.

4) Recognise that there are some contractual relationships where a 20-day maximum payment term might be inappropriate, for example: property such as land and buildings; intangible, such as rights in intangible property that can only be claimed or enforced by court action (intellectual property rights such as patents, or shares in a company); goods subject to a 'security', such as a vehicle until it is paid off; services that are contracts of services, such as employment contracts.

5) Limit the proposal to contracts below a certain value (contracts that form part of trading relationships with an annual value of less than $250,000). This allows to take into account that larger contracts are likely to be subject to more sophisticated negotiation.[340]

6) Limit the proposal to 'standard form contracts' (similar to the unfair contract terms provisions in the Fair Trading Act). This means that extended payment terms would only be prohibited in contracts that are not subject to effective negotiation.[341]

7) It would not include different maximum terms for different industries/sectors or classes of goods, but it would need to ensure that any industry specific regime has common principles and objectives.[342]

8) It would allow contracting out, but only in very limited circumstances. To this end, the definition of "grossly unfair" in the UK legislation is taken as possible example.

9) It would provide for automatic entitlement to interest for late payments, but with a higher interest rate than the Interest on Money Claims Act 2016 provides for -at least where small businesses are the creditors - to reflect the true costs they face from

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[340] The alternative (use the size of the two parties) would add contractual complexity in trying to define the size of business, and what provision to apply and would not take into account that poor payment practices, such as delayed payment terms, can also occur between small businesses.

[341] This would protect entities in cases where there are imbalances of power, but would still allow for, say, two very large organisations to trade on terms mutually agreed through effective negotiation.

[342] For instance, the construction sector, characterised by large and bespoke projects, and a retention regime, already has its own system for regulating payments under the Construction Contracts Act 2002, this includes a regime for dealing with disputes as an alternative to the Courts.

deferred payment: the Reserve Bank of New Zealand's six-month term deposit rate plus a base rate of five percentage points.[343]

10) It would introduce an implied dispute resolution clause. This would mean that, if contracts did not include their own provisions around dispute resolution, they would be required to include a clause as specified in the legislation.

2.7. TÜRKIYE

685. Türkiye - The 2012 Commercial Code includes provisions preventing large enterprises from imposing long/late payment terms on suppliers[344].

686. Maximum payment term in a contract is 60 days starting from the due receipt of the invoice or goods/services or the end of the inspection term, as applicable. The parties can extend such maximum term with mutual agreement, provided that such extension does not cause a gross burden on the other party. However, the maximum term cannot be extended in any circumstances if any of the following apply: (1) the recipient of the payment is a small or mid-size enterprise (SME); or (2) the payment obligor is a large scale enterprise; or (3) the recipient is an agricultural or livestock producer.

687. In case of breach, the payment term will be deemed as 30 days -starting from the receipt by the purchaser of the invoice/payment request- and the purchaser will be deemed in default as of the end of such 30 day period. Default interest will begin to accrue automatically at the end of the 30 days with no requirement for further notice. Contractual provisions indicating that the purchaser shall not be obliged to make a default interest payment to the supplier shall be null and void and, if the agreed default interest rate is grossly unfair, the applicable default interest to be

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[343] New Zealand already has legislation that gives businesses the right to interest as compensation for late payments if a business takes civil proceedings (goes to court). The Interest on Money Claims Act 2016 provides "for the award of interest as compensation for a delay in the payment of debts, damages, and other money claims in respect of which civil proceedings are commenced". That is, if a business take another business to court for a late payment, the Interest on Money Claims Act sets out how to calculate the interest one has to receive. The rate is intended to "reflect fairly and realistically the cost to a creditor of the delay in payment of a money claim by a debtor".

344 Maximum payment term in a contract is 60 days starting from the due receipt of the invoice or goods/services or the end of the inspection term, as applicable. The parties can extend such maximum term with mutual agreement, provided that such extension does not cause a gross burden on the other party. However, the maximum term cannot be extended in any circumstances if any of the following apply: (1) the recipient of the payment is a small or mid-size enterprise (SME); or (2) the payment obligor is a large scale enterprise; or (3) the recipient is an agricultural or livestock producer.

In case of breach, the payment term will be deemed as 30 days starting from the receipt by the purchaser of the invoice/payment request, and the purchaser will be deemed in default as of the end of such 30 day period, default interest will begin to accrue automatically at the end of the 30 days with no requirement for further notice; contractual provisions indicating that the purchaser shall not be obliged to make a default interest payment to the supplier shall be null and void and, if the agreed default interest rate is grossly unfair, the applicable default interest to be paid by the purchaser shall be the statutory commercial interest rate determined by the Turkish Central Bank + 8%.

paid by the purchaser shall be the statutory commercial interest rate determined by the Turkish Central Bank + 8%.

2.8. UNITED KINGDOM

688. Legislation to combat late payment transactions has been in place since 1998[345] and is now under revision[346].

689. Regulations made under sections 3 and 161 of the Small Business, Enterprise and Employment Act 2015 (and for limited liability partnerships (LLPs), made under section 15 and 17 of the Limited Liability Partnerships Act 2000), introduce a duty on the UK's large companies and LLPs to **report** on a half-yearly basis on their **payment practices, policies and performance** for financial years beginning on or after 6 April 2017. The review of this duty concluded that the Regulations have brought greater transparency to the payment practices and performance of large businesses, the policy remains appropriate because there is an ongoing need to ensure greater compliance in terms of prompt payment and to increase awareness of the performance of large businesses in this area. In addition, having considered alternatives that may impose less regulation, the review concluded that the Regulations were the appropriate mechanism to address the policy objectives.

690. The **Prompt Payment code**[347] was established in 2008 and sets standards for payments between organisations of any size and their suppliers. It initially required to pay promptly (within agreed terms), to give clear guidance to suppliers on terms, dispute resolution and prompt notification of late payment and to support good practice throughout their supply chain by encouraging adoption of the Code. It was changed in 2021, requiring confirmation from all signatories by 2022, and additionally asked to pay 95% of invoices within 60 days and 95% of invoices to businesses with less than 50 employees within 30 days.

691. Section 110 of the Housing grants, Construction and Regeneration Act 1996 applies the "**Scheme for construction contracts**" where a construction contract fails to provide a payment term. The scheme terms are 7, 17 and 30 days depending on the type of payment.

692. The government committed to pay 90% of undisputed and valid invoices from SMEs within 5 days and 100% of all undisputed and valid invoices to be paid within 30 days. Government departments are required to **report** their performance against these payment targets on a quarterly basis on GOV.UK.

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[345] The UK national legislation to combat late payments ("The Late Payment of Commercial Debts Regulation of 2013 https://www.legislation.gov.uk/uksi/2013/395/contents/made) is the transposition in the UK of the LPD.

[346] Amendments to the Payment Practices and Performance Regulations 2017 - (www.gov.uk)

[347] https://www.smallbusinesscommissioner.gov.uk/ppc/about-us/

693. All organisations bidding for government contracts over 5 million pounds have to demonstrate that they pay 95% of all supply chain invoices within 60 days.

694. Through the Public Contract Regulations 2015, public sector buyers must include 30-day payment terms in new public sector contracts; and require that this payment term be passed down the supply chain. Public sector buyers must also publish annual reports on their payment performance.[348]

2.9. USA

695. In 2014 the US government launched the ***Supplier Pay Initiative*** with 26 large companies, pledging to pay smaller suppliers earlier and provide more affordable working capital financing. The rationale behind the initiative is that, while slow payment of suppliers makes the large firm's cash flow look better, it hurts supplier investment, thus reducing supplier quality, innovation and on-time delivery. Alternatively, suppliers will build their increased financing costs into their prices which ultimately hurts the original equipment manufacturers's bottom line.

696. While the number of companies signing up for SupplierPay grew from 26 in 2014 to 47 in 2015, the program has had limited results. Flowcast examined the days payable outstanding (DPO) of 17 of the first 26 pledged companies to find that more than half of those companies had actually extended their overall payment days, to a median of +1.9 days. The Initiative was found to lack enforcement, to disregard the prisoner's dilemma effect, to not prevent signatories from forcing the added costs resulting from earlier payments back onto suppliers, to not encourage enough Supply Chain Finance without tying its availability to an extension of payment terms and to not look enough into the benefits of digitalisation of payments.[349]

697. The Perishable Agricultural Commodities Act of 1930 requires "full payment promptly" by agents, buyers and brokerages for agricultural goods in the United States. Maximum payment times range from 5 to 30 days depending on the circumstances set out in 7 CFR 46.2(aa). In addition, a few US States (Idaho, California, Oregon, Washington) have adopted specific B2B legislation in the agriculture domain, in some cases limited to specific products (mostly grain).[350]

698. The 1982 Federal Prompt Payment Act[351] requires **federal agencies** to pay their bills on time and to pay interest penalties when payments are made late. The government should pay with 30 days and 15 days for 'fast pay' terms aimed at SMEs. Federal construction contracts must include a prompt payment clause where the prime contractor has to pay subcontractors for 'satisfactory'

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[348] https://www.gov.uk/guidance/prompt-payment-policy#prompt-payment-in-government-contracting
[349] https://spendmatters.com/tfmatters/5-reaasons-why-obamas-supplierpay-isnt-working/
[350] https://taulia.com/payment-terms/united-states/
[351] Prompt Payment (treasury.gov)

performance within 7 days of receipt of payment. Agencies are to 'accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors'. Barrot and Nanda (2016) investigate the impact of the US Quickpay reform, which accelerated federal government payments to small business contractors, and document that its implementation, by reducing payment terms, has had a positive indirect impact on employment growth in the affected firms.

699. The timing for payment on **non-federal projects** varies by state and project type. Nearly every US state has laws that set payment deadlines on construction projects. The timing of payments and penalties for non-compliance vary widely. Most states have laws that apply to both private projects and public projects. However, some states only set requirements for public projects. In some states, the same statute applies to payments on both public and private projects. In others, different laws apply to each type of project. State prompt payment laws set deadlines for payment on every project tier, including payments from the property owner to the prime contractor, from the prime to subcontractors, and so on. Furthermore, some states create a distinction between progress payments and final payments, including retainage, with different deadlines for each. [352]

[352] https://www.levelset.com/prompt-payment

S. ANNEX 19: PROBLEM DEFINITION AND THE PROBLEM TREE

Figure 20: Late payment problem - context, drivers, and consequences

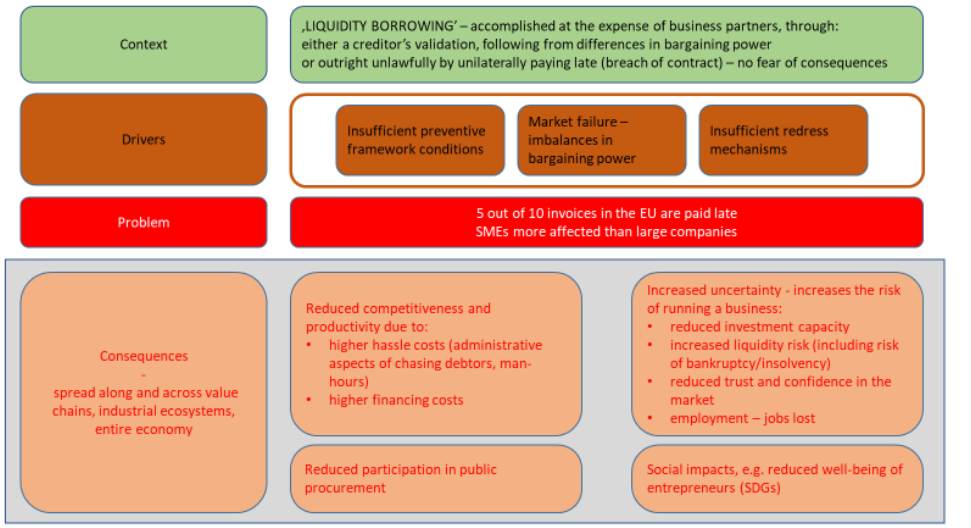
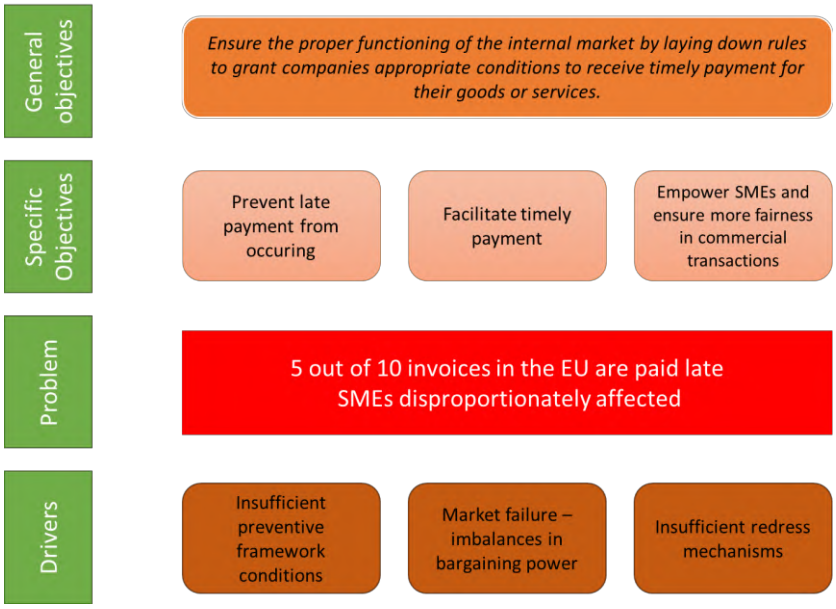


Figure 21: Late payment problem - general and specific objectives



T. ANNEX 20: CONSEQUENCES OF LATE PAYMENT

700. **Late payment creates a domino effect that leads to more late payment**. Consequences of late payment spread along and across supply chains, industrial ecosystems, and the entire economy. 70% of EU companies[353] confirmed that receiving payments faster would let them faster pay their own suppliers (varying from 82% for France, 80% for Switzerland, 79% for the Netherlands and 75% for Ireland, Greece, Bulgaria and Austria).

701. In a 2013 US Working Capital Survey, it was found that companies in the upper quartile of their industries pay their suppliers on average in 35.8 days, almost 11 days slower than companies at the median. A report found that there are possibly two reasons for large buyers not to help suppliers reduce their working capital costs: competing priorities within corporations[354] and conflicting incentives between corporations[355]. A report by Spend Matters analysed data on public companies and found that in 17 of the largest manufacturing industries, higher shareholders returns were correlated with shorter payments; shorter payments tend to strengthen supply chains[356].

702. Making a company's cash flow weaker increases the likelihood that the company would seek to pay late[357]. The company is twice as likely to unilaterally decide to pay late than to formally seek an agreement on the extension of the terms of credit[358].

1. LATE PAYMENTS REDUCE COMPETITIVENESS

703. Late payment slows down the circulation of money in the economy, increases financing costs and causes companies to forego attractive business opportunities.

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[353] Source: https://www.intrum.com/press/news-stories/the-damaging-effect-of-late-payment/

[354] Accounting departments maximise available cash and strong flow management, while procurement departments may care more about having strong suppliers that benefit from quick payment.

[355] Investment in technologies, equipment, and workers throughout the supply chain ultimately benefits all firms in that system. If only one customer slows payment, the overall damage done to the supply chain is fairly small, as other firms will continue to fund the working capital needs of their common suppliers. However, if other companies find themselves at a competitive disadvantage, they may follow suit. Collectively, these large firms could diminish the investment capacity of their common supply chain. The choice of large firms not to pay quickly represents a classic collective action problem known as a prisoner's dilemma.

[356] https://www.commerce.gov/sites/default/files/migrated/reports/supplierpayv25.pdf

[357] https://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-tp-elp-1stock.pdf

[358] https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

704. One-day reduction in payment delays would increase EU companies' aggregated cash flow by 0.9%[359] and could save EUR 158 million in financing costs[360] - see Annex 4 for the calculation of these figures. 70% of companies declare that faster collection of receivables would allow them to pay their own suppliers faster[361].

705. 4 out of 10 companies consider late payments to slow down their company's growth and lose its competitive edge[362]. The absence of predictable income flows makes companies seek to better manage their financial exposure and prevents them from starting new projects, filling large orders, or investing in new equipment.

706. Late payments are the second most critical barrier for growth and for the twin transition (after administrative burden)[363]. 67% of businesses would improve their sustainability and green performance if payments were faster, 40% would expand abroad, 47% would hire more employees, and 70% would pay their own suppliers faster[364].

1.1. LATE PAYMENTS INCREASE HASSLE COSTS OF CHASING DEBTORS

707. The resources - time and money - spent chasing customers for payment represent an unnecessary addition to a company's operating expenses. Late payment causes unnecessary and unprofitable paperwork[365].

708. Monetary estimates associated with chasing late payments as an administrative task[366] range from USD 1,200 in France to USD 2,800 in Germany per SME per

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[359] *Commission Study: Building a responsible payment culture – improving the effectiveness of the Late Payment Directive.*https://op.europa.eu/en/publication-detail/-/publication/cb4bc1bd-1467-11ed-8fa0-01aa75ed71a1/language-en/format-PDF/source-search
Ferrara A., Ferraresi M. (2022), Assessing the economic impact of faster payments in B2B commercial transactions. Final Report, JRC Study https://publications.jrc.ec.europa.eu/repository/handle/JRC130205 and https://op.europa.eu/en/publication-detail/-/publication/fa844000-356a-11ed-9c68-01aa75ed71a1/language-en/format-PDF/source-283038902

[360] *Ex-post Evaluation of the Late Payment Directive* https://publications.europa.eu/en/publication-detail/-/publication/400ecc74-9a54-11e5-b3b7-01aa75ed71a1 The Evaluation was carried out in 2015 based on a model built on the results of a large company survey

[361] Source : Intrum, European Payment Report 2022 https://www.intrum.com/publications/european-payment-report/european-payment-report-2022/

[362] Intrum, European Payment Report 2022 https://www.intrum.com/publications/european-payment-report/european-payment-report-2022/

[363] https://europa.eu/eurobarometer/surveys/detail/2244

[364] Intrum, European Payment Report 2022 https://www.intrum.com/publications/european-payment-report/european-payment-report-2022/

[365] A UK study concluded that chasing debtors can cost SMEs up to 3% of their turnover. The study found that an average UK SME is chasing five outstanding invoices at any one time, amounting to an average of £8,500 being owed. Chasing debtors costs the average UK SME 1.5 hours per day – or almost 900,000 hours in total, across all SMEs, per dayhttps://www.tide.co/blog/tide-update/new-research-uk-smes-chasing-50bn-in-late-payments/

[366] 2017 UK study: "The Domino Effect: the impact of late payments", https://www.sage.com/en-gb/blog/wp-content/uploads/sites/10/2017/12/Domino-Effect-Late-Payments-Research-Sage.pdf

year. These costs include the costs of facilities needed to perform the chasing in addition to the costs of human resources, but exclude software costs, the opportunity-cost of lost investments or new contracts missed.

1.2. LATE PAYMENTS INCREASE COST OF FINANCING

709. Predictability of income flows influences a company's credit rating and affects its ability to obtain financing. Deterioration in cash flow due to late payments may make it difficult for the debtor to repay loans, increasing the level of risk reflected in the credit rating, which determines the cost of funding. Higher levels of risk carry higher costs. The larger the degree to which late payments affect a company, the less favourable conditions the company will obtain from its providers of finance.

710. SMEs affected by late payments are likely to pay higher interest rates[367] and other charges. Financial institutions require higher risk premiums because the funding they provide to their clients is effectively transferred to third parties – debtors. Lenders tend to reduce the amounts of loans granted to SMEs affected by late payments and require a shorter maturity horizon[368].

2. LATE PAYMENTS INCREASE UNCERTAINTY AND THE RISK OF RUNNING A BUSINESS

711. Widespread late payment practices increase market uncertainty[369] and directly affect an economy's competitiveness and efficiency. In an environment dominated by late payment, most companies adopt prudential measures to manage the additional risks stemming from late payment. These measures have a cost, which has no corresponding benefit to match, adversely affecting productivity, profitability, and competitiveness.

712. Running a business in a late payment environment is riskier because every trade credit sale is riskier than in a timely payment environment. Banks are wary of granting funding to customers who are not skilled at collecting their receivables and they consider it as an important risk factor. The existence of late customer payments raises a company's probability of default by 25%, and by 40% if payments are over one month late[370].

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[367] During the 12 months of 2020, the cost of working capital finance for SMEs had increased by 30-35% in the UK, the Netherlands, Germany, the US, Italy and the Nordic region. https://www.gtreview.com/news/global/cost-of-working-capital-finance-soars-for-smes-survey-finds/

[368] https://www.efmaefm.org/0EFMAMEETINGS/EFMA%20ANNUAL%20MEETINGS/2022-Rome/papers/EFMA%202022_stage-3032_question-Full%20Paper_id-161.pdf

[369] https://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp531_en.pdf

[370] https://publications.banque-france.fr/en/do-late-customer-payments-impact-companies-probability-default

2.1. LATE PAYMENTS REDUCE INVESTMENT CAPACITY

713. Unpredictable cash flows negatively affect investment decisions, both made by the company and considered by providers of investment financing. Shortages of cash flow can make it difficult for small businesses to pay their operating expenses leaving no room for funding their future needs (investment). Most bank lenders, who are the main provider of finance to SMEs, will not grant long-term investment funding, riskier than short-term finance, when the risk related to a company's short-term operations is high.

2.2. LATE PAYMENTS INCREASE LIQUIDITY RISK AND THE RISK OF BANKRUPTCY

714. Cash flow is the lifeblood of any business and sufficient liquidity is legally required for companies to do business[371]. Timely payments are essential not only for continuing going concern, but also for competitiveness and growth. Access to finance is usually more restrained for SMEs than for large companies, which makes them more reliant on regular streams of cash from operations.

715. Late payments in commercial transactions, can drive companies out of business[372]. Every insolvency triggers undesirable effects for the whole economy: jobs lost, unpaid debts, tax revenue lost, which affect competitiveness and local communities. Payment delays are estimated to cause 1 out of 4 bankruptcies[373]. In France, payment delays exceeding 30 days increase the probability of bankruptcy by 40%[374]. Receivables overdue by more than 60 days or more severely affect the economic standing of companies[375]. More than 170.000 (12%) of Spanish companies are at risk of bankruptcy due to late payments[376].

2.3. LATE PAYMENTS REDUCE TRUST AND CONFIDENCE IN THE MARKET

716. Late payments damage trust in the marketplace and lead to foregoing profitable business opportunities. Businesses not receiving payment on time have fewer incentives to trust business partners. The fact that most companies never claim compensation for late payment points to the limited trust in market enforcement

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[371] Inability to meet short-term obligations requires companies to file for bankruptcy.

[372] W. Connell, *The Economic Impact of late payments, DG ECFIN, Economic Papers 531*. https://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp531_en.pdf

[373] Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1/language-en/format-PDF/source-103408786

[374] Les retards de paiement des clients impactent-ils la probabilité de défaillance des entreprises ?, Bulletins de la Banque de France n. 227/8 - January -February 2020 819416_bdf227-8_late_customer_payment_vfinale.pdf (banque-france.fr)

[375] W. Rogowski, Payment delays : Reasons, Scale and Consequences, Journal of Management and Financial Sciences, Warsaw School of Economics, 2017

[376] Estudio de la gestión del riesgo de crédito, CyC Atradius and Iberinform, November 2022 171.000 empresas consideran que la morosidad amenaza su supervivencia (creditoycaucion.es)

authorities. Instead, companies may tighten payment terms granted to customers, e.g. by reverting to cash prepayments, at the expense of losing some contracts, step up their internal trade credit control activities (at a cost), or consider moving the business abroad where payment performance is better. When suspicion and mistrust are a norm in business relationships, companies instigate safeguard clauses and require intensive legal assistance. They are likely to be more prudent or unwilling to establish new business relationships. Consequently, lack of trust increases the cost of doing business and accounts for unrealised business opportunities.

2.4. LATE PAYMENTS RESULT IN JOBS LOST

717. Employment suffers from late payment practices. Not only can the lack of cash flow make it difficult for companies to pay their employees, but also the cash flow liberated and reinvested in the economy would pay for additional 6 million jobs in the EU every year[377]. Should the public sector make all its payments on time, it would allow companies from sectors which highly depend on contracts with public administration to increase employment by 0.7%. This would represent 900,000 more jobs in those sectors[378].

3. LATE PAYMENTS REDUCE PARTICIPATION OF SMES IN PUBLIC PROCUREMENT

718. Countries that work with longer-than-average payment periods witness lower participation rate of SMEs in public procurement. Public procurement has a significant economic impact and is a major channel for European investments. It accounts for 14% of the EU's GDP. Promptness and certainty of payment are key in supporting the financial capacity of companies, especially SMEs, and their participation in tendering processes[379]. Public authorities' poor payment behaviour discourages SMEs from taking part in public procurement (see section 2). Delays in payments have a particularly adverse effect on smaller firms[380].

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[377] JRC 2018

[378] https://www.journals.uchicago.edu/doi/epdf/10.1086/713502

[379] Commission study on public procurement 2019 - analysis of the SMEs' participation in public procurement and the measures to support it - https://op.europa.eu/o/opportal-service/download-handler?identifier=eec8227c-ecc4-11ea-b3c6-01aa75ed71a1&format=pdf&language=en&productionSystem=cellar&part=

[380] See the VVA reports for the European Commission on late payment, i.e. the Ex-post evaluation of the Late Payment Directive (2015); Study on late payment in B2B transactions (2018). Available at: https://ec.europa.eu/growth/smes/support/late-payment_fr.

4. LATE PAYMENTS PRODUCE NEGATIVE SOCIETAL OUTCOMES

719. Late payments negatively affect the well-being of entrepreneurs[381]. In a survey carried out in 2020, entrepreneurs declared that late payments lead to anxiety, stress, and panic attacks in 88% of cases, makes running a business less enjoyable (66%), and undermines their confidence as an entrepreneur (25%). Entrepreneurs interviewed declared that late payments determine anxiety, stress, and depression in 63% of cases. The impact is greater among younger entrepreneurs[382].

720. Research commissioned by the South-African government in 2020[383] concluded that late payments had negative social implications for 99% of the respondents. The most serious outcome was the "*inability for small business owners to support their families*" (e.g. pay school fees and provide food). Other negative impacts were "*strained relations with employees*" and "*damaged reputation in the market".*

721. Late payment affects the quality, choice, and continuity of provision of essential goods and community services. Replies to the call for evidence have highlighted the following examples: public and collective transport[384], medicines and medical devices for health care[385], information, communication and media[386], translation and interpretation services[387], instrumental for living and working in the single market; social cooperatives providing services of general interest (e.g. cultural, educational, environmental, integration of disabled and marginalised people in the society)[388].

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[381] "*Late payments took me to a frightening place*", The Guardian, May 2017 https://www.theguardian.com/small-business-network/2017/may/23/late-payments-mental-health-stress-prompt-payment-directory-booking-live
Prévenir le suicide des chefs d'entreprise – Essentiel Santè Magazine, 12.12.2016 *https://www.essentiel-sante-magazine.fr/sante/travail/apesa-france-aide-psychologique-entrepreuneur*
Giuseppe Bortolussi, *L'economia dei suicidi- Piccoli imprenditori in crisi ,* Marcianum Press, 2012
[382] "*The shocking impact of late payments on mental health*", February 2022 https://brodmin.com/payments/late-payments-and-mental-health/
https://www.verywellmind.com/the-relationship-between-debt-and-mental-health-5120085
[383] DPME (2020) "Research on the Delays and Non-payment by Government on Small, Micro and Medium Enterprises - Full Report", Pretoria: Department of Planning, Monitoring and Evaluation
[384] Call for Evidence, feedback F3388590
[385] Call for Evidence feedbacks F3388002, F3388677, F3375926
[386] Call for Evidence feedback F3388929
[387] Call for Evidence feedbacks F3388141, F3388154
[388] Call for Evidence feedback F3388621

U. ANNEX 21: LIST OF BILATERAL MEETINGS (TARGETED CONSULTATIONS)

722. In line with the consultation strategy, a large number of meetings took place, either bilateral with individual stakeholders or with designated groups of experts.

Mr. Spyridon, European Builders Confederation	11-10-2022
BusinessEurope	19-10-2022
Cooperatives Europe	27-10-2022
Assemblée nationale (FR)	09-11-2022
Family Businesses Europe	10-11-2022
Eurocommerce	15-11-2022
SME Assembly	29-11-2022
SMEunited	06-12-2022
Dutch Royal Metaalunie	06-12-2022
ANGED - Asociación Nacional Grandes de Empresas de Distribución	14-12-2022
Trade Promotion Europe	24-01-2023
AIM – European Brands Association	01-02-2023
Association Française des Credit Managers & Conseils	02-02-2023
IAPMEI (Portuguese institute for SMEs and innovation)	03-02-2023
Eurochambres	14-02-2023
Confcommercio	14-02-2023
Employers group of the EESC	16-02-2023

Industrial Forum	20-02-2023
CEPYME (Spain)	01-03-2023
Renew – EP	07-03-2023
PIMEC - Micro, petita i mitjana empresa de Catalunya PMCM - Plataforma Multisectorial contra la Morosidad	08-03-2023
SMEunited	10-03-2023
SME Envoys	21-03-2023

V. ANNEX 22: DIGITAL TOOLS

Facilitating prompt payment through modern digitalisation tools

1. INTRODUCTION

723. The current Late Payment Directive came into force in a world that was a lot less digital. Over those past 10 years, digitalization has had a profound impact on all aspects of society, including on business management. It has transformed the way businesses communicate, access information, market their products and services, streamline their operations, increase mobility, improve customer service, and enhance their security measures. Businesses that embrace digital tools and strategies are generally seen as more likely to succeed and remain competitive in today's fast-paced business environment.

724. Measures introduced by this revision should fit into this contemporary environment and therefore be 'digital by default'. Already in the Call for Evidence (CfE), we highlighted that 'facilitating timely payments, by promoting the use of modern digital payment tools and building up an "SME-friendly" business environment, supportive of timely payments' was one of the pillars on which the revision would be constructed.[389]

725. The impact assessment has put forward a preferred option to deal with the identified problem of late payment and its drivers. Digital tools and solutions will play an important role in some of the measures included in this preferred option and will impact their feasibility and cost-effectiveness. This concerns for instance the obligation to designate bodies responsible for the enforcement. Furthermore, MS are requested to foster the use by SMEs of digital tools for timely payments.

726. Since the adoption of the LPD, digital solutions have become universally available on the market, including automated accountancy programs, which can foster prompt payment by providing liquidity management solutions. Digital solutions can boost transparency and facilitate reporting obligations resulting from several legal instruments. The directive on electronic invoicing in public procurement aims to make the use of e-invoicing widespread. The VAT in the digital age proposal aims to make compliance with VAT easier for businesses by better harnessing the potential offered by digitalisation. Public authorities and companies could benefit from open and reusable digital solutions which the Commission is making available for free (eID, eSignature, eDelivery etc.).

[389] European Commission, 2023. Call for evidence for the revision of the Late Payments Directive, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13665-Late-payments-update-of-EU-rules_en

2. E-INVOICING

727. In the context of this revision, a first question that comes up, is whether companies can be forced into the use of e-invoicing. E-invoicing has the potential to impact payment terms through shortening the processing time of invoices and/or reducing the likeliness of errors in the invoicing process. This can lead to positive effects on payment terms and a reduction in disputes surrounding payments.

728. For G2B transactions, contracting authorities in the MS receive and process electronic invoices which comply with the European standard on electronic invoicing. This mandatory EU standard ensures the interoperability of e-invoices across MS. This has further been supported by the Connecting Europe Facilities Programme[390]. The use of e-invoicing in G2B transactions has proven to significantly shorten payment periods[391], particularly in MS where payment delays in public procurement were/are endemic.

729. Where B2B transactions are concerned, in 2020, 32% of EU businesses used structured e-invoices, accounting to around 7 billion e-invoices[392]. Use was shown to increase with the size of businesses: 30% of small enterprises, 38% of medium and 53% of large enterprises used structured e-invoices at that time. The VAT in the digital age is expected to lead to an increase in these numbers.

730. Notwithstanding the legal reservations to require companies to use as mandatory e-invoicing (see section 5.4 and Annex 14), experience also shows that the impact on payment behaviour is to be regarded only as a possible ancillary effect[393]. The 2022 Economisti Study concluded that in B2B transactions, e-invoicing is potentially a facilitator of better payment behaviour but, in itself, it is unlikely to have a significant impact in changing or improving that behaviour in absence of other factors, namely better enforcement[394]. These findings are backed by the respondents in the SME panel carried out for this IA: 31% of respondents said that e-invoicing helped them to receive payments on time, 44,2% stated that e-

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390 https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/connecting-europe-facility_en

391 Economisti Associati, 2022. Study on building a responsible payment culture in the EU: improving the effectiveness of the Late Payment Directive (2011/7/EU).

392 ibid

393 Economisti Study 2022. In the Study refereferences are made to some dedicated studies carried out in France on htis matter 1) Ministère de l'Économie, des Finances et de la Relance, Rapport de la Direction Générale des Finances publiques - La TVA à l'ère du digital en France, Octobre 2020 (page 53). which clearly guards against excessive expectations regarding the effects of e-invoicing on payment behaviour ("*Or pour l'ensemble des acteurs rencontrés … le simple envoi dématérialisé des factures n'est pas de nature à diminuer mécaniquement la part des paiements excédant les délais légaux*.")

394 *"Overall, it can be concluded that in B2B transactions e-invoicing does contribute to create the conditions for prompt payments, but its role remains secondary, and the impact is likely to be small, if not supported by other accompanying measures and better enforcement of the rules."*

invoicing did not help, while 17,9% do not use this facility and 6,9% did not answer.

731. While the potential of e-invoicing to support timely payments thus justifies the encouragement and promotion of its use, an overall obligation would induce certain costs and administrative burden on SMEs who have not yet adopted the necessary tools, and would not be in line with the overall target overall reduction of reporting obligations and other burdens as announced by the Commission Communication on Competitiveness[395].

3. DIGITAL BUSINESSES – DIGITAL LITERACY

732. Increasing digital literacy[396] amongst businesses ensures the ability to utilise digital (payment) tools, including the sending and accepting of e-invoices. Beyond being equipped to speed up the payment process and reduce the opportunities for delayed payment, digitalisation at the level of the individual employee and business can lead to wider improvements in efficiency, customer engagement, regulatory compliance and competitiveness. In sum, improving digital literacy is important for businesses so they can benefit from, and take part in, the digital transition. The Commission is already very active in shaping Europe's digital future and provides support focused on bringing digital technology to businesses, citizens and public administrations.[397]

733. In addition to e-invoicing, improving digital literacy in general thus improves the overall competitiveness of companies and their ability to deal with (late) payments in particular. As it stands, large enterprises dwarf SMEs when it comes to the adoption of all major digital practices.[398] Additionally, both large enterprises and SMEs still have a way to go to achieve the Commission's digitalisation target of 75% of EU companies using Cloud/AI/Big Data in their operations and 90% of SMEs achieving 'at least a basic level' of digital intensity.[399]

734. Currently[400], 49% of SMEs have a labour force where more than 50% of employees use computers with access to the internet for business purposes

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[395] COM(2023) 168 final

[396] Taken to mean the ability of a business to utilise digital tools and working methods and operate inside a wider digital economy.

[397] https://digital-strategy.ec.europa.eu/en/activities/digital-programme

[398] European Commission, 2022. Digital Economy and Society Index (DESI) 2022. Available at: https://digital-strategy.ec.europa.eu/en/library/digital-economy-and-society-index-desi-2022

[399] European Commission, 2021. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: 2030 Digital Compass: the European way for the Digital Decade'. Available at: https://commission.europa.eu/system/files/2023-01/cellar_12e835e2-81af-11eb-9ac9-01aa75ed71a1.0001.02_DOC_1.pdf

[400] European Commission, 2022. Digital Economy and Society Index (DESI) 2022. Available at: https://digital-strategy.ec.europa.eu/en/library/digital-economy-and-society-index-desi-2022

(compared to 58% of large companies); 40% of SMEs use cloud service (compared to 72% of large companies); 37% of SMEs have Enterprise Resource Planning (ERP) software to share information between different functional areas (compared to 81% of large companies); 28% of SMEs use Internet of Things (IoT) (compared to 48% of large companies), and 7% of SMEs use AI technology (compared to 28% of large companies).

735. In this context, the upcoming action plan on the 2023 European Year of Skills (part of the SME Relief Package) will include the establishment of ecosystem-specific skills academies seeking to equip the SME workforce for the digital transition.[401]

736. On Digital Skills, the approval of Resilience and Recovery Facility funds is contingent on Member States allocating at least 20% to Digital objectives. Out of this, 17% is dedicated to digital skills development.[402]

4. PROMOTING A CULTURE OF DIGITALISATION

1) Digital solutions are often already available on the market. Certain platforms include:
   a) Automated accountancy programs[403] generally offer a holistic overview of all payments, the ability to execute multiple payments in one 'click', the setting up of automatic periodic payments, and an integrated ability to dispute claims.[404] These services can foster prompt payment by providing debtors and creditors with a clear overview of payment timelines. For larger businesses purchasing from SMEs, they can also increase the ease at which payments are executed. For SMEs, targeted digitalisation solutions can narrow the aforementioned potential gap between cross-border-operating SMEs and domestic-operating SMEs resulting indirectly from the VAT in the Digital Age reforms, as it would see domestic-operating SMEs digitalise, including vis-à-vis e-invoicing.
   b) Supply-chain financing platforms[405] connect businesses with financial institutions to provide financing based on the value of outstanding invoices. In a similar vein to digital accounting solutions, pushing businesses to use these services could reduce liquidity strains resulting from delayed payment.
   c) Credit management platforms[406] can help businesses to automate the credit check process, assess the creditworthiness of a potential debtor, and set credit limits, which can help to reduce the risk of late or non-payment.

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[401] European Commission, 2022. Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a European Year of Skills 2023. Available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13614-European-Year-of-Skills-2023_en

[402] European Commission, 2022. Digital Economy and Society Index (DESI) 2022. Available at: https://digital-strategy.ec.europa.eu/en/library/digital-economy-and-society-index-desi-2022

[403] See, for instance, *Yuki*, https://yukisoftware.es/

[404] Ibid.

[405] See for instance *Coface,* https://www.coface.com/

[406] See for instance CreditSafe, https://www.creditsafe.com/be/en.html?sp=true

2) At MS level, interesting projects are already in place. The *Kit Digital* program e.g. is an initiative launched under Spain's 2021-2025 SME Digitalization Plan within the wider Digital Spain 2025 Agenda.[407] It will seek to bolster digital intensity among SMEs through subsidising the adoption of available digital solutions for accounting, simplifying process management, and invoicing procedures. The project has a budget, financed through NextGenerationEU funds, of EUR 3.067 million. The *Digital Kit* program is relevant as it provides targeted digitalisation support at the level of an individual enterprise.

3) Also at EU level, there are projects ongoing. A very recent example is the Entrepreneurship4all project[408] – an e-learning platform helping SMEs to adapt to the current context. The platform works as a hub offering valuable and educational material, including online courses, masterclasses, podcasts, videos, etc., that focus on four pillars: Entrepreneurship Competences (EntreComp), Financial Literacy, Sustainability Competences, and Digital Competences (DigiComp).

5. DIGITAL GOVERNMENTS

737. The Commission wants to ensure the public sector is able to keep pace with new technologies and benefit from innovation. The digital transformation not only offers opportunities to the private sector, but also to public services. Many public services have already digitalised their procedures and are using technologies such as artificial intelligence, blockchain and the Internet of Things to interact with their citizens.

738. The Commission supports public administrations in complying with the public procurement directive's e-invoicing obligation through the Technical Support Instrument, managed by DG REFORM.[409]

739. A very promising initiative of the European Commission for a reinforced public sector interoperability policy is the Interoperable Europe project (led by DG DIGIT)[410]. In November 2022, the Commission proposed the Interoperable Europe Act to strengthen interoperability in the public sector. Interoperability allows administrations to cooperate and make public services function across territorial, sectoral and organisational boundaries, while those administrations remain sovereign actors at all levels of government.

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[407] Kit Digital, 2022. https://www.acelerapyme.gob.es/en/kit-digital
[408] https://entrepreneurship4all.eu/
[409] European Commission, Reform Support: Public administration and governance. Available at: https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance_en#digital-public-administration
[410] https://joinup.ec.europa.eu/interoperable-europe

740. Within this initiative, the Commission is currently elaborating a scoping exercise for a project on Real-Time Economy (RTE) in Finland and the Baltic states, which has the aim of simplifying and automatizing the reporting obligations, exchange of data between companies and public administrations, etc. with a focus on supporting SMEs in particular.

741. The goal of this 'Real-Time Economy' initiative is to create the conditions for a digital economy; a system where all business transactions are based on digital, structured (machine-readable) information and processing. In a digital economy, all services are online and interoperate with each other. Key business data moves entirely electronically and in real-time within companies and with public authorities. The vision is to create a national ecosystem for businesses that is compatible with other countries, enabling in practice the single digital market. The system will enable online electronic invoices, receipts and business data to flow automatically, securely and in real time between the different actors. One of the main building blocks covered is the transfer of online electronic invoices. This building block would be supportive for member states to fulfil transparency.

742. In the context of the September 2020 Capital markets union action plan[411], the Commission and the OECD are working together to develop joint 'financial competence frameworks'[412]. These frameworks set out the knowledge, skills and behaviour that support financial well-being and can be used by national public authorities and stakeholders to develop policies, programmes, and learning materials on financial literacy.

743. The Commission and the OECD jointly developed a financial competence framework for adults in January 2022[413]. The Commission helps national administrations to diagnose the levels of financial literacy amongst population target groups and to identify and address the needs demonstrated by these diagnostics. The Commission also supports EU Member States in creating dedicated programmes for improving financial literacy and education. A financial literacy supporting strategy is already available in Austria[414].

744. Finally, the Commission is launching a pilot project to incentivise the uptake of ADR in the field of late payments, as an alternative to judicial dispute settlement. The project will also have a digital dimension. Next to making available standard clauses for mediation, creating a specialist mediation scheme in the construction sector that includes training of mediators and awareness raising activities, the project will also create and maintain content for a dedicated web section,

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[411] https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan_en

[412] https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan/action-7-empowering-citizens-through-financial-literacy_en

[413] https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan/action-7-empowering-citizens-through-financial-literacy_en

[414] https://reform-support.ec.europa.eu/what-we-do/finance-and-access-finance/strategy-financial-literacy-austria_en

containing all necessary information on the advantages and disadvantages of alternative dispute resolution and providing a tool to find a suitable (and specialised) mediator in construction sector. The web section is thought to be an effective one-stop shop for information, including some standard contractual clauses.

W. ANNEX 23: SUPPORTING INFORMATION

Figure 22: Conditions more favourable to the creditor

B2B: Maximum payment terms and conditions for the parties to agree on longer payment periods
In Denmark,[415] Finland,[416] the Netherlands,[417] and Sweden,[418] the maximum payment term is 30 days instead of 60. The purpose of such legislative intervention was to prevent the period of 60 days included in Article 3(5) LPD from becoming the de facto standard payment period.[419] The parties, however, can agree upon a maximum payment term longer than 30 days, where they both expressly give their consent. These Member States do not allow 'adhesion' clauses[420] setting out longer payment terms. Consequently, the business party with weaker bargaining power does not have to fear that clauses setting out payment terms longer than 30 days are unilaterally imposed by the counterparty with stronger bargaining power.[421] More recently, in July 2022, a new law entered into force in the Netherlands whereby payment terms in B2B transactions shall not exceed 30 days when the creditor is an SME, thus bringing down the initial payment term of 60 days in B2B transactions where the creditor is an SME. Similarly, in Belgium and Poland, payment terms shall not exceed 60 days when the creditor is an SME.

B2B: Maximum payment terms that cannot be derogated by the parties
The French, Spanish and Croatian legislation goes further by limiting the maximum payment term. In France,[422] the payment period agreed upon by the parties in a B2B contract cannot exceed 60 days from the date of issuance of the invoice. However, by way of derogation, the parties can agree on a maximum payment term of 45 days from the end of the month period (following the issuance of the invoice), if the term has been expressly stipulated in the agreement and is not grossly unfair to the creditor.[423] Therefore, the maximum payment term is 75 days. Similarly, the Spanish legislator limits the parties' autonomy by preventing them from agreeing upon payment terms exceeding 60 calendar days.[424] In Croatia,[425] undertakings can agree on a period of payment longer than 60 days (up to 360 days),

[415] Sections 3 (1) and (2), and Section 3a of the Law no. 459 (consolidated version) 'Interest Act' - IA (Lovbekendtgørelse om renter og andre forhold ved forsinket betaling (renteloven)), Official Law Gazette 13 May 2014.
[416] Section 5 of the Act on payment terms for commercial contracts (as last amended in 2015 by Act 385/2015). See also Government Bill Proposal, RP 356/2014.
[417] Article 6:119a (5) of the Civil Code, as amended by Act of 13 December 2012 modifying Book 6 of the Civil Code and some other acts in relation to the transposition of Directive 2011/7/EU
[418] Section 2 a of the 'Interest Act' (Räntelag), SFS 1975:635.
[419] Petersen, L. L., Renteloven (4th ed, Karnov Group, Copenhagen, 2013) 141.
[420] An adhesion clause is a contractual clause drafted by one party and signed by another party which, typically, does not have the power to negotiate or modify the 'imposed' terms.
[421] Making the explicit consent of both parties a condition for validating payment periods longer than 30 days avoids situations where, for example, the debtor merely refers to its previously applied business practice. A limitation of this approach should be considered: in Member States where contracts can be entered into orally (e.g. in Denmark) determining what is needed to establish that a creditor has 'expressly' accepted a payment period longer than 30 days is left to the interpretation of the courts (Morten Qvist Fog Lund, '*Ny lovgivning: Implementering af Late Payment direktivet i Danmark', (2013) 1-S Erhvervsjuridisk Tidsskrift* 43, 44.).
[422] Commercial Code of 18 September 2000, Official Journal of the French Republic of 21 September 2000, as last amended by Law n° 2008-776 of 4 August 2008.
[423] Article L. 441-6, I, Section 9 of the French Commercial Code. It implies that the maximum payment term is, therefore, up to 75 days (if the invoice is received the first day of the month and is paid 45 days from the end of the month).
[424] Article 4 (3), Act on Late Payment in Commercial Transactions (ALCPT).
[425] Article 11(2) of the Act on Financial Operations and Pre-Bankruptcy Settlement, (Official Gazzette no. 108/2012.

provided that the debtor issued a security instrument with the legal effect of an enforceable title to the creditor. A payment period longer than 360 days would be null and void *ex lege*.

B2B: Shorter payment terms established by law in absence of agreement between the parties
According to the LPD, where the parties to a B2B transaction did not agree upon a specific date or period for payment in their contract, a payment term of 30 days applies ex lege (Article 3(3)(b) LPD). Three Member States (Austria, Bulgaria and Germany) have adopted a different approach if the parties did not agree upon a payment term:

1) the payment must be paid 'without any undue delay' (Austria);[426]
2) the standard payment term is 14 days from the date of receipt of the invoice or, alternatively, from the date of delivery of the goods/provision of services, or from the expiry of a specific term agreed between the parties (Bulgaria);[427]
3) the payment is immediately due on receipt of the invoice, on the condition that the creditor has fulfilled all its contractual and legal obligations (Germany).[428]

G2B: 60 days payment term by public entities in the healthcare sector
Ireland and the Netherlands did not include in their national transposition laws the possibility to extend payment terms to 60 days for public entities providing healthcare. In addition, France has limited this possibility of extension to 50 days instead of 60 days

G2B: Faster-than-30 days payments in the public sector (other than healthcare)
In Ireland, the government requires that all central Government Departments, the Health Service Executive, the local authorities and all other public sector bodies (excluding commercial Semi-State bodies) pay their suppliers within 15 calendar days of receipt of a valid invoice. SMEs can attach an Official Notice [429]of the 15-day prompt payment requirement to relevant invoices. Small businesses themselves should refer instances of non-adherence to the relevant Government Department, public sector body and State Agency.

All transactions: EUR 40 compensation
In Ireland and Poland, the lump sum compensation for recovery costs varies according to the value of the invoice. For example, in Ireland, for example, the flat fee compensation is regulated as follows: €40, for invoices not exceeding €1000; €70 for invoices exceeding €1000 but not exceeding €10.000; €100 for invoices exceeding €10.000.

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[426] Sections 904, 907a, and 1334 of the General Civil Code *(Allgemeines bürgerliches Gesetzbuch – ABGB), JGS Nr 946/1811* as amended by Federal Law Gazette published on 9 August 2002, *BGBl I 118/2002.*

[427] Article 303a, Sec. 3 Commerce Act, 'Bill for Amendment and Supplementation of the Commerce Act' (*Закон за изменение и допълнение на Търговския закон*), State Gazette issue 20 of 28 February 2013, in force as of 4 March 2013.

[428] Article 271 Paragraph 1 of the Civil Code, available at https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. The German provision does not imply that the debtor is automatically on delay once he has received the invoice by the creditor. The receipt of the invoice represents only the date starting from which the payment is due (if no other agreement has been reached by the parties in this respect).

429 Prompt Payment Official Notice Reminder - DETE (enterprise.gov.ie)

X. ANNEX 24: MONITORING AND EVALUATION OF IMPACTS

745. The impact of the EU's action in the form late payment measures as set out in the proposed option in this impact assessment should be assessed 4 years after entry into force of the adopted instrument. The evaluation will include consultations, whose questionnaires should provide comparable results with those obtained for this impact assessment. The evaluation should take the form of a European Commission report to the legislator.

746. The monitoring arrangement accompanying the EU framework should enable the gathering of 'hard data' and information on late payment performance. This could cover both the observance of the limits established regarding the payment terms for B2B, as well as enforcement bodies and means of redress. In addition to the overall reduction in the scale of late payment practices, to be reviewed under the general objective, the individual policy measures proposed could be both monitored through the existing EU Late payment observatory and evaluated. The observatory could gather companies' views about the effectiveness and efficiency of policy measures proposed for each specific objective, e.g. the introduction of a cap in B2B transactions.

Specific objectives	Source	Indicators
Prevent late payments by establishing maximum payment terms in B2B and automatic payment of interests and compensation	• Annual survey to undertakings • Members States annual reports • Late Payment Observatory	• Alignment of application of UTP rules (e.g. number of changes to national rules with a view to approximate practices) • Number of payments that do not comply with the EU rules • Number of interests and compensations paid (as percentage of late payments)
Foster timely payments by enabling effective redress	• Members States annual reports • Eurostat / national statistics / EU and national market	• Number of complaints received (anonymously or not) • Number of mediation meetings, if applicable • Number of investigations launched (own initiative or upon request) • Share of cases resulting in findings of an infringement • Share of cases using alternative dispute resolution mechanisms

Y. ANNEX 25: OVERVIEW OF BENEFITS AND COSTS FOR BUSINESS AND FOR PUBLIC AUTHORITIES

For assumptions and calculations please refer to Annex 4.

Table 14: Summary of Economic impacts on businesses

	Benefits for businesses	Costs for businesses
PO1 (across all sub-options)	Capping verification time avoids circumvention of payment terms Reduced negotiation times for around 33% of SMEs Access to financial literacy training worth EUR 200-1800 per SME Reduced hassle costs associated with chasing late payments (based on the assumption that an average company spends 5 person-days on chasing debtors)	Cost to debtors of paying on time by requiring additional financing: one-off cost of dealing with the bank and recurring costs related to interests (but likely cheaper than implicit rate they are paying currently)
PO1a	Reduction in payment delays of 23.4% for the average EU company	One-off adjustment cost of EUR 56.1 million
PO1b	Reduction in payment delays for 14.4% of EU companies	One-off adjustment cost of EUR 35.0 million
PO1c	Reduction in payment delays for 66% of invoices issued by 14.4% of companies	One-off adjustment cost of EUR 23.1 million; cost of verifying SME status of EUR 384 million
PO2 (across all sub-options)	Automatic payment of interests worth up to EUR 265.5 million, plus automatic payment of compensation fees of up to EUR 3.75 billion (benefit to the creditor, cost to the debtor) Subcontractors in public payments are paid promptly, leading to estimated unblocking of payments up to EUR 31 million per year Reduced hassle costs associated	One-off adjustment cost from updating standard payment terms of EUR 243 million Cost to the debtor of automatic interest (worth up to EUR 265.5 million) and compensation fees of up to EUR 3.75 billion Cost to debtors of paying on time by requiring additional financing: one-off cost of dealing with the bank and recurring costs related to

	Benefits for businesses	Costs for businesses
	with chasing late payments (currently assumed at 5 person-days per company on average)	interests (but likely cheaper than implicit rate they are paying currently) Cost to main contractors in public contracts from verifying their prompt payment to the public authority (affecting around 173 000 companies at a total recurring administrative cost of EUR 2.2 million per year)
PO2a	Strong enforcement accompanied by sanctions and fines, estimated to reduce payment delays by 17.8%	Potential fines to debtors worth up to EUR 136.8 million
PO2b	Deterrent from enforcement bodies	
PO3	Avoiding court cases thanks to Member States specifically addressing unfair contractual terms and practices through their national law	
PO3a	EUR 2.6 million per year in recovered debt across EU-27	
PO3b	Cost savings of EUR 27 million per year from avoided court cases Reduction in payment delays of 5.5%	

Table 15: Summary of Economic impacts on public authorities

	Benefits for public authorities	Costs for public authorities
PO1 (across all sub-options)	Indirect effects of reduced late payments on bankruptcies and employment	Negligible administrative costs as capped payment terms concern B2B transactions Negligible administrative costs from verification procedures within 30 days Some adjustment cost to provide access to financial literacy and credit management training, depending on how Member States choose to structure their support in compliance with state aid rules
PO2 (across all sub-options)	Improved execution of public work projects through prompt payment of subcontractors	Public authorities have to pay interest and compensation fees to public contractors when paying late
PO2a	Regulatory fines imposed on debtors of up to EUR 136.8 million per year for the EU-27	Cost of designating national enforcement bodies, estimated at EUR 60-65 million per year for the whole EU-27
PO2b		Cost of designating national enforcement bodies without sanctioning powers
PO3	Reduced burden on judicial system through avoided court cases	Limited one-off costs on Member States to specifically address the question of unfair contractual terms and practices through their applicable national law, covered under a "business-as-usual" scenario
PO3a		Cost of running national payment envoys, estimated at EUR 11.8 million per year for the whole EU-27
PO3b	Public authorities can cheaper solve their own disputes through mediation services instead of being	Cost of running mediation system, estimated at EUR 10.8-39.8 million per year for the whole EU-

	Benefits for public authorities	Costs for public authorities
	taken to court	27