

Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour

Written by
Julia Rzepecka (VVA)
Lucie Lechardoy (VVA)
Valentina Parziale (Milieu)
Sara Fiorentini (Milieu)
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Valdani Vicari & Associati


milieu
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Contact: Kristin SCHREIBER

E-mail: GROW-LATE-PAY-E-DESK@ec.europa.eu

European Commission
B-1049 Brussels

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TABLE OF CONTENT

1 EXECUTIVE SUMMARY 9
Unfair payment practices are widespread in transactions between businesses in Europe…9
... they have significant economic consequences for companies, jobs and growth … 9
… and they are driven by a complex combination of factors 9
A large number of initiatives across Europe try to tackle the problem of late payment …. 9
A combination of such interventions is needed to tackle unfair payment practices 11
2 INTRODUCTION, AIM AND SCOPE 12
3 OVERVIEW OF ISSUES RELATED TO UNFAIR PAYMENT PRACTICES IN B2B RELATIONS 14
3.1 Payment terms and extent of late payment across the EU 14
3.2 Causes of late payment 20
3.3 Impact of late payment 22
3.4 Most affected companies 24
4 MEASURES AIMED TO IMPROVE PAYMENT PRACTICES IN B2B TRANSACTIONS 26
4.1 Categories of measures 26
4.2 Main preventive measures 28
4.3 Main remedial measures 35
4.4 Main initiatives contributing to changing business culture 41
4.5 Measures supporting changes in business culture 45
4.6 Other measures 53
5 SECTOR-SPECIFIC ANALYSIS 57
5.1 Construction sector 57
5.2 Retail and wholesale sector 61
5.3 Manufacturing sector 64
5.4 Food and drink sector 66
5.5 IT/Software/telecommunications 71
5.6 Utilities and transport 72
5.7 Business and professional services 74
6 CONCLUSIONS AND RECOMMENDATIONS 76
6.1 A need for better enforcement of the LPD and rules on payment terms 76
6.2 Preventive measures 77
6.3 Remedial measures 80
6.4 Initiatives contributing to changing business culture 81
6.5 Sectorial interventions 83
7 ANNEXES 86
7.1 Annex 1: Distribution of legal and voluntary measures 86
7.2 Annex 2: Shorter maximum payment terms set out in legislation 103
7.3 Annex 3: Case studies 105
7.4 Annex 4: Methodological approach 174
7.5 Annex 5: Challenges encountered and risk mitigation 180
7.6 Annex 6: List of literature 181

Tables

Table 1: Categories of measures 26
Table 2: List of MACM awareness-raising activities since 2005 50
Table 3: Atradius payment terms and payment delays reported by creditor companies in the wholesale/retail/distribution sector 62
Table 4: Atradius payment terms and payment delays reported by creditor companies in the manufacturing sector 64
Table 5: Maximum payment terms in the food and drink sector 67
Table 6: Payment practices in Italy in 2016 – share of respected payments terms and extent of late payment 110
Table 7: Characteristics of the most used EIBs 126
Table 8: Comparison of fees for services in three major EIBs in Poland 126
Table 9: NDR price list of services according to packages 127
Table 10: List of Betaalme.nu signatories 154
Table 11: Overview of codes of ethics applicable to the construction industry in Hungary 163
Table 12: List of MACM awareness-raising activities since 2005 168
Table 13 : Final number and quota of the CATI survey 175
Table 14 : Total number of interviews per sector and Member State 177
Table 15: List of case studies 178
Table 16 : Interviews conducted in the context of the case studies 179

Figures

Figure 1: Average payment terms recorded as creditor in 2017 14
Figure 2: Average payment terms accepted by creditor, by sector 15
Figure 3: Average payment terms in the EU-28 as creditor, 2012-2017 15
Figure 4: Reasons for accepting longer payment terms 16
Figure 5: Payment practices of companies, 2013-2016 18
Figure 6: Payment terms and actual payment duration as creditor, in 2017 18

Figure 7: Proportion of invoices paid late, as creditor 19
Figure 8: Average payment delay as creditor, 2012-2017 19
Figure 9: Reasons for poor payment discipline with business customers 20
Figure 10: Causes of late payment in each sector 22
Figure 11: Impact of late payment on companies 23
Figure 12: Main types of measures to tackle late payment in B2B transactions 27
Figure 13: Overall number of KRD's subscribers and listed debtors 32
Figure 14: Evolution of the number of mediation cases 37
Figure 15: Food retail in Italy – value shares 108
Figure 16: Growth Rate in Adjudication Referrals in the UK 117
Figure 17: Label Rzetelna Firma 128
Figure 18: Payment practices in Poland: share of payment by due date and extent of late payment, 2008-2016 128
Figure 19: Overall number of NDR's subscribers and listed debtors 129
Figure 20: Ranking of the best known EIB in Poland (2017) 130
Figure 21: Evolution of the number of mediation cases 136
Figure 22: Sector of companies in mediation cases since 2010 137
Figure 23: B2B payment delays in Germany, in days 142
Figure 24: B2B payment terms in Germany, in days 142
Figure 25: B2B payment practices in Belgium in the agriculture, wholesale and retail sale sectors 143
Figure 26: Procedure of imposition of administrative sanctions 147
Figure 27: Fines distribution in France per amount in 2016 149
Figure 28: Average payment time in Malta for government and B2B transactions (2010-2016) 171
Figure 29: Companies' level of awareness of regulatory measures to reduce late payment in Malta and in the EU 172

Boxes

Box 1: Conditions more favourable to the creditor 28
Box 2: Transparency rules on payment behaviour – Scope of application 30
Box 3: Example of Regulation 2017 No. 395 in the United Kingdom 31
Box 4: Example of the National Debt Register (KRD) in Poland 32
Box 5: Use and examples of invoice management measures 34
Box 6: Positive effects of invoice management measures 35
Box 7: B2B dispute resolution mechanisms 36
Box 8: Example of the Ombudsman for Undertakings in France 37
Box 9 : Administrative sanctions 39
Box 10: Example of administrative sanctions in France 40
Box 11: Examples and use of prompt payment codes/charters 41
Box 12: Example of the UK Prompt Payment Code Compliance Board 42
Box 13: Example of the initiative Betaalme.nu in the Netherlands 43
Box 14: Availability of credit management education 45
Box 15: 'Unfairness' vs 'gross unfairness' 46
Box 16: Role of business organisations, examples of national provisions 47
Box 17: Awareness-raising activities 48
Box 18: Example of seminars organised by the Malta Association of Credit Management 50
Box 19 : Examples of labels/certificates/prizes 51
Box 20: Compensation for recovery costs in the UK and Ireland 53
Box 21: Retention of the title – Danish example 54
Box 22: Adjudication systems in the construction sector 60
Box 23: Code of Ethics for Construction Entrepreneurs in Hungary 61
Box 24: Maximum payment terms for retail contracts in certain sectors 63
Box 25: Art. 62 Law Decree No. 1 of 24 January 2012 in Italy 69
Box 26: The Supply Chain Initiative in Belgium 70
Box 27 Relevant findings 77
Box 28 Findings from the case study National Debt Register (KRD) in Poland – payment database 78
Box 29 Findings from the case study Regulations 2017 No. 395 in the United Kingdom – transparency measure imposed by law 79
Box 30 Relevant findings 79
Box 31: Findings from the case study Ombudsman for Undertakings in France 80
Box 32: Findings from the case study Hamon Law and Sapin II Law in France 81
Box 33: Findings from the Prompt Payment Code in the UK 82
Box 34: Findings from the case study Betaalme.nu in the Netherlands 82
Box 35: Relevant findings 83
Box 36: Findings from the case study Construction Contract Act in Ireland 84
Box 37 Findings the Construction Adjudication in the UK 84
Box 38: Example of a company statement – Heineken 152
Box 39: CSR measures in Europe and the United Kingdom 153
Box 40: Contract for general construction - flat rate payment template 162

ABBREVIATIONS

ADR – Alternative Dispute Resolution

B2B - Business to business

CATI - Computer-assisted telephone interviewing

CSR – Corporate Social Responsibility

CZK – Czech crowns

EIB – Economic Information Bureau

EU – European Union

EUR – Euros

FSB – Federation of Small Businesses

GBP –British pound sterling

GCA – Grocery Code Adjudicator

GDP – Gross Domestic Product

ICA – Italian Competition Authority

IT – Information Technology

LPD – Late Payment Directive

MACM – Malta Association of Credit Management

PBA – Project bank account

PLN – Polish zloty

SME - Small and medium-sized enterprise

UK – United Kingdom

VAT – Value added tax

1 Executive summary

Unfair payment practices are widespread in transactions between businesses in Europe…

This study shows that **more than half of companies surveyed have been asked for longer payment terms than they are comfortable with**.[1] Companies accept such terms because it is common practice in their sector, and because they do not want to damage their business relations. In addition to long contractual payment terms, companies are also often paid late, beyond the terms agreed in their contract. In 2016, **only 39% of European companies respected agreed payment deadlines**.[2]

... they have significant economic consequences for companies, jobs and growth …

6.5 million jobs could have been created if there had been less late payment in 2017 (8 million in 2016).[3] In the short to medium term, late payment can lead to cash flow issues, income loss, slow growth and an inability to hire new employees, which in turn has direct consequences for GDP and employment. In the longer term, unsustainable cash flow threatens company survival and leads to bankruptcies.

SMEs suffer most from unfair payment practices because they do not have sufficient bargaining power to negotiate their payment terms and they do not have the resources to mitigate the impact of late payment when it occurs.[4]

… and they are driven by a complex combination of factors

Some of the drivers of late payment are shared across sectors, such as **cash flow issues** resulting from outstanding invoices or bad invoice management.

But late payment is also more frequent in specific sectors. For instance, in the construction, retail and wholesale or food and drinks sectors smaller suppliers have less **bargaining power** than their customers who tend to be larger companies.

The **complex structure of the supply chain** in the construction and food and drinks sector can lead suppliers at the end of the chain to get paid later because of the accumulation of delays earlier in the chain. In the retail sector, **some products take longer to be sold or are only sold seasonally**. In these cases, having to pay suppliers before the product is sold can be detrimental to the cash flow of smaller retailers. In the construction sector, while companies are prone to frequent **disputes over the quality of services** provided, in some instances disputes are used to intentionally delay payment.

A large number of initiatives across Europe try to tackle the problem of late payment …

The **Late Payment Directive**, in force since 2013, contains provisions on payment terms between businesses and it provides remedies in case of late payment (i.e. interest rate, compensation for recovery costs).

Some Member States, business associations or individual companies have taken additional steps to prevent or counteract unfair payment practices. While

[1] Intrum, European Payment Report, 2017.
[2] CRIBIS D&B, Payment Studies 2016 and 2017.
[3] Intrum, European Payment Report, 2017 and 2016.
[4] Intrum, European Payment Report 2017; interviews with stakeholders in at least 23 Member States

some interventions target specific unfair practices or sectors, others focus on reforming the general business culture.

… by focusing on prevention …

Three types of initiatives focus on preventing persistent unfair practices:

1. **Legislation** setting out stricter payment terms can be effective in reducing payment terms to some extent. For example, some Member States set a 30-day maximum for settling invoices between businesses instead of the 60 days mandated in the Directive.[5] Of course, appropriate enforcement of such legislation is needed to be effective.
2. **Access to information on the payment practices of future (or existing) partners** can help companies choose more reliable business partners. In addition, public access to information can be an incentive for companies to improve the way they deal with suppliers. However, where access to payment information is limited, requires payment or offers only fragmented coverage, this can prevent SMEs from systematic use of these data. Mandatory reporting of payment practices for larger operators would counteract these shortcomings but account should be taken of the possible burden on operators.
3. Initiatives supporting **effective invoice management (such as e-invoicing)** have an immediate effect on the reduction of payment delays and cash-flow issues as they accelerate payment settlement.

… remedying the impact of unfair practices after they occur …

Two types of measures focus on remedying the impact of unfair practices after they occur.

1. **Alternative Dispute Resolution (ADR)** such as mediation and adjudication are more effective than going to court as disputes are solved faster, more cheaply and with less harm to business relations. Although mediation may involve costs for companies, these are proportional to the sum at stake and bring greater benefits (i.e. settling the disputes and getting paid). Evidence across Member States suggests that ADR instruments are not yet commonly used by SMEs.
2. Through **administrative sanctions**, public authorities can impose penalties in cases of breaches of payment legislation allowing companies to avoid confronting their clients. However, the compliance costs for administration can be significant.

.. or changes to overall business culture

Finally, two types of initiatives aim to improve overall business culture*:*

1. **Prompt payment codes and corporate social responsibility (CSR) measures** promote fair relationship with suppliers. Whether across sectors or designed for a specific industry, their effectiveness increases with take-up, especially by large companies.
2. Some businesses, especially SMEs, are not aware of basic steps to manage credits responsibly. The availability of **credit management education and training** is not widespread, and the participation of SMEs is limited by the resources and time they have available.

---

[5] At horizontal level, in Denmark, Finland and Sweden, the maximum payment term is 30 days (instead of 60). The parties can agree upon a longer payment term at the condition that, *inter alia*, both the parties expressly gave their consent. Other Member States where stricter payment terms have been applied as horizontal measures are the following: Austria, Bulgaria and Germany, where the legislation establishes maximum payment terms shorter than 30 days in cases where no payment term has been agreed between the parties.

A combination of such interventions is needed to tackle unfair payment practices

It is necessary to **strengthen the enforcement of the Late Payment Directive**. Companies imposing unfair payment practices might not feel threatened as long as enforcement remains weak. At the same time, businesses are afraid of challenging their partners due to the fear of damaging (existing or future) business relations.

The **targeted interventions identified in this study complement the Directive and tackle unfair payment practices.** Because one single measure cannot solve all issues, a combination of the suggested interventions will be more effective in addressing unfair payment practices, taking into account the specificities of different sectors and Member States.

Targeted interventions in nine specific areas to improve payment practices

1. **Better enforcement**
2. **Stricter payment terms**
3. **Transparency of payment practices**
4. **Invoice management measures**
5. **Alternative Dispute Resolution systems**
6. **Administrative sanctions**
7. **Prompt payment codes and CSR measures**
8. **Credit management education**
9. **Sectorial interventions**

2 Introduction, aim and scope

This report presents the results of the study '*Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*' ('the Study'). The study was commissioned by Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and was carried out by VVA in consortium with Milieu and supported by GDCC.

The study provides an in-depth assessment of measures, both regulatory and voluntary, that have been put in place in the Member States to address the problem of late payment in commercial relations between undertakings (B2B). More specifically the objectives of this assignment were to:

- Carry out a mapping and analysis of the most critical issues that result in delaying payments in B2B transactions.
- Carry out a mapping and analysis of the measures (regulatory and non-regulatory) put in place by Member States to prevent or counteract the issues linked to late payment. The assessment of these measures takes into account their impact on the internal market and on SMEs, as well as the specificities of the market sector and industry norms.
- Provide concrete recommendations for building a responsible payment culture in B2B transactions in the EU.

The study covers the 28 EU Member States and focuses on seven sectors: construction, retail and wholesale, manufacturing, IT/software/telecommunications, food and drink, utilities and transport, and business and professional services. The relevant measures were adopted at the earliest in 2006[6], and special attention was paid to measures targeting SMEs.

For the purpose of this study, data were collected through means of desk research (separately for legal and voluntary measures, a CATI[7] survey with businesses, semi-structured interviews with business associations and case studies. Annex 3 provides more information on the methodological approach.

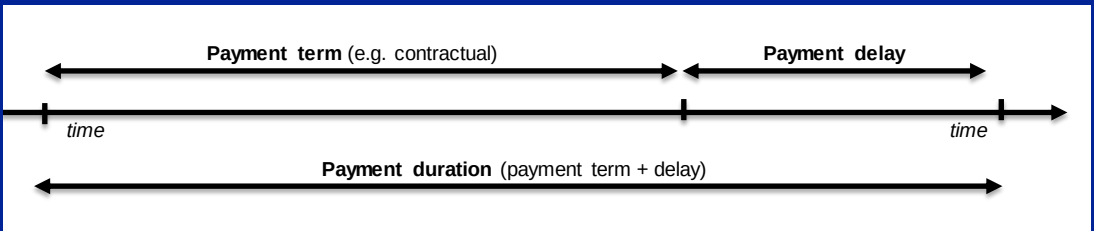
[6] In some cases, measures are related to legislative frameworks adopted earlier than 2006.
[7] Computer aided telephone interviewing

A note on terminology [8]

When considering unfair payment practices, it is important to keep in mind the difference between payment terms, delays, and durations.

- **Payment term** is the time period set out in the contract, and agreed by the two parties. It is thus the period allowed for a buyer to pay off the amount due;
- **Payment delay** is the period starting after the due date according to the contract (payment term), until the payment is received;
- **Payment duration** 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:



Changes in payment terms, payment durations and payment delays are important indicators in in the context of this study.

In the next sections of this report, Chapter 3 provides an overview of the issues related to unfair payment practices in B2B relations, Chapter 4 examines the measures improving payment practices, Chapter 5 focuses on sector-specific issues and measures, while Chapter 6 presents the conclusions and recommendations of this study.

The annexes include the list of identified legal and voluntary measures (Annex 1), a summary of the shorter maximum payment terms introduced in general and sectorial legislation (Annex 2), the case studies (Annex 3), the methodological approach of the study (Annex 4), the challenges encountered and mitigation measures (Annex 5), and the list of literature (Annex 6).

[8] Based on VVA (2015): Evaluation of Late Payment Directive

3 Overview of issues related to unfair payment practices in B2B relations

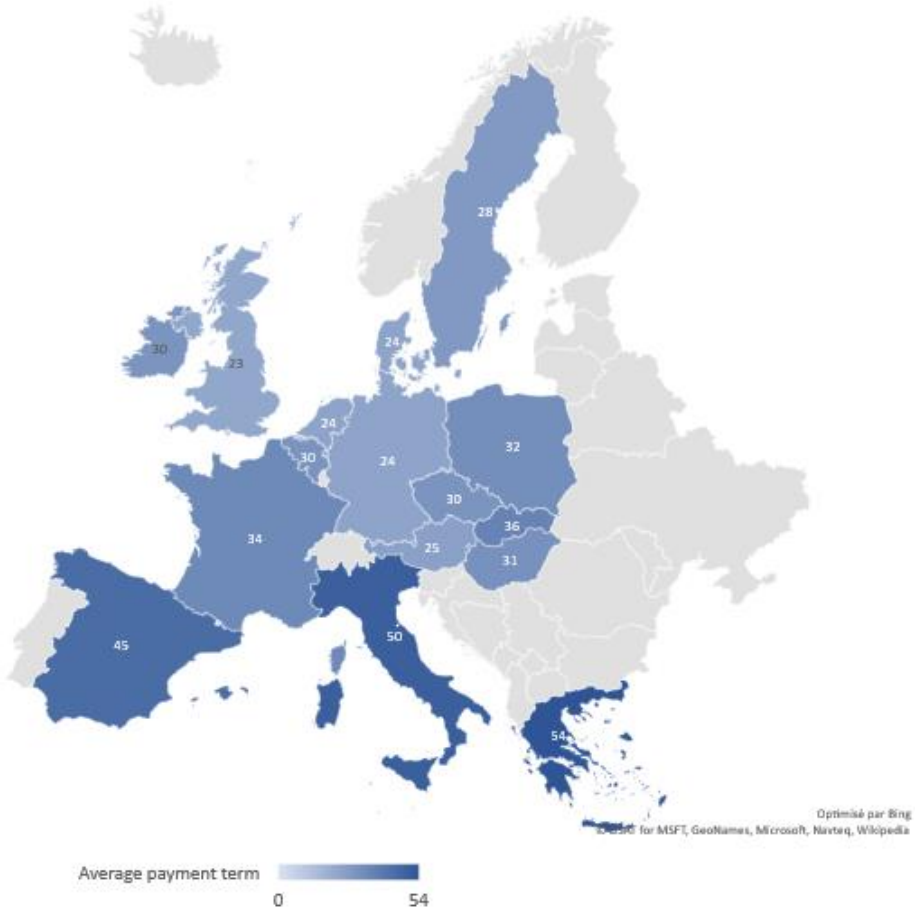
3.1 Payment terms and extent of late payment across the EU

3.1.1 Evolution of payment terms

Due to a large number of intervening factors, such as the impact of the financial crisis, business culture and social norms, it is not possible to attribute changes in payment behaviour to the Late Payment Directive.[9]

While the Directive establishes maximum payment terms of 60 days between companies, the analysis of data has shown that the actual payment terms between businesses vary significantly. Geographical trends can be observed, with the longest average payment terms recorded in Southern Europe (around 50 days), medium payment terms (around 30 days) in Central and Eastern Europe, and short payment terms (below 30 days) in Northern Europe, Germany and the United Kingdom. Figure 1 shows the geographical partition of average payment terms per country, based on the Atradius Payment Practices Barometer[10].

Figure 1: Average payment terms recorded as creditor in 2017



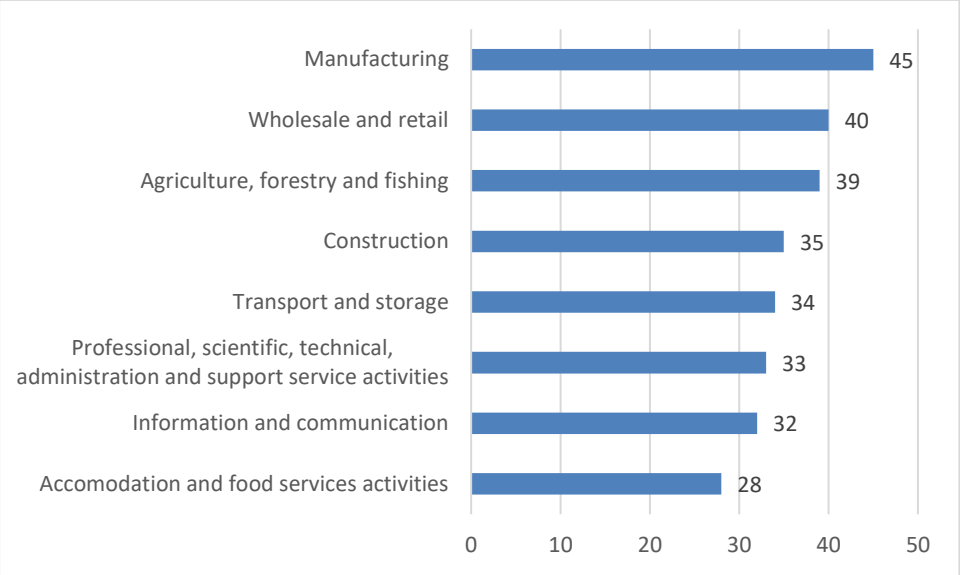
Source: Atradius Payment Practices Barometer 2017
Note: The Barometer only covers 16 Member States.

According to the CATI survey, one in ten companies in the manufacturing, retail and wholesale, and construction sectors reports payment terms of more than 60 days with their creditors. The 2017 Atradius Payment Practice Barometer confirms that in the

[9] VVA, Technopolis Group, Ernst&Young, 2015, Ex-post Evaluation of Late Payment Directive
[10] Atradius Payment Practices Barometer, 2017.

manufacturing and retail/wholesale sectors, longer average payment terms (38 and 34 days respectively) are more prevalent. Figure 2 below shows the average payment terms allowed by creditors across sectors.

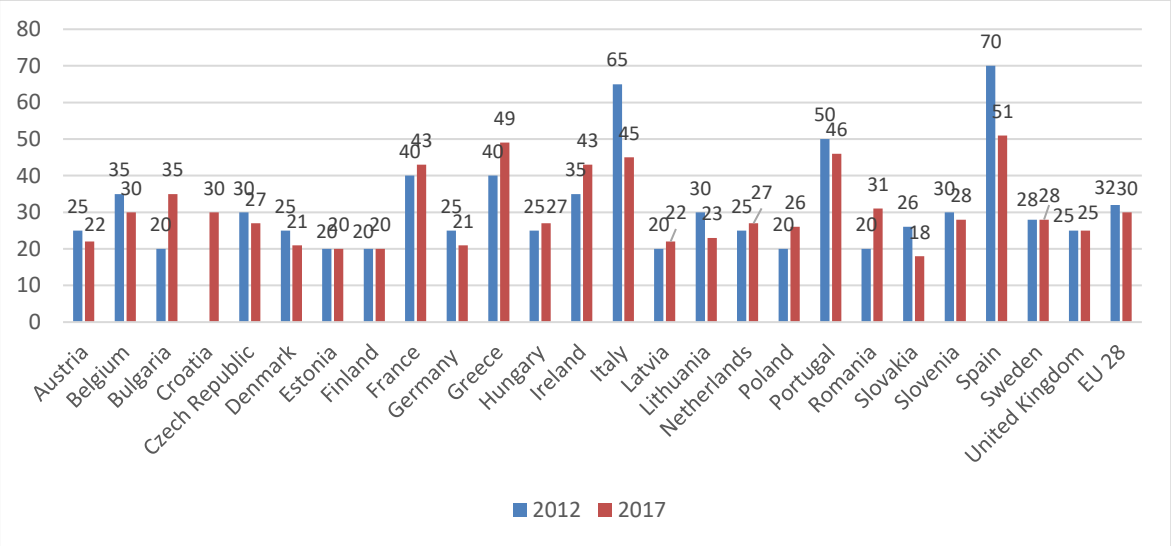
Figure 2: Average payment terms accepted by creditor, by sector



Source: Intrum, European Payment Industry White Paper 2017.

Despite reporting higher payment terms than average, Southern European countries show the biggest improvements in shortening payment terms imposed on suppliers. As reported by Intrum, between 2012 and 2017, average payment terms accepted by creditors have decreased by around 20 days in Italy and Spain, and by four days in Portugal. In the same period, average payment terms have increased by eight days in Ireland, nine days in Greece, 11 days in Romania and 15 days in Bulgaria. In Northern European countries with prompt payment traditions, the payment terms have stagnated.

Figure 3: Average payment terms in the EU-28 as creditor, 2012-2017



Source: Intrum, European Payment Reports for the years 2012 and 2017. Note: Data is not available in Croatia for the year 2012. Data is not available in Cyprus, Luxembourg and Malta for both years 2012 and 2017.

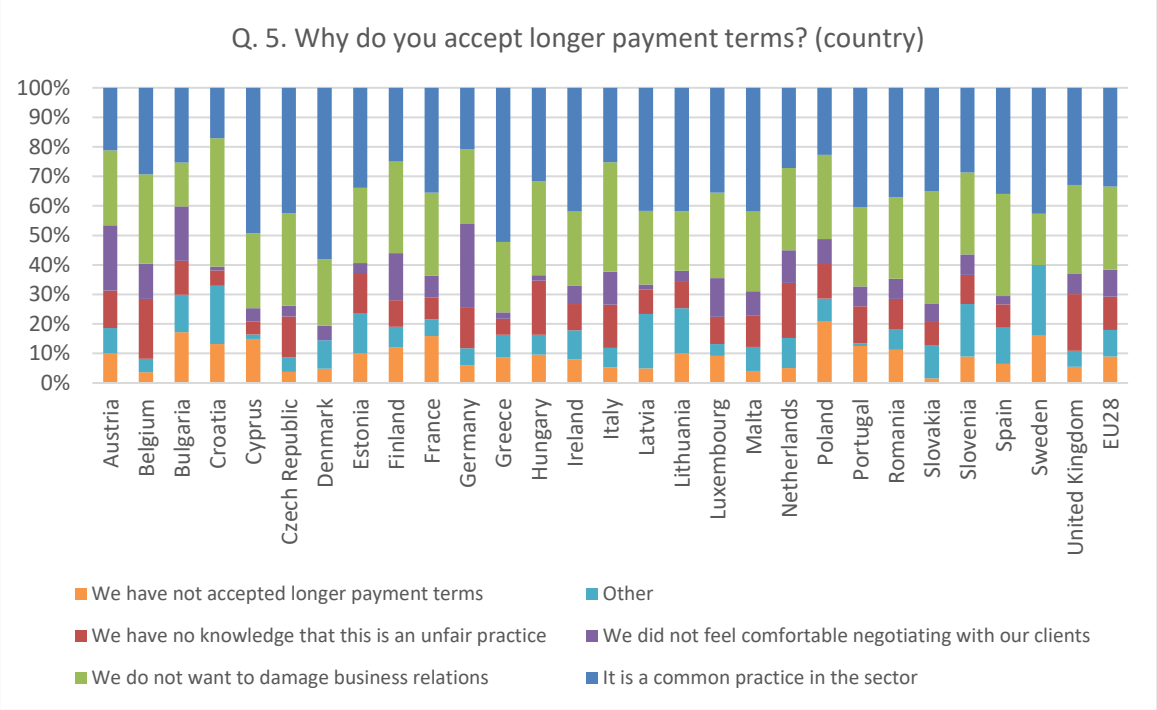
While improved payment terms in contracts across the EU demonstrate progress, many companies still report being given long payment terms. In 2017,

61% of companies reported that they have been asked for longer payment terms than they are comfortable with, and 58% of them indicated that they had accepted these demands.[11] For example, in 2016, 76% of Portuguese companies were asked to accept longer payments than they were comfortable with.[12] In Spain, 72% of suppliers, mostly SMEs and the self-employed, are forced to sign contracts with payment deadlines longer than 60 days.[13] Even in countries with prompt payment traditions, such as those in Northern Europe, the lengthening of payment terms in B2B transactions has come to the attention of regulators. The Dutch Ministry of Economic Affairs has noticed an increase of the share of 60-day agreed payment terms between 2004 (0.7%) and 2014 (1.2%).[14] Moreover, some stakeholders reported that the new Dutch law[15] imposing on large companies a threshold of 60 days to pay SMEs may encourage companies to extend payment terms, beyond the current average of 27 days. In Sweden, a government mapping of payment practices showed that since 2006, average payment terms have increased in all sectors, circulating around the EU average. In particular, the share of agreed payment terms of 60 days or more reached 4% of all invoices in 2016.[16] While it is challenging to establish a direct correlation (due to other intervening factors such as economic recovery), it is possible that the LPD may have normalised payment terms of 60 days in countries with prompter payment traditions.

Companies accepting longer payment terms usually explain that it is a common practice in their sector (55%) and that they do not want to damage business relations (46%).[17] To a lesser extent, some companies are not aware that it is an unfair practice or do not feel comfortable negotiating with their clients as shown in the figure below.

[11] Intrum, European Payment Report, 2017.
[12] Intrum, European Payment Report 2016.
[13] CincoDias (2016), Balance de los pagos a proveedores. Available at: https://cincodias.elpais.com/cincodias/2016/04/06/empresas/1459938902_165038.html
[14] Dutch Ministry of Economic Affairs, Dun & Bradstreet, 2015. "Investigation of payment terms with companies."
[15] Wet van 18 april 2017 tot wijziging van Boek 6 van het Burgerlijk Wetboek in verband met het tegengaan van onredelijk lange betaaltermijnen (Act of 18 April 2017 amending Book 6 of the Dutch Civil Code in connection with the countering of unreasonably long payment terms).
[16] 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
[17] CATI survey, Question 5

Figure 4: Reasons for accepting longer payment terms



Source: CATI survey

Across company sizes, SMEs are more likely to accept or be given longer payment terms by larger companies due to the imbalance of power and the fear of damaging business relations and losing a future contract. The Atradius Payment Practice Barometer[18] confirms that large companies apply longer average payment terms (36 days) compared to micro-enterprises (28 days) in Western and Southern Europe.

According to the CATI survey, a vast majority of companies across all sectors perceives payment terms with their creditors to be fair given the norms or practice in their respective fields. Only a slightly higher proportion of businesses perceive payment terms as unfair in the utilities and transport sector, as higher levels of unfair trading practices are reported in this sector including also intentional late payment.[19] Among the low number of respondents who perceived terms with their creditors to be unfair[20], the clear majority of respondents in all sectors considers that payment terms below 30 days to their suppliers would be fair[21], which would be in line with the stricter transpositions of the LPD.

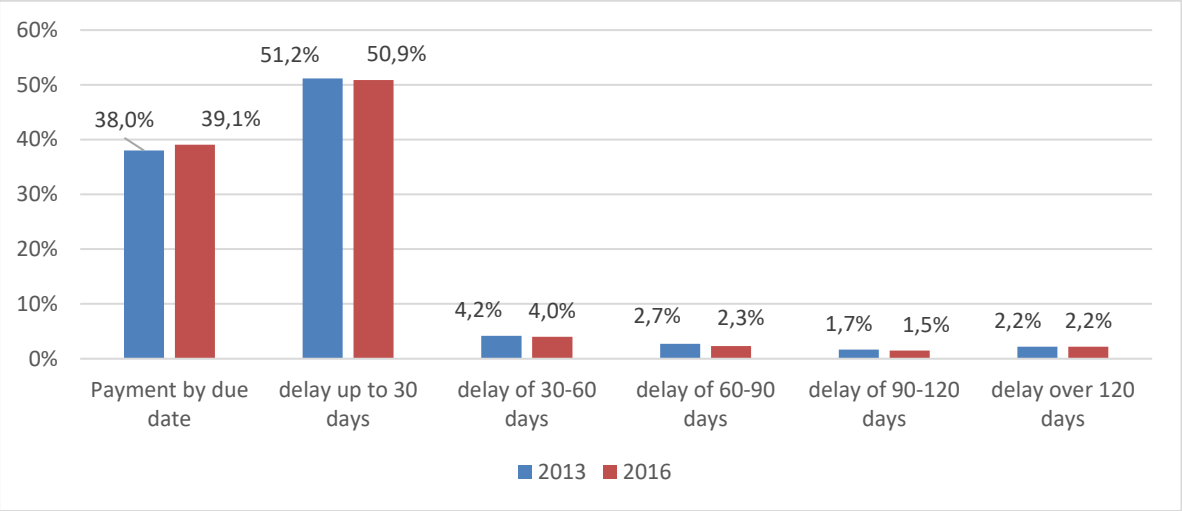
Yet, in 2017 nearly three quarters of companies in the manufacturing, retail/wholesale, and information/telecommunication sectors (respectively 74%, 73% and 71%) report that they have been asked to accept longer payment terms than they are comfortable with, and a large majority has accepted these terms.[22] This suggests that payment terms may not be considered fair by creditors, but they often accept them due to their lack of bargaining power or in fear of losing a contract.

[18] Atradius, Payment Practice Barometer, 2017
[19] Intrum, European Payment Industry White Papers 2016 and 2017
[20] Only 266 out of 1696 businesses replied to Question 4, CATI survey.
[21] CATI survey, Question 4
[22] Intrum, European Payment Industry White Paper 2017

3.1.2 Extent of late payment across the EU

Despite an overall improvement of the payment terms stipulated in B2B contracts companies continue to suffer from late payment though to a lesser extent in recent years. In 2016, only 39.1% of European companies respected agreed payment deadlines according to CRIBIS D&B, compared to 37.5% in 2015.[23]

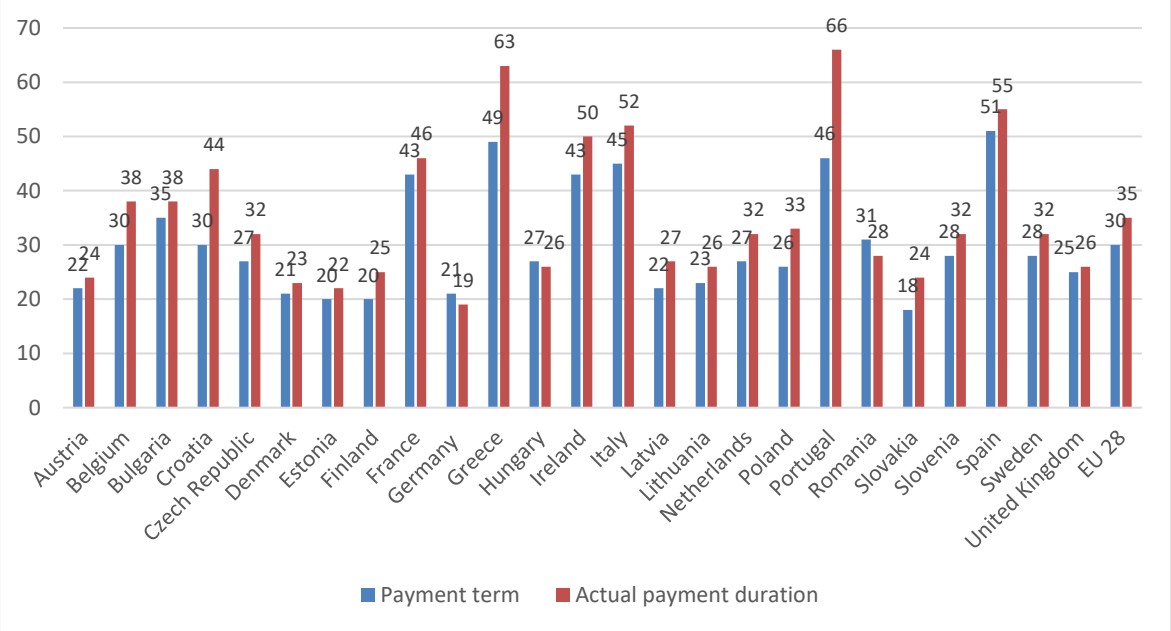
Figure 5: Payment practices of companies, 2013-2016



Source: CRIBIS DB Payment Studies 2014 and 2017

In nearly all Member States, the actual duration it takes to receive payment is higher than the agreed payment term, except in Germany, Hungary and Romania where customers reportedly pay earlier than the average term.

Figure 6: Payment terms and actual payment duration as creditor, in 2017



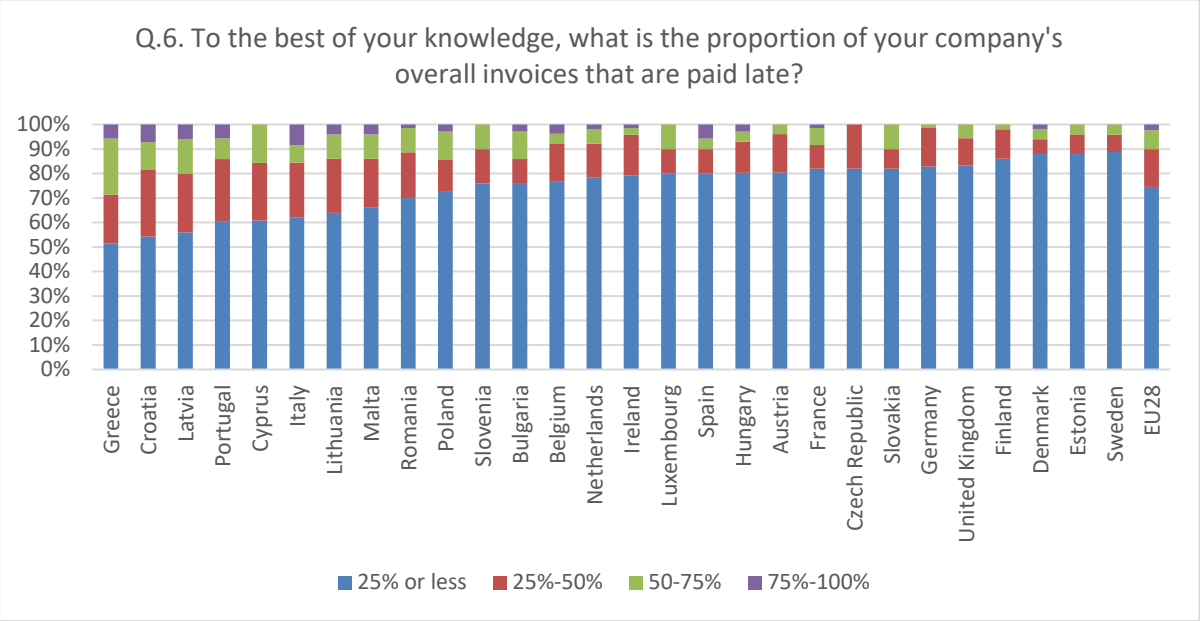
Source: Intrum, European Payment Report 2017. Note: Cyprus, Luxembourg and Malta are not included in the 2017 report.

The occurrence of late payment is higher in Southern Europe with at least 20% of companies in Croatia, Cyprus, Greece, Italy, Malta and Portugal declaring that between

[23] CRIBIS D&B, Payment Studies 2016 and 2017.

25-50% of their invoices are paid late. In Cyprus and Greece, at least 15% of companies even report this to be 50-75% of their invoices, as shown in Figure 7.

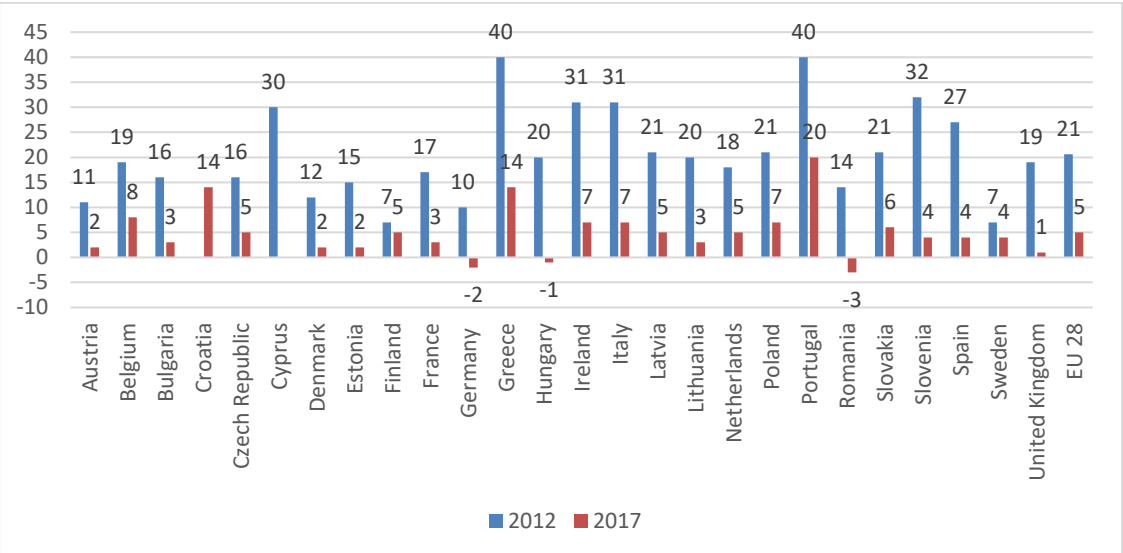
Figure 7: Proportion of invoices paid late, as creditor



Source: CATI survey

Although late payment continues to be an issue across the Southern countries, they have also improved the most, from delays above 30 days in 2012 to fewer than 20 days in Greece and Portugal and fewer than 10 days in Italy and Slovenia in 2017 as shown in Figure 8.

Figure 8: Average payment delay as creditor, 2012-2017



Source: Intrum, European Payment Reports 2012 and 2017. Note: Data is not available in Croatia for the year 2012. Data is not available in Cyprus for 2017. Luxembourg and Malta are not included in 2012 and 2017 reports. The average payment delay was calculated by the difference between actual payment duration and payment term.

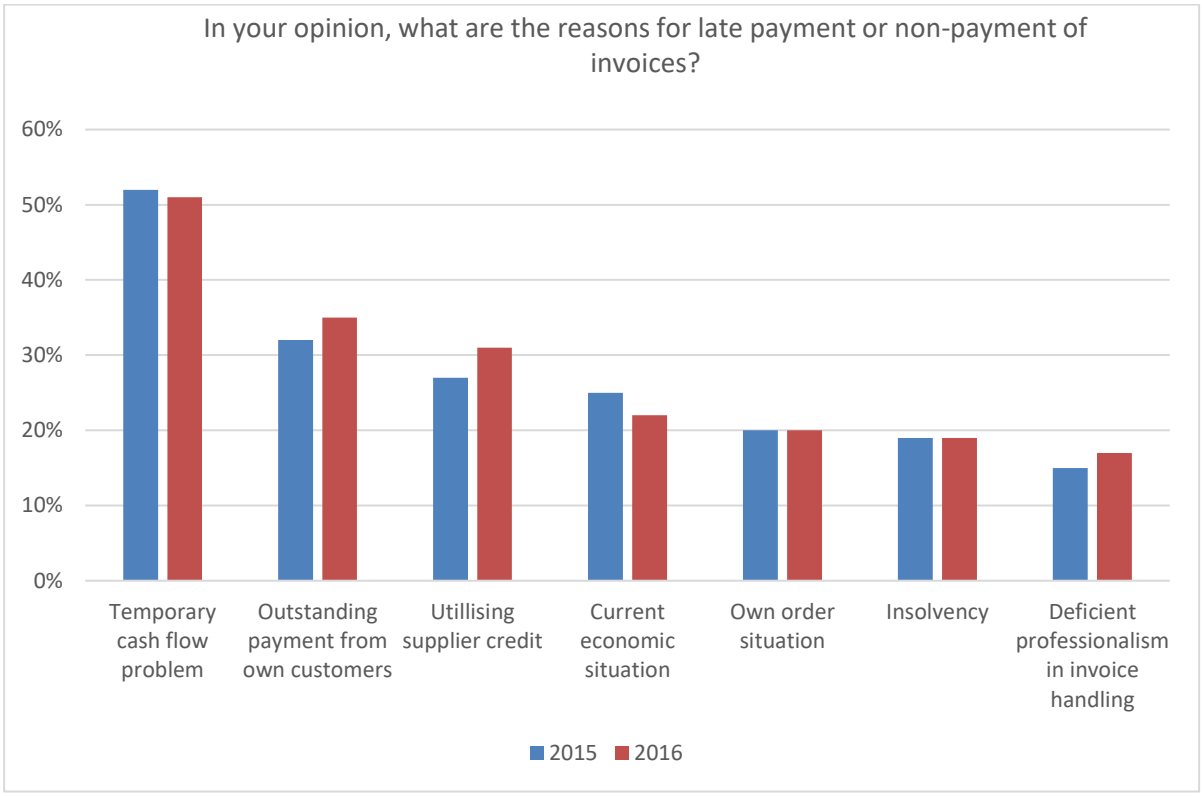
The majority of companies do not expect major changes in payment behaviour in the coming year. In 2017, research has shown that two-thirds of companies foresee stable

risks from their debtors in the coming 12 months with companies in Eastern Europe more optimistic about improved payment behaviour from their debtors.[24,25]

3.2 Causes of late payment

Late payment is a multi-factored, complex problem caused by horizontal drivers common across sectors and across transactions. One of the main common causes is the insufficient cash-flow resulting from outstanding invoices or administrative inefficiency. Figure 9 shows that temporary cash-flow problems are the main causes of late payment across companies and is more prevalent for smaller companies, as it is mentioned by almost 60% of micro-enterprises, 50% of SMEs and 47% of large companies according to Atradius.[26]

Figure 9: Reasons for poor payment discipline with business customers



Source: EOS Survey "European Payment Practices" 2016

However, as industry stakeholders noted, **there is a large number of reasons why companies struggle with cash-flow**, including the economic recovery, availability of trade credit and poor internal credit control.

Poor access to credit can have a direct bearing on company liquidity. Access to finance is important, especially for SMEs, for which credit is most limited and expensive.[27] The issue of insufficient availability of funds is most problematic in Southern and Central Europe, with around 50% of companies or more reporting that it

[24] Intrum, European Payment Report, 2017.
[25] EOS Survey "European Payment Practices" 2016. Available at: https://www.eos-solutions.com/fileadmin/user_upload/eos-solutions/Market_research/EOS_Survey_European_Payment_Practices_2016/EOS_Survey_European_Payment_Practices_2016_Graphic_report_EN.pdf
[26] Atradius, Payment Practice Barometer, 2017
[27] Valdani Vicari Associati; Technopolis Group; Ernst & Young (study commissioned by the European Commission), Ex-Post Evaluation of Late Payment Directive, 2015

is a reason for payment delay.[28] This may result from the fact that Southern countries, in particular, still suffer from the effects of the recent economic crisis, as mentioned by interviewees. For instance, Cyprus exited its bailout programme in March 2016, but the banking system is still recovering, which limits its possibility to provide solutions to the cash-flow issues of companies.[29]

Bad invoice management can result in additional delays and affects mostly SMEs as they have fewer resources to deal with their invoices. Indeed, the lack of a professional invoice handling mechanism can lead to administrative inefficiencies and errors. In addition, as noted by interviewees, verbal agreements are still common, for instance, in the agriculture sector. These can lead to misunderstandings, including disputes on payment terms, and prevents the use of remedial actions.

Moreover, **the use of outstanding debts or invoices as a form of financing by the debtor should be factored into the understanding of causes of late payment.** Across all sectors around 30% of companies perceive intentional delay to be causing payment delays.[30]

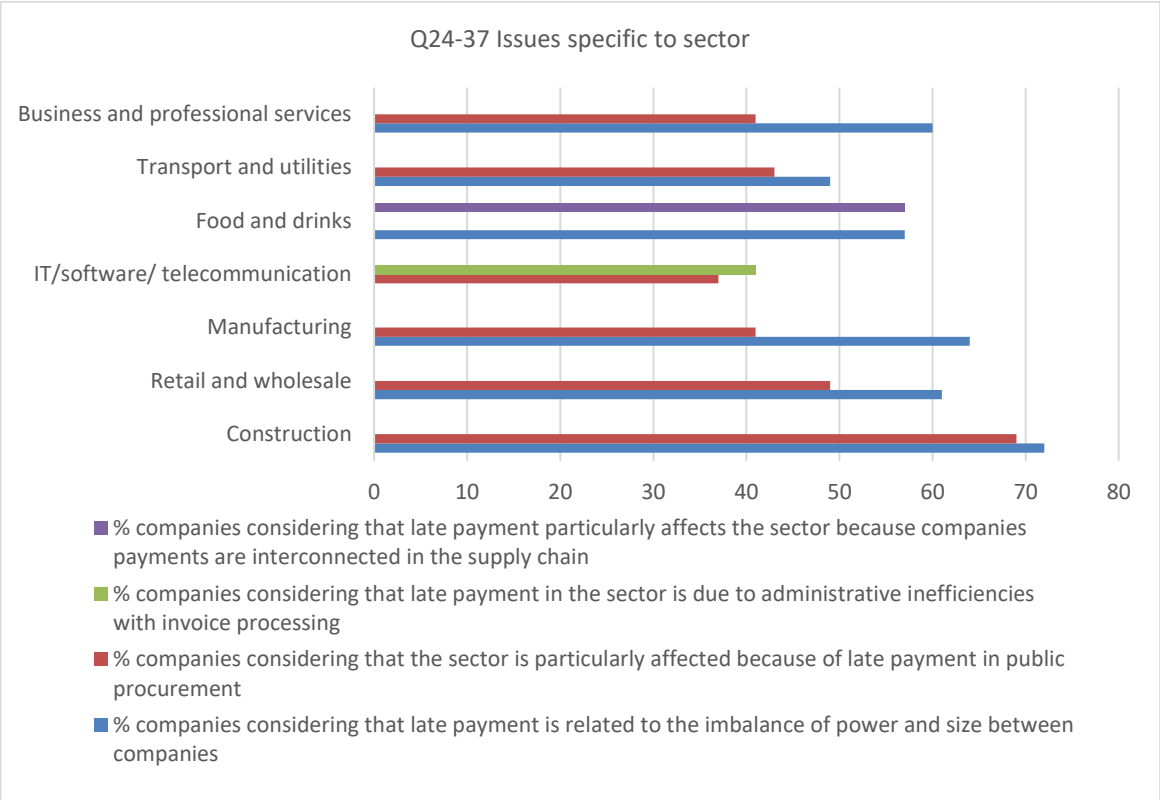
Across sectors, the structure of the market and of the supply chain can reinforce unfair payment practices. The unbalanced relationship between partners can create a dominant position for large companies to impose unfair practices on smaller suppliers such as long payment terms and systematic late payment. According to interviewed stakeholders and the CATI survey, **the imbalance of power and size between companies is considered an important cause for late payment.** Interviewees suggested that because companies are afraid of damaging business relations and subsequently losing future contracts, it is common for SMEs not to seek remedies in case of payment delay from a larger client (such as those stemming from the LPD or other remedial action such as the use of mediation). In the long term, large companies may exploit the weaker position of smaller suppliers and pay them last leading to systematic late payment. Over 60% of CATI respondents indicated that these were the main reasons for late payment for business and professional services and in the construction, retail and wholesale and manufacturing sector, as shown in the figure below.

[28] Atradius, Payment Practice Barometer, 2017

[29] Enterprise Europe Network, Results on the EU report related to B2B transactions, 2017, Available at: http://bsccyprus.org.cy/wp-content/uploads/24022017CircularLatePayments.pdf

[30] EOS Survey "European Payment Practices" 2016. Available at: https://www.eos-solutions.com/fileadmin/user_upload/eos-solutions/Market_research/EOS_Survey_European_Payment_Practices_2016/EOS_Survey_European_Payment_Practices_2016_Graphic_report_EN.pdf

Figure 10: Causes of late payment in each sector



Source: CATI survey.

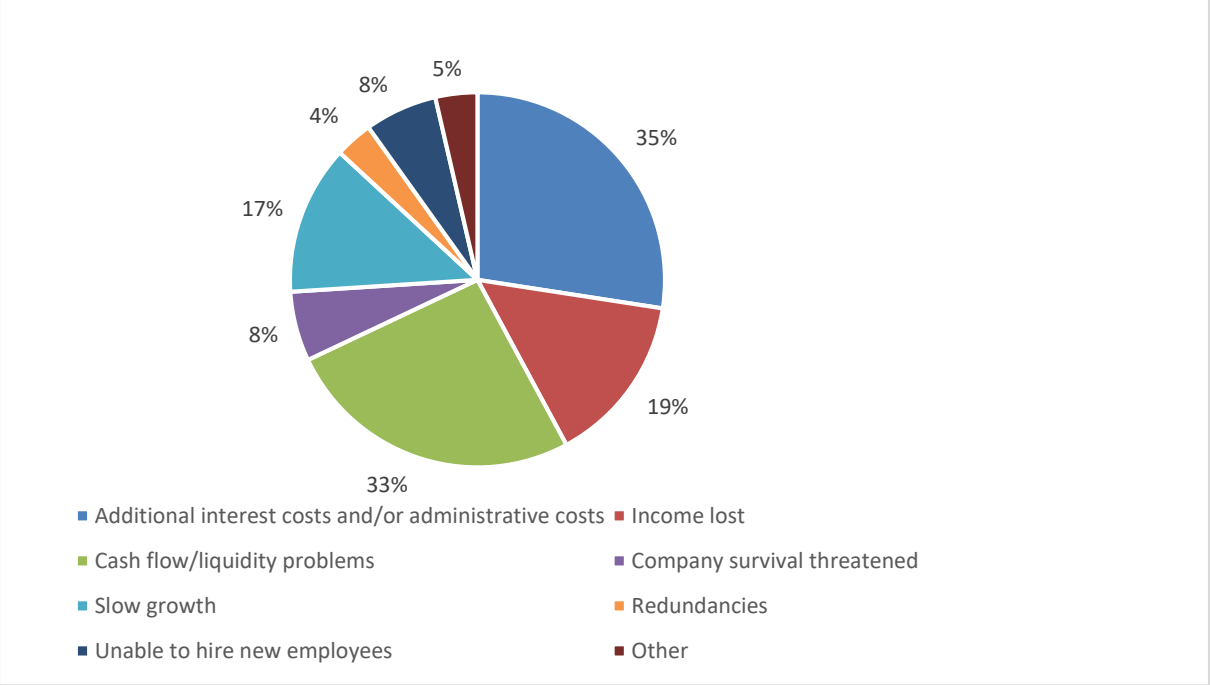
Finally, the structure of the supply chain can also lead to late payment, where small suppliers at the end of the chain get paid later because of the accumulation of delays earlier in the chain. This was highlighted by more than half of the companies from the food and drink sector in the CATI survey (see figure above) and by interviewees from the construction sector.

3.3 Impact of late payment

The results of the CATI survey indicate that for over 30% of respondents, late payment creates additional interest or administrative costs, or it leads to cash-flow issues as shown in the figure below. Pan-European research, however, shows that the impact of late payment has slightly decreased in recent years as fewer companies consider it a threat to their survival (27% in 2017 against 33% in 2016). Companies are also becoming more optimistic about the prospects of being able to conduct their business without risking cash-flow, liquidity and growth issues as a consequence of their customers' inability or unwillingness to pay on time.[31]

[31] Intrum, European Payment Report, 2017.

Figure 11: Impact of late payment on companies[32]



Source: CATI survey

Late payment creates additional or administrative costs as companies invest resources into chasing late payers or they pay interest on the credit contracted to continue business operations. In the UK, a report by the Federation for Small Businesses (FSB) indicated that the cost of chasing late payment amounts to 2,100 EUR (1,524 GBP) per year per SME, for an aggregate cost of about 11 billion EUR (8 billion GBP).[33] In Spain, late payment cost 930 million EUR to SMEs in the second quarter of 2017, although an 11% improvement could be noted compared to the previous quarter due to the reduction of average payment duration.[34]

Cash-flow issue is not only a cause of late payment, as shown in section 3.2, **but it is also its result. It can lead to problems with liquidity and result in challenges for companies seeking to fulfil contractual obligations towards suppliers or staff and, in extreme cases, lead to redundancies**. In the long term, unsustainable cash-flow results in threats to the company survival and to bankruptcies. Almost one in five companies in Southern Europe (i.e. Croatia, Greece, Romania and Spain) say that late payment threatens company survival, according to the CATI survey. National data in Spain suggest that late payment caused the closure of more than 500,000 companies since 2008.[35] An impact study carried out for the European Commission suggests that eliminating chronic late payment in Italy, Portugal and Spain would reduce business closures of between 124,000 and 248,000 enterprises each year.[36] Though late payment might be a more prevalent threat in Southern Europe, in

[32] The figure only presents the types of impacts when late payment was experienced by the respondents. It should be noted that 40% of respondents (680 out of 1696) declared not having experienced any impacts. This corresponds to the number of respondents who did not experience late payment, or a delay below 10 days (698 out of 1,696).

[33] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf

[34] CEPYME, 2017, Boletín de morosidad y financiación empresarial. Available at: http://www.cepyme.es/wp-content/uploads/2017/12/AF-Boletin-CEPYME-13-Digital-2.pdf

[35] CincoDias, 2016, Balance de los pagos a proveedores. Available at: https://cincodias.elpais.com/cincodias/2016/04/06/empresas/1459938902_165038.html

[36] Connell, W., September 2014, Economic Impact of Late Payments. Economic Papers 531, European Commission.

the rest of the EU it can also lead to severe consequences. In fact, late payment has been identified as the cause of 25% of bankruptcies in Belgium[37] and France[38], and 60% of bankruptcies in the Czech Republic in 2016.[39] In the UK, a quarter of SMEs expect cash flow issues with late payment to be an obstacle to running their business in the next 12 months as of the second quarter of 2017.[40]

Late payment can also result in income loss, which has wider consequences for the economy as it prevents companies from investing and growing. Income loss impacts primarily the countries most affected by late payment, namely Southern European countries. In Spain, financial costs due to late payments increased by 8% between 2016 and 2017 to reach 980 million EUR.[41] In France, the Observatory of Late Payment estimates that late payment costs 16 billion EUR per year to SMEs[42].

Slow growth and the inability to hire new employees are late payment impacts which have direct consequences on the national GDP and employment. Pan-European research shows that 6.5 million jobs could have been created if there was less late payment in 2017 (8 million in 2016).[43] Micro and small businesses are less likely to increase the size of their workforce or their capital expenditure when faced with late payment. Again, companies in Southern countries experienced negative effects of late payment, with around 40% of Spanish and Italian companies reporting slow growth, and more than 15% of companies reporting the inability to hire new employees in Croatia, Greece, Italy, Romania and Slovenia.[44] In the UK, 8% of SMEs cannot hire new staff due to late payment[45], and more than 66,000 companies in Sweden.[46] In France, SMEs could create 100,000 jobs if all companies paid on time.[47]

3.4 Most affected companies

Pan-European research results show that SMEs suffer most from unfair payment practices because they do not have enough bargaining power to negotiate long payment terms and they also do not have the resources to lower the impacts of late payment when it occurs.[48] Data from the Association of Chartered Certified Accountants indicate that businesses with fewer than 50 employees are 50% more likely than larger firms to experience poor supply chain practice.[49] In the UK, 52% of small businesses surveyed by FSB have suffered detriment as a result of

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[37] Graydon, 2015, Infographie : comportement de paiement Q3 2015. Available at: https://graydon.be/fr/downloads/infographic-infographie-comportement-de-paiement-q3-2015

[38] La Tribune, June 2015, Entreprises : "25% des faillites sont liées à des retards de paiement". Available at : https://www.latribune.fr/economie/france/entreprises-25-des-faillites-sont-liees-a-des-retards-de-paiement-483579.html

[39] Pravni Radce, 2016, Bankrotů kvůli nezaplaceným fakturám přibývá zbytečně. Podnikatelé neznají zákon, Available at: http://pravniradce.ihned.cz/c1-65498130-bankrotu-kvuli-nezaplacenym-fakturam-pribyva-zbytecne-podnikatele-neznaji-zakon

[40] BDRC Continental, SME Finance Monitor Q2 2017.

[41] CEPYME (2017), CEPYME valora positivamente el consenso del Congreso para reforzar la lucha contra la morosidad empresarial. Available at: http://www.cepyme.es/wp-content/uploads/2017/06/NdP-CEPYME-valora-positivamente-el-consenso-del-Congreso-para-reforzar-la-lucha-contra-la-morosidad-empresarial.pdf

[42] Observatory of Late Payment, 2017, Annual Report. Available at: https://publications.banque-france.fr/sites/default/files/medias/documents/odp2018_book_web2603.pdf

[43] Intrum, European Payment Report, 2017 and 2016.

[44] CATI survey, Question 8

[45] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf

[46] Dagens Industri, 16.03.2017, Debatt: Inför en etisk kod om korta betalningstider. Available at: http://www.di.se/opinion/debatt-infor-en-etisk-kod-om-korta-betalningstider/

[47] Jean-Noël Barrot, Julien Sauvagnat, 2015, Délais de paiement : L'effet sur l'emploi du non-respect de la LME. Available at: http://didattica.unibocconi.it/mypage/dwload.php?nomefile=LME20160920152218.pdf

[48] Intrum, European Payment Report 2017; interviews with stakeholders in at least 23 Member States

[49] ACCA, 2015, 'Ending late payment – Part 3: Reflections on the Evidence'

supplier contract terms over the last three years. As a result, small businesses faced additional costs of nearly GBP 1.3 billion (EUR 1.5 billion) a year.[50]

SMEs tend to pay quicker than large companies but get paid later than larger companies. 95% of SMEs say that they are paid late in Western Europe[51] and 89% in Eastern Europe[52], a higher proportion than large companies. In Sweden, for example, small companies tend to pay within 30 days, while the large companies pay after several months, using in practice their subcontractors as banks.[53] In the UK, three-fifths (61%) of small businesses say that payment from large firms tended to be late in 2016[54], and SMEs wait three weeks longer for payment than large businesses.[55] In Italy only 13.7% of large companies pay on time, compared to 36.8% of micro companies.[56] In France, the Observatory of Late Payment noted that in 2017 half of the large companies paid their suppliers late compared to one-third of SMEs.[57]

These findings do not come as a surprise. The evaluation of the LPD found that SMEs are likely to be disproportionately affected by late payments because:

- They may not have easy access to finance to cover any temporary shortfalls;
- Such finance – where it is available – may be more expensive than for larger companies; and
- They do not always have appropriate credit management systems for preventing or managing late payment.

Interviewed stakeholders across Member States and across all sectors agreed that in case of unpaid invoices, SMEs are more vulnerable than large companies because they do not have sufficient resources to prevent late payment from occurring or to manage cash-flow issues. This burden is even greater if SMEs need to open credit lines or use other financial solutions to maintain liquidity. For example, in the United Kingdom, SMEs highlight that the average value of each late payment is not trivial, with two-thirds of late payment greater than 1,130 EUR (1,000 GBP).[58]

In some sectors, such as the food and drink, and construction sectors, interviewed stakeholders noted that SMEs are more exposed to late payment due to long supply chains, which means waiting for the main contractor to be paid before receiving payment.[59]

[50] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf

[51] In the Atradius Barometer, Western Europe comprises Germany, Austria, Denmark, Great Britain, the Netherlands, Sweden, Ireland, Ireland, Belgium, France, Greece, Spain, Italy and Switzerland.

[52] In the Atradius Barometer, Eastern Europe comprises Czech Republic, Poland, Hungary, Slovakia, Turkey.

[53] Dagens Industri, 29/05/2017, Debatt: Storföretag bör redovisa varför de inte betalar i tid. Available at: http://www.di.se/opinion/debatt-storforetag-bor-redovisa-varfor-de-inte-betalar-i-tid/

[54] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf

[55] Asset Based Finance Association, 2015, Late Payment: An analysis by sector. Available at: http://www.abfa.org.uk/news/Documents/ABFA%20white%20paper%20-%20Payment%20days%20by%20sector.pdf

[56] Sole 24 ore, 6/04/2017

[57] Observatory of Late Payment, 2017, Annual Report. Available at: https://publications.banque-france.fr/sites/default/files/medias/documents/odp2018_book_web2603.pdf

[58] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf

[59] In Bulgaria, Czech Republic, Denmark, Estonia, France, Ireland, Italy, Lithuania, Latvia, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia, UK

4 Measures aimed to improve payment practices in B2B transactions

4.1 Categories of measures

The study identified and analysed over 170 national measures aimed at improving payment behaviour in B2B transactions. These measures can be categorised according to their nature (legal or voluntary), scope (horizontal or sector-specific) and objective (preventive, remedial, change of business culture).

Some measures have been initiated in line with Article 12(3) of the LPD, allowing Member States to bring into force provisions that are more favourable to the creditor than those necessary to comply with the Directive. Other measures are aligned with Article 8(4), whereby Member States may encourage the establishment of any other initiatives tackling the crucial issue of late payment and contribute to developing a culture of prompt payment which supports the objective of this Directive. The measures addressing the problem of late payment were classified in the main categories as presented in Table 1.

Table 1: Categories of measures

Type	Group of measures	Description
Main preventive measures	Stricter payment terms	Provisions fixing stricter payment terms or shorter maximum payment terms.
	Transparency of payment practices	Mandatory rules on disclosure of payment behaviour, or databases and registries where information on payment practices is stored or published and can be consulted by companies to check the business practices and solvency of their potential business partners.
	Invoice management measures	Initiatives to improve cash flow such as e-invoicing or factoring[60].
Main remedial measures	Alternative Dispute Resolution System	Dispute resolution mechanisms made available to companies, including mediation, arbitration and adjudication.[61]
	Administrative sanctions	Administrative penalties for breaching rules on late payment.
Main initiatives contributing to changing business culture	Prompt payment codes	Codes or charters whereby signatories commit to respecting requirements such as payment terms.
	Corporate social responsibility	Initiatives whereby companies take responsibility for good payment practices.
	Credit management education	Education and training of companies on credit management.
Supportive measures in changing business culture	Unfair contractual terms and the role of business organisations	Rules on the notion of 'unfair' contractual terms, and powers conferred onto business organisations' representatives to take legal action to challenge grossly unfair payment terms and practices.
	Awareness raising activities	Events, information campaigns to increase knowledge about issues related to unfair payment practices in B2B transactions, rights and remedies stemming from the LPD and other national measures.
	Labels and prizes	Certificates to award companies with good payment practices.
	Working groups	Working group reflecting on solutions to issues with unfair payment practices.
Other measures	Compensation for recovery costs proportional to the size of the debt	Provisions setting out a compensation for recovery costs proportional to the amount of the debt.

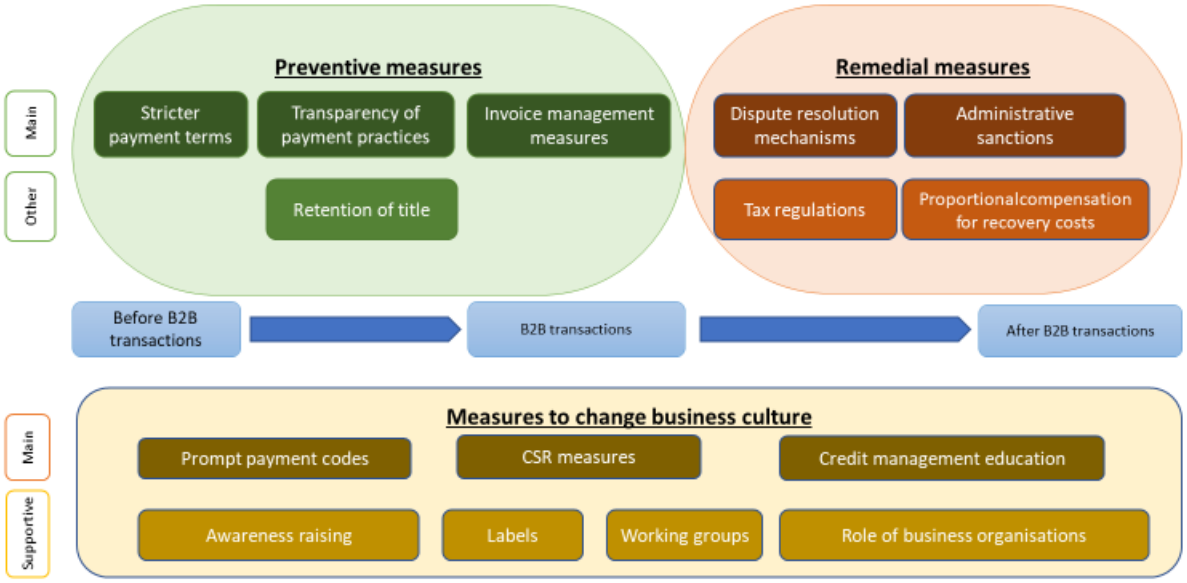
[60] Factoring is a transaction in which a business sells its invoices, or receivables, to a third-party financial company, which then collects payment on those invoices from the business's customers. Factoring is known in some industries as "accounts receivable financing". More information available at: http://www.rtsfinancial.com/guides/what-factoring

[61] Other rules that could be implemented in the litigation or pre-litigation phases, such as those on the order for payment procedure, are not analysed. According to the national legal analysis, this procedure is widely used in some Member States, allowing creditors of a certain, liquid and due sum to obtain an executive title against their debtors. It represents one of the primary measures aimed at assisting creditors in addressing late payment issues under national law. This is, for example, the case in Austria, Bulgaria, Lithuania, Malta and Slovakia. On the contrary, in other Member States, such as Cyprus, the order for payment procedure has never really been used to settle disputes on late payments in B2B transactions. These measures are not analysed in this study, since they fall under a different legal framework, representing the national equivalent of the European Payment Order, designed for cross-border settings.

Type	Group of measures	Description
	Legal provisions on the retention of title	Provisions relating to the retention of title identified under the law of contract.
	Tax regulations	Special tax regimes transferring or postponing the VAT obligation in case of late payment.

The figure below presents measures according to the point of transaction for which they are most used and their nature objective.

Figure 12: Main types of measures to tackle late payment in B2B transactions



The sections below analyse each type of measure in more detail.

4.2 Main preventive measures

4.2.1 Stricter payment terms

According to the LPD (Article 3(5) LPD)[62], the parties to a B2B contract can agree upon a payment term longer than 60 days on the condition that it is expressly agreed upon in the contract and it is not grossly unfair to the creditor in the meaning of Article 7. **Article 12(3) LPD allows Member States to maintain or bring into force provisions that are more favourable to the creditor than those necessary to comply with the Directive**. As shown in Annex 1, many Member States (Austria, Bulgaria, Croatia, Denmark, Finland, France, Germany, Ireland, Lithuania, Poland, Spain, Sweden, the Netherlands and the United Kingdom) resorted to this possibility and enacted stricter rules.

Several Member States (Denmark, Finland and Sweden) have set out shorter payment terms than those established in the LPD or have gone further and defined maximum payment terms that cannot be derogated by the parties (Croatia, France, the Netherlands and Spain).

Another intervention, very limited in scope, is the establishment of payment terms, shorter than those of the LPD, applicable in the absence of an agreement between the parties. These three approaches are described in Box 1.

Box 1: Conditions more favourable to the creditor

Maximum payment terms and conditions for the parties to agree on longer payment periods

In Denmark,[63] Finland[64] and Sweden,[65] 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.[66] 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[67] 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.[68]

Maximum payment terms that cannot be derogated by the parties

The French, Spanish, Croatian and Dutch legislation goes further by limiting the maximum payment term. In France,[69] 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), as long

[62] According to Article 3(5) LPD, 'Member States shall ensure that the period for payment fixed in the contract does not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of Article 7'.
[63] 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.
[64] 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.
[65] Section 2 a of the 'Interest Act' (*Räntelag*), SFS 1975:635.
[66] Petersen, L. L., *Renteloven* (4th ed, Karnov Group, Copenhagen, 2013) 141. Conclusions provided by the Danish, Finnish and Swedish Legal Researches (information collected through desk research on March 2017).
[67] 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.
[68] 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. Conclusions provided by the Finnish and Swedish Legal Researches (information collected through desk research on March 2017). 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.).
[69] 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.

as the term has been expressly stipulated in the agreement and is not grossly unfair to the creditor.[70] 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.[71] In Croatia,[72] undertakings can agree on a period of payment longer than 60 days (up to 360 days), 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*. In the Netherlands the parties may agree on a payment term of maximum 60 days. In contracts where the creditor is a trader-physical person or an SME, and the debtor a large legal person, the parties may not agree on a longer payment term. A clause deviating from this rule is null. In other B2B contracts, a payment term exceeding 60 days is possible at the condition that the parties both expressly gave their consent, and this period is not evidently unfair for the creditor in view of the criteria mentioned in Art. 6:119 (5) a, b, and c.[73]

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:

- the payment has to be paid 'without any undue delay' (Austria);[74]
- 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);[75]
- 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).[76]

The scope of these provisions (i.e. shorter payment terms) and their effects are very limited (i.e. they only apply when the parties have not agreed on payment terms). This approach is, thus, not discussed in detail.

There is no strong link between stricter implementation of the LPD and payment behaviour. In Member States applying stricter legislation (Denmark, Finland and Sweden), actual payment times vary between 23 (Denmark) and 32 days (Sweden).[77] However, these Member States generally are characterised by a strong prompt payment culture, where the implementation of the LPD had no significant impact on payment practices.[78]

In Member States where parties are prevented from negotiating payment terms above the limit set by law, the stricter approach adopted does not translate into the application of shorter payment terms compared to other EU Member States. **Differences in bargaining power still have an impact and lead to unfair practices**. In France and Spain, where maximum payment terms that cannot be exceeded are set out, payment duration and average terms are above the EU average.[79] In addition, a French case-law

[70] 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).
[71] Article 4 (3), Act on Late Payment in Commercial Transactions (ALCPT).
[72] Article 11(2) of the Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.
[73] Art. 6:119a (5) and (6) Civil Code, juncto Art. 2:397 (1) and (2) Civil code
[74] 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.*
[75] 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.
[76] 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).
[77] See Section 3.1.
[78] See also Valdani Vicari Associati; Technopolis Group; Ernst & Young (study commissioned by the European Commission), Ex-Post Evaluation of Late Payment Directive, 2015. As mentioned in Section 3.1.1, in some Member States (Sweden), even a deterioration of average payment terms has been recorded in the recent period.
[79] According to Intrum data, in 2017, average payment terms and payment duration in France are, respectively, 43 and 46 days; in Spain, 51 and 55 days; the EU average is 30 and 35 days (see Section 3.1.1).

in the retail sector shows that, while big suppliers often resort to the possibility of paying their retailers within 45 days from the end of the month period, smaller retailers have to pay services for commercial cooperation provided by the retailer within 30 days. As highlighted by different courts, this results in a significant imbalance in the rights and obligations of big suppliers and small retailers.[80]

Evidence suggests that **the establishment of stricter or maximum payment terms does not necessarily translate into shorter payment duration**. While stricter payment terms are relevant and enhance prompt payment, the effectiveness of these measures depends on the level of enforcement and other influencing factors, such as the national payment culture, the structure of the market and the persistence of imbalances of power.

Implementation of short(er) payment may have **unintended effects on the extent of payment delays**. For example, companies acting in unstable economic situations may be more reluctant to enter into contracts if they are not sure they can adhere to the 30-day payment term.[81] However, according to the results of the CATI survey, 60% of businesses that provided an answer (i.e. 158 out of 266 respondents) say that less than 30 days would be a fair payment term in their sector.[82] The CATI also shows that businesses in Member States promoting the adoption of shorter payment terms do not experience higher issues in terms of late payment (i.e. only a minority of invoices is paid late).[83]

4.2.2 Transparency of payment practices

Measures for transparency of payment practices include legal obligations to publish information on payment practices, and voluntary initiatives to store and publish the payment and credit information of companies on specific databases and registries.

A few Member States (France,[84] Slovenia,[85] Spain[86] and the United Kingdom[87]) have established provisions setting out the **mandatory communication and publication by businesses of payment practices and policies** (e.g. average payment periods in France, Spain and the United Kingdom, and protested bills of exchange in Slovenia). The obligations usually apply to large companies, with turnover exceeding a certain amount, or above a certain number of employees (see Box 2).

Box 2: Transparency rules on payment behaviour – Scope of application

France: businesses having their annual accounts certified by an auditor must provide information to the Ministry of Economy regarding the payment deadlines of their suppliers and clients.

[80] Commercial court of Lille (*tribunal de commerce de Lille*), judgment of 6 January 2010, RDC 2010, p. 928, obs. Martine Bechar-Touchais; RTD 2010, p. 324, obs. Bertrand Fages; D. 2010, p.1000, obs. Juliette Sénéchal; D. 2011, p. 546, obs. Didier Ferrier, available at http://ddata.over-blog.com/xxxyyy/1/70/46/66/concurrence/TC-LILLE-CASTO-06.01.10-1-.pdf; Court of appeal of Paris (*cour d'appel de Paris*), judgment of 1 October 2014, n° 13/27125, RDC 2015, p. 67, obs. Martine Behar-Touchais, available at http://www.economie.gouv.fr/files/files/directions_services/dgccrf/documentation/Lettre_CetC/reseaux/cour_appel_arret_01102014.pdf; Court of Cassation, judgment of 4 October 2016, unpublished, n° 14-28013, available at https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000033211538; Court of Cassation, judgment of 3 March 2015, n° 14-10907, unpublished, ECLI:FR:CCASS:2015:CO00239.

[81] Nielsen, M.-B. C., '*Ændringer I regler om betaling af renter og inddrivelseomkostninger*', (2013) 9 Revision & Regnskabsvæsen 90, 94.

[82] Question 4, CATI survey. In parallel, 24% of businesses (63 out of 266 respondents) consider payment terms between 30 and 60 days as 'fair'.

[83] In these Member States, between 88% (Denmark) and 86% (Finland) of the businesses have experienced late payment concerning a minority of their invoices (25% of the invoices or less), against the EU average equal to 74% (CATI survey, Question 6).

[84] Decree n° 2015-1553 of 27 November 2015.

[85] 'Law on prevention of late payment', *Zakon o preprečevanju zamud pri plačilih*, Uradni list RS, št. 57/12.

[86] Additional Provision 3 to the Act 15/2010 amending the Act 3/2004 establishing measures to combat late payment in commercial transactions.

[87] Reporting on Payment Practices and Performance Regulations 395/2017 of 15 March 2017.

Spain: listed joint stock companies have the obligation to maintain a website aimed at showing, on their shareholders' behalf, information required by law on securities market, as well as their average payment periods.[88]
United Kingdom: a company meeting certain requirements (see companies subject to Regulations 2017 No. 395 in Box 3) should report on the government's website,[89] twice a year: a narrative description of payment terms; the average time taken to pay invoices; the percentage of payments made within 30 days, in 31 to 60 days, and in 61 days or more.[90]

T**he public availability of payment information is expected to discourage late payment by balancing information asymmetry and help businesses choose reliable commercial partners.** The mandatory publication of information concerning payment behaviour should also encourage businesses to follow fair practices and perform their monetary obligations on time to **avoid damaging their own reputation**.

Box 3: Example of Regulation 2017 No. 395 in the United Kingdom

The Regulation came into force on 6 April 2017.[91] It is pan-sectorial, affecting all large companies and limited liability partnerships (LLPs) that exceed at least two of the three thresholds for qualifying as a medium-sized company under the Companies Act 2006 (section 465 (3)). The thresholds are:

- GBP 36 million (EUR 41 million[92]) annual turnover;
- GBP 18 million (EUR 20.5 million) balance sheet total;
- 250 employees.[93]

All companies in the scope report on half-yearly basis. The reports are openly available on the government website.[94] The report must include, among other information, a narrative description of payment terms, the average time taken to pay invoices, and the percentage of payments made within 30 days, in 31 to 60 days, and in 61 days or more.[95] The first reporting cycle is still ongoing: over 300 reports have been submitted so far, with around 15,000 expected. While the Regulation is still at its initial stages, no behavioural change has become evident so far.[96]

According to the Impact Assessment, the benefits of the Regulations will come through reductions in payment times to suppliers, driven by transparency and scrutiny. Moreover, while larger companies will face costs for providing information, overall benefits will be produced by the reduction of the time needed for following up on late payment. An illustrative estimate of these benefits suggests that even a small 0.25% overall reduction in the cost burden of chasing late payment would lead to annual benefits of 22.9 million EUR (approximatively 25.9 million EUR) to UK businesses. The Impact Assessment also predicts positive effects on the payment practices of large businesses, which could have a significant impact across the economy as late payment by large businesses can have repercussions all the way down the supply chain.[97] An SME representative noted that visibility and access of data reported by companies will be important. To create sufficient pressure for the companies to change their payment behaviour, private customers also need to change their shopping behaviour to favour the companies with good payment practices. They also observed that in some cases, especially in competitive markets, the suppliers may not have the choice to pick and choose who to do business with, even if data of negative payment behaviour is available and they are aware of it.[98]

In addition to the mandatory transparency measures mentioned above, **companies can check the payment and credit practices of potential business partners in specific databases and registries**. Such initiatives have been mostly launched by private companies (e.g. Lindorff Group and Tinyfee Ltd in Finland, SIA Lursoft in Latvia, KRD in Poland), associations of credit management (e.g. the Austrian Credit Protection

[88] Article 539, Corporate Enterprises Act.
[89] The reports can be accessed at: https://check-payment-practices.service.gov.uk/search
[90] Interview with the initiator of the measures.
[91] Legislation.gov.uk, 2017, The Reporting on Payment Practices and Performance Regulations 2017, available at: http://www.legislation.gov.uk/uksi/2017/395/contents/made
[92] Conversion rate: 1 EUR = 0.8785 GBP
[93] Department for Business, Energy & Industrial Strategy, October 2017, Duty to Report on Payment Practices and Performance – Guidance to reporting on payment practices and performance, p. 4, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649941/payment-practices-performance-reporting-requirements-oct-2017.pdf
[94] The reports can be accessed at: https://check-payment-practices.service.gov.uk/search
[95] Interview with the initiator, 26/01/2018.
[96] Interview with a stakeholder involved in the UK Case study ('The Reporting on Payment Practices and Performance Regulations 2017').
[97] Department for Business, Energy and Industrial Strategy, 'Explanatory Memorandum to the Reporting on Payment Practices and Performance Regulations 2017' (2017), available at http://www.legislation.gov.uk/ukdsi/2017/9780111153598/pdfs/ukdsiem_9780111153598_en.pdf.
[98] Interview with a stakeholder involved in the UK Case study.

Association, the Malta Association for Credit Management) or business associations (e.g. the Chamber of Private Enforcement Agents in Bulgaria).

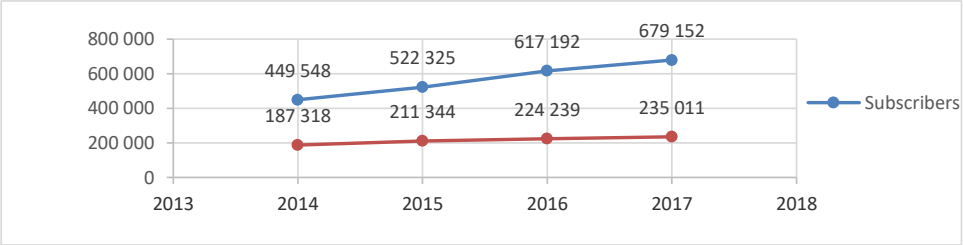
The availability of business information in databases and registers and their use vary across identified examples. Across the EU, Intrum reports that credit checks are used as a preventive measure against poor payment behaviour by 30% companies, with particularly high use in Latvia (52%) and Portugal (56%).[99] It was also reported in Lithuania[100], in Greece[101] and by 44% of companies in Estonia in 2017 (36% in 2016).[102]

Box 4: Example of the National Debt Register (KRD) in Poland

The Economic Information Bureaus (EIBs) are the only entities entitled to receive, store and disclose economic information and data on unreliable debtors in Poland. **KRD is the main EIB, known by 88% of Polish companies and used by 26%.**[103]

The number of KRD subscribers and the number of listed debtors grew steadily in recent years (see figure below). At the end of 2017, KRD had 679,152 subscribers[104] and 235,011 listed debtor companies, representing a total debt of EUR 2.1 billion.[105]

Figure 13: Overall number of KRD's subscribers and listed debtors[106]



Source: VVA

Since its establishment, the KRD estimated that EUR 39.12 million[107] has been paid back. KRD estimates that **68% of debts could be avoided if companies checked their future business partners**.[108] However the use of KRD services among SMEs remains limited due to the access costs or lack of digital skills. While KRD remains the largest database on debtors in Poland (registering 13% of Polish companies[109]), other EIBs provide similar services.[110] The lack of a comprehensive database might create difficulty for the enterprises interested in EIB services. Companies wishing to access the credit data of potential business partners do not know in advance which EIBs stores data on specific companies. Therefore, having one centralised EIB could increase the effectiveness and efficiency of the service. It should be noted, however, that a recent law amendment[111] enabling EIB to access data in other databases (upon request from a company) might contribute to an increased coverage and use of EIBs.

There are clear benefits of knowing in advance about the payment practices of business partners. According to the Association of Chartered Certified Accountants,[112]

[99] Intrum, European Payment Report, 2017.
[100] Verseckas, D., 2015, Vėluojantys atsiskaitymai tampa tendencija. Verslo žinios. Available at: http://www.vz.lt/vadyba/finansai-apskaita/2015/08/17/veluojantys-atsiskaitymai-tampa-tendencija
[101] Atradius, Payment Practices Barometer Greece 2017, 11 April 2017.
[102] Intrum (Estonia), May 2017, "Maksetähtajad pikenesid Eestis aastaga 25%". Available at: https://www.intrum.com/et/ee/ettevottest/uudised/maksetahtajad-pikenesid-eestis-aastaga-25/
[103] Figures provided by KRD
[104] KRD figures do not disentangle subscribers between individual consumers and companies
[105] Figures provided by KRD : PLN 8,774,729,852.94
[106] Data provided by KRD
[107] 163,000,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[108] KRD, Benefits for business clients. Available at: http://en.krd.pl/Adding-debtor/For-business-clients/Benefits
[109] Calculation for the year 2015 based on the number of debtor companies listed (211,344 according to KRD) and the number of Polish companies (1,606,559 according to Eurostat).
[110] The EIBs are economic operators, although some of their names are partially misleading by including the adjective 'national'. All EBIs in Poland are individual and competing entities, with their own databases. There is no central coordination or exchange of information between them. See the case study in section 0 for more detail.
[111] Op.cit. Act of 7 April 2017.
[112] Association of Chartered Certified Accountants, 2015, Ending Late Payment – Part 2 What works? Available at: http://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-tp-elp-2whatworks.pdf

studies demonstrate that access to financial information on customers tends to improve the cash balances of suppliers, and that using credit reference checks increased SMEs' confidence in their credit policies, thus releasing liquidity to invest and grow.

A fear of being recorded on the database should prevent late payment from occurring and companies should make an effort to pay their suppliers on time. On the other hand, enterprises recorded should be further incentivised (in the form of the removal from the register) to pay their debts. However, in 2017, drawing on the Polish example, on average one euro was paid back for every EUR 1,500 of debt listed on KRD[113] suggesting a limited influence on the payment practices. There could be several explanations why this is the case. Many such initiatives are private in nature, with restricted publicity and limited access (members only) and which impose costs for accessing the information. One of the reasons limiting SMEs use of the database is cost. Drawing on the Polish case again, companies can either subscribe to ongoing access to the database or request individual reports – none of the databases available in Poland offer both access points to data. A limited paid access combined with fragmented coverage and awareness can prevent SMEs from systematic use of credit data, disincentivising debtors from paying the debt back promptly even if it is recorded in the database. Furthermore, SMEs, if they use payment practices databases, tend to verify the reliability of new clients, but not existing clients.

4.2.3 Invoice management measures

Invoice management initiatives can improve timely collection of invoices. Such initiatives include the use of e-invoicing and the outsourcing of invoice management to third-party companies via factoring or reverse factoring. With factoring services, a business sells its invoices to a third-party financial company, which then collects payment on those invoices from the business's customers for a fee. By contrast, reverse factoring (or supply chain financing) is a financing solution initiated by the client in order to help suppliers finance their receivables more easily and at a lower interest rate than that which they would be offered by a bank or factoring company.

[113] Proportional calculation for one euro, based on figures provided by KRD of the debts paid back (EUR 8,103,360 which do not differentiate between business and consumers) over the debts listed (EUR 12.1 billion: EUR 2.1 billion for businesses and EUR 10 billion for consumers) for the year 2017.

Box 5: Use and examples of invoice management measures

E-invoicing is growing worldwide at around 20% a year, and as of 2013 it accounted for over 8% of all invoicing worldwide.[114] **The share of European companies working exclusively or at least in part with external specialist providers of receivable management services is growing fast, from 35% in 2014 to 44% in 2016.**[115,116] The use of invoice management measures is particularly common in some Eastern European countries, for instance pre-payment in Latvia (52%) and Romania (63%) and payment plans in Bulgaria (52%).[117] In Latvia, the association Latvian IT Cluster, in collaboration with Latvian IT companies, provides a template for e-invoices.[118] In Spain, the SME association PIMEC offers a e-invoicing service and software to its members called *Pimefactura*[119], responsible for sending the invoices to the clients and recording evidence that the invoices have been correctly delivered to the recipient.

In some countries, the use of e-invoicing is fostered by national governments. In Italy, the government has extended its electronic invoice tool to B2B transactions, and encourages its use by giving businesses some fiscal and administrative incentives.[120] In France, e-invoicing in public procurement is compulsory since 2017 for large companies (above 5,000 employees), since 2018 for intermediary companies (250-5,000 employees), and will become compulsory from 2019 for SMEs (10-250 employees) and from 2020 for micro-enterprises (less than 10 employees).[121] This may foster the adoption of e-invoicing by companies in B2B relations too.

The **total factoring volume in the EU increased by 25% from 2012 to 2016** (from EUR 1.2 billion to EUR 1.5 billion), with the highest GDP penetration in Cyprus, Belgium and the UK.[122] On the other hand, in 2014 reverse factoring only accounted for 4% of the global receivables financing market.[123]

Examples of invoice management initiatives include the Edebex Factoring service in Luxembourg[124], factoring services in the Czech Republic[125] and the URICA payment network in the UK[126].

Invoice management measures can reduce the impact of late payment by improving cash flow and reducing liquidity issues – one of the main causes but also main consequences of late payment. These initiatives can reduce the administrative burden of late payment, since in the case of payment delays, over 80% companies send reminders, and administrative costs are the main impact experienced. Invoice management measures can reduce these administrative inefficiencies and lead to faster settlement of invoices, thus improving cash flow.

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[114] Association of Chartered Certified Accountants, 2015, Ending Late Payment – Part 2 What works? Available at: http://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-tp-elp-2whatworks.pdf

[115] EOS Survey "European Payment Practices" 2016. Available at: https://www.eos-solutions.com/fileadmin/user_upload/eos-solutions/Market_research/EOS_Survey_European_Payment_Practices_2016/EOS_Survey_European_Payment_Practices_2016_Graphic_report_EN.pdf

[116] OECD Scoreboard, 2017, Financing SMEs and Entrepreneurs. Available at: http://www.oecd-ilibrary.org/industry-and-services/financing-smes-and-entrepreneurs-2017_fin_sme_ent-2017-en

[117] Intrum, European Payment Report, 2017.

[118] PBO Baltic, November 2011, Standards of the Electronic invoices in Latvia – distant vision or near future (ppt.). Available at: http://lata.org.lv/wp-content/conf/Efektivitate/LATA_Erekinu_standarts_JanisKronbergs.pdf

[119] PIMEC, Factura electronica. Available at: https://www.pimec.org/es/pymes-autonomos/servicios/tecnologia-e-innovacion/factura-electronica

[120] Fatturap.gov.it. Available at: http://www.fatturapa.gov.it/export/fatturazione/it/index.htm

[121] Ministère de l'Economie, 2017, Marchés publics : la facturation par voie électronique obligatoire par étapes. Available at: https://www.economie.gouv.fr/entreprises/marches-publics-facture-electronique

[122] EU Federation Factoring and Commercial Finance, Total factoring volume data. Available at: https://euf.eu.com/total-factoring.html

[123] ACCA, 2014, A study of the business case for supply chain finance. Available at: http://www.accaglobal.com/ab111

[124] Edebex website. Available at: https://edebex.com/blog/FR-fr/tag/retard-de-paiement

[125] Hospodářské noviny, 2015, Factoring je pro malé a střední firmy víc než jen "dražší" alternativa k úvěru. Available at: http://byznys.ihned.cz/podnikani/finance-pohledavky-zavazky/c1-64674960-factoring-je-pro-male-a-stredni-firmy-vic-nez-jen-drazsi-alternativa-k-uveru

[126] URICA, 2014. Available at: urica.com/wp-content/uploads/2014/03/URICA-Media-Fact-Sheet.pdf

Box 6: Positive effects of invoice management measures

A Commission expert group on e-invoicing estimates that the implementation of e-invoicing can save EUR 5-15 per invoice for the national economy.[127] E-invoicing enables faster payment and a reduction of human error and fraud, but also saves costs of printing and mailing, and space for storage. By creating an automatic invoice approval process and audit trail, e-invoicing can reduce invoice disputes significantly, and improve financial management.

Third-party invoice management such as factoring reduces the potential bad debt and late payment and leads to a healthier cashflow of the business. Providing a greater level of stability to the business, **companies can pay their own suppliers faster**, thus leading to shorter payment delays. It also **facilitates access to funding** from financial institutions, given that the debtor book is better managed, and the business would be able to afford to meet its loan payment obligations.

Overall, awareness and use of invoice management initiatives remain relatively low, possibly due to their private nature or lack of advertisement. The cost of setting up an e-invoicing system or resorting to third party factoring companies **also remains one of the main barriers for companies.** For example, in the UK, the URICA payment network charges a 'discount charge' to suppliers of GBP 85 (EUR 101) to 250 (EUR 298) on a GBP 10,000 (EUR 11,956) invoice.[128] The discount is charged only when the supplier chooses to be paid early.[129]

The expansion of e-invoicing is hampered by the lack of resources or digital knowledge from SMEs, and the interoperability of e-invoicing systems within and across borders. In some Member States, additional promotional activities were launched to increase awareness of the benefits of invoice management which might encourage greater uptake in the future. For example, in the Netherlands, the initiative Betaalme.nu[130] (Section 4.4.2) promotes the use of e-invoicing among SMEs. In Poland, the campaign of the 'I choose e-invoicing' coalition (Section 4.5.2) promotes the use of e-invoicing and provides a website with information on electronic payment.[131] In Germany, the Forum for Electronic invoicing[132] (Section 4.5.4) is the national platform for the promotion of electronic invoicing and has developed a uniform e-invoicing data format.

Overall, the invoice management measures demonstrate clear benefits in reduction of the impact of late payment by improving cash flow and reducing liquidity issues. Awareness and use are still relatively low, due to the potential cost and lack of publicity.

4.3 Main remedial measures

4.3.1 Alternative Dispute Resolution

Negotiated settlements, arbitration and ADRs (such as mediation or conciliation) might be an attractive solution for business disputes, as they offer a faster and low-cost alternative to court proceedings. These forms of dispute resolution appear to be commonly known among companies: a significant majority of businesses surveyed (72%) appear to be aware of the possibility of making use of adjudicators, mediators or arbitrators to settle a dispute in the case of late payment.[133]

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[127] European Commission, 2009, Final report of the expert group on e-invoicing. Available at: http://ec.europa.eu/internal_market/consultations/docs/2009/e-invoicing/report_en.pdf

[128] URICA Factsheet, 2014. Available at: urica.com/wp-content/uploads/2014/03/URICA-Media-Fact-Sheet.pdf

[129] Cdn2, "URICA aims to ease cash flows." Available at: cdn2.hubspot.net/hub/328681/file...pdf/Urica_aims_to.../urica_cash_flow.pdf

[130] Betaalme.nu. Available at: https://www.betaalme.nu/

[131] Wybieram e-faktury. Available at: http://konfederacjalewiatan.pl/uslugi/projekty-kampanie-patronaty/wybieram-e-faktury#

[132] Forum elektronische Rechnung Deutschland. Available at: http://www.ferd-net.de/electronic-invoicing446/introduction/index.html

[133] 1227 businesses out of 1696, CATI survey, question 12.

The ADR systems identified have been either set up by legislative acts or by business associations and chambers of commerce.

Box 7: B2B dispute resolution mechanisms

Only the United Kingdom and France have established, through legislative acts, specific bodies for ADR for B2B contracts. In France, the **Ombudsman for Undertakings**[134] is empowered to facilitate the resolution of disputes between two economic actors. The mediation process is initiated by a company's online request, following which the Ombudsman invites the other company involved to the negotiation table to find a solution. In the United Kingdom, the government appointed a **Small Business Commissioner**[135] to specifically tackle the issue of late payment for SMEs. Duties include:

- Providing general information, advice and recommendations to SMEs on relations with larger businesses;
- Considering complaints by small business suppliers about payment issues with the larger businesses that they supply;
- Ensuring assistance and guidance to SMEs in payments disputes, including information on available ADR systems.[136]

In other Member States, ADR systems have been set up by business associations and chambers of commerce, such as Centre of Arbitration and Mediation in Poland[137], the Vienna International Arbitral Centre in Austria[138], the 'Second Chance' for Enterprises mediation centre[139] in Bulgaria, the Danish Institute of Arbitration,[140] and the Arbitration Institute in Finland.[141] While most of these initiatives focus on mediation and arbitration, the 'Second Chance' for Enterprise mediation centre in Bulgaria and the Centre of Arbitration and Mediation in Poland also organise training activities. In Poland, the centre is divided into six regional branches and to date has provided training for 900 entrepreneurs, lawyers, mediators and judges. The regional centres reached out to over 70,000 businesses, via local and national conferences and specialist publications addressed to entrepreneurs, mediators and lawyers.

Ombudsmen or arbitration tools are useful in solving payment disputes and maintaining business relations, and they are usually preferable to going to court.[142] Companies and especially SMEs are usually afraid of damaging their business relations or losing a future contract if they use legal remedies. Mediation helps, at least to a certain extent, maintain a dialogue between the client and the supplier, find a solution together and continue business relations. To avoid an escalation leading to late payment or non-payment, the Ombudsman can intervene when commercial relations are tense.

In recent years, the level of awareness of companies and the extent of use have increased.

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[134] Decree of 14 January 2016 appointing the ombudsman for undertakings (*décret du 14 janvier 2016 portant nomination du médiateur des entreprises),* Official Journal of the French Republic of 14 January 2016. The ombudsman for undertakings took over the tasks previously assigned to the inter-enterprises ombudsman and the public procurement ombudsman.

[135] Enterprise Act 2016 ch. 12 of 4 May 2016, part. 1.

[136] Enterprise Act 2016, sec. 1(2), 1 (3) part 1; Department for Business Innovation & Skills, 'Small Business Commissioner', government response, (September 2015), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461675/BIS-15-548-small-business-commissioner-government-response.pdf.

[137] CAM Centra Arbitrazu i Mediacji: http://caim.gov.pl/index.php/pl/

[138] Vienna International Arbitral Centre (VIAC). Available at: http://www.viac.eu/en/

[139] ЦЕНТЪР ЗА МЕДИАЦИЯ към Арбитражен съд при Българска търговско-промишлена палата- http://www.mediation.bcci.bg/; "Механизмът трябва да регламентира доброволното уреждане на отношенията между длъжник и кредитор преди стартиране на производство по несъстоятелност". Available at : http://www.investor.bg/ikonomika-i-politika/332/a/obsyjda-se-procedura-za-vtori-shans-za-zadlyjneli-predpriiatiia-202901/

[140] The Danish Institute of Arbitration, n.d., About the Danish Institute of Arbitration. Available at: http://voldgiftsinstituttet.dk/en/about/, accessed 26/06/2017.

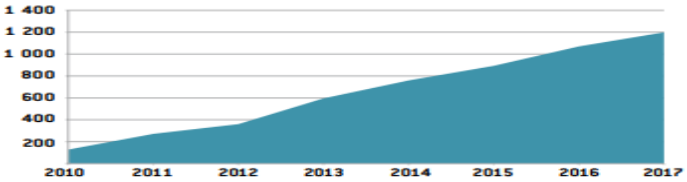
[141] Finland Chamber of Commerce (FAI), n.d., The Arbitration Institute. Available at: https://arbitration.fi/the-arbitration-institute/, accessed 30/06/2017.

[142] Only one third of businesses starts court proceedings to address late payment (32.5% according to the CATI survey).

Box 8: Example of the Ombudsman for Undertakings in France

In France, the number of mediation cases has considerably increased, from 100 cases per year in 2010 to 100 cases per month in 2016. Eight percent of French companies declare having used mediation, (6% often, 2% sometimes).[143]

Figure 14: Evolution of the number of mediation cases



Source: Ombudsman for Undertakings, 2017 Annual report

Mediation is known by 40% of medium and large companies but only 23% of micro-enterprises.[144] According to the Ombudsman, late payment is the first cause of mediation, representing at least a quarter of cases every year. The Ombudsman is generally called in by small companies. In 2016-2017, 93% of the mediation cases were initiated by SMEs, of which half with less than 10 employees.[145] **In nearly three out of four cases, mediation leads to a solution between the parties and to a verbal or written agreement**.

The results of interviews with the Ombudsman and business associations suggest that mediation represents an **effective measure for solving commercial business disputes and maintaining business relations, while providing SMEs with more bargaining power** and confidence at the negotiation phase. Furthermore, the Ombudsman **increases businesses' awareness of available remedies**, by informing them about their rights and proposing appropriate solutions.[146]

One of the main causes for the limited use of mediation is the lack of awareness of the measure, especially among SMEs.

ADR systems usually solve commercial disputes faster than in court, and the average duration of cases is decreasing. A report from the World Bank estimated that cases can be solved by mediation within 7-30 days while with legal proceedings last an average of 512 days.[147] In France, mediation cases are solved within three months on average.[148] The Danish Institute of Arbitration decreased the average time for solving a domestic case from 19 months in 2012 to seven months in 2016.[149] At the Arbitration Institute of the Finland Chamber of Commerce (FAI), the median duration of arbitration under the Arbitration Rules has gone down from 10 months in 2010 and 2011 to eight months in 2015 and 2016.[150]

Despite the growing number of mediation cases and their positive outcomes, evidence across Member States suggest that ADR instruments are not yet commonly used by companies and SMEs. Small businesses might be reluctant to use mediation due to the fear of damaging business relations according to interviews. Suppliers fear that bringing the case to the mediation services will upset their client and make them lose future contracts. Companies tend to wait until the impact of late payment is severe before resorting to the ADR. Again, a better

[143] CODINF Letter, April 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Avril%202018.pdf
[144] CODINF Letter, April 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Avril%202018.pdf
[145] Ombudsman for Undertakings, 2017 Annual report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf
[146] See Section 7.3.5 FR Case-study, 'Ombudsman for undertakings', Links with the needs of companies.
[147] Doing Business 2016 Poland. A World Bank Group Flagship Report. The statistics do not disentangle the cases on late payment from other cases.
[148] Ombudsman for Undertakings, 2017 Annual report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf
[149] The Danish Institute of Arbitration, n.d., Statistics 2016. Available at: http://voldgiftsinstituttet.dk/wp-content/uploads/2014/12/statistics-2016-en.pdf
[150] FAI, n.d., Statistics. Available at: https://arbitration.fi/the-arbitration-institute/statistics/

communication about the positive results of mediation should help reassure companies and encourage them to use mediation as soon as the issue arises.

Companies across borders do not have the same starting point when they consider resorting to the ADR procedures in case of late payment as the **costs of mediation services vary significantly between Member States.** In some countries costs involve a registration fee (e.g. 1,300 EUR for the Danish Institute of arbitration, 120 EUR in the Polish centres of arbitration and mediation) or proceeding costs (e.g. the arbitration fee of the Finnish Arbitration Institute ranges from 2,500 to 8,000 EUR depending on the amount of the claim[151]) but they can also be free of charge (e.g. French Ombudsman for Undertakings). Evidence shows that in the United Kingdom, in 2015, only 1% of SMEs used arbitration to settle their disputes.[152] Similarly, in Latvia, in 2015, only 15 B2B disputes were decided by mediators.[153] Based on the French example of Ombudsman, ADR measures represent an effective means of solving disputes and minimising the costs of access to justice, but an overall persistent fear of damaging business relations still prevents wider use.

4.3.2 Administrative sanctions

Administrative sanctions represent an important means of supporting the enforcement of national legislation on late payment. While administrative sanctions are commonly used at sector level, in conjunction with legislation on maximum payment terms (see Section 5) only few Member States have adopted administrative sanctions applicable to all sectors (France and Croatia).[154]

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[151] FAI, n.d., Calculator (Requests for Arbitration filed on or after 1 June 2017). Available at: https://arbitration.fi/arbitration/costs-of-arbitration/calculator-2017/

[152] FSB commercial dispute resolution survey 2015. Federation of Small Businesses, 'Tied U. Unravelling the Dispute Resolution Process for Small Firms' (November 2016), available at http://www.fsb.org.uk/docs/default-source/fsb-org-uk/tied-up-unravelling-the-dispute-resolution-process-for-small-firms.pdf?sfvrsn=1, p. 23.

[153] Ziemanis M. (2016) (*Mediācija kā efektīvs komercstrīdu risināšanas mehānisms. Praktiskie aspekti"*). Issued in Jurista Vārds n.18(921)

[154] Croatia: Financial Operations and Pre-Bankruptcy Settlement Procedure Act, as amended in 2013, Official Gazzette 81/2013. For France, see

Box 10. Another example is the Czech Republic, where the parties to a contract have the possibility of agreeing on a contractual penalty in the case of late payment, as a form of payment security (Sections 2048-2052 of the new Civil Code Act (*Občanský zákoník*) of 3 February 2012, Collection of law (State Gazette) 89/2012.). The contractual penalty replaces the compensation for damages, although the parties can agree that both penalty and compensation apply. However, in this case, the application and enforcement are up to the parties and it is not discussed.

Box 9 : Administrative sanctions

In **Croatia**, pecuniary fines for breaching rules on late payment[155] were established as an additional instrument to combat and prevent late payments.[156] Fines are issued by the competent local tax authority, based on the indictment proposals submitted by the financial oversight inspector from the Ministry of Finance.[157] A recurring issue highlighted by Croatian stakeholders is the gap that exists between legislative provisions and practice. The effectiveness of sanctions in Croatia is rather limited, given other elements related to the national context. Late payment appears to be strictly related to financial difficulties faced by the debtor (especially when the debtor is a small company),[158] and therefore imposing financial penalties on an already struggling business would be rather ineffective.

In **France**, reforms have been adopted in recent years to disincentive late payments. In 2014, the ***Hamon Law***,[159] *inter alia*, replaced civil and criminal penalties previously in force with administrative penalties for non-compliance with the periods of payment set out by the Commercial Code.[160] The ***Sapin II Law***[161], adopted in 2016, introduced two changes that aimed to strengthen the sanctions:

- The value of administrative fines in cases of late payments was increased;[162]
- The possibility to accumulate administrative fines was introduced.[163].

Finally, according to the **Czech Civil Code Act**,[164] the parties to a contract have the possibility of agreeing on a contractual penalty in the case of late payment, as a form of payment security. The national legislation has introduced the possibility for the parties to agree on a contractual penalty in case of late payment. As it is up to the parties to introduce such a penalty, the measure does not seem to be effective, especially in the case of long-term cooperation between the parties, or in cases where there is an imbalance of power.[165] The contractual penalty replaces the compensation for damages, although the parties can agree that both penalty and compensation apply. However, in this case, the application and enforcement is up to the parties and it is not discussed.

Given that administrative sanctions are enforced by public authorities, direct intervention from the public administration can overcome the 'fear factor' and helps to avoid placing the responsibility to take action against the debtor on the creditor. In the case of France, several suppliers whose clients were subject to administrative sanctions confirmed that the payment behaviour of these clients had improved.

[155] Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.
[156] Article 88, Act on Financial Operations and Pre-Bankruptcy Settlement. In the case of late payment, the fine amounts to 10,000 to 1 million HRK (approximately 1350 to 135,135 EUR) for the undertaking, and to 1,000 to 50,000 HRK (approximately 135,00 to 6,756 EUR) for the responsible person in the undertaking.
[157] Article 87 Financial Operations and Pre-Bankruptcy Settlement Procedure Act, as amended in 2013, Official Gazzette 81/2013. Moreover, undertakings must deliver quarterly a statistical form, called OPZ-STAT-1, to the Tax Administration. In this form, they list their matured but unpaid claims. This was introduced by law in 2015 (Pravilnik o obvezujućim mišljenjima, ispravku prijave, statističkim izvješćima i poreznoj nagodbi, Official Gazzette 78/2015). The financial oversight inspectors of the Ministry of Finance have access to the information collected on the basis of OPZ-STAT-1, and they act upon it.
[158] Intrum, European Payment Report 2016.
[159] Law n° 2014-344 of 17 March 2014 regarding the consumer affairs (*loi n° 2014-344 du 17 mars 2014 relative à la consummation*), Official Journal of the French Republic of 18 March 2014 (*Law Hamon*).
[160] Fines are issued by the French Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, hereafter DGCCRF.
[161] Law n° 2016-1691 of 9 December 2016 regarding the transparency, the fight against corruption and the modernisation of the economic life (*law 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*), Official Journal of the French Republic of 10 December 2017 (*Law Sapin II*).
[162] Article 123, *ibid.* The administrative fine can now amount to 75,000 EUR for a natural person and to 2 million EUR for a legal person. The decision regarding a fine is always published for non-compliance with the periods of payment set out by the Commercial Code, as last amended by Law Sapin II.
[163] For example, if a company violates Article 441-6, I, Section 9 (agreed payment term) or Section 11 (payment terms concerning the transport of goods) of the Commercial Code, the amount of the fine for the same legal person could be the one resulting from the sum of the two fines applicable for the two respective violations.
[164] Sections 2048-2052 of the new Civil Code Act (*Občanský zákoník*) of 3 February 2012, Collection of law (State Gazette) 89/2012.
[165] Conclusions provided by the Czech Legal Research (information collected through desk research in March 2017).

Box 10: Example of administrative sanctions in France

Since 2014, with the entry into force of the *Hamon Law*, the administration can directly sanction bad payers. The overall administrative process is faster, and it results in **around 230 sanctions per year**. As of 2014, the DGCCRF has conducted **2,500 controls per year**, covering all the suppliers of the targeted company. The sample of annual controls targets large companies and sectors more impacted by late payment in particular. In the case of late payment, the DGCCRF can deliver a warning, an injunction to comply with legal obligations, or a notification of the application of administrative sanctions. SMEs which are not engaged in a serious misconduct may, in the first instance, receive a warning or an injunction to improve their payment behaviour instead of a sanction. In 2017, only 16% of the administrative sanctions were imposed on SMEs.[166]

Around 10,000 enterprises have been controlled since 2014, and the following actions were undertaken:

- 389 warnings were issued in 2016, and 235 in 2017;
- 192 injunctions were issued in 2016, and 170 in 2017;
- 274 notifications of the application of administrative sanctions[167] were issued 2016, 230 in 2017.[168]

In 2016, the total annual number of administrative fines amounted to EUR 10.9 million while in 2017 it reached EUR 15 million.[169]

Overall, payment behaviour has improved in France in recent years. 70% of companies across all sizes noted a stabilisation of payment terms.[170] In addition, there was a small decrease in the average payment delay – from 13.2 days in in 2015 to 10.9 days in 2017.[171] Although interviewees mentioned that the value and publication of sanctions have a deterrent effect on late payers, the economic recovery may also be factored into the recent improvement in payment behaviour.

According to a survey conducted in France, 25% of companies consulted in their role as clients indicated that the stricter controls had an effect on their payment behaviour, with a higher proportion among large companies (49%).[172] In general terms, **administrative sanctions are considered a contributing factor to improvements in payment behaviour, especially when reinforced with a 'name & shame' disposition that generates peer pressure**. This view has also been supported by some participants to the workshop with stakeholders.[173]

The enforcement of administrative sanctions requires significant resources. Drawing on the French example, the *Hamon Law* and *Sapin II Law* have foreseen strengthening resources for enforcement and introduced an annual objective of 2,500 controls representing only 20% of existing payment delays, according to the DGCCRF.[174] For this reason, the French public authority targets the largest enterprises – due to their higher propensity to late payment – as well as sectors with longer payment delays (e.g. road transport of goods).[175] The smaller enterprises with less significant delays are subject to administrative warnings of injunctions instead of direct sanctions.

Furthermore, since the enforcement of administrative sanctions can be based on information regularly provided by businesses to the competent authorities (e.g. the case of Croatia), the **administrative burden stemming from information obligations placed on companies should be considered in this case**.

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[166] Op.cit. Observatory of Late Payment, 2017 Annual Report

[167] In French Law 'procès-verbal' is a statement of proof and presumption, drafted in a due form of law by the public officer, which informs enterprises about an application of administrative sanctions. The 'procès-verbal' officially opens an administrative procedure where the given enterprise can still defend itself by raising counter evidence.

[168] Observatory of Late Payment, 2016 and 2017 Annual reports.

[169] Observatory of Late Payment, 2016 and 2017 Annual reports.

[170] CODINF Letter, January 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Janvier%202018.pdf

[171] Op.Cit. *Altares*

[172] 68% of companies surveyed said that the stricter controls introduced did not have an impact on their payment behaviour. Teresa Monroe, Enquête sur les délais de paiement «l'affaire de tous», July 2017 (available at: http://www.finyear.com/attachment/876498/).

[173] Workshop with stakeholders held on 25 April 2018.

[174] Observatory of Late Payment, 2016 Annual Report.; Interview with the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, 01/02/2018.

[175] Interview with the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, 01/02/2018.

4.4 Main initiatives contributing to changing business culture

4.4.1 Prompt payment codes

Codes and charters of good practice encourage signatory companies to respect specific requirements for improving their payment practices. Some codes are fully dedicated to payment issues and explicitly include the commitment to paying suppliers on time (e.g. in Ireland, Italy, Slovenia, Spain and the UK). Other codes cover broader issues related to contractual terms and aim to ensure fair relationships and trust among businesses (e.g. the Ethical Code in Bulgaria and the Charter for Responsible Supplier Relations in France). Sectorial codes have also been set up, particularly in the food and drink and construction sectors (see Section 5).

Box 11: Examples and use of prompt payment codes/charters

Such codes or charters are usually **launched by chambers of commerce** (the Ethical Code in Bulgaria[176], the Declaration on encouraging higher payment discipline in Slovenia[177]), **business associations** (the code for responsible payments in Italy[178], the code for good practices to avoid late payments in Spain[179], the Timely payment commitment in Portugal[180], the '30 days' ethical code in Sweden[181], the Prompt Payment Code in the UK[182]), the **Ombudsman** for Undertakings (the Charter for Responsible Supplier Relations in France)[183], or **governments** (the Prompt Payment Portal in Ireland).[184]

Participation in these codes is growing. In the UK, over nearly a decade, the Prompt Payment Code has reached 2,053 signatories.[185] In France, since 2010, a total of 1,856 companies have signed the Charter for Responsible Supplier Relations.[186] In Portugal, between 2011 and February 2017, 856 companies have signed the timely payment commitment.[187] In Italy, between 2015 and May 2017, the Code for responsible payment has reached 296 signatories.[188] In Ireland, between March 2015 and October 2017, the Prompt Payment Code has received more than 200 signatures.[189]

Prompt payment codes promote fair relationship with suppliers and are an important element in changing payment culture. The participation of companies in these initiatives has grown in recent years but **the number of signatories remains low compared to the overall number of companies in the respective countries** (e.g. 5.5 million in the UK[190], 3.8 million in France[191]). Companies are rarely aware of these codes which could partially explain a small uptake (between 5% (in Bulgaria) and

[176] Bulgarian Chamber of Commerce and Industry (BCCI) Ethical Code: http://www.bcci.bg/bulgarian/kodex.htm

[177] Chamber of Commerce and Industry of Slovenia, 2010, Izjava o spodbujanju k večji plačilni disciplini v državi. Available at: https://www.gzs.si/pripone/IZJAVA_o_spodbujanju_k_vecji_placilni_disciplini_v_drzavi-23_06_2010.pdf

[178] Pagamenti Responsabili. Available at: http://www.pagamentiresponsabili.it/

[179] Cepyme, 2016, Propuestas empresariales para combater la morosidad. Available at: http://www.cepyme.es/wp-content/uploads/2016/01/Propuestas-empresariales-para-combatir-la-morosidad.pdf

[180] Timely payment commitment. Available at: http://www.ver.pt/acege-renova-compromisso-pagamento-pontual/

[181] Dagens Industri, 2017, Debatt: Inför en etisk kod om korta betalningstider. Available at: http://www.di.se/opinion/debatt-infor-en-etisk-kod-om-korta-betalningstider/

[182] Prompt Payment Code. Available at: http://www.promptpaymentcode.org.uk/

[183] Charter for Responsible Supplier Relations. Available at: http://www.economie.gouv.fr/files/files/directions_services/mediateur-des-entreprises/PDF/3_ACHETER_RESPONSABLE/Charte_RFR_2016.pdf

[184] Prompt Payment Portal. Available at: http://www.promptpayment.ie/

[185] Prompt Payment Code signatories. Available at: http://ppc.promptpaymentcode.org.uk/ppc/ppc_signatory.a4d

[186] Charter for Responsible Supplier Relations. Available at: http://www.relations-fournisseur-responsables.fr/

[187] Compromisso pagamento pontual, February 2017, número de aderentes ao compromisso. Available at: http://www.pagamentospontuais.com.pt/PDF/NL-CPP-01.pdf

[188] http://www.pagamentiresponsabili.it/wp-content/uploads/2017/05/2017_Pagina_I-numeri_11_05_2017.pdf

[189] Ireland Prompt Payment Code signatories. Available at: https://www.promptpayment.ie/signatories/

[190] House of Commons Library, November 2016, Business statistics. Available at: http://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf

[191] Insee, 2017, Les entreprises en France. Available at: https://www.insee.fr/fr/statistiques/3152802?sommaire=3152833

32% (in Ireland) of the CATI respondents). In France, awareness of the Charter has increased following the launch of a dedicated website for the Charter, Purchasers Forum and press releases.[192]

For the different codes of good practice to be useful, stakeholders mentioned that it was important that large companies, often considered bad payers, also sign up to it and commit to improving their payment behaviour. In Sweden the 13 largest national firms have come to an agreement with the government to accept the implementation of a code of honour where they commit to paying SMEs within 30 days.[193] This agreement followed a threat from the government to introduce new legislation if the largest Swedish companies did not commit to paying their suppliers within the legal deadlines (30 days).

The direct link between the adoption of the codes and the reduction of late payment cannot always be established. In France, the Charter signatories are considered to have better payment practices than the non-signatories, according to a survey.[194]

While codes and charters of good practice contribute to creating a responsible payment culture (by encouraging signatory companies to respect specific payment terms), their effectiveness can be enhanced by their enforcement. The Association of Chartered Certified Accountants suggests that codes can be strengthened with a range of additional measures, such as a confidential 'whistle-blowing' process, a record of successful challenges of payment terms, a register of payment complaints, an audit scheme for code signatories and transparency requirements, including the publication of standard contracts.[195]

Box 12: Example of the UK Prompt Payment Code Compliance Board

In the UK, in 2015 the Code was strengthened by introducing a 60-day maximum payment term, creating a Code Compliance Board to enforce the Code, and requiring SME signatories to report annually on their payment performance.[196] The Compliance Board can conduct its own investigations, which has already led to some results. For example, in 2015, Diageo reconsidered its plan to extend payment deadlines after an intervention of the Compliance Board.[197]

Overall, prompt payment codes promote fair relationships with suppliers and are an important element in changing payment culture. The effectiveness of the codes increases with the number of signatories, especially large companies. While awareness and participation in these codes is growing and some improvements in payment behaviour can be observed, further steps such as enforcement of rules are needed to enhance their positive impact.

4.4.2 Corporate social responsibility

Corporate social responsibility measures are similar in nature to prompt payment codes as they encourage companies to take responsibility for the improvement of their business behaviour, including payment practices. Some

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[192] Charter for Responsible Supplier Relations. Available at: http://www.relations-fournisseur-responsables.fr/

[193] DN, 22/10/2017, Småbolag ska få betalningstiderna kortade. Available at: https://www.dn.se/ekonomi/smabolag-ska-fa-betalningstiderna-kortade/

[194] Profession Achat, December 2015, Délai de paiement, l'affaire de tous. Available at: http://images.cdaf.fr/cdaf/UtilisateursFichiers/201512/151210-PROFESSION_ACHATS-60-decembre_tireapart.pdf

[195] Association of Chartered Certified Accountants, 2015, Ending Late Payment – Part 2 What works? Available at: http://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-tp-elp-2whatworks.pdf

[196] Prompt Payment Code FAQ: http://ppc.promptpaymentcode.org.uk/ppc/news.a4d http://www.promptpaymentcode.org.uk/faqs.htm

[197] The Telegraph, 13/03/2015, Diageo U-turn on threat to extend supplier payment times. Available at: https://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/11471490/Diageo-U-turn-on-threat-to-extend-supplier-payment-times.html

CSR measures identified only target late payment indirectly (e.g. the CSR Hub in Ireland[198] initiated by the government, the CSR platform in Latvia[199] initiated by the Employer Confederation, and the Company Act 2006 in the UK[200]). On the other hand, in the Netherlands, the non-profit initiative Betaalme.nu[201] encourages large companies to publish a statement of their commitment to treat their suppliers fairly and pay them on time.

Box 13: Example of the initiative Betaalme.nu in the Netherlands

In the Netherlands, 50 large companies have signed up to the initiative Betaalme.nu since 2015. The initiative aims to foster a change of behaviour from the business community itself, with three main objectives:

1. To set a payment duration of 30 days as the norm between Dutch companies;
2. To free up to EUR 2.5 billion of liquidity for SMEs;
3. To raise media attention on late payment practices.

In addition to its CSR objectives, the Betaalme.nu initiative also conducts awareness-raising activities about cash flow management. In particular, the initiative encourages large companies to increase their use of supply chain finance[202], and SMEs to familiarise themselves with electronic invoicing systems.

Betaalme.nu relies on the willingness of large companies to improve their behaviour with suppliers instead of constraining them by law. The interviewed stakeholders agreed that this approach can be more effective than regulatory intervention.[203] Notably, the lack of a 'name and shame element and the focus on encouraging good practices has been welcomed by an interviewed signatory company.[204]

According to Betaalme.nu data, the initiative has unlocked EUR 2 billion liquidity for SMEs by being paid earlier.[205,206] In addition to this direct benefit, the initiative may have prevented SMEs closing their businesses, as the lack of liquidity is one of the first causes of closing business.[207]

With only 50 large signatories, under the initiative 200,000 SMEs were paid quicker, which represents about 19% of all Dutch SMEs.[208] If all Dutch SMEs benefited from the initiative, it would free up EUR 10.42 billion for SMEs.[209]

CSR measures encourage companies to take responsibility for the improvement or exemplarity of their business behaviour, including payment practices. Companies are more and more interested in participating. In Latvia in 2011,

[198] Corporate Social Responsibility Hub: http://www.csrhub.ie/

[199] Employers' Confederation of Latvia, October 2014, Corporate Social Responsibility Platform. Available at: http://en.lddk.lv/pakalpojums/a-corporate-social-responsibility-platform/

[200] The Company Act 2006 states that a company has an overarching duty to take account of a range of stakeholders in making decisions, including suppliers. See Company Act 2006 at: http://www.legislation.gov.uk/ukpga/2006/46/contents

[201] Betaalme.nu. Available at: https://www.betaalme.nu/

[202] Supply chain finance or reverse factoring is a set of solutions that optimises cash flow by allowing businesses to extend their payment terms to their suppliers while providing the option for suppliers to get paid early. Supply chain finance solutions use a platform where suppliers indicate a preferred payment duration. Buyers receive a discount in case they make payment on time using their own cash. In case buyers do not have enough cash flow, supply chain finance systems allow them to access several solutions from banks and investors for paying suppliers within their preferred timeframe. Available at: https://primerevenue.com/what-is-supply-chain-finance/

[203] Interview with Betaalme.nu on 04/01/2018, Interview with VNO-NCW & MKB representative on 19/12/2017, Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018.

[204] Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018.

[205] Betaalme.nu, 12 September 2017. "Persbericht: Betaalme.nu bereikt mijlpaal: 50 grote bedrijven die MKB sneller betalen". Available at: https://www.betaalme.nu/news/persbericht-betaalme-nu-bereikt-mijlpaal-50-grote-bedrijven-mkb-sneller-betalen/

[206] This is the sum of the amounts signatory companies reported to pay to their smaller suppliers within 30 days during the year. Small suppliers are considered as suppliers to which signatory companies purchase for less than 50,000 EUR per year. Betaalme.nu founders consider that paying smaller suppliers within 30 days equals to freeing up liquidity as the money is made available to them earlier.

[207] 20% of the SMEs surveyed by Betaalme.nu said that they may end their business because of liquidity problems. Betaalme.nu, May 2017, Rapportage Onderzoek MKB en ZZP. Available at: https://www.betaalme.nu/news/helft-leveranciers-mkb-geconfronteerd-langere-betaaltermijnen/

[208] Based on Eurostat: 1,042,588 SMEs in the Netherlands in 2015. Available at: http://ec.europa.eu/eurostat/web/structural-business-statistics/structural-business-statistics/sme

[209] VVA calculation, based on an extrapolation of the Betaalme.nu results to the 1,042,588 Dutch SMEs (Eurostat, 2015).

the CSR platform initiated a CSR Memorandum, which has been supported by 35 different institutions (including ministries) since July 2014. The platform has also launched a Sustainability Index on CSR[210] and since 2010, more than 200 companies have used self-evaluation to establish their sustainability index.[211] In the rest of the EU, over the last decade many companies have placed more attention on ethics and corporate social responsibility as a result of pressure from investors and stakeholders[212]. In the UK the Company Act 2006 was introduced.[213] However, a report from the FSB suggests that many large companies in the UK do not meet their responsibilities towards suppliers.[214] A 2013 survey reported that UK businesses felt that CSR was not something that could be driven or influenced by government, suggesting that businesses should determine for themselves what responsible practices suited them.[215]

CSR measures contribute to creating a responsible payment culture. Their potential economic impact in unlocking liquidity can have an influence on national economies. However, despite the growing uptake and interest, awareness and use of these measures to tackle late payment issues remain limited to date.

4.4.3 Credit management education

The lack of education of business owners regarding effective credit management can reinforce late payment. While large companies usually have enough resources and skills with regards to credit management, knowledge of effective control techniques is limited across SMEs. The areas of education include:

- Accountancy and financial management;
- Negotiating contracts, agreeing payment terms, addressing retention of title issues;
- Setting up effective payment collection processes;
- Credit management strategy;
- Calculating late payment interest and applying the other LPD provisions;
- The advantages and disadvantages of different financing alternatives, including the use of bank loans and other service such as factoring;
- Credit checks and monitoring of customer payment performance; and
- Debt recovery options.

The availability of training and education in invoice and credit management varies widely across Member States.

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[210] Association "Institute for corporate sustainability and responsibility, June 2017, Sustainability Index. Available at: http://incsr.eu/lv/novertejums/ilgtspejas-indekss/

[211] Employers' Confederation of Latvia, November 2013, Corporate Social Responsibility Platform (ppt.). Available at: http://www.mfa.gov.lv/data/file/l%C4%ABga%20me%C5%86%C4%A3elsone%20lddk.pdf

[212] International Finance Corporation, 2015, A Guide to Corporate Governance Practices in the European Union. Available at: https://www.ifc.org/wps/wcm/connect/c44d6d0047b7597bb7d9f7299ede9589/CG_Practices_in_EU_Guide.pdf?MOD=AJPERES

[213] Companies Act 2006, http://www.legislation.gov.uk/ukpga/2006/46/contents

[214] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf

[215] UK Department for Business Innovation & Skills, 2014. Corporate Responsibility. Good for business & society: government response to call for views on corporate responsibility. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf

Box 14: Availability of credit management education

There are currently no programmes at EU or national level focusing on enhancing businesses' knowledge of credit management. This topic is usually addressed in the context of policy initiatives relating to banking/financial institutions, or within general apprenticeship schemes. For example, the UK government provides funding for apprenticeships and adult education/qualification, which can be used for credit/invoice management trainings.[216]

Credit management courses are provided in some universities and business schools in the context of management or finance curricula, for example in France[217] and the UK.[218] In Spain, some universities also provide courses in corporate social responsibility.[219] However, such courses are not widespread in traditional economics and business programmes.

In most cases, training courses in credit management are provided by financial consulting institutions, private management training institutions and credit management associations for a fee. A review of credit management courses and certifications in Ireland, provided by training institutes showed that the prices range from EUR 300 to 500. Some national associations of credit management offer accredited trainings and have established registered trademarks for their courses, but these only apply to the country of the association. For instance, both the Dutch and the German association offer a Certified Credit Manager (CCM) qualification, but despite bearing the same name these are two different programmes with separate accreditation and registration. The costs for these trainings range from EUR 2,000 to 9,000 per individual (depending on the country and education level). The Malta Association of Credit Management (MACM) organises seminars to educate the Maltese business community on solutions for improving credit and cash flow management, open to MACM members against an annual fee of EUR 250 for SMEs and EUR 1,200 for large companies (see Section 4.5.2 and the case study in section 7.3.10).

Effective credit management shortens the average collection period and maintains an optimal cash flow, thus reducing the risk of default and increasing the potential for growth. Training and support may also make it more likely that SMEs use the remedies of the LPD.[220]

Overall, better knowledge of credit management could lead to a reduction of late payment and its impacts, but SMEs often lack capacities to invest in trainings. SMEs either do not have a dedicated person carrying out credit control or have one credit manager who is unable to dedicate the time required for the training. Moreover, these trainings may incur high entry costs for SMEs (in terms of travel and time as some programmes last two to three years/up to 500 hours), factors that are particularly relevant for SMEs when taking the decision to train their staff.[221]

4.5 Measures supporting changes in business culture

4.5.1 Unfair contractual terms and practices and the role of business organisations

The LPD sets out the unenforceability of a contractual term or practice[222] which is 'grossly' unfair to the creditor.[223] Some Member States, such as Croatia[224] and Poland,[225]

[216] CICM Apprenticeships. Available at: https://www.cicm.com/cicm-apprenticeships/
[217] Université de Rennes, Master Finance, parcours Credit Management. Available at: http://www.igr.univ-rennes1.fr/diplome/fc-financecredit-management
[218] London Postgraduate Credit Management College. Available at: http://www.lpcredit.co.uk/
[219] Universia Espana, Cursos Responsabilidad Social Corporativa. Available at: http://cursos.universia.es/Responsabilidad-Social-Corporativa/2cs5c8/
[220] Commission Staff Working Document Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions - Impact assessment, 2009. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN
[221] Interview with a representative of the European Federation of Credit Management Associations (FECMA)
[222] According to Article 7 LPD, the contractual term or practice could relate the date or period for payment, the rate of interest for late payment or the compensation for recovery costs.
[223] According to Article 7(1) LPD, 'Member States shall provide that a contractual term or a practice relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs is either unenforceable or gives rise to a claim for damages if it is grossly unfair to the creditor. […]'.
[224] Article 14 of the Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.
[225] Article 13 of the Act of 8 March 2013 on the payment deadlines in commercial transactions, (*Ustawa z 8 marca 2013 o terminach zapłaty w transakcjach handlowych*), Official Journal of 2013 item 403.

adopted legal provisions stating that contractual terms contrary to statutory laws are null and void, rather than setting out an ex post-check of their 'unfairness' or 'gross unfairness'. Other Member States (Denmark, Finland, Sweden and Lithuania), as shown by Box 15 below, have instead adopted legal measures more favourable to the creditor than Article 7(1) LPD.

Box 15: 'Unfairness' vs 'gross unfairness'

In Denmark,[226] Finland,[227] and Sweden,[228] it is sufficient for the contractual term (or practice) inserted in a B2B contract to be 'unfair' (or not in compliance with the principle of good faith) to be declared ineffective. Similarly, in Lithuania, the legislator resorts to the stricter notion of 'unfairness' instead of 'gross unfairness' for contractual terms or practices relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs to be unenforceable or to give rise to a claim for damages.[229]

Businesses have low incentives for objecting against 'grossly unfair' or 'unfair' contractual terms and practices. The reluctance of companies to bring cases to court and the fear of damaging business relationships remain the main obstacles. Litigation regarding unfair contractual terms and practices normally does not take place, being too costly, ineffective (due to the length of the proceeding) or damaging for smaller companies.[230]

Against this background, the **role and powers conferred onto business organisations** by the LPD could be particularly valuable. According to Article 7(5) of the LPD, business organisations may take action 'before the courts or before competent administrative bodies on the grounds that contractual terms or practices are grossly unfair'.[231]

Business organisations' representatives could have an essential role in helping SMEs with insufficient resources or lacking the knowledge of the relevant legal framework and available remedies to take action against 'grossly unfair terms and practices'. In many Member States, the transposition of Article 7(5) LPD strengthened the role of representative organisations by giving them the possibility of claiming damages caused by unfair contractual terms or practices through a representative action. Before the LPD came into force, in most Member States the role of representative organisations was strictly limited to activating injunction procedures against contractual terms drawn up for general use on the grounds that they were grossly unfair (box below).[232]

[226] Section 36 of the Contracts Act, Law no. 193 (consolidated version) 'Contracts Act' (*Bekendtgørelse af lov om aftaler og andre retshandler på formuerettens område* (*Aftaleloven*)), Official Law Gazette 2 March 2016.
[227] Section 36 of the Contract Act, 'Contracts Act' (*Lag om rättshandlingar på förmögenhetsrättens område*), 228/1929.
[228] 'Contracts Act' (*lag om avtal och andra rättshandlingar på förmögenhetsrättens område*), SFS 1915:218.
[229] 'Law on the Prevention of Late Payment in Commercial Transactions' (*Mokėjimų, atliekamų pagal komercinius sandorius, vėlavimo prevencijos įstatymas*), Official Gazette 2012, No. 127-6389, identification code 1121010ISTA0XI-2287.
[230] Stakeholder Interview reporting – Lithuania, Utilities and transport; Stakeholder Interview reporting – Poland, Construction; Stakeholder Interview reporting – Poland, IT/software/ Telecommunications, Business and professional services; Stakeholder Interview reporting – Croatia, all sectors.
[231] Article 7(5) LPD states 'organisations officially recognised as representing undertakings, or organisations with a legitimate interest in representing undertakings may take action according to the applicable national law before the courts or before competent administrative bodies on the grounds that contractual terms or practices are grossly unfair […], so that they can apply appropriate and effective means to prevent their continued use'.
[232] See Annex VII to Commission Staff Working Document Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast), Impact assessment, SEC(2009) 315/2.

Box 16: Role of business organisations, examples of national provisions

In Ireland, since the regulations transposing the LPD came into force in March 2013,[233] a business representative body may bring a claim in the Circuit Court for an order that a relevant clause is grossly unfair and thus unenforceable.[234] In other Member States, such a possibility existed long before the adoption of the Directive. For example, in Finland registered organisations for undertakings have since 1994 had the right to initiate proceedings before the competent court to identify and prohibit the use of unfair terms on payment, recovery costs and interest rates, as well as unfair contractual business practices.[235] Alternatively, registered organisations for undertakings could also seek prohibitive injunctions against unfair contract terms.[236]

In practice, the **role and powers conferred onto business organisations is not exploited to a sufficient degree**.[237] The action of business organisations before courts is prevented by several factors: the lack of resources among business organisations, also in terms of expertise required; the statute of the business organisation that might not include the possibility for the organisation to represent members in court; and possible conflicts of interest, arising when the business organisation is requested to take action against a business represented by the same organisation.[238]

Furthermore, in some cases there is legal uncertainty at the national level. It is up to Member States' legislators to set out criteria for defining which organisations would qualify to seek redress before the competent courts. For example, in Croatia, any associations of undertakings and any legal persons, which have been established for the purpose of enforcing collective rights of creditors of monetary claims, are authorised plaintiffs in class actions on behalf of creditors of pecuniary claims.[239] Although this provision entered into force in 2012, a list of such authorised plaintiffs still needs to be adopted by means of a government regulation proposed by the Minister of Economy.

The effectiveness of stricter national rules on unfair contractual terms/practices and national provisions transposing verbatim Article 7 LPD highly depends on the imbalances of power that might characterise a certain market. As their enforcement requires creditors taking the initiative of acting against their debtors, small companies fear that initiating a legal procedure to mitigate or invalidate a contractual term could hinder goodwill among the business' customers and affect their business relations. In addition, costs of court proceedings represent an important obstacle. Business organisations could mitigate these obstacles, but in practice, due to the factors mentioned above (e.g. lack of resources, statutory constraints), they rarely take an active role in taking action before court against 'grossly unfair terms and practices'.

4.5.2 Awareness raising activities

Awareness-raising activities aim to increase knowledge about issues related to late payment in B2B transactions, rights and remedies stemming from the LPD or other national measures. In addition to the Late Payment Information

[233] European Union (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580/2012).
[234] Reg 8, *supra.*
[235] 'Act on contractual terms in commercial relations' (*lagen om reglering av avtalsvillkor mellan näringsidkare*), 1062/1993.
[236] *Ibid.*
[237] In most of the Member States where information has been collected, stakeholders (including businesses) are not aware of the existence of this measure, or it has never led to start a legal action (France, Germany, Italy, Poland, Netherlands, Malta, United Kingdom, Finland). Based on interviews with stakeholders carried out in the context of case studies. For Finland: conclusions provided by the Finnish Legal Research (information collected through desk research on March 2017). Additionally, see Bärlund, J., Nyberg, F., Petrell, K., *Finlands civil- och handelsrätt – En introduktion* (5th edn, Talentum, Helsinki, 2016) 299. The only exception is Poland, where a business organisation represents Polish enterprises in the court with, on average, two interventions per month (several dozens of interventions per year). Interview with Polish Association of Construction Employers (PACE).
[238] Based on interviews with stakeholders carried out in the context of case studies and Workshop with stakeholders held on 25 April 2018.
[239] Article 14(9) of the Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.

campaign[240] organised by the European Commission in the 28 Member States from October 2012 to November 2014, awareness-raising activities were organised in 16 Member States by ministries, business associations and chambers of commerce. [241]

Box 17: Awareness-raising activities

In Some Member States, awareness-raising activities took the form of **events, seminars and information sessions** to inform companies about their rights and remedies. For example, since 2011, the Malta Association of Credit Management (MACM) has organised several seminars on the LPD, managing credit, debt recovery and cash flow.[242] The German SME Association BVMW organises regular information sessions (most recently in July 2017)[243] to provide guidelines to its member companies on payment rules, invoice management and checking of the creditworthiness of business partners. In Spain, the SME Confederation (Cepyme) launched a campaign of seminars and publications to raise awareness among companies about the need to comply with good business practices.[244]

Other initiatives consist of **online information and communication campaigns**. In Romania, business associations carried out online awareness campaigns with press releases describing the main points of the LPD. The Romanian Chamber of Commerce raised awareness on the campaign launched by EUROCHAMBERS to highlight the burden that late payments have on businesses.[245] In Spain, the EAE Business School and the *Plataforma Multisectorial contra la Morosidad* (PMCM) published 'Practical tips to avoid late payment.'[246] Finally in 2012, the Polish Confederation Lewiatan launched the 'I choose e-invoicing' coalition with the aim of promoting electronic invoicing among companies and individual customers, and gathers relevant information on a dedicated website.[247]

The different awareness-raising activities are useful for companies as they inform businesses about solutions for preventing late payment or remedies if payment delays occur. Although awareness-raising activities were identified in more than half of the countries, familiarity with them varied among respondents to the CATI survey[248] for a range of reasons. First, participants were asked to pay entrance fees. For example, while EU seminars on late payment information campaign were free of charge for participants, in Malta some of the seminars of the MACM involved entrance fees ranging from EUR 20 to 80. Second, events targeted a specific audience. While the seminars under the EU late payment information campaign were open to the public, other activities were more targeted. For example, the MACM seminars in Malta targeted primarily MACM members (with a different registration fee for students and externals) while in Poland the Coalition 'I choose e-invoicing' was open primarily to members of the Polish Confederation Lewiatan. Finally, although the coverage of all awareness-raising activities identified is nationwide, in practice the seminars of the EU late payment information campaign or other initiatives usually take place in the capital city, making it less accessible for companies based in other parts of the country.

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[240] Late Payment Information Campaign. Available at: http://ec.europa.eu/growth/smes/support/late-payment_en

[241] Awareness raising activities were identified in 16 Member States (Belgium, Czech Republic, Germany, Denmark, Finland, Hungary, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Sweden, Spain)

[242] Information seminars on debt recovery, and credit and business law, organised on 29/10/2012, 29/10/2013 and 10/05/2017. MACM annual conferences on managing credit, organised on 12/05/2011 and 19/05/2016 for MACM 10- and 15 years anniversary. MACM and Malta Institute of Accountants joint conference on cash flow, organised on 17/05/2012. Source: Malta Association of Credit Management (MACM). Available at: http://www.macm.org.mt/home

[243] Der Bundesverband mittelständische Wirtschaft (BVMW) website. Available at: https://www.bvmw.de/

[244] Cepyme, 2016, Propuestas empresariales para combater la morosidad. Available: http://www.cepyme.es/wp-content/uploads/2016/01/Propuestas-empresariales-para-combatir-la-morosidad.pdf

[245] Chamber of Commerce of Romania, 2014. Available at: http://ccir.ro/2014/05/12/late-payment-directive-public-payments-still-worryingly-slow/

[246] PCMC, 2013, Consejos prácticos para prevenir impagos empresariales. Available at: http://www.pmcm.es/documentacion/postcategoria/consejos-practicos/5

[247] Wybieram e-faktury. Available at: http://konfederacjalewiatan.pl/uslugi/projekty-kampanie-patronaty/wybieram-e-faktury#

[248] Awareness results: 22 respondents out of 50 in Slovakia, 31 out of 70 Poland, 9 respondents out of 50 in Czech Republic, 8 out of 50 in Finland, 6 out of 50 in Luxembourg, 6 out of 50 in Malta, 13 out of 71 in Portugal and 7 out of 71 in Sweden.

Interviewed stakeholders and some participants to the workshop[249] suggested carrying out periodic and more widespread activities. Considering the low level of knowledge and use of awareness-raising activities[250], a more systematic approach to the organisation of such events might be a useful solution, as already implemented in some Member States. For example, the EU late payment information campaign led to a follow-up seminar targeting the agricultural sector in the Netherlands.[251] In Ireland, the first national seminar was held in Dublin in 2013, with further seminars held across the country between 2013 and 2016. The department of jobs, enterprise and innovation also continued to host information stands at business events throughout the country.[252]

During the study workshop with stakeholders, it was noted that business associations are best placed to reach companies and conduct awareness-raising activities at regional and local level.

[249] Workshop with stakeholders held on 25 April 2018

[250] Across the countries where awareness-raising activities were identified, less than a third of companies may have participated/used them according to the CATI survey.

[251] VNO-NCW, 26 October 2012, "Landelijk Seminar in Nederland in het kader van de informatiecampagne late betalingen". Available at: https://www.vno-ncw.nl/meer-informatie/landelijk-seminar-nederland-het-kader-van-de-informatiecampagne-late-betalingen

[252] Correspondence with a DJEI representative, July 2017.

Box 18: Example of seminars organised by the Malta Association of Credit Management

The MACM conducts a wide range of activities. First, the association has an online Credit Management Information System where MACM members can find up-to-date information on the credit behaviour of other members. This allows MACM members to check the creditworthiness of potential debtors and to take informed decisions on whether granting them a credit or not. The MACM publishes yearly statistics on late payment. Second, MACM organises a number of conferences, seminars and workshops on credit management topics. Finally, the MACM lobbies the Maltese government on various legislative areas, such as data protection, business promotion, banking, consumer credit, dishonoured cheques and late payment. Awareness-raising activities on late payment issues are part of the second set of MACM activities. Since its creation, the association has held a number of information seminars on the LPD[253], legal actions for recovery of debt, credit and business law, and management of cash flow. These events are open to members and to non-members from all sectors. A non-exhaustive list of MACM awareness-raising activities since 2005 can be found in Table 2 below.

Table 2: List of MACM awareness-raising activities since 2005

Topic	Date	Type
Sales & Credit	May-05	Seminar
Late Payments in Commercial Transactions	Sep-05	Seminar
Improvement Debt Collection through the Maltese Courts	May-06	Conference
Debt recovery through the Maltese Courts	May-07	Conference
Practical Credit Management	May-08	Conference
Effective Interest Charging. Legal implications	Sep-08	Conference
Credit Crunch Matters	May-09	Conference
Financing International Business	Feb-10	Seminar
Managing credit in 2010	Apr-10	Conference
Best practices to Managing Credit in Today's Business Environment	May-11	Conference
Managing credit	May-11	Conference
Joint Seminar on cash flow management with the Malta Institute of Accountants	May-12	Seminar
Execution of Judgement and Other Executive Titles	Oct-12	Seminar
EU Directive 2011/7 on combating late payment in commercial transactions	Feb-13	Seminar
Credit & Business Law - What's new?	Oct-13	Seminar
Neighbours. Impact on the Maltese economy and the Credit Environment	Nov-14	Conference
Managing credit profitability	May-15	Workshop
New amendments to the Companies Act	Jan-16	Seminar
Managing credit in 2016	May-16	Conference
Debt Recovery through the Law Courts	May-17	Seminar
The Dynamic Business World. Are you ready for change?	Nov-17	Seminar
Practical Credit Control and Management	Jan-18	Workshop
Collecting Money by Telephone Effectively	Feb-18	Workshop
The Road to GDPR Compliance	Mar-18	Seminar

Source: MACM.

In terms of **costs** for the companies, the MACM charges membership fees which range from EUR 250 per year for small companies to EUR 1,200 per year for companies with turnovers exceeding EUR 15 million. Most MACM services are free of charge for MACM members. Conferences and seminars charge additional fees to cover organisation costs, which range from EUR 20 to 90. For instance, the last MACM seminar on 'Debt Recovery through the Law Courts' charged EUR 22 for students, EUR 59 for MACM members and EUR 89 for non-members.[254]

According to the stakeholders interviewed, it is difficult to estimate the monetary value of the **benefits** of MACM information events.[255] One reason is that it is difficult to separate the impacts of the different MACM activities, especially between the Online Credit Management System and the awareness-raising activities. According to one MACM member, the debt collection techniques learnt thanks to the MACM seminars have resulted in saving of EUR 40,000 to 60,000 per year in avoiding default of their debtors.[256] There are also potential economic benefits for the Maltese economy given that late payment has an impact on future investment: debtors represent about 40% of the balance sheet of Maltese companies.[257]

The interviewed stakeholders agreed that the benefits of MACM awareness-raising activities generally outweighed the costs. According to the MACM Director General, these costs could still prevent some companies from participating in events.

[253] Directive 2011/7/EU.

[254] Documentation sent by MACM on 20/07/2017.

[255] Interview with MACM Director General on 11/01/2018, Interview with a MACM member (food and drink sector) on 06/02/2018, Interview with a MACM member (business and professional services sector) on 06/02/2018.

[256] Interview with a MACM member (food and drink sector) on 06/02/2018

[257] Times of Malta, 10 March 2016. "Payments taking longer". Available at: https://www.timesofmalta.com/articles/view/20160310/business-news/Payments-taking-longer.605150

Overall, the direct impact of awareness raising measures on the improvement of payment behaviour is difficult to establish, but businesses across Member States where such campaigns were undertaken tend to be more aware of issues linked to late payment. Free of charge, open access, regional coverage and follow-up activities or events could help to reach out to the broader business population.

4.5.3 Labels and prizes

Labels/certificates/prizes are attributed to companies with exemplary business behaviour, including positive payment practices.

Box 19 : Examples of labels/certificates/prizes

Types: In Croatia[258] and Slovenia[259], the excellent SME certificate is issued yearly by chambers of commerce to bring attention to SMEs meeting the criteria of business excellence (including for their payment practices). In Finland, the certificate is issued by a credit rating company Suomen Asiakastieto and it acknowledges companies' positive financial figures, background information and good payment behaviour.[260] In Latvia[261] and Poland[262], companies of all sizes can be listed for their good business behaviour, including their payment practices. In France, the Responsible Supplier label is attributed to signatories of the Charter for Responsible Supplier Relations (Section 4.4.1) and is a guarantee of respect for its commitments.[263] In addition, a Late Payment Prize[264] is attributed yearly by the Observatory of Late Payments to distinguish companies of different sizes (with one prize for SMEs) with virtuous practices against late payment.

Costs: In Slovenia, the Excellent SME certificate involves annual direct costs of EUR 297.[265] In Croatia, the yearly usage costs of Excellent SME Croatia certificates amount to EUR 297 + VAT for the first website. Members of Croatian Chamber of Economy are entitled to a discount. Costs for certification of every additional website owned by the same company amount to EUR 60 + VAT.[266] In Finland, a company meeting the requirements can purchase the Strongest in Finland certificate and related logos and other materials for a fee (EUR 396.80 for the online package and EUR 520.80).[267] In Poland, obtaining the certificate and logo of the Reliable Company Programme is free but customers need to subscribe to a package to get additional legal services, between EUR 38 to 235 (PLN 160 to 990) monthly.[268]

The number of companies certified or labelled for their good payment practices has grown in recent years. In France, 39 private and public organisations have received the Responsible Supplier Relations Label since 2012, representing an annual intake of EUR 104 billion.[269] In Slovenia, 850 SMEs have been certified since 2014 and the certificate has already become internationally visible as an indicator of a reliable SME company, according to one interviewee. In Latvia, 70 companies have joined the White List since 2012,[270] and it is estimated that more than 300 enterprises comply with

[258] Excellent SME Certificate: http://excellentsme.com/issuers.php?i=11#
[259] Chamber of Commerce and Industry of Slovenia, since 2014, Excellent SME, available at: https://excellent-sme.gzs.si/
[260] Suomen Asiakastieto Oy, n.d., Strongest in Finland -certificate. Available at: https://www.asiakastieto.fi/web/en/services-for-businesses/what-is-your-companys-value-and-position/strongest-in-finland-certificate.html.
[261] Ministry of Finance, 2012, In-Depth Cooperation Programme. Available at: http://www.fm.gov.lv/en/s/taxes/in_depth_cooperation_programme/
[262] Rzetelna Firma: http://rzetelnafirma.pl
[263] Responsible Supplier Relations Label : http://www.economie.gouv.fr/mediateur-des-entreprises/label-relations-fournisseurs-responsables
[264] Late Payment Award: http://delais-paiement.fr/
[265] Chamber of Commerce and Industry of Slovenia, since 2014, Excellent SME, available at: https://excellent-sme.gzs.si/
[266] Excellent SME Croatia certificate. Available at: http://excellentsme.com/issuers.php?i=11#
[267] Suomen Asiakastieto Oy, n.d., Suomen Vahvimmat -paketti. Available at: https://www.asiakastieto.fi/yritykset/sertifikaatit/suomen-vahvimmat
[268] Krajowy Rejestr Długów – prices: file:///C:/Users/User/Downloads/5-us%C5%82ug%20(1).pdf
[269] Label Relations fournisseur Responsables, October 2017, 39 labellisés. Available at: https://www.economie.gouv.fr/files/files/directions_services/mediateur-des-entreprises/PDF/liste_des_labellises_28092017.pdf
[270] Ministry of Finance of the Republic of Latvia, June 2017, In-Depth Collaboration Programme Register. Available at:

the criteria and could eventually join the list.[271] In Poland, over 43,000 companies from various sectors have registered on the Reliable Company Programme since 2008.[272]

These labels and certificates generate benefits for the awarded companies in terms of visibility and reputation for good payment behaviour, and they also highlight the most responsible business partners to other companies. For example, in France the labelled companies are said to have better payment practices than other companies.[273] In Finland, the Strongest in Finland certificate is based on the Alfa-credit rating of Suomen Asiakastieto and is a sign of a company's positive financial figures, background information and good payment behaviour.[274]

While such labels and certificates have direct added value for the awarded companies, they can induce a positive trend for the wider business population. The growing number of companies that are certified or labelled for their good payment practices indicates that for more and more companies the perception of being a prompt payer is becoming increasingly relevant and this may contribute to changing business culture.

4.5.4 Working groups

Fora/working groups related to late payment were identified in France and Germany. In France, the Ombudsman for Undertakings chairs a working group on Late Payment[275] that includes large companies and public entities, to identify causes of late payment, share good preventative practices and reflect on new solutions. In Germany, the forum on electronic invoicing[276] was launched in 2010 by a range of ministries and business associations and has developed a uniform data format as well as a user guide.

Fora and working groups are relevant for discussing the issues of late payment, reflecting on solutions and raising awareness of good practices. The French working group on late payment is particularly relevant for companies for addressing late payment issues, while the German forum on electronic invoicing[277] targets the same issues indirectly.

Companies can benefit from the outputs of these working groups and fora at no added expense. In 2013, the French working group published a first list of 30 good practices and recommendations against late payment,[278] and in 2017, a list of 15 new recommendations, including a proposed common template for invoices.[279] The two reports on good practices and recommendations included testimonies from the members of the working group on the implementation of such good practices within their business.

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http://www.fm.gov.lv/lv/sadalas/nodoklu_politika/noderiga_informacija/padzilinata_sadarbibas_programma/dalibnieku_registrs/44673-padzilinatas-sadarbibas-programmas-dalibnieku-registrs

[271] Dienas mediji, August 2012, Baltajā sarakstā iekļūst Latvenergo, Rimi, Getliņi eko un vēl 4 uzņēmumi. Available at: https://www.diena.lv/raksts/uznemeja-diena/zinas/baltaja-saraksta-ieklust-latvenergo-rimi-getlini-eko-un-vel-cetri-uznemumi-13962134

[272] Krajowy Rejestr Długów – prices: file:///C:/Users/User/Downloads/5-us%C5%82ug%20(1).pdf

[273] Profession Achat, December 2015, Délai de paiement, l'affaire de tous. Available at: http://images.cdaf.fr/cdaf/UtilisateursFichiers/201512/151210-PROFESSION_ACHATS-60-decembre_tireapart.pdf

[274] Suomen Asiakastieto Oy, n.d., Strongest in Finland -certificate. Available at: https://www.asiakastieto.fi/web/en/services-for-businesses/what-is-your-companys-value-and-position/strongest-in-finland-certificate.html

[275] Charter for Responsible Supplier Relations Working Group, 2013, 30 good practices to reduce late payment. Available at: http://images.cdaf.fr/cdaf/UtilisateursFichiers/201406/30_bonnes_pratiques-reduire_les_delais_de_paiement.pdf

[276] Forum for Electronic Invoicing. Available at: http://www.ferd-net.de/electronic-invoicing446/introduction/index.html

[277] Forum elektronische Rechnung Deutschland. Available at: http://www.ferd-net.de/electronic-invoicing446/introduction/index.html

[278] Charter for Responsible Supplier Relations Working Group, 2013, 30 good practices to reduce late payment. Available at: http://images.cdaf.fr/cdaf/UtilisateursFichiers/201406/30_bonnes_pratiques-reduire_les_delais_de_paiement.pdf

[279] Charter for Responsible Supplier Relations Working Group, 2017, 15 recommendations to go further. Available at: http://www.economie.gouv.fr/files/files/directions_services/mediateur-des-entreprises/PDF/3_ACHETER_RESPONSABLE/15_recommandations_pour_aller_plus_loin1.pdf

In June 2014, the German forum on electronic invoicing has developed a uniform data format – ZUGFeRD, the 'Central User Guide of the Forum for Electronic Invoicing in Germany', which is freely available to all interested companies and organisations.

Fora and working groups are more relevant for discussing the issues of late payment, reflecting on solutions and raising awareness on good practices leading directly to changes in payment behaviour. Awareness and use of these initiatives, however, is low, possibly due to limited access (i.e. large companies and public authorities in the French working group on late payment, and ministries and business associations in the German Forum on electronic invoicing).

4.6 Other measures

4.6.1 Compensation for recovery costs proportionate to the size of the debt

The LPD sets out a fixed sum of EUR 40 as compensation for recovery costs that the creditor is entitled to obtain from the debtor once interest for late payment has become payable (Article 6(1) LPD).[280] While the vast majority of Member States sticks to this minimum rule, in the United Kingdom and Ireland compensation varies depending on the amount of the debt.

Box 20: Compensation for recovery costs in the UK and Ireland

The main legal act that regulates late payments in the United Kingdom[281] sets out three different fixed sums proportionally to the amount of the contractual debt: approximately EUR 43[282] (when debt is up to around EUR 1,075),[283] approximately EUR 75[284] (when debt is in a range of around EUR 1,075 to 10,755),[285] and approximately EUR 108[286] (when debt is around EUR 10,755, or more).[287]
In Ireland, suppliers are entitled to a minimum fixed charge of EUR 40 where the debt is less than EUR 1,000; EUR 70 where the debt is between EUR 1,000 and 10,000; and EUR 100 where the debt exceeds EUR 10,000.[288]

The introduction of a fixed sum-compensation for recovery costs set out by the Directive had limited impact and is rarely used by companies. Although 85% of businesses surveyed across all Member States are aware that they are entitled by law to this remedy, only 7% of them claim flat-rate compensation for recovery costs in cases of late payment.[289] The 2015 LPD Evaluation shows that the EUR 40 compensation fee is considered to be disproportionate to the sums owed and the costs implied by late payment. The evaluation argues that the minimum fee should be higher to reflect the effort required in recovering late payment: a higher compensation fee could encourage businesses to claim their rights.[290]

However, **evidence does not confirm that setting out compensation fees proportionate to the amount of the debt helps encourage creditors to claim for compensation as a remedy in the case of late payment**. The CATI survey shows

[280] According to Article 6(1) LPD, '[…] where interest for late payment becomes payable in commercial transactions […], the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40'.
[281] Section 5A of the Late Payment of Commercial Debts (Interest) Act 1998 of 11 June 1998, in force as of 1 November 2000, as last amended by the Contracts, England and Wales - Contracts, Northern Ireland - The Late Payment of Commercial Debts Regulations 2002 No. 1674 of 22 June 2002, Her Majesty's Stationery Office (HMSO) 22 June 2002, in force as of 7 August 2002; the Late Payment of Commercial Debts (Scotland) Regulations 2002 No. 335 of 2 July 2002, Her Majesty's Stationery Office (HMSO) 2 July 2002, in force as of 7 August 2002. The measure has been effective from 7 August 2002.
[282] 40 GBP.
[283] 1,000 GBP.
[284] 70 GBP.
[285] 1,000 - 10,000 GBP.
[286] 100 GBP.
[287] 10,000 GBP.
[288] Regulation 9(1) of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 (S.I. No. 388 of 2002) which transposed Directive 2000/35/EC into Irish law.
[289] 117 out of 1696 respondents, Q10, CATI Survey.
[290] Valdani Vicari Associati; Technopolis Group; Ernst & Young (study commissioned by the European Commission), Ex-Post Evaluation of Late Payment Directive, 2015.

that only 4% of Irish companies and 8% of UK companies, in the case of late payment, claim compensation.[291] Stakeholders interviewed reported that in the United Kingdom businesses operating in the food and drink industry, as well as in the utilities and transport sector, never claim interest for late payment or compensation for recovery costs for fear of losing the client.[292]

The fixed sum-compensation for recovery costs introduced by the LPD is rarely claimed by businesses in case of late payment. Legal measures fixing **compensation fees proportionate to the amount of the debt have not proved to be effective in combating late payment because creditors rarely use this remedy** for fear of damaging business relations.

4.6.2 Legal provisions on the retention of title

The retention of title constitutes a security right that allows the seller to maintain the ownership on the sold good until the buyer has paid the full price. The clause might also establish that the transfer of the ownership happens only once the payment has been performed. Therefore, it can also be indirectly used to encourage punctual payments.

The Directive (Article 9 LPD) requires the retention of title clause to be expressly agreed between the buyer and the seller before the delivery of the goods. In most Member States, the retention of title clause must be agreed in writing. Furthermore, as foreseen by the Directive, it must be stipulated before the delivery of the goods in order for it to be enforceable. Some Member States have adopted slightly different approaches, as described in the Box below.

Box 21: Retention of the title – Danish example

When the national legislation applicable to contracts is based on informality, the retention of title clause does **not necessarily** require that it is agreed **in written form**. For example, in Denmark[293], it may be agreed orally, as long as some conditions are met (stipulated by both the parties upon delivery of the goods; the goods are bought for other reasons than consuming or reselling; a minimum purchase price). Similarly, in Finland, no particular form is required when the parties to a sale contract agree upon a retention of title clause, as long as both parties expressly give their consent.[294]

The Danish provisions set out that, as a minimum condition for the validity of the retention of title, the **clause must be stipulated upon delivery of the goods** (not necessarily before delivery). A similar rule exists in Belgium where the clause must be agreed by the parties in writing.[295] The possibility to agree on the retention of title orally (as in Denmark), combined with the fact that the clause can be stipulated at the moment of the delivery of the goods (as in Belgium and in Denmark), gives more time to the parties to agree on it and could therefore facilitate the stipulation of the clause.

With regards to the other conditions set out by the Danish legislator, it must be observed that – given that a minimum purchase price is required, and goods cannot be bought for consuming or reselling reasons – in many cases, the retention of title clause cannot be invoked in the food and drink sector.

The actual use of the retention of title clause was only reported in the Baltic countries[296] and in a few other Member States, where this clause is a popular means of securing the performance of B2B contracts (especially for SMEs placed in a creditor position in B2B contracts).[297] For example, in Poland it is always listed as a useful tool on websites that

[291] CATI survey, Question 10.
[292] Stakeholder Interview reporting – United Kingdom, Food and drink, Utilities and transport.
[293] Law no. 1336 (consolidated version) 'Credit Agreements Act' (*Lovbekendtgørelse om kreditaftaler (kreditaftaleloven)*), Official Law Gazette 26 November 2015, Section 34 (1)(1).
[294] In Finland, as in Denmark, the retention of title rule is not codified and exists as a general (uncodified) principle long before the transposition of the LPD into national law.
[295] Insolvency Act of 8 August 1997, Belgian Official Journal 28 October 1997.
[296] Estonia and Latvia interviewees.
[297] Conclusions provided by the German and Polish Legal Researches (information collected through desk research on April 2017).

provide advice to entrepreneurs.[298] This is also confirmed by the quite frequent national case-law on the matter.[299]

Overall, national provisions relating to the retention of title are of **limited relevance in combating late payment in B2B transactions**. The retention of title can be used as a preventive measure against late payment: when a seller is concerned about the buyer's liquidity or suspects receiving delayed payment, then the retention of title clause in the purchase agreement could be considered. **However, in practice, this clause appears to be useful mainly in cases where the payment is not performed at all** (rather than in cases of delayed payments), as well as in foreclosure and insolvency proceedings.[300] Furthermore, its limited scope of application does not make it available to all creditors (for example, it cannot be applied to service contracts).

4.6.3 Tax regulations

Tax regulations can be used to tackle unfair payment behaviour. Two main models have been identified:

- Tax regimes that **indirectly sanction** non-compliant businesses by transferring the obligation to pay VAT from the creditor to the debtor (e.g. in Czech Republic),[301] or by preventing the debtor from deducting the VAT in case of an unpaid invoice or violation of the payment periods set out by law (e.g. in Slovenia).[302] The transfer of the obligation from the creditor to the debtor also allows for the recovery of due payments.
- Tax regimes that **allow creditors to postpone the payment of VAT** until the debtor has fully carried out the monetary obligations or obtained tax adjustments. In Italy, for businesses with an annual turnover of up to EUR 2 million that conclude contracts with other businesses, VAT payments on unpaid invoices can be deferred until the payment has been received.[303] Similar provisions are in force in Spain and Poland, where creditors can obtain tax adjustments in cases of delayed or unpaid debts.[304] Although these measures are not directly related to late payment, they **address liquidity issues caused by late payment** (by allowing creditors to obtain tax adjustments or postpone the payment of VAT).

The enforcement of these measures does not require any action by the company affected and thus overcomes obstacles related to the reluctance of businesses to use remedies against late payment or to undertake legal action. Two stakeholders (namely in Slovenia and Slovakia) have supported the idea of allowing creditors to postpone or reduce VAT obligations in the case of payment delays, as an effective measure for

[298] Conclusions provided by the Polish Legal Research (information collected through desk research on April 2017).
[299] See, for example, the judgement of the Supreme Court of 13 March 2015, III CSK 2006/14, or judgement of the Supreme Court of 21 January 1999, I CKN 955/97.
[300] Conclusions provided by the German Legal Research (information collected through desk research on April 2017).
[301] Law no. 235/2004 on Value Added Tax (Section 109).
[302] *Zakon o dopolnitvah Zakona o davku na dodano vrednost* (Uradni list RS, št. 18/11).
[303] Article 32-*bis,* Law-Decree 83/2012 'Urgent measures for the growth of the State' ('Misure urgenti per la crescita del Paese'), Official Gazette 147/2012. According to this law, businesses have the possibility to opt for a VAT cash accounting regime. According to this regime, VAT must be paid within one year from the date of performance of the creditor's obligation.
[304] Spain: Act 37 of 28 December 1992 governing Value Added Tax, as amended by Act 14 of 27 September 2013 to support entrepreneurs and their internationalisation (Official State Gazette of the 28th). Poland: Act of 16 November 2012 on reducing certain administrative burdens, *ustawa z 16 listopada 2012 o redukcji niektórych obciążeń administracyjnych w gospodarce*, Official Journal 2012, item 1342, as amended by Act of 11 March 2014 on the tax for goods and services, Ustawa z 11 marca 2014 o podatku od towarów i usług, Official Journal 2004 no 54, item. 535. New Articles 89a and 89b of the national act.

lessening cash-flow issues. Also, some participants at the workshop expressed interest in further exploring this type of measure.[305]

However, the implementation of these measures in practice can prove difficult and requires, among others, the coordination between different authorities at national level. For example, in Spain, based on Law 37/1992 and its amendments, the creditor can request a reduction of the VAT base in the case of uncollectable bills. However, the conditions and procedures required for the creditor to recover the VAT are complicated and take up to a year. Many SMEs do not make the necessary arrangements to proceed with the VAT recovery and thus experience an additional loss. According to estimates made by the Union of Technicians of the Ministry of Finance, in Spain SMEs pay EUR 800 million per year in VAT invoices that they have not yet come to collect and perhaps will never collect. A draft bill, in discussion[306], proposes to simplify the procedure to ensure that companies are under no circumstances forced to pay VAT on an invoice that they have not collected.

[305] Workshop with stakeholders held on 25 April 2018.

[306] Proposición de Ley de refuerzo de la lucha contra la morosidad en las operaciones comerciales - 122/000098. Available at: http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas?_piref73_2148295_73_1335437_1335437.next_page=/wc/servidorCGI&CMD=VERLST&BASE=IW12&FMT=INITXDSS.fmt&DOCS=1-1&DOCORDER=FIFO&QUERY=%28122%2F000098*.NDOC.%29

5 Sector-specific analysis

5.1 Construction sector

5.1.1 Causes and issues of late payment in the sector

The construction sector is most affected by late payment, as noted by stakeholders across most Member States.[307] In 2017, 65% of construction companies were asked to accept longer payment terms than they are comfortable with and 58% of construction companies accepted them.[308] Data show that the construction sector also experienced the longest payment duration: 72 days in 2016,[309] although this figure was 3.6 days lower than in 2012.[310]

The average payment delay in the sector decreased from 10 days in 2015 to four days in 2017.[311] However, the results of the CATI survey show that nearly a third (30.96%) of creditor companies[312] indicate that more than one quarter of their invoices are paid late, of which 30.12% are delayed longer than 30 days.[313]

Due to payment delays, 40.59% of companies[314] report cash-flow issues which are exacerbated by the long supply chain and the interdependency of payments between contractors and subcontractors. Around 37% of construction companies[315] experience additional interest costs according to the CATI survey and pan-European research,[316] while a quarter (24.27%) of companies[317] report income loss. By blocking time and financial resources, late payment thus has severe consequences on investment and growth. Consequently, in the UK late payment is the primary or major factor in one fifth of corporate insolvencies in the sector.[318] Moreover, almost a third (31%) of construction companies in the EU say that faster payment from their debtors would enable them to hire more employees.[319]

The main causes for the persistence of B2B late payment in the construction sector are the imbalance of power between businesses leading to the use of outstanding invoices as a form of free credit, the frequency of unsubstantiated disputes over the quality of goods and services provided, and cash-flow issues emerging from the interconnection of payments in the supply chain. The imbalance of power and size is considered the main cause of late payment by 72.38% of construction companies that participated in the CATI survey.[320] Larger companies tend to use their dominant position on the market to intentionally delay payment to their own financial advantage. For example, almost half of all construction companies in

[307] Namely in Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the Netherlands and the United Kingdom.
[308] Intrum, European Payment Industry White Paper 2017.
[309] Average of Days Sales Outstanding in the following countries: Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Italy, Poland, Portugal, Romania, Spain, Sweden, the Netherlands and the United Kingdom. Source: Euler Hermes. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0&slide=10004.
[310] VVA estimate using Euler Hermes data. Source: Euler Hermes. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0&slide=10004.
[311] Intrum, European Payment Industry White Papers 2015 and 2017.
[312] 74 over 239 construction respondents to the CATI survey.
[313] 72 over 239 construction respondents to the CATI survey.
[314] 97 over 239 construction respondents to the CATI survey.
[315] 90 over 239 construction respondents to the CATI survey.
[316] Intrum, European Payment Industry White Paper 2017.
[317] 58 over 239 construction respondents to the CATI survey.
[318] The Payment Minefield, April 2016, A review of payments within the UK construction industry by CE funding and finance group. Available at: http://constructingexcellence.org.uk/wp-content/uploads/2016/07/Payments-Minefield-%E2%80%93-A-review-of-payment-practices-within-the-UK-Construction-industry.pdf.
[319] Intrum, European Payment Industry White Paper 2017.
[320] 173 over 239 construction respondents to the CATI survey.

Germany[321] and in Poland[322] report that outstanding invoices are intentionally used as a form of free credit.

In addition, **due to the bespoke nature of the product, construction companies are prone to frequent disputes over the quality of goods and services**. As reported by a third of companies in Germany[323] and in the UK[324] and by interviewees from France and Latvia, these prolonged signing-off processes regularly lead to the postponement of the official delivery of the project. When these disputes are based on factual shortcomings in the quality of the service, the payment delay is usually covered in the contract and should thus not be considered late payment. However, some stakeholders mentioned that companies start unsubstantiated quality disputes mainly with the intention to delay the payment process as a source of free credit. While the verification of quality of goods and services should be allowed, especially in the construction sector, intentional payment delay should be avoided as it has a domino effect on the whole supply chain.

Liquidity problems are another cause for late payment.[325, 326] Cash-flow issues emerge from the structure of the construction supply chain where contractors depend on payments from property developers. The sector is composed of various subsectors that interact with each other, creating complex cash flow and payment interdependencies.[327] In addition, the comparatively long supply chains in the construction sector cause a ripple effect of delays affecting many other businesses further down the line, with SMEs being affected the most. Some stakeholders indicated that delays in the sector are more common when a public authority is the main customer at the end of the chain. Indeed, almost 70% of respondents to the CATI survey[328] in the construction sector have seen late payment in public procurement contracts as a cause for late payment between businesses.

5.1.2 Analysis of key measures for addressing the problem

Measures preventing late payment in the construction sector include legislation setting out stricter payment terms and project bank accounts.[329]

The most comprehensive example of **legislation addressing late payment in the construction sector** is the United Kingdom Construction Act.[330] Where the parties to a construction contract fail to provide a final date for payment in relation to any sum which becomes due under a construction contract, the maximum term is reduced to 24 days. These provisions protect the cash flow during construction works and promote short payment times, but they exclusively apply as default where the parties to the B2B construction contract have not fixed any payment terms. Therefore, they do not address issues concerning the contract negotiation phase, when power imbalances along the

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[321] Atradius, Payment Practices Barometer Germany 2017. Available at: https://group.atradius.com/publications/payment-practices-barometer-germany-2017.html.

[322] Atradius, Payment Practices Barometer Poland 2016. Available at: https://group.atradius.com/publications/payment-practices-barometer-poland-2016.html.

[323] 72 over 239 construction respondents to the CATI survey.

[324] Euler Hermes, Quarterly overdue payment report, Q4 2015. Available at: http://www.eulerhermes.co.uk/euler-hermes-UK-and-Ireland/mediacenter/news/Pages/Quarterly-Overdue-Payments-Report-Q4-2015.aspx.

[325] Euler Hermes, Quarterly overdue payment report, Q4 2015. Available at: http://www.eulerhermes.co.uk/euler-hermes-UK-and-Ireland/mediacenter/news/Pages/Quarterly-Overdue-Payments-Report-Q4-2015.aspx.

[326] Funding gates, July 2015, Beware: Industries Most Prone to Late-Paying Customers. Available at: http://blog.fundinggates.com/2015/07/7-industries-most-prone-to-late-payments/.

[327] Funding gates, July 2015, Beware: Industries Most Prone to Late-Paying Customers. Available at: http://blog.fundinggates.com/2015/07/7-industries-most-prone-to-late-payments/.

[328] 164 over 239 construction respondents to the CATI survey.

[329] Project Bank Account primary available in transactions between public authorities and businesses and therefore not directly under the scope of this study. Presented in this section for its relevance for the sector.

[330] Housing Grants, Construction and Regeneration Act 1996 of 24 July 1996 (provisions on construction contracts are in force as of 11 September 1996 partially, the rest as of 1 May 1998). The Act has been amended in 2009 by Part 8 of the Local Democracy, Economic Development and Construction Act 2009.

supply chain and the reluctance of many SMEs to exercise their rights are a main issue.[331]

In Ireland, while main contractors can agree their own payment terms with clients, main contractor/subcontractor and subcontractor/sub-subcontractor contracts are governed by the Schedule to the Construction Contracts Act[332] which requires payment every 30 days after the relevant payment claim date (unless more favourable terms are agreed on). In this context, **Project Bank Accounts** (PBAs) should be noted, although only available in transactions between public authorities and businesses and therefore not directly under the scope of this study. They are, for instance, used in Northern Ireland, where they are a requirement for government-funded construction projects over GBP 2 million (EUR 2.3 million). PBAs aim at facilitating payment to the contractor and its first-tier subcontractors (exceeding 1% of the main contract and higher than EUR 8,337[333]) and protect subcontractors in case the main contractor becomes insolvent. Payments from the PBA to the contractor and its subcontractors are jointly authorised by the contractor and government client's representative, so payments to the contractor and the first-tier subcontractors take place at the same time. As all payments are visible to the client, there is no need for subcontractors to report poor payment practices. However, PBAs are only available on large contracts and only provide protection to larger first-tier subcontractors, which may leave smaller subcontractors without protection.[334]

The application of rules on payment terms is often hindered by the bespoke nature of construction works, which leaves room for subjectivity over the amount, quality and timely delivery of the work or service.[335] Measures seeking remedy after late payment has occurred, specifically designed for the construction companies include mainly dispute resolution systems. In addition to stricter regulation, the legislation in the UK[336] and Ireland introduces an **adjudication system for the resolution of disputes** between contracting parties. Adjudication[337] was introduced as a low-cost, quick-fix method of resolving construction disputes while protecting cash flow during construction.[338] A similar dispute resolution system has also been set up in Hungary and Denmark, as voluntary system (i.e. not established by legislation).

Overall, data on the use of adjudication in the UK, Ireland, Denmark and Hungary suggest that it represents a relevant and effective instrument in the construction sector, providing easier access to justice and a low-cost method for dispute resolution (including comparatively low-value disputes),[339] in particular

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[331] A Review of Payments within the UK Construction Industry – April 2016. Available at: http://constructingexcellence.org.uk/wp-content/uploads/2016/07/Payments-Minefield-%E2%80%93-A-review-of-payment-practices-within-the-UK-Construction-industry.pdf.
These considerations are supported by the results of the CATI survey (Q24): 72% of companies (173 over 230) consider that late payment in the construction sector is related to the imbalance of power and size between companies. In the United Kingdom, this share is 70% (7 over 10).

[332] Construction Contracts Act 2013 No. 34 of 2013. Available at: http://www.irishstatutebook.ie/eli/2013/act/34/enacted/en/html

[333] GBP 10,000

[334] Department of Finance, February 2017, Construction Works Procurement: Project Bank Accounts. Available at: https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0314-construction-works-procurement-project-bank-accounts

[335] Idem.

[336] Section 108, Housing Grants, Construction and Regeneration Act 1996 of 24 July 1996.

[337] McCluskey, Milligan, Cattanach, Kennedy, The Development of UK Statutory Adjudications; its relationship with construction workload and the costs. Available at: http://cdr.uk.com/wp-content/uploads/2017/01/The-Development-of-UK-Statutory-Adjudication-its-relation-with-construction-workload-and-costs-2011.pdf.

[338] Adjudicators' decisions are interim-binding, i.e. until the dispute is finally determined by legal proceedings, arbitration or by agreement.

[339] McCluskey, Milligan, Cattanach, Kennedy, The Development of UK Statutory Adjudications; its relationship with construction workload and the costs. Available at: http://cdr.uk.com/wp-content/uploads/2017/01/The-Development-of-UK-Statutory-Adjudication-its-relation-with-construction-workload-and-costs-2011.pdf.

for smaller and relatively simple disputes.[340] In Hungary, adjudication is considered one of the factors behind improvements in payment behaviour.[341]

Box 22: Adjudication systems in the construction sector

In the United Kingdom, the adjudication of a dispute concerning construction agreements should not take longer than 28 days from the referral, unless otherwise agreed by the parties. The adjudicator's decision is binding until a final decision is pronounced (judicial decision, arbitration decision, agreement). Available data show that adjudication is an instrument widely used in the UK construction sector. The number of adjudication referrals over the whole implementation period (18 years) has increased from 187 cases in 1998 to 1,511 cases in 2016.[342] Most disputes decided by the UK adjudicator concern payments (29.3% of total cases in 2015). Although there is a downward trend, most of the disputes are closed in favour of the claimant.[343] Adjudication appears to be a valid system also for low-value disputes.[344]

In Ireland, the parties to a construction contract can refer their payment disputes to adjudication. The adjudicator must take a decision on the case within 28 days of referral, or 42 days with the referring party's consent. The adjudicator's decision is binding for both parties until the dispute is resolved through agreement, arbitration or litigation.[345]

In Hungary, an Expert Body[346] working with the Hungarian Chamber of Commerce and Industry presides over unpaid construction debts to facilitate the resolution of construction disputes speed up legal proceedings. The Expert Body may, upon request, give advice to the principal contractor or subcontractor over disputes concerning the lack of the certificate of completion of the work or payments that have not been performed. Furthermore, the Expert Body can provide opinions which are given priority to before the competent court.

In Denmark, the Building and Construction Arbitration Board [347] handles arbitration disputes in the building and construction sector, issues expert decisions and facilitates conciliation and mediation. According to the CATI survey, 43% of respondents from the construction sector in Denmark are aware of mediation measures, but none had used them at the time of the survey.[348] As suggested by the arbitration board, the low use can be linked to relatively low activity in the sector in general.

Finally, at least three **codes of good practice** have been identified in the construction sector.[349] These codes set principles of fair and honest business conduct and include the obligation to fulfil contractual and payment obligations on time. However, as of 2018 the codes have not had any significant impact on reducing the incidence of late payment in the sector, notably because the number of signatory companies remains low (40 in the UK[350], 100 in Estonia[351]).

[340] Brian Bond, Dispute resolution and the Construction Contracts Act 2013, 24 April 2014.
[341] Dun & Bradstreet, Payment Studies 2015 and 2016:The average payment terms in the construction sector were 38 days in 2013, dropping to 31 days in 2015 and continuing to steadily decrease.
[342] The peak was reached in 2002, when 2027 referrals were reported.
[343] The claim success rate was 71% in the period 2010-2011, reduced to 50% in the period 2013-2014. Adjudication Society, Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators. Report No. 14 (April 2016) and Report N. 15 (September 2016).
[344] In 2016, the majority of cases were related to low value disputes (between, approximately, 11,000 and 56,000 EUR). Report No. 14 (April 2016) and Report N. 15 (September 2016).
[345] Moreover, a statutory Code of Practice Governing the Conduct of Adjudications has been published and is binding on all Adjudicators operating under the Act. Section 6(8), ibid.
[346] Performance Certificate Compliance Expert Body, set out by Act XXXIV of 2013.
[347] Danish Building and Construction Arbitration Board, n.d., About. Available at: http://voldgift.dk/?lang=en, accessed 26/06/2017.
[348] It should be noted that the number of respondents by sector and country was too limited to be statistically representative.
[349] Good Conduct of the Members of the Association of Construction Entrepreneurs in Estonia, the Code of Ethics for Construction Entrepreneurs in Hungary, the Construction Supply Chain Payment Charter in the UK
[350] Construction Supply Chain Payment Charter: http://www.promptpaymentcode.org.uk/cscpc.htm
[351] Estonian Association of Construction Entrepreneurs, 2010, Good Conduct of the Members of the Association of Construction Entrepreneurs. Available at: http://www.eeel.ee/index.php?article_id=96&page=59&action=article

Box 23: Code of Ethics for Construction Entrepreneurs in Hungary

The Code applies to construction entrepreneurs registered with the Hungarian Chamber of Commerce and Industry (MKIK) as per Article 39 of the Act LXXVIII of 1997 on the Construction and Protection of the Construction Environment.[352] However, construction entrepreneurs on this registry do not need to be a member of the MKIK.[353]

The Code provides ethical rules for relations with clients, competitors, the state and internal relations, indicating how construction entrepreneurs should treat their employees and subcontractors.[354] For example, in the section on relations with competitors, the Code outlines the rules on prohibition of denigration, trade secrets violation, prohibition of luring of employees from other companies, protection of technological knowledge, prohibition of boycotting third parties or rules for fair competition.[355] Further, the Code prohibits the misuse of a dominant position in the construction sector. More specifically, it is considered an unfair market conduct when a main construction contractor imposes unilateral and unfair disadvantages in the contractual relationship with its subcontractors. Moreover, longer than reasonable payment terms are also considered an unfair market practice.[356]

It is challenging to assess the impact of the Code on practices in the construction sector since its introduction.[357] The MKIK does not assess the effectiveness of the Code, nor monitor its enforcement.[358] In fact, the enforcement of the Code is not entirely clear. According to the initiator of the Code, MKIK, the update, application and practice of the Ethics Code for Construction Entrepreneurs is in the competence of the Hungarian National Association of Construction Entrepreneurs (EVOSZ).[359] However, the interviewed representative of EVOSZ pointed out that the Association cannot, due to the internal charter, oversee the implementation of the Code as it also applies to parties which are not members of the Association.[360] Further, the sanctions imposed by the MKIK Ethics Code on the offending parties are viewed as rather soft.

As shown in Section 4, prompt payment codes promote fair relationship with suppliers and are an important element in changing overall payment behaviour. The effectiveness of the codes increases with the number of signatories, and further steps such as enforcement of rules are needed to enhance their influence.

5.2 Retail and wholesale sector

5.2.1 Causes and issues of late payment in the sector

Regarding the retail and wholesale sector, data show that the majority of creditor companies grant payment terms of fewer than 30 days, but still almost one in ten creditor companies reports payment terms longer than 60 days.[361] In addition, 5.9% of long delays (over 90 days on average) at the end of 2015 were related to retail trade companies (the worst performers on average in Europe).[362] Nine out of ten companies from the retail/wholesale sector have experienced payment delays.[363]

[352] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[353] Varga, K. (2013). Etikai kódex, ajánlott szerződésminták az építőiparban. Available at: http://slideplayer.hu/slide/2645121/.

[354] Idem.

[355] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[356] The Code states that longer than reasonable payment terms are unfair but does not specify them further, i.e. it does not state what is a reasonable time limit.

[357] Idem.

[358] Interviews with EVOSZ representative on 15/02/2018 and MKIK representative on 19/02/2018.

[359] Information obtained from correspondence with MKIK.

[360] Interview with EVOSZ representative on 15/02/2018.

[361] Atradius, Payment Practice Barometer, 2017.

[362] CRIBIS D&B, 2016, Payment study. Available at: https://www.dnb.co.uk/content/dam/english/economic-and-industry-insight/payment-study-2016-international.pdf.

[363] The Groceries (Supply Chain Practices) Market Investigation Order 2009 (Order).

Table 3: Atradius payment terms and payment delays reported by creditor companies in the wholesale/retail/distribution sector

	Payment terms and payment delays				
		2015		2016	
Average payment terms recorded		Western Europe	Eastern Europe	Western Europe	Eastern Europe
	1 to 30 days	74.00%	79.40%	64.90%	71.60%
	31 to 60 days	16.60%	14.40%	25.30%	17.10%
	61 to 90 days	7.40%	4.80%	5.40%	8.20%
	Over 90 days	2.00%	2.90%	4.40%	3.10%
Paid late		93.30%	82.85%[364]	90.90%	87.9%[365]

Source: Atradius Payment Practice Barometers 2017 and 2016

Pan-European sources show that payment issues remain important in the sector, but they present diverging results as to whether the sector experienced an improvement in payment practices in recent years.[366, 367] The increasing number of businesses manufacturing goods and selling them to large retailers and wholesalers makes the retail and wholesale sector very diverse. Unfair contractual conditions can therefore be easily imposed on SMEs by large companies to increase their margins over the supply chain.[368] High street retailers, e-commerce sites, supermarkets and department stores are all known for their long payment terms, sometimes as long as 120 days. This **imbalance of power among large retailers and their smaller suppliers** contributes to a payment culture where longer payment terms continue to be accepted.

The **differences in shelf life and stock rotation across products** can lead to further payment delays or other issues (e.g. cash-flow issues). Stakeholders noted that they find it difficult to comply with the LPD provisions on payment terms as some products take longer to be sold (i.e. in the DYI sector) or are only sold seasonally (e.g. winter sport equipment). Paying suppliers before having sold the product could thus be detrimental to retailers' cash flows. Companies indicated that cash flow issues continue to be the biggest challenge if late payment occurs and impedes growth of almost a third of companies in the sector.[369, 370]

5.2.2 Analysis of key measures for addressing the problem

The key measures identified in the retail and wholesale sector include stricter legislation on unfair trading practices and an invoice management initiative.

Rules on unfair trading practices attempt to ensure an economic balance between suppliers and retailers by prohibiting certain practices and limiting the use and abuse of market power.[371] Some Member States[372] have set out **sectorial rules on unfair**

[364] Taken as the average of the percentage of respondents reporting late payment by B2B customers (domestic and foreign). Source: Atradius, Payment Practice Barometer, 2016.
[365] Taken as the average of the percentage of respondents reporting late payment by B2B customers (domestic and foreign). Source: Atradius, Payment Practice Barometer, 2017.
[366] Intrum, European Payment Industry White Papers 2015 and 2017.
[367] VVA estimate using Euler Hermes data. Source: Euler Hermes. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0&slide=10004.
[368] European Commission, 2010, Retail market monitoring report. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0355&from=EN.
[369] BDRC Continental, SME Finance Monitor Q2 2017.
[370] Intrum, European Payment Industry White Paper 2016.
[371] In addition, as of 2018, the Croatian government is discussing the possibility of adopting the Unfair Trading Practices Law which would apply to the grocery supply chain and prohibit the exploitation of significant bargaining power. Fines for non-compliance with the Draft Unfair Trading Practices Law would be up to HRK 3.5 million (approximately EUR 0.47 million) for legal persons and HRK 1.5 million (approximately EUR 0.2 million) for individuals. Article 24, Draft Unfair Trading Practices Law, May 2017.
[372] The Czech Republic, France, Latvia, Spain, the United Kingdom. Moreover, on 12 April 2018, the European Commission adopted a proposal on unfair trading practices in B2B relations in the food supply chain, which also prohibits payments later than 30 days for perishable products. This prohibition addresses the buyer of

trading practices in the retail and wholesale industry. Many of these measures establish rules for retail contracts concerning food products, for example by setting out payment terms shorter than 60 days. These provisions are thus relevant to both the retail and wholesale sector and the food and drink industry. For this reason, sectorial measures targeting the retail and wholesale industry, which apply to the food retail sector in particular, are analysed under this Section. Legal measures targeting any contract (not only retail contracts) concerning food and drink products are instead analysed in Section 5.4. In general terms, on-the-spot payments by customers are the rule for retailers, and cash is available immediately after the product is sold. Therefore, shorter payment terms (for retailers to pay their suppliers) are realistic, especially for perishable products.[373] Following this logic, part of the legal measures applicable to the retail sector impose shorter maximum payment terms, in some cases defined in line with the nature of the product. Overall evidence indicates that in several Member States payment terms in the retail sector have already been reduced through the implementation of the LPD.[374, 375] On the other hand, certain products with long shelf life (e.g. luxury items, seasonal equipment, DIY products) typically take much longer to sell, which is why some Member States have adopted exceptionally long maximum payment terms for relevant product groups.

Box 24: Maximum payment terms for retail contracts in certain sectors

In the , the parties to a B2B retail contract concerning agricultural and food products cannot agree upon a payment term exceeding 30 calendar days from the delivery of the invoice.[376] For breaches of this obligation, a company can be fined with up to CZK 10 million (approximately EUR 38,400), or 10% of net income. In , the maximum payment term for the supply of fresh vegetables and fruit is 20 days[377], on the condition that these goods are supplied to the same retailer more than three times in one calendar week.[378] If a retailer violates this provision, a fine of up to 0.2% of the net turnover is applied.[379] In , payment periods fixed in the contract cannot exceed 30 days for fresh and perishable food products,[380] or 60 days for other goods except where the parties to the contract have explicitly agreed otherwise. In the latter case, the supplier must be financially compensated for the extension of the payment term, and under no circumstances may the payment be deferred for more than 90 days. In , legal measures (derogating from the payment terms set out by the general national legislation) have been adopted with regards to B2B sale contracts concerning seasonal activities, i.e. agricultural equipment, sports items, the leather sector, the watch and jewellery sector and the toy industry.[381] In relation to these categories of products, the payment terms can be extended beyond 60 days (depending on the product and specific circumstances).

food products, which includes, but is not limited to the retail sector. The proposal is available at this link: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0173&from=EN.

[373] Report of the Agricultural Markets Task Force, Improving Market Outcomes – Enhancing the Position of Farmers in the Supply Chain, Brussels 2016.

[374] Interviews with business representatives of the retail and wholesale sector in Spain and France.

[375] Number of days for payment of suppliers in the retail and motor repair sector. Source: Observatory of Late Payment, 2016, Annual Report. Available at: http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/22331.pdf.

[376] Article 3a(a), Act no. 395/2009 Coll. on Significant Market Power in Selling of Agricultural and Food Products and its Abuse.

[377] Article 8(2), Unfair Retail Trade Practices Prohibition Law (*Negodīgas mazumtirdzniecības prakses aizlieguma likums*), Latvian Herald issue n. 107 (5425). It is noted that the legal measures set out by the Unfair Retail Trade Practices Prohibition Law also apply to the food and drink sector when the retail contract concerns food products.

[378] Payment terms exceeding 20 days are considered 'unfair and unjustifiably long'. Where these conditions are not met, the maximum payment term which the parties can agree upon cannot exceed 30 days. Article 8(2), Unfair Retail Trade Practices Prohibition Law.

[379] The fine cannot be lower than EUR 70. The Competition Council is entitled to impose an additional penalty to the retailer which did not fulfil its legal obligations. The additional penalty cannot exceed 2% of the retailer's net daily turnover in the last reporting year and cannot be lower than EUR 70 for each calendar day. It applies until the retailer fulfils its legal obligation.

[380] It is noted that the legal measures set out by the Act on a Regulatory Framework for Retail Trade also apply to the food and drink sector when the retail contract concerns food products. Article 17(1), 'Act 7/ 1996, of 15 of January, on Regulatory Framework for Retail Trade' (*Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista*), Official State Journal of 17 January 1996.

[381] Decree n° 2015-1484 of 15 November 2015 setting out the list of sectors mentioned by Article L. 441-6 of *Law Macron*, allowing derogations to the Commercial Code's provisions regarding payment periods (*décret n° 2015-1484 du 16 novembre 2015 fixant la liste des secteurs mentionnés à l'article L. 441-6 du code de commerce*), Official Journal of the French Republic of 17 November 2015.

An **invoice management measure** has been identified in Austria. The Electronic Data Interchange (EDI) Initiative[382] allows companies to implement a fully electronic exchange of invoice-related documents. This initiative aims to improve the invoicing process and thus indirectly addresses issues related to late payment by lowering administrative inefficiencies in the invoicing process. However, it does not tackle the issue of power imbalances.

A valid instrument to overcome the imbalance of power between large retailers and small suppliers is the Grocery Code Adjudicator (GCA) established in the United Kingdom. According to a recent survey,[383] the establishment of the GCA has, on the one hand, simplified the resolution of disputes within the food retail sector, while on the other hand, proved to be effective in exercising its investigation and enforcement powers. A recent report of the Agricultural Markets Task Force supports the establishment of independent authorities (such as the GCA) which have the power to undertake their own initiative investigations that do not lead to the disclosure of the complainant's identity. Measures of this kind provide effective enforcement of rules on unfair trading practices by addressing the fear factor that prevents many companies from lodging complaints against business partners.[384]

5.3 Manufacturing sector

5.3.1 Causes and issues of late payment in the sector

In the manufacturing sector, the majority of creditor companies report payment terms of fewer than 30 days[385]. However, nearly a quarter (22.05%) of creditor companies[386] indicate in the CATI survey that more than 25% of their invoices are paid late, and almost a third (28.74%)[387] mention that the average delay experienced exceeds 30 days. As shown in Table 4, the extent of late payment, however, has decreased within the sector.[388]

Table 4: Atradius payment terms and payment delays reported by creditor companies in the manufacturing sector

	Payment terms recorded in the manufacturing sector				
		2015		2016	
Average payment term recorded		Western Europe	Eastern Europe	Western Europe	Eastern Europe
	1 to 30 days	67.40%	68.80%	65.40%	64.90%
	31 to 60 days	22.00%	22.20%	23.70%	24.50%
	61 to 90 days	8.90%	6.40%	8.50%	6.80%
	Over 90 days	1.70%	5.30%	2.40%	3.80%
Paid late		93.80%	85.00%[389]	92.80%	82.40%[390]

Source: Atradius Payment Practice Barometers 2017 and 2016

The main impacts of late payment on the manufacturing sector are additional costs, cash-flow issues and obstacles to growth. Around 37.8% of creditor companies[391] in the

[382] REWE International AG and EDITEL Austria to advance electronic invoicing in Austria, 2013. Available at: https://www.editel.eu/fileadmin/user_upload/EU/press_releases_EU/PM_REWE_EDITEL_eBilling_EN_06032013.pdf.
[383] Department for Business, Energy & Industrial Strategy, Statutory Review of the Groceries Code Adjudicators: 2013-2016 (published in July 2017).
[384] Report of the Agricultural Markets Task Force, Improving Market Outcomes – Enhancing the Position of Farmers in the Supply Chain, Brussels 2016.
[385] Atradius, Payment Practice Barometer, 2017.
[386] 56 over 254 manufacturing respondents to the CATI survey.
[387] 73 over 254 manufacturing respondents to the CATI survey.
[388] Intrum, European Payment Industry White Papers 2015 and 2017.
[389] Taken as the average of the percentage of respondents reporting late payment by B2B customers (domestic and foreign). Source: Atradius, Payment Practice Barometer, 2016.
[390] Taken as the average of the percentage of respondents reporting late payment by B2B customers (domestic and foreign). Source: Atradius, Payment Practice Barometer, 2017.
[391] 96 over 254 manufacturing respondents to the CATI survey.

sector experience additional interest or administrative costs due to late payment, and 34.65%[392] report liquidity issues.

Furthermore, pan-European research shows that for nearly a third of manufacturing companies (32%), late payment has a medium to high impact on company growth.[393] In the UK, 9% of SMEs from the sector expected cash-flow issues linked to late payment to be a major obstacle to running the business in the next 12 months in 2017, compared to 15% in 2014.[394]

For almost two-thirds (63.78%) of companies in the sector[395] the **imbalance of power and size** is one of the main causes for late payment. More than in other sectors, businesses in the manufacturing sector have been asked to accept longer payment terms than they are comfortable with (74%), and two-thirds (63%) have also accepted this request due to the imbalance of power and the fear of losing future contracts.[396]

Measures to improve payment performance including debt collection, bank guarantees, factoring, credit insurance, credit checks and prepayment are also more commonly used in the manufacturing sector compared to the European average. For instance, 62% of companies use prepayment, a higher proportion than the European average of 45%.[397]

5.3.2 Analysis of key measures for addressing the problem

At least two measures in the manufacturing sector have been identified, both established in France. In 2007, an agreement in the automobile manufacturing sector was signed between the federations of automobile manufacturers, automotive suppliers and mechanical industry. The agreement established payment terms between clients and sub-contractors in line with the size of companies and manufactured units sold per year.[398] In 2010, a charter of good practices in the fashion and luxury goods sector[399] was signed by the French federation of fashion, clothing and fashion designers, the French union of apparel industries and their members to establish better business relations between large companies and their suppliers.

The **two charters of good practices** address the most pressing issues at stake in the sector: business relations and payment practices. The automobile sector agreement aimed at large companies (with turnovers of more than EUR 300 million) sought to reduce payment terms to 45 days (with turnovers lower than 50 million EUR) by 2008. Indeed, between 2007 and 2014[400] the average payment term in the automobile manufacturing sector has decreased from 51.6 days to 42 days. Furthermore, between 2013 and 2015 the perception of respected payment terms as well as supplier relation has improved,[401] suggesting that the agreement is having a positive influence. It should be noted, however, that a large number of administrative fines for late payment are still given to the automobile sector (EUR 71,700 in 2014),[402] which emphasises that there is still scope for improvement. Regarding the charter of good practices in the fashion and

[392] 88 over 254 manufacturing respondents to the CATI survey.
[393] Intrum, European Payment Industry White Paper 2017.
[394] BDRC Continental, SME Finance Monitor Q2 2017.
[395] 162 over 254 manufacturing respondents to the CATI survey.
[396] Interviews with stakeholders in Denmark, Estonia, France, Poland, Portugal, Slovakia, Sweden
[397] Intrum, European Payment Industry White Paper 2017.
[398] Agreement in the automobile sector about payment terms. Available at: http://www.uimm3340.com/iso_album/accord_delais-paiement_2007.pdf.
[399] Charter of good practices in the fashion and luxury goods manufacture sector. Available at: https://archives.entreprises.gouv.fr/2012/www.industrie.gouv.fr/portail/secteurs/luxe/chartevdef.pdf.
[400] Observatory of Late Payment, 2015, Annual Report. Available at: http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/164000161.pdf.
[401] Opinion Way, 2016, Evaluation des grandes entreprises par leurs fournisseurs. Available at: http://www.croissanceplus.com/wp-content/uploads/2016/01/R%C3%A9sultat-Enqu%C3%AAte-M%C3%A9diation-CroissancePlus-EMBARGO.pdf.
[402] Observatory of Late Payment, 2015, Annual Report. Available at: http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/164000161.pdf.

luxury goods sector, the assessment is more ambiguous.[403] Between 2013 and 2015, the perception that payment terms are respected in the luxury/cosmetic sector has deteriorated[404], though supplier relations are considered to have improved.[405]

5.4 Food and drink sector

5.4.1 Causes and issues of late payment in the sector

Food and drink companies report shorter payment terms than companies in the other sectors studied. According to the CATI survey, over half (54.77%) of all food and drink companies[406] indicate that they use payment terms of fewer than 30 days with their suppliers. However, within the broad food and drink sector the different business activities are not affected to the same extent. Notably agriculture activities are more exposed to late payment than food services. As noted by Intrum[407], while the accommodation and food service sectors record a rather short average payment delay (four days in 2015, two days in 2017), the agri-food sector has a longer average delay (11 days in 2016, five days in 2017). This trend can clearly be seen, for instance, in Germany, where 92% of companies in the agri-food sector have admitted granting credit periods in 2016, which is the highest percentage of the seven sectors covered.[408]

The retail end of the food supply chain is becoming increasingly concentrated, which leads to unfair trading practices becoming more widespread as there are **significant imbalances in bargaining power** between contracting parties. While cooperatives and large enterprises can negotiate on an equal footing with the large retail chains, individual farmers are in a weaker position. As noted by the European Parliament, unfair trading practices in the food supply chain come in a number of forms, including[409] payments made up to 120 days late ('pay you later'), arbitrary discounts that large firms give themselves for paying early or on time, and retrospective discounting on outstanding money owed to a supplier[410]. According to the CATI survey, one in five creditor companies in the food and drink sector[411] noted an average delay exceeding 30 days. In addition, 1.2% of companies in the agri-food sector pay with a delay of 90-120 days and 1.5% with a delay of over 120 days.[412]

The **interdependency of payments within the supply chain** can lead to an accumulation of payment delays between companies, particularly affecting SMEs at the end of the chain. While this also happens in other supply chains, farmers (many of which run very small businesses) are more likely to have difficulties in finding external financing, which makes them vulnerable to liquidity constraints.[413, 414] Producers of perishable products have even more limited bargaining options in cases of contract disagreements due to the impossibility of long-term storage. Finally, as noted by interviewees, the fact that **written contracts do not always exist in the agriculture**

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[403] Challenges, 21 January 2016, Ce qui met les PME K.O. Available at: http://codinf.fr/documents/boite_a_outils/Article%20Challenges%20Janvier%202016.pdf.
[404] Index of 11.3/20 in 2013, 8.4/20 in 2015.
[405] Index of 11.2/20 in 2013, 11.9/20 in 2015. The index of supplier relation is based on a recommendation ranking. It is based on the respect of contractual terms including payment terms.
[406] 132 over 241 food and drink respondents to the CATI survey.
[407] Intrum, Industry White Papers 2015, 2016 and 2017.
[408] Coface, Panorama, Germany Corporate Payment Survey 2016. Available at: http://www.coface.com/content/download/140594/2196566/file/Coface_Panorama_Payment_Survey.pdf.
[409] Retailers forcing suppliers to use certain third-party packaging producers that pay supermarkets a fee for the business they receive; unilateral and retroactive changes to contracts; flat charges that companies levy on suppliers as a requirement for inclusion in a supplier list ('pay to stay').
[410] Opinion of the Committee on Agriculture and Rural DEVELOPMENT (17.11.2015) for the Committee on the Internal Market and Consumer Protection on unfair trading practices in the food supply chain (2015/2065(INI)).
[411] 46 over 241 food and drink respondents to the CATI survey.
[412] CRIBIS D&B, Payment Study 2016. Available at: http://www.dnb.com/content/dam/english/economic-and-industry-insight/payment-study-2016-international.pdf.
[413] Report of the Agricultural Markets Task Force to the European Commission, November 2016.
[414] COPA COGECA, 2016, Promoting farmers and agri-cooperatives positioning in the food supply chain.

sector[415] leads to misunderstandings over payment terms and prevents the use of remedial actions in cases of late payment.

5.4.2 Analysis of key measures for addressing the problem

In the food and drink sector, the set of preventive measures adopted at national level to improve payment practices in B2B transactions consists of provisions setting out maximum payment terms, with dedicated enforcement bodies[416], as well as an invoice management initiative.

A total of nine Member States have adopted **legislation setting out maximum payment terms shorter than 60 days**, as shown in Table 5 below.

Table 5: Maximum payment terms in the food and drink sector

Member State	Stricter maximum payment terms
Bulgaria	Parties to a B2B contract for the purchase of foods intended for subsequent resale cannot agree on payment terms exceeding 30 days.[417]
France	Maximum payment terms for producers, retailers or service providers vary depending on the nature of the food product and are, in some cases, shorter than 60 days.[418]
Hungary	Payment terms exceeding 30 days following the date of the actual delivery of food products (where the invoice has been received within 15 days from delivery), or 15 days from the date of receipt of the invoice (where the invoice has been received after the elapse of 15 days from the actual delivery) are regarded as unfair and therefore prohibited.[419]
Italy	Payment periods fixed in B2B contracts cannot exceed 30 days for perishable food products.[420]
Lithuania	Maximum payment terms shorter than 60 days apply to diverse groups of agricultural products, depending on the agreed payment schedule.[421] Parties may deviate from this rule and explicitly agree on longer payment terms, on the condition that the extension of the term is objectively justified by the type of contract and its peculiarities and is not unfair to the seller.[422]
Portugal	Payment periods fixed in contracts for the purchase of food products cannot exceed 30 days following the date of receipt of the invoice or after the delivery of the good.[423]
Romania	Payment periods fixed in contracts for the purchase of food products cannot exceed 30 days, or 7 days in the case of fresh food products.[424]

[415] Report of the Agricultural Markets Task Force to the European Commission, November 2016.
[416] Furthermore, it should be noted that the stricter measures adopted at national level in the retail sector apply also to the food and drink industry when the retail contract concerns food products (see Section 5.2). This is, for example, the case of the Significant Market Power Act in the Czech Republic, the Act on a Regulatory Framework for Retail Trade in Spain, and the Unfair Retail Trade Practices Prohibition Law in Latvia.
[417] 'Foods Act'.
[418] 30 days after the end of a 10-day period from the delivery in the case of purchases of perishable food products; 20 days after the day of delivery in the case of purchases of live cattle intended for consumption and fresh meat by-products; 30 days after the end of the month of delivery for purchases of alcoholic drinks; 45 days from the end of the month or 60 days from the date of issue of the invoice for purchases of grapes intended for the production of wine and other alcoholic drinks. 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.
[419] Section 3(2) lit. h), Act XCV of 2009.
[420] Article 62(3), Law Decree No. 1 of 24 January 2012 containing urgent provisions on competition, development and competitiveness, converted by Law No. 27 of 24 March 2012.
[421] (i) products for which the entire payment must occur within 30 days after the receipt of the products; (ii) products for which 50% of the payment is due within 30 days of the receipt of the products, while the remaining 50% of the price must be paid within 60 days after the receipt of the products; (iii) products for which the entire payment must occur within 60 days after the receipt of the products. Order of the government of the Republic of Lithuania of 6 April 2000, No. 393 concerning the Approval of the Terms for the Settlement for Agricultural Products and for the Formation of their Prices (*Dėl atsiskaitymo už žemės ūkio produkciją ir jos įkainojimo terminų patvirtinimo*), Official Gazette 2000, No. 30-835, as last amended.
[422] Article 5, 'Law on Settlement for Agricultural Products' (*Atsiskaitymo už žemės ūkio produkciją įstatymas*), Official Gazette 1999, No. 102-2921, identification code 0991010ISTAIII-1422, as amended by Official Gazette 2013, No. 38-1837, identification code 1131010ISTA0XII-207.
[423] Article 3, Decree-Law 118/2010, as amended by Decree-Law 2/2013, of January 9th (*Decreto-lei 118/2010, de 25 de Outubro, na redacção do Decreto-lei 2/2013, de 9 de Janeiro*), Official Gazette A – I Series, no. 207, of October 25th.
[424] Law No. 321 of 15 October 2009 (amended version 29 September 2016).

Member State	Stricter maximum payment terms
Slovakia	Payment terms fixed in contracts for the purchase of food products cannot exceed 30 days following the date of receipt of the invoice or 45 days after the delivery of the product.[425]
Slovenia	Payment periods for perishable food should not be longer than 45 days.[426]

In several Member States, sectorial provisions set out maximum payment terms shorter than 60 days that exclusively apply to contracts concerning fresh and perishable food products. The differentiation between perishable and non-perishable goods is linked, as mentioned above, to the particularly weak position of producers of fresh food in the supply chain. Moreover, in most of these Member States (France, Italy, Lithuania, Portugal, Romania, Slovakia) and Spain[427] there are administrative sanctions for infringement of the relevant provisions.

Some Member States have appointed **dedicated bodies with control or advisory functions**:

- In Italy, the Competition Authority has only been given generic power to supervise the correct application of the relevant sectorial legislation.[428]
- In Lithuania, the State Tax Inspectorate carries out more specific tasks, such as monitoring the correct conclusion of written purchase contracts and timely payments.[429] Larger businesses must inform the regional State Tax Inspectorate on a monthly basis of compliance with the special payment terms set out by law.
- Spain has established two dedicated bodies: the AICA (Food Information and Control Agency) as a public body of specialised control, and the Observatory of the Food Chain as a body for advising and studying the operation of the chain.[430]
- In Bulgaria, the revision of the Foods Act led to the establishment of a Consultative Council on the Better Functioning of the Food Supply Chain. The consultative body supervises the activities of a Conciliatory Committee, providing specialised mediation services to food traders upon their written request.[431]

The CATI survey indicates that most of the businesses in a debtor position operating in the food and drink sector use payment terms shorter than 30 days or 'payment in advance'.[432] Interviewees noted that in some Member States (e.g. France and Lithuania), a combined use of sectorial legal intervention imposing stricter payment terms and sanctions for the breach of payment terms seems to have resulted in more

[425] Act No. 362/2012 Coll. on Undue Requirements in Business Relations regarding Foods (*Zákon o neprimeraných podmienkach v obchodných vzťahoch, ktorých predmetom sú potraviny*). According to Section 3(1) letter e), the parties can only stipulate a shorter period of payment. The breaching of this rule is considered as an undue requirement.
[426] Article 61 b, Agriculture Act (*Zakon o kmetijstvu* - Uradni list RS, št. 45/08, 57/12, 90/12 – ZdZPVHVVR, 26/14 in 32/15).
[427] Additional Provision 1 to Act 3/2004 of 29 December.
[428] The Competition Authority is in charge of monitoring the correct application of the provisions of Law Decree 1/2012 on contracts relating to the sale of agricultural and food products. Article 62, Paragraph 8 of Law Decree 1/2012, Law Decree No. 1 of 24 January 2012 containing urgent provisions on competition, development and competitiveness, converted by Law No. 27 of 24 March 2012.
[429] Order of the Government of the Republic of Lithuania of 6 April 2000, No. 393 concerning the Approval of the Terms for the Settlement for Agricultural Products and for the Formation of their Prices (*Dėl atsiskaitymo už žemės ūkio produkciją ir jos įkainojimo terminų patvirtinimo*), Official Gazette 2000, No. 30-835, as last amended by Official Gazette 2013, No. 70-3527. Businesses which must provide information are: (i) trading companies with a turnover of at least EUR 2.9 million during the last reporting year, and (ii) companies processing agricultural products, including other private commercial or public subjects that buy agricultural products for the purpose of either processing them, or selling them if the turnover during the last reporting year reaches at least EUR 0.87 million.
[430] Additional Provision 1 to Act 3/2004 of 29 December.
[431] 'Foods Act' (*Закона за храните*), State Gazette issue no. 90 of 15 October 1999. It is noted that, so far, no steps have been implemented towards the establishment of these bodies. Therefore, no assessment of this measure is provided below.
[432] 41 out of 55 respondents (businesses in the food and drink sector in the following Member States: Bulgaria, Hungary, Italy, Portugal, Slovakia, Slovenia. Question 2, CATI survey). This result is in line with the average data (i.e. results in the food and drink sector across all Member States, and overall results).

timely payments.[433, 434] However, stakeholders in several Member States (Italy, Slovenia, Slovakia and Portugal) have also highlighted that food producers, despite the legislative measures set up, continue to agree upon longer periods of payment due to their weaker contractual and economic position. Even where improvements are recorded, imbalances of power remain, resulting in the reluctance of producers to enforce their contracts and undertake litigations. Evidence from the Italian case is presented in the box below.

Box 25: Art. 62 Law Decree No. 1 of 24 January 2012 in Italy

In Italy, the Law Decree 1/2012 establishes that, for agricultural and food products, payments must occur within 30 days from delivery for "*perishable*" goods and within 60 days from delivery for "*non-perishable*" goods. Breaches of the legislation (lack of written contract, application of unfair terms and late payment) can result in pecuniary sanctions. In addition, if the payment terms are not respected according to the contractual arrangements, the interest rate that can be claimed for late payment is to be increased by 2 percentage points from the conventional late payment interest rate.[435]

The Italian Competition Authority (ICA) is responsible for the monitoring of the correct application of these rules. ICA's interventions are prioritised on the basis of the following criteria: Significance of the competition restriction (i.e. if there is at least indirect evidence that the unfair practice does have an appreciable effect on the correct functioning of competition in the market); Pervasiveness of the unfair conduct, which should be widespread and thus have a high potential to impact the competitive level playing field.

The stricter payment terms resulted in **shorter payment periods** experienced by producers of perishable food compared to other sectors. A 2017 payment barometer study shows that the shortest payment terms were agreed with domestic and foreign B2B customers in the agriculture sector: 36 days, against average payment terms at national level of 50 days.[436]

However, the share of companies paying on time has decreased over the recent years, across all sectors.[437] The deterioration of payment behaviour undermines the perception of positive developments in the food and agriculture sector; however, stakeholders interviewed in the context of the case study, report that the stricter legislation introduced has been effective in reducing the *days-sale-outstanding* (i.e. the average number of days that it takes a company to collect payment after a sale has been made) and has had some positive, although limited, effects in **increasing the bargaining power** of primary producers.

According to of the stakeholders interviewed, the process of reporting to ICA was not considered costly or burdensome.

Nevertheless, limits to the effectiveness of the measure remain and are related to **imbalances of power**, not fully addressed, coupled with the **reluctance of producers to enforce their contracts and undertake litigations**.[438] Stakeholders interviewed in Italy highlight that producers of perishable food products, despite the legislative measures set up, continue to agree upon longer periods of payment, due to their weaker contractual and economic position.[439] In parallel, in the last five years there have been only two competition cases related to Article 62. By denouncing a business partner to the competition authority, a company gets publicly exposed, with the risk of losing business opportunities.

On 12 April 2018, the European Commission adopted a proposal for a Directive on unfair trading practices in business-to-business relationships in the food supply chain. This proposal comprises a list of eight prohibited unfair trading practices, including the prohibition for a buyer of food products to pay the supplier later than 30 calendar days after the date of delivery of the perishable food products, whatever is the later. The

[433] Observatory of Late Payment, 2016, Annual Report. Available at: http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/22331.pdf.

[434] Stakeholder Interview reporting – Lithuania. Food and drink. Food and drink. National stakeholders do not report particular problems with regard to the food and drink sector. According to a 2016 survey (available at http://creditinfo.lt/wp-content/uploads/sites/22/2017/01/Mokejimu_apzvalga_201612.pdf), in Lithuania, the sectors which are more affected by late payment are manufacturing (67%), transport (65%) and construction (55%).

[435] Article 62 of the Law Decree No. 1 of 24 January 2012 "Urgent provisions on competition, development of the infrastructures and competitiveness".

[436] Atradius Collection (2017) Payment Practices Barometer Italy 2017.

[437] CRIBIS, 2014 and 2017 Payment studies.

[438] Interviews with stakeholders and desk research carried out in the context of the case studies.

[439] Stakeholder Interview reporting – Italy. Food and drinks.

Directive also includes provisions on the enforcement of the prohibition of unfair trading practices, in particular the designation of a public authority, which is vested with investigative and sanctioning (pecuniary fines) powers.[440]

In Germany, an **invoice management initiative** was identified in the food and drink retail sector in the form of a purchasing cooperative.[441] The cooperative gathers independent middle-sized retailers which centralise their purchase and payment systems for all suppliers. The aim of the initiative is to achieve higher purchasing volumes by pooling demand and thus achieving more favourable prices with suppliers. Purchases are paid through a central regulation system and the central office deals with late payment by 1) sending a reminder, 2) reducing the discount rate if any, and 3) reducing the volume of purchase/sales in the next order. This type of initiative can be a useful tool for avoiding liquidity issues and easing negotiations between large and small companies. Companies organised in purchasing cooperatives share the burden of late payment and tend to have fewer liquidity problems as the central office has a legal obligation to prevent the insolvency of members. The more members there are, the better liquidity problems can be reduced.[442] The structure of a purchasing cooperative does not entail costs for companies so the benefits of reducing liquidity issues are apparent.

Codes of conduct and mediation tools have an added value in promoting good business practices and improving relations in the supply chain. Agreements or codes of good practice were identified in at least seven Member States.[443] These measures comprise codes of good practices in the whole food supply chain, whereby retailers commit to dealing fairly with their suppliers and to paying them on time. Some of the codes are inspired by the Supply Chain Initiative[444] initiated at EU level to increase fairness in commercial relations in the food supply sector. In Belgium, there is also a separate code of conduct for restaurants and cafés ("Horeca") in addition to the more general code of conduct for the agri-food chain.[445]

Box 26: The Supply Chain Initiative in Belgium

The Supply Chain Initiative has been in place in Belgium since 2010. It was initiated by nine Belgian business associations representing all stages of the food supply chain and offers a dispute settlement mechanism to businesses that want to challenge unfair trading practices.

The initiative is a voluntary measure that is open to businesses that are registered either directly with the European Supply Chain Initiative or with one of the signatory associations. In 2017, the number of signatory businesses of the Belgian code of conduct had reached 261[446] and since the creation of the dispute resolution procedure, there has been only one complaint regarding payment terms and no complaints regarding late payment (out of 21 complaints in total)[447].

According to interviewed stakeholders, the Supply Chain Initiative has had an impact on the reduction of unfair trading practices in Belgium. Between 2013 and 2016, there has been a clear increase in payments that are made by due day (from 38% of all payments in 2013 to 46% in 2016). Although hard to measure, interviewed stakeholders indicated that the initiative also has long-term effects on the general business mentality in the sector, meaning that over time businesses incorporate the principles of the code of conduct into their everyday behaviour.

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[440] COM(2018) 173 final.

[441] Metro Group, 2015. Available at: https://www.metrogroup.de/~/assets/mag/documents/media/metro-retail-compendium-2015-16_en.pdf.

[442] Metro Group, 2015. Available at: https://www.metrogroup.de/~/assets/mag/documents/media/metro-retail-compendium-2015-16_en.pdf.

[443] Among these codes are the Code of Conduct for Fair Relations Between Suppliers and Purchasers in the Agri-food Chain (part of the Supply Chain Initiative) in Belgium, the Good Practice for the Food Supply Chain in Estonia, the Agreements in the Food Retail Sector in France, the Code of Good Trading Measures in Portugal, the Code of Good Business Practice Among Stakeholders in the Agri-food Chain in Slovenia, the Code of Good Practices in Food Procurement in Spain and the Code of Conduct in the Food Sector in Sweden.

[444] The Supply Chain Initiative. Available at: http://www.supplychaininitiative.eu/about-initiative.

[445] Interview with Fevia, conducted on 22 June 2017.

[446] Supply Chain Initiative, Registry. Available at: http://supplychaininitiative.be/en/registry/.

[447] Supply Chain Initiative, Annual reports. Available at: http://supplychaininitiative.be/en/library/jaarrapporten/.

However, there are contradictory findings concerning their direct impact on reducing late payment. In France[448] for example, the perception that payment terms are being respected in the agri-food sector and the perception of supplier relations in general have deteriorated between 2013 and 2015.[449] In Belgium, even if average payment terms in the sector have decreased by three days, a survey conducted by a trade association in 2015 found that 85% of respondents experienced one or more unfair trading practices over the past five years, and 28% of respondents had an issue with late payments, payments not being respected, or difficulties setting the terms of the contract. Nevertheless, the Belgian Supply Chain Initiative is perceived positively (see Box 26). In Germany, the dispute resolution tools offered by the Food Supply Chain Dialogue Platform have, as of January 2018, never been used by a business.[450]

Dispute resolution and mediation systems are in place in Belgium, Germany and Slovenia. The mechanisms in Belgium (the dispute resolution system of the Supply Chain Initiative)[451] and Slovenia (the Ombudsman of the Food Supply Chain)[452] were implemented along with the codes of good conduct mentioned above. In Germany, the Food Supply Chain Dialogue Platform[453] offers dispute resolution tools and conciliation for companies in the sector, including on issues related to payment terms.

Two working groups were specifically designed to address issues concerning the food and drink sector: in the Netherlands and in Finland. As discussed in Section 4, the working groups are relevant for discussing late payment issues, for reflecting on solutions and for raising awareness of good practices, but their direct impact on payment behaviour is limited. In Finland, the Board of Trading Practices in the Food Supply Chain promotes fair business practices in the sector. In addition, companies may request that the board issues a statement against a company which has shown unfair conduct.[454] The Dutch government has set up a pilot steering group on unfair trading practices in the agri-food sector[455], which has drafted and implemented a code of conduct and established a dispute resolution mechanism via an online platform. Working groups provide tools against late payment at no expense to companies.

5.5 IT/Software/telecommunications

5.5.1 Causes and issues of late payment in the sector

Debtor companies in the IT/software/telecommunications sector mostly use payment terms of fewer than 30 days, as reported by almost half (49.79%) of respondents to the CATI survey.[456] Only a small proportion (4.56%) of companies reports payment terms of more than 60 days with their creditors[457], which is less than in all the other six sectors covered. The average payment delay in the sector has decreased (seven days in 2015 against two days in 2017).[458] Yet, a quarter (24.9%) of creditor sector

[448] The first report of the SME-Food retailer observatory does not provide data on the reduction of late payment but focuses on the expansion of SME products in retailers' offers. See: Commerce et Consommation, 16 December 2016, L'observatoire PME-Grande distribution dévoile ses premiers résultats. Available at: http://www.lsa-conso.fr/l-observatoire-pme-grande-distribution-devoile-ses-premiers-resultats,251331.

[449] Opinion Way, 2016, Evaluation des grandes entreprises par leurs fournisseurs. Available at: http://www.croissanceplus.com/wp-content/uploads/2016/01/R%C3%A9sultat-Enqu%C3%AAte-M%C3%A9diation-CroissancePlus-EMBARGO.pdf.

[450] Interview with the *Handelsverband Deutschland*, conducted on 18 January 2018.

[451] Code of conduct for fair relationships between suppliers and purchasers in the agri-food chain (2014). Available at: http://supplychaininitiative.be/en/about-the-initiative/.

[452] Varuh odnosov v verigi preskrbe s hrano, Kdo smo. Available at: https://www.varuhverigehrane.si/.

[453] The Food Supply Chain Dialogue Platform. Available at: http://www.lebensmittellieferkette.de/.

[454] Finland Chamber of Commerce, n.d., The Board of Trading Practices in the Food Supply Chain. Available at: https://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/.

[455] Dutch Ministry of Economic Affairs, Dun & Bradstreet, 2015, "Investigation of payment terms with companies".

[456] 120 over 241 IT/software/telecommunication respondents to the CATI survey.

[457] 11 over 241 IT/software/telecommunication respondents to the CATI survey.

[458] Intrum, European Payment Industry White Papers 2015 and 2017.

companies[459] report that more than 25% of their invoices are paid late, and 29.05%[460] mention that the average delay experienced exceeds 30 days. In fact, Euler Hermes data show that payment duration has increased by 7.5 days between 2012 and 2016, reaching 57.5 days in 2016.[461]

The IT/software/telecommunications sector is diverse as it is composed of large, often multinational or previously state-owned companies as well as IT specialists, often freelancers, with a creative background in web design or digital marketing. Research shows that **large companies in the sector tend to abuse their dominant position and impose unfair trading practices** on their suppliers. Indeed, 71% of companies in the sector have been asked to accept longer payment terms than they are comfortable with, and 68% have accepted this request.[462] As reported by interviewees and Intrum[463], 66% of sector companies consider that large companies intentionally delay payment to make economic gains and use their suppliers as free creditors. Freelancers and other creative professionals are particularly prone to experience late payment and non-payment due to the bespoke nature of the product or service, which gives clients the opportunity to challenge the quality of the work and consequently delay or refuse payment.

5.5.2 Analysis of key measures for addressing the problem

No measures specific to the IT/software/telecommunication sector were identified.

5.6 Utilities and transport

5.6.1 Causes and issues of late payment in the sector

In the utilities and transport sector, around 10% of companies[464] report payment terms of more than 60 days with their creditors. Euler Hermes reports an increase in payment duration of 11.8 days since 2012, reaching 56.9 days in 2016.[465] The average payment delay in the sector, however, has decreased over the past years, from eight days in 2015 to four days in 2017.[466]

The utilities and transport sector is dominated by only a few companies which were originally state-owned companies that have been liberalised under the application of EU law.[467] According to stakeholders, these **large companies tend to impose their payment terms** on their suppliers and due to tight competition in the market small businesses accept longer payment terms than they are comfortable with. If late payment occurs, companies consider it intentional, which sometimes derives from a different interpretation of contract terms and content of the service, as noted by one stakeholder. The most severe consequences of payment delays relate to growth and employment. Indeed, close to half (46%) of the companies say that faster payment would enable them to hire more employees, and more than a third (35%) of businesses in the sector report that late payment has medium to high consequences for the dismissal of employees.[468]

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[459] 60 over 241 IT/software/telecommunication respondents to the CATI survey.
[460] 70 over 241 IT/software/telecommunication respondents to the CATI survey.
[461] VVA estimate using Euler Hermes data. Source: Euler Hermes. ICT/software/telecommunications figure are obtained taking the average of ICT and telecom sector figures. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0&slide=10004.
[462] Intrum, European Payment Industry White Paper 2017.
[463] Intrum, European Payment Industry White Paper 2017.
[464] 29 over 240 transport and utilities respondents to the CATI survey.
[465] VVA estimate using Euler Hermes data. Source: Euler Hermes. Utilities and transport figures are obtained taking the average of utilities and transportation figures. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0&slide=10004.
[466] Intrum, European Payment Industry White Papers 2015 and 2017.
[467] Red Pepper, 2007, Privatisation in Europe. Available at: http://www.redpepper.org.uk/Privatisation-in-Europe/.
[468] Intrum, European Payment Industry White Paper 2016.

5.6.2 Analysis of key measures for addressing the problem

Measures specific in the utilities and transport sector include stricter payment terms and an initiative to increase transparency of payment practices.

Two Member States (France[469] and Romania[470]) have adopted **maximum payment terms** shorter than 60 days. In France, a single piece of legislation lists the types of contract in the transport and logistics sector where agreed payment terms may under no circumstances exceed 30 days from the date of issuance of the invoice.[471] According to interviewees, the introduction of the 30-day maximum payment period led to an improvement of payment practices in the transport sector. The payment terms decreased in the sector (from 42.9 days in 2008 to 44.1 days in 2016 as debtor, and from 54.8 days in 2008 to 55.5 days in 2016 as creditor) and are shorter compared to other sectors.[472] However, despite this improvement the average payment terms remains above the 30 days established by the national legislation, and 36% of companies in the sector have experienced late payment from their clients in 2016.[473] The reasons are attributed to several factors, including the possible complexity of contracts and the invoicing process (leading to misunderstandings and delays). These considerations are supported by the results of the CATI survey which show that more than half of the responding businesses operating in the French utilities and transport sector (6 out of 10) accept longer payment terms, either because it is accepted as common practice in the sector (4 out of 10) or from fear of damaging business relations (4 out of 10).[474]

In Romania, several orders and decisions in the utilities service sector set out maximum payment terms of 10 or 15 days depending on the nature of the contract, and monetary sanctions in cases of late payment.[475] These stricter payment terms are coupled with sanctions in cases of late payment. According to the CATI survey, most of the businesses in the utilities and transport sector (6 out of 10) apply payment terms shorter than 30 days or payment in advance with their creditors,[476] while late payment does not appear as a major issue: in only two businesses out of 10 does late payment affect 25-50% of the total invoices.[477] On the other hand, this data matches the national average (i.e. the data across all sectors) and thus does not indicate positive trends specific to the utilities and transport sector. Despite the introduction of strict legislation, Romania remains one

[469] Article L 441-6, I, Section 11, Commercial Code of 18 September 2000.
[470] Order no 483/2008 of National Authority for Regulation of Public Community Utility Services, concerning the approval of the Framework agreement for supply of heating, published in the Official Gazette of Romania, no 735/30.10.2008; Order no 112/2007 of National Authority for Regulation of Public Community Utility Services, concerning the approval of the Framework agreement for performance of sanitation of localities, published in the Official Gazette of Romania no 529/06.08.2007; Order 90/2015 of Romanian Energy Regulatory Authority, concerning the approval of the Framework agreement concerning distribution of electricity, published in the Official Gazette of Romania no 462/26.06.2015; Decision no 480/2004 concerning the approval of the Framework agreement for underground gas storage, published in the Official Gazette of Romania no 327/15.04.2004; Decision no 183/2005 of the President of the Romanian Natural Gas Regulatory Authority, concerning the approval of the Framework agreement for distribution of natural gas, published in the Official Gazette of Romania no 600/12.08.2008.
[471] Transport of goods by road, rental of vehicles with or without a driver, freight forwarding and activities of forwarding agent, shipping agent and cargo agent, freight broker and customs clearing agent.
[472] Observatory of Late Payment, 2017, Annual Report. Available at: https://publications.banque-france.fr/sites/default/files/medias/documents/odp2018_book_web2603.pdf
[473] Observatory of Late Payment, 2017, Annual Report. Available at: https://publications.banque-france.fr/sites/default/files/medias/documents/odp2018_book_web2603.pdf
[474] Question 5, CATI survey.
[475] For example, while Order 90/2015 concerning the approval of the Framework agreement concerning distribution of electricity provides that invoices must be paid within 10 working days from the issuance date or from the receipt of the invoice, Order 483/2008 concerning the approval of the Framework agreement for supply of heating sets out a maximum payment term of 15 days from the issuance of the invoice.
[476] Question 2, CATI survey.
[477] Question 6, CATI survey.

of the countries most affected by late payment and issues related to cash flow, insolvencies and paying behaviour in general.[478]

In Latvia, the Freight Forwarders Compulsory Register,[479] which includes information on the commercial and financial reliability of companies, constitutes a **measure that aims to improve the transparency of payment practices**. It was launched in spring 2017 and, as of June 2017, had registered a total of 10 companies.[480] Although the impact of the register could not yet be measured, the use of credit checks has overall been positive, particularly in Latvia. However, as noted by one interviewee, participation in the register is not compulsory for Latvian companies and having only a limited number of companies registered can thus limit the usefulness and impact of the initiative.

Finally, **good practice charters in the utilities and transport sector** have been identified in Estonia and the UK. In Estonia, the good practice of logistics services aims to improve the transparency and performance of the services provided in the sector of logistics and freight forwarding overall, and includes provisions related to payment issues.[481] In the UK, the Network Rail's Fair Payment Charter[482] is dedicated to payment issues and contains the commitment for network rail contractors to pay their suppliers within 28 days. As discussed earlier in this report, **the good practice charters help to create a responsible payment culture by promoting specific payment terms.** Data from the UK[483] indicate that 90% of contractors knew about the Network Rail's Fair Payment Charter. In addition, 75% of contractors surveyed were aware that the length of payment had been reduced and 58% replied that they had changed their terms and conditions to base their subcontracts on the charter.[484]

5.7 Business and professional services

5.7.1 Causes and issues of late payment in the sector

Debtor companies in business and professional services mostly (85.54% of CATI respondents) use payment terms of fewer than 60 days.[485] Euler Hermes shows a decrease in payment duration of 0.9 days between 2012 and 2016, thus reaching 64.4 days.[486] Nearly a third (31.41%) of creditor companies[487] mention that the average delay experienced exceeds 30 days. **These proportions are higher than the average of the other six sectors covered.**

The business and professional services sector covers many various sub-sectors ranging from technical services, such as engineering and architecture, to other professional services such as legal services, employment services and facility management.[488] Often business and professional suppliers provide a **personalised service where client perception matters** the most. It is therefore likely that when late payment occurs,

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[478] In 2015, Romanian companies that paid their suppliers on time ("By due date" class) represented only 25.5% out of the total, 12% below the European average. Source: Payment Study 2016 by Dun & Bradstreet. Available at: http://www.dnb.com/content/dam/english/economic-and-industry-insight/payment-study-2016-international.pdf.

[479] Latvian National Association of Freight Forwarders and Logistic, June 2017, Freight Forwarders Register. Available at: http://www.laff.lv/en/laff-register/.

[480] Latvian National Association of Freight Forwarders and Logistic, June 2017, Regulations on the Expeditors Register. Available at: http://www.laff.lv/sertifikacija/.

[481] Estonian Logistics and Freight Forwarding Association, 2017.

[482] Network Rail's Fair Payment Charter. Available at: http://cdn.prgloo.com/media/download/3d84d90f0a894eb99d518870df7c117e.

[483] Rail Technology Magazine, 16 January 2016, Approaching the tipping point on fair payment. Available at: http://www.railtechnologymagazine.com/Interviews/approaching-the-tipping-point-on-fair-payment.

[484] Rail Technology Magazine, 16 January 2016, Approaching the tipping point on fair payment. Available at: http://www.railtechnologymagazine.com/Interviews/approaching-the-tipping-point-on-fair-payment.

[485] 207 over 242 business and professional services respondents to the CATI survey.

[486] VVA estimate using Euler Hermes data. Source: Euler Hermes. ICT/software/telecommunications figure are obtained taking the average of ICT and telecom sector figures. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0&slide=10004.

[487] 76 over 242 business and professional services respondents to the CATI survey.

[488] European Commission, Services Directive in practice. Available at: https://ec.europa.eu/growth/single-market/services/services-directive/in-practice_en.

fear of damaging business relations prevents creditors from taking any action. In fact, 59% of sector companies have been asked to accept longer payment terms than they are comfortable with.[489] Late payment has consequences on growth and employment in the sector. Around a third (35%) of companies could have probably or would have certainly hired more employees if debtors had paid them faster.[490]

5.7.2 Analysis of key measures for addressing the problem

In the business and professional services sector, only one **initiative aiming to increase transparency** of payment information was identified in Slovenia. The webpage neplačniki.info[491] lists companies with overdue liabilities for more than 60 days to agencies providing temporary workers. The information can be posted by registered and licenced agencies and the list is updated daily. The website provides information on more than 300 companies. Posting and accessing information is free of charge, and the webpage benefits those looking for more information regarding their business partners. Its narrow scope could suggest only limited relevance to improving payment behaviour among Slovenian companies, but no data was found to support this view.

[489] Intrum, European Payment Industry White Paper 2017.
[490] Intrum, European Payment Industry White Paper 2015.
[491] Neplačniki.info webpage. K8 d.o.o. company. Available at: http://www.neplacniki.info/clanki-o-neplacevanju.

6 Conclusions and recommendations

The study has identified several types of measures set up to prevent or counteract unfair payment practices in B2B transactions. While some measures have been initiated to go beyond the requirements of the LPD as per Article 12(3), other measures complement the LPD as per Article 8 by tackling the issues of late payment and contributing to developing a culture of prompt payment.

Overall, due to the various factors leading to late payment (i.e. cash-flow issues, imbalances of power, supply chain structure) and the influence of external factors (i.e. economic situation, national business culture), it is not possible to distinguish one solution that would solve all issues. Therefore, a combined use of legal and voluntary measures is needed to address problems leading to late payment. Targeted interventions will involve the European Commission, Member States and business associations. Such a combination would include preventive measures targeting issues arising before the transaction takes place with remedial solutions addressing issues after transaction is completed.

In sectors most affected by unfair payment practices, sectorial interventions could take into account the specificities of different sectors.

The set of recommendations is based on the results of the study, but the details should be further discussed among the Commission, Member States and business associations.

6.1 A need for better enforcement of the LPD and rules on payment terms

The LPD is still fit for purpose but needs to be better enforced. The LPD does not set maximum payment terms (derogations to agree on payment terms beyond 60 days remain possible), so companies can continue to use long payment terms, unless 'grossly unfair'. Also, in the few Member States where maximum payment terms that cannot be derogated have been established (e.g. Croatia, France, the Netherlands and Spain – see Section 6.2.1), the results in terms of improved payment practices largely depend on the effective enforcement of the legislation.

Businesses, especially SMEs, are afraid of challenging contracts in court or, once late payment has occurred, using the legal remedies provided by the LPD (e.g. interest rate and compensation) or initiating court proceedings. Reasons preventing follow-up action include the fear of damaging business relations, losing future contracts, and for small companies, also the lack of legal knowledge. At the same time, companies imposing unfair payment practices, in particular large companies, might not feel threatened as the enforcement mechanism in place is too weak. Member States should ensure that the LPD and rules on late payment are better enforced by, for example, establishing a monitoring system and sanctions in case of non-compliance with the relevant regulations (see remedial measures in Section 6.3).

According to Article 7(5) of the LPD, business organisations 'may take action before the courts or before competent administrative bodies on the grounds that contractual terms or practices are grossly unfair'. While they can thus support companies in challenging unfair contractual terms and overcome the 'fear factor', there is little evidence that this provision is applied in practice.

More repeated and widespread communication is also needed at national and local level about the remedies offered by the LPD and complementary measures that companies can use to prevent or counteract late payment.

Box 27 Relevant findings

- Imbalance of power affects negotiations between the parties and can result in unfair practices such as long payment terms. In addition, small businesses are reluctant to initiate legal action to mitigate or invalidate a contractual term considered unfair, or to challenge payment terms non-compliant with the national legislation.
- Once late payment has occurred, only a limited share of companies uses the legal remedies offered by the LPD (claiming interest for late payment and claiming flat rate compensation for recovery costs). The fixed-sum compensation is often considered too low for companies compared to the effort in recovering late payment; however, there is no evidence that a proportionate compensation in Ireland and the UK prompts more creditors to claim compensation for late payment.
- Business organisations rarely use the provisions of Article 7(5) of the LPD, mainly due to the lack of resources or barriers related to their statute or conflict of interest.

Recommendation area 1

- To improve the enforcement of the LPD and national legislation on late payment, Member States are encouraged to designate a body in charge of monitoring enforcement of legislation on payment practices and imposing financial penalties in case of a violation. This body could also act upon the reporting of violations by businesses, provided that anonymity is ensured.
- Business organisations are best placed to provide guidance, information and training on rights and obligations of businesses including payment terms and how to tackle unfair contractual practices and offer legal support in case late payment issues arise.

6.2 Preventive measures

The study has identified several preventive measures to deter or avoid long payment terms and late payment.

6.2.1 Stricter payment terms

Some Member States have limited the standard payment term to 30 days (instead of 60 days set out in the LPD),[492] while only few Member States have introduced maximum payment terms (that the parties cannot derogate from).[493] At sector level, the introduction of maximum payment terms is more common.[494]

Legislation setting out stricter payment terms is effective in reducing payment terms to some extent. Provided that legislation is enforced, it creates a level-playing field between large and small companies. Legislations defining payment terms differentiated by category of products (e.g. perishable food, seasonal products) are relevant for enhancing fair practices and addressing the specificities of the sector.

Legislative action could include adapting payment terms to the needs of specific sectors, by focusing on sectors where long payment terms might have a particularly strong and negative impact on businesses (e.g. in the case of perishable goods). The Member

[492] At horizontal level, in Denmark, Finland and Sweden, the maximum payment term is 30 days (instead of 60). The parties can agree upon a longer payment term at the condition that, *inter alia*, both the parties expressly gave their consent. Other Member States where stricter payment terms have been applied as horizontal measures are the following: Austria, Bulgaria and Germany, where the legislation establishes maximum payment terms shorter than 30 days in cases where no payment term has been agreed between the parties.

[493] At horizontal level: France, where a payment term can be up to 75 days, with no possibility for derogation; Spain, where the payment periods is limited to 60 days, with the possibility to extend payment terms in specific sectors; Croatia, where a payment term longer than 360 days would be null ex-lege; the Netherlands where payment terms cannot exceed 60 days in contracts between a large company and an SME.

[494] At sector level, stricter payment terms are especially common in the food sector and results vary. For example, stakeholders in the food sector across several Member States (such as Italy, Portugal, Slovakia and Slovenia) highlight a lack of enforcement of the legislation, resulting in the continued practice of agreeing upon periods of payment longer than those allowed. In the transport sector in France, data shows that the average payment terms exceed the limit set by law.

States introducing stricter payment terms should also ensure appropriate enforcement through monitoring and sanction mechanisms.

Recommendation area 2

In sectors particularly vulnerable to long payment terms, Member States could consider establishing stricter payment terms:

- Taking into account the specificities of the sector and the good traded; and
- Provide an appropriate monitoring and enforcement system.

6.2.2 Transparency of payment practices

Transparency of payment practices, whether imposed by law or accessible via databases, can prevent late payment from happening as companies can improve their decision-making by accessing businesses' financial information and choose reliable business partners.

The 'name and shame' factor and public access to information can be an incentive for companies to improve their payment practices. Large companies are particularly sensitive to the public access to information as it can affect their reputation.

Box 28 Findings from the case study National Debt Register (KRD) in Poland – payment database

- In Poland, since its establishment, the KRD estimated that EUR 39.12 million[495] have been paid back. KRD estimates that 68% of debts could be avoided if the companies checked their future business partners.[496]
- Although there are clear benefits of knowing payment practices of future business partners, SMEs are rather reluctant to use the payment databases. A limited paid access combined with fragmented coverage of the databases can prevent SMEs from systematic use of creditworthiness data. Furthermore, 33% of SMEs tend to verify the reliability of new clients, but not existing ones.[497]
- In 2017, on average one euro was paid back for every EUR 1,500 of debt listed on KRD suggesting a limited influence on payment practices.

Many initiatives are private in nature, with restricted publicity, limited access (members only) and impose costs for accessing the information. A limited paid access combined with fragmented coverage and awareness can prevent SMEs from systematic use of creditworthiness data, disincentivising debtors to pay promptly the debt back even if recorded in the database. To this end, a duty for companies to report their payment practices responds to the shortcomings of existing databases. While this ensures transparency across both good and bad payers, the downside of this mandatory reporting is the burden placed on companies. Considering potential benefits but not yet widespread availability, national authorities should facilitate the establishment of such databases of payment practices and business associations should engage in awareness raising. Companies should be encouraged to check the payment practices of their future business partners. Moreover, the European Commission can advise that Member States should establish duty-to-report payment practices for large companies, but further research is needed regarding the information obligation placed on companies.

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[495] 163,000,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.

[496] KRD, Benefits for business clients. Available at: http://en.krd.pl/Adding-debtor/For-business-clients/Benefits

[497] KRD, *Nie chca sprzedawac dluznikom ale…sprzedaja,* 9 January 2018, available at:http://krd.pl/Centrum-prasowe/Informacje-prasowe/2018/Nie-chca-sprzedawac-dluznikom--ale%E2%80%A6-sprzedaja

Box 29 Findings from the case study Regulations 2017 No. 395 in the United Kingdom – transparency measure imposed by law

- In the UK, the Reporting on Payment Practices and Performance Regulations were adopted in 2017 and apply to large businesses that reach at least two of the three following thresholds: GBP 36 million (EUR 41 million) annual turnover, GBP 18 million (EUR 20.5 million) balance sheet total, or 250 employees.
- All companies under the scope report on a half-yearly basis, and the reports are openly available on the government website. The reports must include, among other information, the average time taken to pay invoices and the percentage of payments made within 30 days, between 31 to 60 days, and over 60 days.
- Awareness of the duty to report increases rapidly, and the benefits linked with the reduction of late payment are predicted to outweigh the costs of reporting for large companies.

Recommendation area 3

- Member States could establish the organisation and rules governing databases on payment practices.
- Member States and business associations could raise awareness about the existence and benefits of databases.
- Member States could establish the mandatory reporting of payment practices. This legislative action could target only large companies, but further research is needed to establish the costs of information obligation placed on companies.

6.2.3 Invoice management measures

One of the main causes but also consequences of late payment is the insufficient cash flow resulting from outstanding invoices or administrative inefficiency.

In this context**,** invoice management initiatives have an immediate effect on the reduction of payment delays and cash-flow issues as they accelerate payment settlement.

In addition to faster payment and a reduction of human error and fraud, electronic invoices also save costs of printing and mailing, space for storage, and improve financial management. Some challenges remain for the expansion of e-invoicing, such as the adoption by SMEs with fewer resources or little digital knowledge, and the interoperability of e-invoicing systems within and across borders.

Box 30 Relevant findings

- A Commission expert group on e-invoicing estimates that the implementation of e-invoicing can save EUR 5-15 per invoice for the national economy.[498]
- The Multisectorial Platform against Late Payment, a federation of business associations in Spain, is promoting the creation of technological platform offering invoicing systems, including in PDF format. For example, its member PIMEC offers an e-invoicing service and software called *Pimefactura*[499], responsible for sending the invoices to the clients and recording evidence that the invoices have been correctly delivered to the recipient.

Better invoice and credit management lead to a healthier cashflow, providing a greater level of stability to the businesses. Companies across all Member States should be made aware of practical steps in invoice management allowing late payment to be avoided. To date awareness and the use of invoice management initiatives remains low, possibly due to their private nature or lack of publicity. In some Member States, promotional

[498] European Commission, 2009, Final report of the expert group on e-invoicing. Available at: http://ec.europa.eu/internal_market/consultations/docs/2009/e-invoicing/report_en.pdf

[499] PIMEC, Factura electronica. Available at: https://www.pimec.org/es/pymes-autonomos/servicios/tecnologia-e-innovacion/factura-electronica

activities have been launched to increase awareness of the benefits of invoice management that might encourage greater uptake in the future. Business associations could engage in promotion of the use of e-invoicing in B2B transactions or other options outsourcing invoice management.

Recommendation area 4

- Member States and business associations could raise awareness about the benefits of invoice management measures.

6.3 Remedial measures

The study has identified several remedial measures to follow up on late payment.

6.3.1 Alternative dispute resolution

Alternative Dispute Resolution includes mediation, conciliation, arbitration and adjudication. ADRs can be set up by the national authorities or by bodies such as business associations or chambers of commerce.

ADR systems are more effective than going to court as disputes are solved faster, more cheaply and with less harm to business relations. Although mediation services may involve costs for companies, these are proportional to the sum at stake and bring greater benefits (i.e. settling the disputes and getting paid).

Despite the growing number of mediation cases and their positive outcomes, evidence across Member States suggests that ADR instruments are not yet commonly used by companies and SMEs. Suppliers fear that bringing the case to the mediation services will upset their client and make them lose future contracts. To overcome the fear factor preventing companies to resort to mediation, confidential mediation procedures could be used, so that the names of the companies are not exposed. Institutions of Ombudsman or similar, where disputes are resolved, could be entrusted with pursuing collective cases targeting late payers.

Box 31: Findings from the case study Ombudsman for Undertakings in France

- In France, the Ombudsman for Undertakings provides free and confidential mediation services to companies.
- SMEs represent 93% of mediation users and late payment issues account for a quarter of cases. The number of mediation cases has considerably increased, from 100 cases per year in 2010 to 100 cases per month in 2016. 8% of French companies declare having used mediation, (6% often, 2% sometimes).[500] Three quarters of cases lead to an agreement between the parties.
- The Ombudsman ensures a balanced negotiation between the parties and educates companies about their rights and remedies against late payment.
- Mediation is free of charge and can lead to faster solutions, allowing companies to maintain dialogue and to continue business relations. SMEs benefit particularly from the Ombudsman services; however, a lack of awareness and a persistent fear of damaging business relations still prevent wider use.

Recommendation area 5

- Member States or business associations could set up national and regional mediation services, accessible to all companies;
- The fees for mediation for SMEs could be minimised (make the service free of charge or cheaper for SMEs);
- A confidential mediation process could be allowed to mitigate the fear factor.

[500] CODINF Letter, April 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Avril%202018.pdf

6.3.2 Administrative sanctions

Administrative sanctions (cross sector or in a specific sector) can prove effective in deterring late payment. Given that administrative sanctions are enforced by public authorities, they overcome imbalances of power and avoid the need for businesses to take action against their client. The compliance costs for administration can be significant but administrative sanctions contribute to improvements in payment behaviour, especially when reinforced with a 'name and shame' measure that creates peer-pressure. However, without enforcement of the legislation, sanctions alone will have a small impact on payment culture.

Box 32: Findings from the case study Hamon Law and Sapin II Law in France

- In 2014, the Hamon Law[501] introduced administrative sanctions, which replaced the regime of civil and criminal sanctions, and are directly imposed by the public administration in case of the breach of law. The Sapin II Law[502] considerably increased the value of the applicable penalties and removed the cap on the non-cumulation of sanctions. All decisions regarding sanctions are published on the government website.[503]
- As of 2014, around 2,500 companies have been controlled by the administration every year, especially large companies and in sectors most impacted by late payment. A total of 274 sanctions were pronounced in 2016 and 230 in 2017, for a total amount of EUR 10.9 million in 2016 and EUR 15 million in 2017.[504] SMEs that are not engaged in a serious misconduct may in the first place receive a warning or an injunction instead of a sanction.
- The publication of administrative sanctions can deter companies from non-compliance with terms and encourage companies to pay on time. According to a survey, 25% of companies consulted in their role as clients indicated that the stricter controls had an effect on their payment behaviour, with a higher proportion among large companies (49%).[505]

Recommendation area 6

Better and more effective enforcement of rules against late payment. Member States are encouraged to consider:

- National plans for monitoring and controls (e.g. based on level of risks encountered in the different sectors/across different sizes of companies);
- Administrative sanctions (i.e. financial penalties) in case of non-compliance with the rules; and
- Publication of the decisions regarding sanctions to increase the deterrent effect and transparency.

6.4 Initiatives contributing to changing business culture

6.4.1 Prompt payment codes and CSR

Prompt payment codes promote fair relationship with suppliers and are an important element in changing payment culture. The effectiveness of the codes, whether across sectors or designed for a specific industry, increases with the number of signatories, especially large companies. Sectorial codes target the respective sectorial issues to a greater extent and promote good practices explicit to the sector. While awareness and participation in these codes is growing and some improvements in payment behaviour

[501] Law n° 2014-344 of 17 March 2014 on consumer affairs (*loi n° 2014-344 du 17 mars 2014 relative à la consummation*), Official Journal of the French Republic of 18 March 2014 (*Hamon Law*).
[502] Law n° 2016-1691 of 9 December 2016 regarding the transparency, the fight against corruption and the modernisation of the economic life (*law 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*), Official Journal of the French Republic of 10 December 2017 (*Law Sapin II*).
[503] https://www.economie.gouv.fr/dgccrf/sanctions-delais-paiement.
[504] Observatory of Late Payment, 2016 and 2017 Annual reports.
[505] 68% of companies surveyed said that the stricter controls introduced did not have an impact on their payment behaviour. Teresa Monroe, Enquête sur les délais de paiement «l'affaire de tous», July 2017 (available at: http://www.finyear.com/attachment/876498/).

can be observed, these initiatives can be hampered by a lack of enforcement. The enforcement could be strengthened by additional means such as disclosure of payment practices, a confidential 'whistle-blowing' process in cases of non-compliance with the code and a register of payments complaints.

Box 33: Findings from the Prompt Payment Code in the UK

- In the UK, the Prompt Payment Code has reached 2,053 signatories over nearly a decade. In 2015 the Code was strengthened by introducing a 60-day maximum payment term, creating a Code Compliance board to enforce the Code, and requiring SME signatories to report annually on their payment performance.
- The Compliance Board can conduct its own investigations, which has already led to some results. For example, in 2015, Diageo reconsidered its plan to extend payment deadlines after an intervention of the Compliance Board.[506]

CSR measures are similar in nature to prompt payment codes as they encourage companies to take responsibility for the improvement of their business behaviour, including payment practices. Although companies have placed more attention on ethics and corporate social responsibility over the last decade as a result of pressure from investors and stakeholders, CSR measures often only target payment issues indirectly.

Measures promoting exemplary payment behaviour such as prompt payment codes, CSR measures and labels tend to have a larger impact on the overall business culture where late payment is no longer accepted. Prompt payment codes and similar initiatives complement the legislative intervention, especially when large companies are involved and lead by example. However, codes, similar to stricter national legislation, are likely to benefit creditors more, with complementary enforcement approaches.

Box 34: Findings from the case study Betaalme.nu in the Netherlands

- In the Netherlands, 50 large companies have joined the Betaalme.nu initiative and are committed to paying small suppliers within 30 days.
- With only 50 large signatories, under the initiative 200,000 SMEs were paid quicker, which represents about 19% of all Dutch SMEs. If all Dutch SMEs benefited from the initiative, it would free up EUR 10.42 billion for SMEs.
- Betaalme.nu benefits from a good media coverage and conducts awareness-raising activities to encourage SMEs to use e-invoicing.

Recommendation area 7

- Member States/business associations could foster prompt payment codes, ensure appropriate enforcement (e.g. with compliance boards) and encourage large companies to enrol.
- Business associations could foster CSR measures against late payment to promote good payment behaviour.

6.4.2 Education

One of the issues reinforcing late payment and its impact on cash flow is the lack of knowledge and education of business owners in relation to effective measures on how to get paid on time. Effective credit management reduces the risk of default, shortens the average collection period and maintains an optimal cash flow, thus reducing the risk of default and increasing the potential for growth. While large companies may have an internal credit department, knowledge on effective credit control techniques is extremely limited across SMEs. The availability of education and training in credit management is not widespread, and the participation of SMEs is limited by their restricted resources and time. Knowledge of invoice management and credit management options should be improved among companies in all Member States. While

[506] The Telegraph, 13/03/2015, Diageo U-turn on threat to extend supplier payment times. Available at: https://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/11471490/Diageo-U-turn-on-threat-to-extend-supplier-payment-times.html

credit management education may only be part of the wider issue of financial literacy, developing handbooks and training is a step in the right direction to foster long-term improvement.

Box 35: Relevant findings

- Credit management education is mostly provided by credit management associations and private management or financial training institutions for a fee. It is also taught at university in specific credit management curricula.
- A review of credit management courses and certifications in Ireland, provided by training institutes showed that the prices range from EUR 300 to 500. The costs of trainings provided by credit management associations range from EUR 2,000 to EUR 9,000 per individual (depending on the country and education level).
- The UK government provides funding for apprenticeships and adult education/qualification, which can be used for credit/invoice management trainings.[507]

Recommendation area 8

- Member States are encouraged to consider targeted credit management education and training and provide financial support to companies wishing to participate in them.
- Business associations could develop and promote handbooks and business guides on credit management.

6.5 Sectorial interventions

6.5.1 Construction

The main causes for the persistence of B2B late payment in the construction sector are the imbalance of power between businesses leading to the use of outstanding invoices as a form of financing, the frequency of unsubstantiated disputes over the quality of goods and services provided, and cash-flow issues emerging from the interconnection of payments in the supply chain. UK national legislation addressing late payment in the construction sector only exclusively applies as default where the parties to the B2B construction contract have not fixed any payment terms. Therefore, the issues concerning the contract negotiation phase, when power imbalances along the supply chain are imposed on a weaker party, are not addressed. In this context the Irish legislation goes beyond by fixing a payment schedule to subcontractors every 30 days after the relevant payment claim date (unless more favourable terms are agreed on). In this context, it is worth noting Project Bank Accounts. Although only available in transactions between public authorities and businesses and therefore not directly under the scope of this study, PBAs facilitate payment to the contractor and its first-tier subcontractors. However, PBAs are only available on large contracts and only provide protection to larger first-tier subcontractors, which may leave smaller subcontractors without protection.

While the fixing payment schedule between main contractor and main subcontractors and PBAs (although only used in PA2B) are steps in the right direction in removing imbalances of power, similar steps are needed down the supply chain.

Cash-flow issues for the construction companies, the main cause and result of late payment in the sector are exacerbated by the long supply chain and the interdependency of payments between contractors and subcontractors. Stricter legislation setting up the payment terms along the supply chain and its enforcement should address the core problem. Considering the complexity of construction projects, a possibility to dispute the quality of goods or services should be allowed. However,

[507] CICM Apprenticeships. Available at: https://www.cicm.com/cicm-apprenticeships/

adjudication systems should be developed to overcome intentional disputes over the quality of work.

Box 36: Findings from the case study Construction Contract Act in Ireland

- In Ireland, the Construction Contracts Act 2013 establishes that the payment by instalments between the main contractor and subcontractors or between subcontractors must be performed every 30 days after the relevant payment claim date.
- Evidence suggests that significant numbers of Tier 1 contractors and Tier 2 subcontractors have adopted the legislation and have adjusted their payment application structure to suit.
- Awareness and implementation down the supply chain is still low.[508]

Box 37 Findings the Construction Adjudication in the UK

- In the UK, the Construction Adjudicators register more than 1,000 referrals every year since their establishment in 1999, and even beyond 1,800 cases per year in the period 2000-2004 shortly after their creation.
- Most disputes decided by the UK adjudicators concern payments (29.3% of the total cases in 2015). Although there is a downward trend, most of the disputes are still closed in favour of the claimant.

Recommendation area 9

- Member States could consider imposing strict payment terms between contractors and all subcontractors, with appropriate enforcement. Business associations, where relevant, could foster prompt payment codes setting the business standards in the sector.
- The Commission could encourage Member States and business associations to set up construction adjudication or mediation measures and disseminate good practices in this regard.
- The Commission could encourage Member States to allow project bank accounts between businesses and disseminate good practices in this regard. However, further research is needed to the implications of PBAs in large complex construction projects involving several layers of suppliers.

6.5.2 Food and drink

The interdependency of payments within the supply chain can lead to an accumulation of payment delays between companies, affecting particularly SMEs at the end of the chain. While this also happens in other supply chains, small producers of perishable products or farmers are vulnerable to liquidity constraints and are likely to have limited bargaining options in case of disagreements, before or after the transaction takes place. Stricter legislation establishing payment terms differentiated by category of products (e.g. perishable foods) are relevant to address the specificities of the sector. An appropriate enforcement should accompany legislation setting up terms, such as administrative sanctions for infringement of the relevant provisions or empowering an adjudicator not only to solve disputes, but also to monitor the enforcement and to impose financial penalties in cases of breaches.

Recommendation area 10

- Member States could consider introducing stricter payment terms differentiated by category of products[509] with appropriate enforcement. Business associations, where relevant, could foster prompt payment codes setting the business standards in the sector.
- The Commission could encourage Member States to establish an independent body of adjudicator empowered with enforcement task, dispute resolution and sanctioning.
- The Commission could disseminate good practices in this regard.

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[508] CIF, 2017, Anniversary of the introduction of the Construction Contracts Act. Available at: https://cif.ie/2017/07/25/anniversary-introduction-construction-contracts-act/

[509] In line with the proposal on unfair trading practices in B2B relations in the food supply chain adopted by the European Commission on 12 April 2018, which prohibits payments later than 30 days for perishable products. See: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0173&from=EN.

6.5.3 Retail

The retail and wholesale sector is very diverse. High street retailers, e-commerce sites, supermarkets and department stores are all known for their long payment terms, sometimes as long as 120 days. Unfair contractual conditions can therefore be easily imposed on SMEs by large companies to increase their margins over the supply chain. This imbalance of power among large retailers and their smaller suppliers contributes to a payment culture where longer payment terms continue to be accepted. The differences in shelf life and stock rotation across products can lead to further payment delays. In the retail sector, similar to the food and drink sector, legislation could differentiate payment terms by category of products allowing derogations with longer payment terms in sub-sectors where the stock rotation is particularly slow.

A valid instrument to overcome the imbalance of power between large retailers and small suppliers is the adjudicator, as already proposed in the food and drink sector. A recent report of the Agricultural Markets Task Force supports the establishment of independent authorities (such as the GCA), which have the power to undertake their own initiative investigations that do not lead to the disclosure of the complainant's identity. Measures of this kind provide effective enforcement of rules on unfair trading practices by addressing the fear factor that prevents many companies from lodging complaints against business partners.

Recommendation area 11

- Member States could consider fair payment terms in the sector according to the type of products sold. Further research is needed to define what is 'fair' and what is the viability of terms beyond 60 days.
- Member States are encouraged to establish an independent body of adjudicator empowered with enforcement, dispute resolution and sanctioning. Member States could explore setting up a joint adjudicator for the food and drink sector and the retail sector.
- The Commission could disseminate good practices in this regard.

6.5.4 Manufacturing, IT/software/telecommunication, utilities and transport, and business and professional services sectors

In the manufacturing, IT[510], utilities and transport, and business/ professional services sectors, the imbalance of power in negotiations between companies is one of the main causes of unfair payment practices. The manufacturing, utilities/transport sectors are dominated by large companies imposing less favourable conditions on their smaller suppliers. In the IT/software/telecommunication and business and professional services sectors, the creative or personalised nature of the work gives clients the opportunity to challenge the quality of the work and consequently delay or refuse payment. In fact, the extent of late payment continues to be persistent and higher than in other sectors considered in the study. While more research is needed to explore the nature of the problem in these sectors, the short-term positive change could be induced by targeted soft interventions from Member States and business associations.

Recommendation area 12

- Member States/business associations, where relevant, could foster prompt payment codes setting the business standards in the respective sectors.
- The Commission could disseminate good practices in this regard.

[510] Including software and telecommunication

7 Annexes

7.1 Annex 1: Distribution of legal and voluntary measures

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
Legal	Stricter legislation	Compensation for recovery costs proportionate to the amount of the contractual debt	• Ireland (Regulation 9(1) of the European Communities);[511] • United Kingdom (Late Payment of Commercial Debts Interest Act).[512]							
		Shorter maximum payment terms	• Croatia (Act on Financial Operations and Pre-Bankruptcy Settlement);[513] • Denmark (Interest Act);[514] • Finland (Act on payment terms	Ireland (Construction Contracts Act 2013 of 29 July 2013)[519]	• Czech Republic (Act on Significant Market Power in Selling of Agricultural and Food		• Bulgaria (Foods Act);[524] • France (Commercial Code);[525] • Hungary (Act on the prohibition of		• France (Commercial Code);[532] • Romania (Order 483/2008;[533] Order	

[511] Regulation 9(1) of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 (S.I. No. 388 of 2002) which transposed Directive 2000/35/EC into Irish law.
[512] Section 5A of the Late Payment of Commercial Debts (Interest) Act 1998 of 11 June 1998, in force as of 1 November 2000, as last amended by the Contracts, England and Wales - Contracts, Northern Ireland - The Late Payment of Commercial Debts Regulations 2002 No. 1674 of 22 June 2002, Her Majesty's Stationery Office (HMSO) 22 June 2002, in force as of 7 August 2002; the Late Payment of Commercial Debts (Scotland) Regulations 2002 No. 335 of 2 July 2002, Her Majesty's Stationery Office (HMSO) 2 July 2002, in force as of 7 August 2002. The measure has been effective from 7 August 2002.
[513] Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.
[514] Law no. 459 (consolidated version) 'Interest Act' - IA (*Lovbekendtgørelse om renter og andre forhold ved forsinket betaling (renteloven)*), Official Law Gazette 13 May 2014.
[519] Construction Contracts Act 2013 No. 34 of 2013. Available at : http://www.irishstatutebook.ie/eli/2013/act/34/enacted/en/html
[524] 'Foods Act' (*Закона за храните*), promulgated in State Gazette issue no. 90 of 15 October 1999.
[525] 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.
[532] Commercial Code of 18 September 2000.
[533] Order no 483/2008 of National Authority for Regulation of Public Community Utility Services, concerning the approval of the Framework agreement for supply of heating, published in the Official Gazette of Romania, no 735/30.10.2008.

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			for commercial contracts);[515] • France (Commercial Code);[516] • Spain (Act on Late Payment in Commercial Transactions)[517] • Sweden (Interest Act).[518]		Products and its Abuse);[520] • France (Decree 2015/1484);[521] • Latvia (Unfair Retail Trade Practices Prohibition Law);[522] • Spain (Act on Regulatory Framework		unfair distributor conduct vis-à-vis suppliers regarding agricultural and food industry products);[526] • Italy (Law Decree 1/2012);[527] • Lithuania (Law on Settlement for		112/2007;[534] Order 90/2015;[535] Decision 480/2004;[536] Decision 183/2005).[537]	

[515] Act on payment terms for commercial contracts (as last amended in 2015 by Act 385/2015). See also Government Bill Proposal, RP 356/2014.
[516] 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.
[517] Act 15/2010 of 5 July on measures to combat late payments in commercial transactions. Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2010-10708
[518] 'Interest Act' (*Räntelag*), SFS 1975:635.
[520] Act no. 395/2009 Coll. on Significant Market Power in Selling of Agricultural and Food Products and its Abuse.
[521] Decree n° 2015-1484 of 15 November 2015 setting out the list of sectors mentioned by Article L. 441-6 of *Law Macron*, allowing derogations to to the Commercial Code's provisions regarding payment periods (*décret n° 2015-1484 du 16 novembre 2015 fixant la liste des secteurs mentionnés à l'article L. 441-6 du code de commerce*), Official Journal of the French Republic of 17 November 2015.
[522] Unfair Retail Trade Practices Prohibition Law (*Negodīgas mazumtirdzniecības prakses aizlieguma likums*), Latvian Herald issue n. 107 (5425).
[526] Act XCV of 2009 on the prohibition of unfair distributor conduct vis-à-vis suppliers regarding agricultural and food industry products, entered into force on 1 January 2010. The Act includes measures aimed to combat UTPs in the agriculture and food supply chain.
[527] Law Decree No. 1 of 24 January 2012 containing urgent provisions on competition, development and competitiveness, converted by Law No. 27 of 24 March 2012.
[534] Order no 112/2007 of National Authority for Regulation of Public Community Utility Services, concerning the approval of the Framework agreement for performance of sanitation of localities, published in the Official Gazette of Romania no 529/06.08.2007.
[535] Order 90/2015 of Romanian Energy Regulatory Authority, concerning the approval of the Framework agreement concerning distribution of electricity, published in the Official Gazette of Romania no 462/26.06.2015.
[536] Decision no 480/2004 concerning the approval of the Framework agreement for underground gas storage, published in the Official Gazette of Romania no 327/15.04.2004.
[537] Decision no 183/2005 of the President of the Romanian Natural Gas Regulatory Authority, concerning the approval of the Framework agreement for distribution of natural gas, published in the Official Gazette of Romania no 600/12.08.2008.

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
					for Retail Trade).[523]		Agricultural Products);[528] • Portugal (Law Decree 118/2010);[529] • Slovakia (Act 362/2012);[530] • Slovenia (Agriculture Act).[531]			
		Payment terms more favourable to the creditor	• Austria (General Civil Code);[538] • Bulgaria (Commerce Act);[539] • Germany (Civil Code).[540]	• United Kingdom (Housing Grants, Construction and Regeneration Act).[541]						

[523] 'Act 7/ 1996, of 15 of January, on Regulatory Framework for Retail Trade' (*Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista*), Official State Journal of 17 January 1996, available at: https://www.boe.es/buscar/act.php?id=BOE-A-1996-1072 - in Spanish).
[528] 'Law on Settlement for Agricultural Products' (*Atsiskaitymo už žemės ūkio produkciją įstatymas*), Official Gazette 1999, No. 102-2921, identification code 0991010ISTAIII-1422, as amended by Official Gazette 2013, No. 38-1837, identification code 1131010ISTA0XII-207.
[529] Decree-Law 118/2010, as amended by Decree-Law 2/2013, of January 9th (*Decreto-lei 118/2010, de 25 de Outubro, na redacção do Decreto-lei 2/2013, de 9 de Janeiro*), Official Gazette A – I Series, no. 207, of October 25th.
[530] Act No. 362/2012 Coll. on Undue Requirements in Business Relations regarding Foods (*Zákon o neprimeraných podmienkach v obchodných vzťahoch, ktorých predmetom sú potraviny*).
[531] Agriculture Act (*Zakon o kmetijstvu* - Uradni list RS, št. 45/08, 57/12, 90/12 – ZdZPVHVVR, 26/14 in 32/15).
[538] 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.*
[539] 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.
[540] Article 271 Paragraph 1 of the Civil Code, available at https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf.
[541] Housing Grants, Construction and Regeneration Act 1996 of 24 July 1996 (provisions on construction contracts are in force as of 11 September 1996 partially, the rest is as of 1 May 1998), with subsequent amendments.

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
		Rules on unfair contractual terms and practices (in the meaning of Article 7 LPD) more favourable to the creditor	• Croatia;[542] • Denmark (Contracts Act);[543] • Finland (Contracts Act);[544] • Lithuania (Law on the Prevention of Late Payment in Commercial Transactions);[545] • Poland;[546] • Sweden (Contracts Act).[547]							
	Administrative sanctions	Fines applied by law or contractual penalties established by the parties	• Croatia (Act on Financial Operations and Pre-Bankruptcy Settlements);[548] • Czech Republic (Civil Code Act);[549]		• Czech Republic (Significant Market Power Act);[552] • Latvia (Unfair Retail		• France (Commercial Code);[554] • Italy (Law Decree 1/2012);[555] • Lithuania (Law on		• Romania (Order 483/2008; Order 112/2007; Order 90/2015 Decision	

[542] Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.
[543] Section 36 of the Contracts Act, Law no. 193 (consolidated version) 'Contracts Act' (*Bekendtgørelse af lov om aftaler og andre retshandler på formuerettens område* (*Aftaleloven*)), Official Law Gazette 2 March 2016.
[544] Section 36 of the Contract Act, 'Contracts Act' (*Lag om rättshandlingar på förmögenhetsrättens område*), 228/1929.
[545] 'Law on the Prevention of Late Payment in Commercial Transactions' (*Mokėjimų, atliekamų pagal komercinius sandorius, vėlavimo prevencijos įstatymas*), Official Gazette 2012, No. 127-6389, identification code 1121010ISTA0XI-2287.
[546] Act of 8 March 2013 on the payment deadlines in commercial transactions, (*Ustawa z 8 marca 2013 o terminach zapłaty w transakcjach handlowych*), Official Journal of 2013 item 403.
[547] 'Contracts Act' (*lag om avtal och andra rättshandlingar på förmögenhetsrättens område*), SFS 1915:218.
[548] Act on Financial Operations and Pre-Bankruptcy Settlement, (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*) Official Gazzette no. 108/2012.
[549] Sections 2048-2052 of the new Civil Code Act (*Občanský zákoník*) of 3 February 2012, Collection of law (State Gazette) 89/2012.
[552] Act no. 395/2009 Coll. on Significant Market Power in Selling of Agricultural and Food Products and its Abuse.
[554] Set out by Article L. 443-1 of the Commercial Code of 18 September 2000.
[555] Law Decree No. 1 of 24 January 2012.

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			• France (Law Hamon,[550] Law Sapin II).[551]		Trade Practices Prohibition Law).[553]		Settlement for Agricultural Products);[556] • Portugal (Decree-Law 118/2010);[557] • Slovakia (Act on Undue Requirements in Business Relations regarding Foods);[558] • Spain (Additional Provision 1 to Act 3/2004).[559]		480/2004; Decision 183/2005).	
	Supporting measures	Special tax regimes	• Czech Republic (VAT law);[560] • Slovenia (Value Added Tax Act[561]							

[550] Law n° 2014-344 of 17 March 2014 regarding the consumer affairs (*loi n° 2014-344 du 17 mars 2014 relative à la consummation*), Official Journal of the French Republic of 18 March 2014 (*Law Hamon*).
[551] Law n° 2016-1691 of 9 December 2016 regarding the transparency, the fight against corruption and the modernization of the economic life (*law 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*), Official Journal of the French Republic of 10 December 2017 (*Law Sapin II*).
[553] Unfair Retail Trade Practices Prohibition Law.
[556] Article 15(1), 'Law on Settlement for Agricultural Products' No. 102-2921. See also Article 179 of the 'Code on Administrative Breaches of the Republic of Lithuania' (*Lietuvos Respublikos administracinių nusižengimų kodeksas*), TAR 2015-07-10, identification code 2015-11216.
[557] Decree-Law 118/2010, as amended by Decree-Law 2/2013, of January 9th (*Decreto-lei 118/2010, de 25 de Outubro, na redacção do Decreto-lei 2/2013, de 9 de Janeiro*), Official Gazette A – I Series, no. 207, of October 25th.
[558] Act No. 362/2012 Coll. on Undue Requirements in Business Relations regarding Foods.
[559] Set out by Additional Provision 1 to the 'Act 3/2004, of 29 December.
[560] Law no. 235/2004 on Value Added Tax.
[561] *Zakon o davku na dodano vrednost* – ZDDV-1 (Uradni list RS, št. 117/06 z dne 16. 11. 2006).

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			as last amended).[562]							
		Legal provisions on transparency of payment behaviour	• France (Decree 1553/2015);[563] • Slovenia (Law 57/2012 on prevention of late payment);[564] • Spain (Additional Provision 3 to the Act 15/2010);[565] • United Kingdom (Regulations 395/2017).[566]							
	Dispute resolution systems	Adjudication procedures /specialised mediation services	• France (Decree of 14 January 2016);[567] • United Kingdom (Enterprise Act).[568]	• Hungary (Performance Certificate Compliance Expert Body);[569] • Ireland (Constructio	• United Kingdom (Groceries (Supply Chain Practices) Market		• Bulgaria (Foods Act).[573]			

[562] *Zakon o dopolnitvah Zakona o davku na dodano vrednost* (Uradni list RS, št. 18/11). This Act embodies the following Acts: *Zakon o davku na dodano vrednost* – ZDDV-1 (Uradni list RS, št. 117/06 z dne 16. 11. 2006); *Zakon o spremembi Zakona o davku na dodano vrednost* – ZDDV-1A (Uradni list RS, št. 33/09 z dne 30. 4. 2009); *Zakon o spremembah in dopolnitvah Zakona o davku na dodano vrednost* – ZDDV-1B (Uradni list RS, št. 85/09 z dne 30. 10. 2009); *Zakon o davku na dodano vrednost – uradno prečiščeno besedilo* – ZDDV-1-UPB2 (Uradni list RS, št. 10/10 z dne 12. 2. 2010); *Zakon o spremembah in dopolnitvah Zakona o davku na dodano vrednost* – ZDDV-1C (Uradni list RS, št. 85/10 z dne 29. 10. 2010); *Zakon o davku na dodano vrednost – uradno prečiščeno besedilo* – ZDDV-1-UPB3 (Uradni list RS, št. 13/11 z dne 28. 2. 2011) and *Zakon o dopolnitvah Zakona o davku na dodano vrednost* – ZDDV-1D (Uradni list RS, št. 18/11 z dne 15. 3. 2011).

[563] Decree n° 2015-1553 of 27 November 2015.

[564] 'Law on prevention of late payment', *Zakon o preprečevanju zamud pri plačilih*, Uradni list RS, št. 57/12.

[565] Additional Provision 3 to the Act 15/2010 amending the Act 3/2004 establishing measures to combat late payment in commercial transactions.

[566] Reporting on Payment Practices and Performance Regulations 395/2017.

[567] Decree of 14 January 2016 appointing the ombudsman for undertakings (*décret du 14 janvier 2016 portant nomination du médiateur des entreprises),* Official Journal of the French Republic of 14 January 2016.

[568] Enterprise Act 2016 ch. 12 of 4 May 2016, part. 1.

[569] Act XXXIV of 2013.

[573] Foods Act.

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
				n Contract Act);[570] • United Kingdom (Construction Act).[571] •	Investigation Order).[572]					
	Other measures implementing the LPD	The 'retention of title'	• All Member States.							
		Role and powers of business organisations' representatives	• All Member States.							
Voluntary		Awareness raising activities	• Belgium, Czech Republic, Denmark, Finland, Hungary, Ireland, Lithuania, Luxembourg, Portugal, Slovakia, Sweden (EU Late Payment Information Campaign);[574] • Germany (Awareness	• United Kingdom (Construction Fair Payment Campaign) [584]			• Netherlands (Rural seminar of the Netherlands) [585]			

[570] Construction Contracts Act 2013 No. 34 of 2013.
[571] Section 108, Housing Grants, Construction and Regeneration Act 1996 of 24 July 1996.
[572] The Groceries (Supply Chain Practices) Market Investigation Order 2009 (Order).
[574] European Commission, Late Payment Information Campaign. Available at: http://ec.europa.eu/growth/smes/support/late-payment_en
[584] Construction Fair Payment Campaign. Available at: http://www.fairpaymentcampaign.co.uk/about.asp
[585] VNO-NCW, 26 October 2012, "Landelijk Seminar in Nederland in het kader van de informatiecampagne late betalingen". Available at: https://www.vno-ncw.nl/meer-informatie/landelijk-seminar-nederland-het-kader-van-de-informatiecampagne-late-betalingen

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			raising events by BVMW);[575] • Luxembourg (Greater Region Business days);[576] • Malta (Ministry of Finance FAQ on LPD[577]; MACM information seminars[578]); • Poland ("I choose e-invoicing" coalition and website);[579] • Portugal (Exporter's guide);[580] • Romania (online awareness activities from business associations on LPD);[581] • Spain (Communication campaign							

[575] Der Bundesverband mittelständische Wirtschaft (BVMW). Available at: https://www.bvmw.de/
[576] Chamber of Commerce of Luxembourg, Greater Region Business Day 2014 brochure. Available at: http://www.cc.lu/uploads/tx_userccpublications/Brochure-UK-GRBD-BAT.pdf
[577] Malta Ministry of Finance – FAQs on the Late Payment Directive. Available at: Available at: http://mfin.gov.mt/en/The-Ministry/Departments-Directorates-Units/fpmd/Pages/Late-Payments.aspx
[578] Information seminars on debt recovery, and credit and business law, organised on 29/10/2012, 29/10/2013 and 10/05/2017. MACM annual conferences on managing credit, organised on 12/05/2011 and 19/05/2016 for MACM 10- and 15 years anniversary. MACM and Malta Institute of Accountants joint conference on cash flow, organised on 17/05/2012. Source: Interview with Malta Association of Credit Management (MACM). Available at: http://www.macm.org.mt/home
[579] Wybieram e-faktury. Available at: http://konfederacjalewiatan.pl/uslugi/projekty-kampanie-patronaty/wybieram-e-faktury#
[580] AICEP Portugal Global (Portuguese Agency for Investment and Foreign Trade), Exporter's Guide. Available at: http://www.portugalglobal.pt/PT/Internacionalizar/GuiadoExportador/GestaoCreditosCobrancas/Paginas/GestaodeCreditoseCobrancas.aspx
[581] Chamber of Commerce of Romania, 2014. Available at: http://ccir.ro/2014/05/12/late-payment-directive-public-payments-still-worryingly-slow/, and offline sources.

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			"mentalizing" the companies on the need to comply with good business practices;[582] Practical tips to avoid late payments[583]).							
		Measures of transparency of payment practices	• Austria (Austrian Credit Protection Association KSV1870);[586] • Bulgaria (Central Registry of Debtors[587]; Trade exchange programme[588]); • Finland (Credit Information Register);[589] • France (Observatory for Late Payment);[590]						• Latvia (Freight Forwarders Compulsory Register).[597]	• Slovenia ("Neplačniki. info" webpage).[598]

[582] Cepyme, 2016, Propuestas empresariales para combater la morosidad. Available at: http://www.cepyme.es/wp-content/uploads/2016/01/Propuestas-empresariales-para-combatir-la-morosidad.pdf

[583] PCMC, 2013, Consejos prácticos para prevenir impagos empresariales. Available at: http://www.pmcm.es/documentacion/postcategoria/consejos-practicos/5

[586] Kreditschutzverband. Available at: https://www.ksv.at/

[587] The Central Registry of Debtors (CSD) to the Chamber of Private Enforcement Agents of the Republic of Bulgaria. Available at: https://newregistry.bcpea.org/

[588] Interview with ICAP Bulgaria. Available at: http://www.publics.bg/bg/interviews/187/%D0%9C%D0%B5%D0%B6%D0%B4%D1%83%D1%84%D0%B8%D1%80%D0%BC%D0%B5%D0%BD%D0%B0%D1%82%D0%B0_%D0%B7%D0%B0%D0%B4%D0%BB%D1%8A%D0%B6%D0%BD%D1%8F%D0%BB%D0%BE%D1%81%D1%82_%D0%B2_%D0%91%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F_%D0%B5_%D0%B2%D1%81%D0%B5_%D0%BE%D1%89%D0%B5_%D1%81%D0%B5%D1%80%D0%B8%D0%BE%D0%B7%D0%BD%D0%B0_%D1%82%D0%B5%D0%BC%D0%B0_.html

[589] Yritysraportti, n.d., Maksuviiveet. Available at: https://www.yritysraportti.fi/lis%C3%A4tietoa/maksuviiveet.html

[590] Observatory for Late Payment. Available at: http://www.tresor.economie.gouv.fr/Observatoire-des-delais-de-paiement

[597] Latvian National Association of Freight Forwarders and Logistic, June 2017, Freight Forwarders Register. Available at: http://www.laff.lv/en/laff-register/

[598] "Neplačniki.info" webpage. K8 d.o.o. company. Available at: http://www.neplacniki.info/clanki-o-neplacevanju

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			• Greece (Publication of payment practices);[591] • Latvia (Delayed Payment Database (DPD) and Debtor Portfolio);[592] • Malta (MACM Credit Management Information System);[593] • Poland (KRD Economic Information Bureau;[594] Fairpay.pl portal[595]); • Sweden (Sustainability reporting obligation).[596]							
		Prompt payment/good practice codes/charters	• Bulgaria (BCCI Ethical code);[599] • France (Charter for Responsible	• Estonia (The Good Conduct of the members of the		• France (Agreement in the automobile sector[613];	• Belgium (Supply Chain Initiative – Code of		• Estonia (Good Practice of	

[591] Source not available. Information retrieved through desk research.
[592] SIA Lursoft, 2016, Delayed Payment Database. Available at: https://www.lursoft.lv/en/delayed-payment-database.
[593] Malta Association for Credit Management (MACM), Brochure. Available at: http://www.macm.org.mt/macmbrochure
[594] Krajowy Rejestr Długów. Available at: https://krd.pl/
[595] Fairpay.pl. Available at: http://fairpay.pl
[596] Dagens Industri, 29.05.2017, Debatt: Storföretag bör redovisa varför de inte betalar i tid. Available at: http://www.di.se/opinion/debatt-storforetag-bor-redovisa-varfor-de-inte-betalar-i-tid/
[599] Bulgarian Chamber of Commerce and Industry (BCCI) Ethical Code. Available at: http://www.bcci.bg/bulgarian/kodex.htm
[613] Agreement in the automobile sector about payment terms. Available at: http://www.uimm3340.com/iso_album/accord_delais-paiement_2007.pdf

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			Supplier Relations);[600] • Ireland (Prompt Payment Code of Conduct and Prompt Payment Portal);[601] • Italy (Italian code for responsible payments);[602] • Slovenia (Declaration encouraging higher payment	Association of Construction Entrepreneurs[608]; General conditions of the Construction Employment Contract[609]); • Hungary (Code of Ethics for Construction		Charter of good practices in the fashion and luxury goods manufacture sector).[614]	conduct[615]; Code of conduct for restaurants and cafés[616]); • Estonia (Good Practice for the food supply chain);[617] • France (Agreements in the Food		Logistics Service)[623] • Romania (Orders of National Authorities);[624] • United Kingdom (Network Rail's Fair Payment Charter).[625]	

[600] Charter for Responsible Supplier Relations. Available at: http://www.economie.gouv.fr/files/files/directions_services/mediateur-des-entreprises/PDF/3_ACHETER_RESPONSABLE/Charte_RFR_2016.pdf

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[602] Pagamenti Responsabili. Available at: http://www.pagamentiresponsabili.it/

[608] Estonian Association of Construction Entrepreneurs, 2010, Good Practice of the member of the Association of Construction Entrepreneurs. Available at: http://www.eeel.ee/index.php?article_id=96&page=59&action=article

[609] The Ministry of Economic affairs and Communications, 2013, General conditions of the Construction Employment Contract. Available at: https://www.mkm.ee/sites/default/files/ehituse_toovotulepingute_uldtingimused.pdf

[614] Charter of good practices in the fashion and luxury goods manufacture sector. Available at: https://archives.entreprises.gouv.fr/2012/www.industrie.gouv.fr/portail/secteurs/luxe/chartevdef.pdf

[615] Supply Chain Initiative Belgium. Available at: http://supplychaininitiative.be/en/home/

[616] Source not available. Interview with the Belgian Federation of the Agrofood Industry (FEVIA) (22/06/2017).

[617] The Estonian Chamber of Agriculture and Commerce, 2015, "Ebaausatest kaubandustavadest toiduainete tarneahelas". Available at: http://epkk.ee/wp-content/uploads/2015/10/Ebaausatest-kaubandustavadest-toiduainete-tarneahelas.pdf

[623] Estonian Logistics and Freight Forwarding Association, 2017

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[625] Network Rail's Fair Payment Charter. Available at: http://cdn.prgloo.com/media/download/3d84d90f0a894eb99d518870df7c117e

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			discipline in the country);[603] • Spain (Code of good practices to avoid late payments);[604] • Portugal (timely payment commitment);[605] • Sweden ("30 days" club and an ethical code);[606] • United Kingdom (Prompt Payment Code).[607]	Entrepreneurs);[610] • Latvia (Memorandum for Electronic time tracking system);[611] • United Kingdom (Construction Supply Chain Payment Charter[612]).			Retail sector);[618] • Portugal (Code of Good Trading Measures);[619] • Slovenia (Code of good business practice among stakeholders in the AgriFood chain);[620] • Spain (Code of Good Practices in Food			

[603] Chamber of Commerce and Industry of Slovenia, 2010, Izjava o spodbujanju k večji plačilni disciplini v državi. Available at: https://www.gzs.si/pripone/IZJAVA_o_spodbujanju_k_vecji_placilni_disciplini_v_drzavi-23_06_2010.pdf

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[606] Dagens Industri, 2017, Debatt: Inför en etisk kod om korta betalningstider. Available at: http://www.di.se/opinion/debatt-infor-en-etisk-kod-om-korta-betalningstider/

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[620] CCI Chamber of Agricultural and Food Processing Companies, 2011, Kodeks dobrih poslovnih praks med deležniki v agroživilski verigi. Available at: https://www.gzs.si/pripone/KODEKS%20-%2023%208%202011.pdf

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
							Procurement);[621] • Sweden (Code of conduct in the food sector);[622]			
		Invoice management initiatives	• Cyprus (Initiatives to improve cash-flow; e-invoicing);[626] • Czech Republic (Factoring);[627] • Greece (Initiatives to improve cash-flow);[628] • Italy (Electronic invoices);[629] • Latvia (Development of the united E-		• Austria (Electronic Data Interchange initiative);[634] • Greece (e-invoicing).[635]		• Germany (Purchasing cooperative) .[636]			

[621] Code of Good Practices in food procurement. Available at: http://www.mapama.gob.es/es/prensa/listadoempresasasociacionesadheridasalcodigo0901_tcm7-444039_noticia.pdf

[622] Code of conduct in the food sector. Available at: https://www.svenskdagligvaruhandel.se/wp-content/uploads/Principer-f%C3%B6r-god-aff%C3%A4rssed.pdf and https://www.svenskdagligvaruhandel.se/wp-content/uploads/Exempel-p%C3%A5-otillb%C3%B6rliga-aff%C3%A4rsmetoder-god-aff%C3%A4rssed.pdf

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Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			invoice standard);[630] • Luxembourg (Edebex Factoring service);[631] • Netherlands (PaySmartPro (PsP));[632] • United Kingdom (URICA payment network).[633]							
		Mediation measures	• Austria (Vienna International Arbitral Centre (VIAC));[637] • Bulgaria ("Second Chance" for enterprises);[638] • Cyprus (Amicable settlement opportunities);[639] • Denmark (Arbitration and mediation);[640]	• Denmark (The Danish Building and Construction Arbitration Board).[645]			• Belgium (Supply Chain Initiative – Dispute settlement system);[646] • Germany (The dialogue platform for Food Supply Chain);[647]			

[630] PBO Baltic, November 2011, Standards of the Electronic invoices in Latvia – distant vision or near future (ppt.). Available at: http://lata.org.lv/wp-content/conf/Efektivitate/LATA_Erekinu_standarts_JanisKronbergs.pdf

[631] Edebex website. Available at: https://edebex.com/blog/FR-fr/tag/retard-de-paiement

[632] Source not available. The initiative has not been implemented yet.

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[645] Danish Building and Construction Arbitration Board, n.d., About. Available at: http://voldgift.dk/?lang=en, accessed 26/06/2017.

[646] Supply Chain Initiative Belgium. Available at: http://supplychaininitiative.be/en/home/

[647] The Dialogue platform for food supply chain. Available at: http://www.lebensmittellieferkette.de/

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			• Finland (Arbitration Institute of the Finland Chamber of Commerce);[641] • Greece (Amicable settlement opportunities);[642] • Ireland (Prompt Payment mailbox);[643] • Poland (The Centres of Arbitration and Mediation).[644]				• Slovenia ("Ombudsman" in the Food Supply Chain).[648]			
		Labels/certificates/prizes for payment behaviour	• Croatia (Excellent SME Certificate Croatia);[649] • Finland (Strongest in Finland certificate);[650] • France (Responsible Supplier Relations Label[651]; Late							

[641] Finland Chamber of Commerce (FAI), n.d., The Arbitration Institute. Available at: https://arbitration.fi/the-arbitration-institute/, accessed 30/06/2017.
[642] Source not available. Information retrieved through desk research.
[643] Irish Department of Business, Enterprise and Innovation. Available at: https://dbei.gov.ie/en/What-We-Do/Supports-for-SMEs/Late-Payments/Late-Payment-in-Commercial-Transactions/
[644] CAM Centra Arbitrazu i Mediacji: http://caim.gov.pl/index.php/pl/
[648] Varuh odnosov v verigi preskrbe s hrano, Kdo smo. Available at: https://www.varuhverigehrane.si/
[649] Excellent SME Certificate: http://excellentsme.com/issuers.php?i=11#
[650] Suomen Asiakastieto Oy, n.d., Strongest in Finland -certificate. Available at: https://www.asiakastieto.fi/web/en/services-for-businesses/what-is-your-companys-value-and-position/strongest-in-finland-certificate.html.
[651] Responsible Supplier Relations Label. Available at: http://www.economie.gouv.fr/mediateur-des-entreprises/label-relations-fournisseurs-responsables

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			Payment Prize[652]); • Latvia (In-Depth Cooperation Programme aka "White list" of companies);[653] • Poland (Reliable Company (Rzetelna Firma) – programme for entrepreneurs);[654] • Slovenia (Excellent SME Certificate).[655]							
		Corporate social responsibilities measures	• Ireland (Corporate Social Responsibility Hub);[656] • Latvia (Corporate Social Responsibility platform);[657] • Netherlands (Betaalme.nu).[658]							
		Fora/working groups related to late payment	• France (Working group on Late Payment);[659]		• Netherlands (Pilot project on unfair		• Finland (The Board of Trading			

[652] Late Payment Award. Available at: http://delais-paiement.fr/
[653] Ministry of Finance, 2012, In-Depth Cooperation Programme. Available at: http://www.fm.gov.lv/en/s/taxes/in_depth_cooperation_programme/
[654] Rzetelna Firma. Available at: http://rzetelnafirma.pl
[655] Chamber of Commerce and Industry of Slovenia, since 2014, Excellent SME. Available at: https://excellent-sme.gzs.si/
[656] Corporate Social Responsibility Hub. Available at: http://www.csrhub.ie/
[657] Employers' Confederation of Latvia, October 2014, Corporate Social Responsibility Platform. Available at: http://en.lddk.lv/pakalpojums/a-corporate-social-responsibility-platform/
[658] Betaalme.nu. Available at: https://www.betaalme.nu/
[659] Charter for Responsible Supplier Relations Working Group, 2013, 30 good practices to reduce late payment. Available at: http://images.cdaf.fr/cdaf/UtilisateursFichiers/201406/30_bonnes_pratiques-reduire_les_delais_de_paiement.pdf

Type	Category		Horizontal	Sectors						
				Construction	Retail and wholesale	Manufacturing	Food and drink	IT/Software /Telecoms	Utilities and transport	Business and professional services
			• Germany (Forum for Electronic Invoicing).[660]		trading practices in the fashion, textile and footwear industry)[661].		Practices in the Food Supply Chain);[662] • Netherlands (Pilot project on unfair trading practices in the agro-food sector).[663]			

[660] Forum for Electronic Invoicing. Available at: http://www.ferd-net.de/electronic-invoicing446/introduction/index.html
[661] Dutch Ministry of Economic Affairs, Dun & Bradstreet, 2015. "Investigation of payment terms with companies."
[662] Finland Chamber of Commerce, n.d., The Board of Trading Practices in the Food Supply Chain. Available at: https://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/, accessed 30/06/2017.
[663] Dutch Ministry of Economic Affairs, Dun & Bradstreet, 2015. "Investigation of payment terms with companies."

7.2 Annex 2: Shorter maximum payment terms set out in legislation

The table below further completes Annex 1 by presenting the shorter maximum payment terms set out in general and sectorial legislation.

Category	Horizontal – number of days[664]	Sectors – number of days[665]			
		Construction	Retail and wholesale	Food and drink	Utilities and transport
Shorter maximum payment terms that can be derogated by the parties	• **Denmark**: 30 days. • **Finland**: 30 days. • **Sweden**: 30 days.		• **France**: 45 days from the end of the month, or 60 days from the date of issue of the invoice for purchases of grapes intended for the production of wines as well as of alcoholic drinks; 30 days after the end of a 10-day period from the delivery in the case of purchases of perishable food products; 30 days after the end of the month of delivery for purchases of alcoholic drinks; 20 days from the delivery, in the case of purchases of live cattle intended for consumption and fresh meat by-products;	• **Lithuania**: depending on the type of agricultural good: (i) products for which the entire payment must occur within 30 days after the receipt of the products; (ii) products for which 50% of the payment is due within 30 days of the receipt of the products, while the remaining 50% of the price must be paid within 60 days after the receipt of the products; (iii) products for which the entire payment must occur within 60 days after the receipt of the products. • **Portugal**: 30 days.	
Shorter maximum payment terms that cannot be derogated by the parties	• **Croatia**: 360 days. • **France**: 60 days from the invoice, or 45 days from the end of the month period. • **Netherlands**: 60 days in contracts between a large company and an SME. • **Spain**: 60 days.		• **Czech Republic**: 30 days. • **Latvia**: 20 days. • **Spain**: 30 days or 90 days.	• **Bulgaria**: 30 days. • **Hungary**: 30 days from the delivery of food products; 15 days from the invoice. • **Italy**: 30 days. • **Romania**: 30 days or 7 days. • **Slovakia**: 45 days. • **Slovenia**: 45 days.	• **France**: 30 days. • **Romania**: 10, 15 or 30 days.
Shorter payment terms established by law in absence of agreement between the parties	• **Austria**: payment to be performed 'without any undue delay'. • **Bulgaria**: 14 days from the invoice, delivery of the goods/provision of services, or expiry of a specific term agreed between the parties.	• **United Kingdom**: 17 days.			

[664] Terms inserted in this table are to be meant as starting from the date in which the payment becomes due according to the relevant national legislation, unless differently specified.
[665] Terms inserted in this table are to be meant as starting from the date in which the payment becomes due according to the relevant national legislation, unless differently specified.

Category	Horizontal – number of days[664]	Sectors – number of days[665]			
		Construction	Retail and wholesale	Food and drink	Utilities and transport
	• **Germany**: payment immediately due on receipt of the invoice.				

7.3 Annex 3: Case studies

This annex presents the case studies assessing good practice measures to combat unfair payment practices:

1) Law Decree No. 1 of 24 January 2012 in Italy (stricter legislation – food and drink sector)
2) Construction Contract Act in Ireland[666] (stricter legislation – construction sector)
3) Regulations 395/2017 in the United Kingdom (transparency measure – horizontal)
4) KRD Economic Information Bureau in Poland (transparency of payment practices – horizontal)
5) Ombudsman for undertakings in France (dispute resolution system – horizontal)
6) The dialogue platform of the Food Supply Chain in Germany[667] (dispute resolution system – food and drink sector)
7) Hamon Law and Sapin II Law in France (administrative sanctions - horizontal)
8) Betaalme.nu in the Netherlands (corporate social responsibility - horizontal)
9) Code of Ethics for Construction Entrepreneurs in Hungary (prompt payment code – construction sector)
10) Seminars of the Malta Association of Credit Management in Malta (awareness-raising activities – horizontal)

[666] Supported with findings from the UK Housing Grants, Construction and Regeneration Act 1996
[667] Supported by findings from the Belgian Supply Chain Initiative

7.3.1 Italy: Art. 62 Law Decree No. 1 of 24 January 2012 - "Urgent provisions on competition, development of the infrastructures and competitiveness"

7.3.1.1 Background and description

The Decreto Legge 24 Gennaio 2012 - *Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività* (also known as *Cresci Italia* Decree - the Law Decree No. 1 of 24 January 2012 "Urgent provisions on competition, development of the infrastructures and competitiveness") was issued in 2012 when the Italian economy was still recovering from the economic crisis, according to expert opinion. The recital of the scope of the Decree[668] noted "the extraordinary and urgent need to issue provisions to promote the economic growth and competitiveness of the country, in order to align Italy with major European and international partners".

The Law Decree 1/2012:

- Introduced measures aimed at modernising and developing national infrastructures;
- Liberalised certain economic activities in sectors such as insurance, banking, construction, retail and notary services.[669]
- Facilitated young people's access to the labour market; and
- Implemented measures aiming to reduce or eliminate competition concerns.

Measures implemented to reduce or eliminate competition concerns are specifically relevant for the purpose of this case study. Art. 62 of the Law Decree addressed late payment issues in business-to-business (B2B) contracts in the food and drink sector relating to the sale of agricultural and food products. More specifically, Art. 62 provides that the B2B contracts facilitating sale of agricultural and food products must be formalised in writing and indicate:

- The duration, quantities of product(s) sold;
- Characteristics and price of the product(s) sold; and
- Mode of delivery and payment terms.

Furthermore, the commercial practices forbidden under Art. 62 include for example:[670]

- Imposing unfair price conditions,
- Clauses applied retrospectively;
- Applying different conditions to equivalent transactions;
- Linking the implementation of the contract to other obligations that are not connected with the main matter of the contract;
- Obtaining undue unilateral services that are not justified by the nature or content of trade relations; and
- Putting in place any other conduct that can be considered unfair in light of typical commercial relations in the sector.

The Law foresees a distinction between the sale of non-perishable and perishable agriculture products such as fruits, vegetables, other agriculture products, fish, meat, milk, herbs and aromatic plants in bulk or packaged. According to Art. 62, the payment must occur within 30 days from delivery for perishable goods and within 60 days from delivery for non-perishable goods. If the payment terms are not respected according to

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[668] Considering that in December 2011 the spread between Italian bonds (BTP) and the German bonds (Bund) was at its peak, there was a need to restore the confidence about the future of the Italian stability and competitiveness in the financial markets and institutional investors. http://www.repubblica.it/politica/2014/02/10/news/estate_2011_spread_berlusconi_bce_monti_governo_napolitano-78215026/

[669] The sectors involved were: insurance, banking, construction, retail (certain restrictions were removed for pharmacies, newsstands, gas stations, taxi services), energy and notary services. http://www.altalex.com/documents/leggi/2014/02/26/liberalizzazioni-il-testo-del-decreto-coordinato-in-gazzetta

[670] OECD, 2013, Competition Issues in the Food Chain Industry

the contractual arrangements, the interest rate claimed for late payment can be increased by two percentage points.[671]

Moreover, if the points foreseen by Art. 62 are not applied, the contracting parties incur the following sanctions:

- Lack of written contract: from EUR 516 to EUR 20,000;
- Application of unfair terms: from EUR 516 to EUR 3,000;
- Late payment: from EUR 500 to EUR 500,000 (to be determined according to the turnover of the company, the frequency and the value of the invoice that has not been paid yet).

The Italian Competition Authority (ICA) is responsible for the monitoring of the application of Art. 62. ICA prioritises its interventions according to the following criteria:[672]

1. *Significance of the competition restriction* (i.e. if there is at least indirect evidence that the unfair practice does have an effect on the correct functioning of competition in the market); and
2. *Pervasiveness of the unfair conduct,* which should be widespread and thus have a high potential to impact the competitive level playing field.

7.3.1.2 Links with the needs of companies

Agriculture is one of the industries facing the most difficulties, frequently leading to some form of economic market failure. The types of market failure in agriculture include:[673]

1. *Volatile prices/volatile supply*: it takes a year to grow most crops, but this can vary due to weather conditions. Demand is price inelastic, food is essential, and people are not usually put off by higher prices;
2. *Low and volatile income for farmers*: Often farmers do not share the same benefits of economic growth. As the economy expands, food has a low-income elasticity of demand (as incomes rise, people do not spend more on food). Also, technological advances can lead to lower prices for consumers rather than rising incomes for farmers;
3. *Environmental costs of intensive farming*: balance between environmental costs and increased crop yields due to the use of fertilisers;
4. *Monopsony power of food purchasers*: supermarkets can have monopsony buying power over local farmers. This means farmers may see their profit margins squeezed by the big supermarkets who have substantial buying power.

In 1996, the large retail distribution accounted for 50% of the total value of food sale. The remaining 50% was split between traditional food shops (40%) and street merchants (10%). Between 1996 to 2010, the share of the large retail distribution increased to 72%.[674]

[671] The Law Decree 231-02 states that late payment interest rate is to be calculated according to the following formula: BCE rate + 8% default rate. Art. 62 established that for agriculture and foodstuff the late payment interest rate is to be calculated according to the following formula: BCE rate + 8% default rate + 2%. https://www.professionegiustizia.it/documenti/guide/gli_interessi_moratori_nelle_transazioni_commerciali/4

[672] OECD, 2013, Competition Issues in the Food Chain Industry

[673] Tejvan Pettinger (2016) "Problems of Agriculture – Market Failure"

[674] OECD, 2013, Competition Issues in the Food Chain Industry

Figure 15: Food retail in Italy – value shares



Source: OECD Elaboration of Federdistribuzione data

In 2007 and in 2013, the Italian Competition Authority (ICA) carried out two market surveys in 2007 and in 2013 to have a clearer understanding of competition issues in the sector. The first survey, published in 2007, dealt with the food distribution chain, specifically in the fruit and vegetable sector.[675] The second, concluded in 2013, examined the large retail sector.[676]
Although the studies did not identify specific conducts requiring immediate action, they highlighted several issues, including supplier-buyer relations.[677] More specifically, they highlighted significant asymmetries and conflicting relationships between producers and large retailers.

In fact, many retailers joined non-structural forms of cooperation such as cooperatives, franchising systems and buying alliances.[678] In particular, the inquiry has revealed the greater bargaining power of buying alliances (five of them accounting for approximately 75% of the retail procurement market).[679]

Despite these competition concerns, the food retail sector is less concentrated in Italy than in other European countries. The three top retailers account for less than 35% of the total value, whereas in UK, Germany, France and Spain the shares of the three top retailers are equal or higher than 55%.

However, stakeholders commented that in Italy, the foodstuff and agriculture producers suffer from unfair payment and contractual terms imposed mainly by large retailers. According to an SME interviewed, producers of perishable food products are particularly vulnerable when negotiating payment terms, as it is harder for them to diversify the customer base due to the nature of the products and the lack of long-term storage solutions. According to interviewees, farmers, who do not depend on only a few customers, tend to perform better and usually obtain better contractual terms, but there is no evidence to support this view.

Further evidence was found by ICA in 2013, when it launched a survey with agri-food firms from a sample representative of 23 food sectors in different areas of Italy.[680]

The survey focused on the characteristics of their contractual relationship with large retailers, and this allowed it to take a detailed look at relationships in the food chain.[681]

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[675] IC28 Indagine sulla distribuzione alimentare, Autorità Garante della Concorrenza e del Mercato, 7 June 2007, http://www.agcm.it/stampa/news/3381-ic28-indagine-sulla-distribuzione-agroalimentare-chiusuraindagine-conoscitiva.html;
[676] IC43 Settore della Grande Distribuzione Organizzata, Autorità Garante della Concorrenza e del Mercato, 24 July 2013, http://www.agcm.it/stampa/comunicati/6548-ic43- agroalimentare-antitrust-piu-forte-il-potere-di-mercato-della-gdo-rapporti-conflittuali-con-i-fornitori-eeffetti-incerti-sui-consumatori.html
[677] OECD, 2013, Competition Issues in the Food Chain Industry
[678] OECD, 2013, Competition Issues in the Food Chain Industry
[679] ECN, 2012
[680] The ICA sent a questionnaire to 471 companies and received 320 replies.
[681] OECD, 2013, Competition Issues in the Food Chain Industry

The findings of the ICA's survey showed that food producers were confronted with complex and long negotiations:

- Suppliers were often requested to deliver goods to large retailers even before the agreements had been formalised; and
- Negotiations focus on two main categories of items: discounts and trade spending[682], i.e. additional fees paid by suppliers in return for promotional and display services. Trade spending was a key contractual element because it represented up to 40% of the overall value of contracts and was the main cause of tensions between suppliers and large retailers.

Considering those issues, the government introduced the 'antitrust toolbox' with a view to promoting a level-playing field and ensuring effective competition, decreasing the bargaining power of 'super-alliances' of retailers (i.e. forms of collaborative purchasing by chains of retailers).[683]

Art. 62 of Law Decree 1/2012 applies to commercial agreements for food and agricultural products, with particular respect to economic relationships between undertakings in the food chain characterised by a significant imbalance of contractual power.[684] Art. 62 reinforces the objectives of the Late Payment Directive by imposing the formalisation of contracts in writing in the agriculture sector[685], specific payments terms and a higher interest rate for late payment.

7.3.1.3 Progress and impact

According to the payment studies from CRIBIS, the share of Italian companies in the agriculture sector agreeing on payment terms of maximum 30 days increased from 21% in 2013 to 26.7% in 2016, while the share of companies with payment terms of 31-60 days decreased from 38.9% in 2013 to 26.6% in 2016.[686]

A 2017 payment barometer study from Atradius also shows that compared to the average payment terms at national level (50 days), the shortest payment terms were agreed with domestic and foreign B2B customers in the agriculture sector (36 days).[687]

However, the payment studies conducted by CRIBIS show that the Italian companies are less able to respect agreed payment terms in transactions with other businesses between 2013 and 2016. The share of agriculture companies paying on time decreased from 49.1% in 2013 to 33.6% in 2016, while the share of delays up to 30 days increased from 38.3% in 2013 to 54.1% in 2016.[688]

The retail sector has been identified as one of the sectors most affected by late payment in Italy. According to data from CRIBIS, retail trade had the lowest values in relation to punctual payments (28.1% in 2013, 25.7% in 2016).

In addition, eating and drinking places as well food stores were among the worst payment performers.[689]

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[682] Trade spending: marketing technique aimed at increasing demand for products in retail stores based on special pricing, display fixtures, demonstrations, value-added bonuses, no-obligation gifts, and more.
[683] OECD, 2013, Competition Issues in the Food Chain Industry
[684] OECD, 2013, Competition Issues in the Food Chain Industry
[685] According to the previous legislation regulating the commercial relationships in the primary sector, contracts could be dealt in oral form. Clearly an oral contract is not a strong "proof of evidence" in the event of litigation. Art. 62 is deemed to address this issue in order to increase the contracting power of foodstuff and agriculture products suppliers. According to expert's opinion, Italy was one of the first country in Europe to introduce this obligation.
[686] CRIBIS (2014, 2017), Payment studies
[687] Atradius Collection (2017) Payment Practices Barometer Italy 2017
[688] CRIBIS (2014, 2017), Payment studies
[689] CRIBIS (2017), Payment Study

Table 6: Payment practices in Italy in 2016 – share of respected payments terms and extent of late payment

	Agriculture, forestry, hunting & fishing	Retail Trade
Payment by due date	33.6%	25.7%
Delay up to 30 days	54.1%	55.1%
Delay of 30-60 days	6.1%	8.3%
Delay of 60-90 days	3.3%	5.3%
Delay of 90-120 days	1.8%	3.5%
Delay over 120 days	1.1%	2.1%

Source: CRIBIS

These data indicate that foodstuff and agriculture producers still suffer from cash-flow issues, as there is a significant mismatch between *days-payable-outstanding* (DPO , in French '*délai fournisseur*'i.e. the number of days it takes for a company to pay its suppliers) and *days-receivable-outstanding* or days-sales-outstanding (DSO , in French 'délai client'(i.e. the number of days it takes for a company to be paid by its client) ; the former are significantly shorter than the latter (i.e. producers incur expenses before they cash in from their sales).

Although data point to a negative payment performance of retailers at the expenses of primary food producers, there have been only two competition cases related to Art. 62 in the last five years:

- *Eurospin Italia*: in 2014 ICA investigated *Eurospin* (holding of the retail discount group) for having presumably imposed on its suppliers unjustified and burdensome six-month payments, that do not respond to any service provided by the *Eurospin group* in their favour.[690] The case was closed in 2015 as there were no evidences of misconduct.[691]
- *Celox Trade S.r.l. vs. Coop Italia & Centrale Adriatica* (subsidiary of Coop group): the two retail operators were accused of having abused their dominant positions to impose on the supplier (Celox Trade) financial discounts and clauses that were excessively burdensome and not proportional to the relationship between the contracting parties. This, in turn, also had an effect on the agreed price. The case was closed in 2015 with the issue of administrative sanctions to the Coop Group and the renegotiation of the contract with Celox according to *fairer* contractual terms.[692]

ICA commented that this low number of cases can be interpreted in two ways: either Art. 62 has been working very well and it is widely accepted by industry players, or

[690]AGCM (2014) Istruttoria e ispezioni dell'Antitrust nei confronti di Eurospin per violazione dell'art. 62 del DL 1/2012 nel mercato agro-alimentare. Available at : http://www.agcm.it/stampa/news/7326-istruttoria-e-ispezioni-dellantitrust-nei-confronti-di-eurospin-per-violazione-dellart-62-del-dl-12012-nel-mercato-agro-alimentare.html

[691]AGCM (2015), AL12 - Eurospin/modifica condizioni contrattuali con fornitori. Available at: http://www.agcm.it/concorrenza/intese-e-abusi/open/41256297003874BD/F251DFDCEDD9BE83C1257E9E004534C5.html

[692] ANCD (2016) AL14 - COOP Italia-centrale Adriatica/condizioni contrattuali con fornitori Provvedimento n. Available at: http://www.ancd.it/download/PDF/LEGISLAZIONE%20E%20UFFICIO%20STUDI/Segnalazioni/2016_01_19_Prot.%20n.%20005%20Circolare%20Antitrust%20sanziona%20Coop%20Italia%20e%20Centrale%20Adriatica%20per%20violazione%20art.%2062/Provvedimento%20AGCM%20su%20Coop%20Italia.pdf

primary producers (i.e. foodstuff and agriculture companies) are afraid of damaging business relations and do not denounce distributors/retailers.

Nevertheless, two SMEs interviewed commented that since Art. 62 came into force their payment duration has reduced. Out of the two, the SME active in the production of perishable foodstuff noted that the payment duration decreased from approximatively 60 days (in 2012) to approximatively 45 days (in 2017).

New rules may have placed a burden on firms. However, according to the interviewed stakeholders, this does not seem to be the case for Art. 62 of Decree Law 01/2012. In fact, a transition period of seven months was given to all economic players before written contacts became an everyday rule. In fact, interviewees noted that the formalisation of contracts in written form provides an immediate proof of evidence in case of disputes.

By setting down in writing the contractual terms, the objective was to ensure greater enforceability of the contracts. However, according to some interviewees, the benefits expected from enforcement are perceived to be lower than the costs. By denouncing a business partner to the competition authority, a company gets publicly exposed when the case is published. Even though the process of reporting to ICA is not per se costly or burdensome, companies are afraid of negative publicity which can impact their future business opportunities.

Furthermore, macro-evidence shows that in the last years Italy has lost its export-primacy against Spain in terms of exports of fruits and vegetables (in 2017 EUR 3.9 billion in Italy vs EUR 11.3 billion in Spain).[693] The president of the Italian association of fruit and vegetable producers noted that "although there is a single market for fruit and vegetable in the European Union, production suffers from a lack of uniformity due to different specifications and contractual requirements at national level, that in turn hamper the level playing field [across borders]".[694] In this regard, an interviewee (a producer of perishable foodstuff) commented that Art. 62 makes the Italian export less competitive, as it adds contractual restrictions on the timing of payments. However, numerous other factors came into play.[695] Therefore, isolating the specific effect of additional restrictions (or Art. 62) is not possible. Moreover, between 2015 and 2016, exports of agricultural products have increased by 3.8% with EU countries and by 4.1% with non-EU countries[696], suggesting that the Law Decree did not have an impact.

7.3.1.4 Conclusions

Art. 62 of Law Decree 1/2012 not only imposes specific contractual terms, but also reinforces the objectives of the Late Payment Directive by imposing the written form of contract in the agriculture sector and a higher interest rate for late payments.

According to data, since the introduction of Art. 62 the average payment terms have improved, but the extent of late payment has worsened – indicating that while there is a higher share of suppliers negotiating shorter payment terms, there is also a higher share of customers paying late.

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693 Italia Fruit, 2018, Export, Spagna batte Italia 13 miliardi a 5. Available at : http://www.italiafruit.net/DettaglioNews/42648/lapprofondimento/export-spagna-batte-italia-13-miliardi-a-5

694 Il Giornale, 2015, Frutta e verdura, motore dell'agroalimentare italiano. Available at : http://www.ilgiornale.it/news/frutta-e-verdura-motore-dellagroalimentare-italiano-1119079.html

695 For example, the Russian embargo hit significantly the Italian exports of fruit and vegetables, as Russia was one of the main importers.

696 European Commission – DG AGRI, 2017, Statistical factsheet Italy. Available at: https://ec.europa.eu/agriculture/sites/agriculture/files/statistics/factsheets/pdf/it_en.pdf

Furthermore, primary producers are afraid of ICA intervention. Only to limited extent has Art. 62 been able to tackle their vulnerability in denouncing unfair commercial practices as a fear of damaging future opportunities overpowers any further action.

In this regard, the ICA commented that a greater role can be played by business organisations. In fact, none of the companies interviewed has ever sought assistance from business organisations in relation to issues related to unfair contract terms and practices.

7.3.2 Ireland: Construction Contracts Act 2013 (supported with findings from the UK Housing Grants, Construction and Regeneration Act 1996)

7.3.2.1 Background and description

The post 2008 economic downturn had a significant impact on the Irish construction sector. Subcontractors, in particular, were already considered vulnerable in the payment cycle before the crash,[697] and in 2009, almost ten construction industry failures were experienced per week.[698]

During the legislative process, the Minister of State, Brian Hayes TD observed that "[w]hile there is strong anecdotal evidence of the practice of delayed or non-payment having escalated in recent times, it should be noted that the problem is not new. It is reported that many firms, mainly subcontractors, are experiencing serious difficulty in obtaining payment for work done".[699]

The government programme of 2011 contained a commitment to introduce new legislation that would protect small building subcontractors that had been denied payment by bigger companies. Consequently, the bill was passed in 2013. Its commencement was dependent on several factors, including the appointment of a panel of adjudicators and the publication of a code of practice for the conduct of adjudications. The panel and its chairperson were appointed in 2015, and the Construction Contracts Act 2013 was enacted on 29 July 2016, to apply to construction contracts entered into after 25 July 2016. The code of practice was published on 25 July 2016.[700]

The Act has two elements for ensuring that a payment is enforced:

- **While main contractors can agree their own payment terms with clients, main contractor/subcontractor and subcontractor/sub-subcontractor contracts are governed by the Schedule to the Act which requires payment every 30 days after the relevant payment claim date** (unless more favourable terms are agreed on); and
- Under section 1 of the Act, a **party to a construction contract can refer a payment dispute for adjudication as a means of resolving the dispute**. It is envisaged that adjudications will usually be completed within 28 days of the referral.[701] The parties may either agree to appoint an adjudicator of their own choice, or the adjudicator shall be appointed by the chair of the panel.

The Act also includes a provision **that prohibits 'pay when paid'** clauses (Section 3 (5)), which is considered notable for the sector.[702]

The Act does not apply to a contract if:

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[697] Department of Business, Enterprise and Innovation, 2017, First Annual Report of the implementation of the Construction Contracts Act, 2013. Available at: https://dbei.gov.ie/en/Construction-Contracts-Adjudication-Service/Annual-Report/

[698] Cunningham Tony, 2013, Will The Construction Contracts Bill Improve Subcontractor Cash Flow? Available at: https://arrow.dit.ie/beschreoth/10/

[699] Houses of the Oireachtas, 2012, Construction Contracts Bill [Seanad]: Second Stage Thursday, 3 May 2012 Dail Eireann Debate Vol 764 No 2. Available at: http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2012050300006

[700] Department of Business, Enterprise and Innovation, 2017, First Annual Report of the implementation of the Construction Contracts Act, 2013. Available at: https://dbei.gov.ie/en/Construction-Contracts-Adjudication-Service/Annual-Report/

[701] Ibid.

[702] Interview with a participant, 15/02/2018.

- The value of the contract is below EUR 10,000;
- The contract relates only to a dwelling which has a floor area not greater than 200 m^2, and one of the parties to the contract is a person who occupies, or intends to occupy, the dwelling as his or her residence;
- It is a contract between a state authority and its partner in a public-private partnership arrangement as defined in the State Authorities (Public Private Partnership Arrangements) Act, 2002; and
- It is a contract of employment (within the meaning of the Organisation of Working Time Act, 1997).[703]

For the purposes of the Act, construction operations do not include the manufacture or delivery of:

- Building or engineering components or equipment;
- Materials, plant or machinery; and
- Components for systems of heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems.[704]

The Act complements the Late Payment Directive by setting stricter rules (requiring payment every 30 days after the relevant payment claim date in contracts with subcontractors).

The Act has been said to be "broadly modelled"[705] on the UK Housing Grants, Construction and Regeneration Act 1996.[706] This Act provides for adjudication for construction contracts in the UK. As in Ireland, it requires that the adjudicator reaches a decision within 28 days of referral, "or such longer period as is agreed by the parties after the dispute has been referred" (Part III, Section 108 (2c)). However, in the UK, adjudication is available to a dispute on "any difference", whereas in Ireland the legislation only applies to "a payment dispute".[707] Regarding payment terms in UK construction contracts, the Scheme for Construction Contracts (England and Wales) Regulations 1998[708] and the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011[709] prohibit 'pay when paid' clauses, and set rules for interim payments for contract periods greater than 45 days. Where a written contract does not exist, the final payment "shall become due on the expiry of 30 days following completion of the work" (Part II (5a)).

7.3.2.2 Links with the needs of companies

As described above, the Act was created specifically to meet the needs of the construction sector, particularly those of the subcontractors. The Act focuses in particular on B2B contracts between contractors and subcontractors, and subcontractors and sub-subcontractors.

The prohibition of 'pay when paid' clauses was hailed during the 2012-2013 parliamentary debates as an effective way to address a "serious power imbalance in the sector".[710] However, the construction sector representative noted that from their

[703] Department of Business, Enterprise and Innovation, n.d., Construction Contracts Act, 2013. Information Booklet, p.4. Available at: https://dbei.gov.ie/en/Publications/Publication-files/Information-Booklet-Construction-Contracts-Act-2013.pdf
[704] Ibid. p. 5.
[705] William Fry, 2014, Construction Contracts Act 2013. Available at: https://www.williamfry.com/docs/default-source/2015-pdf/construction-contracts-act-2013.pdf?sfvrsn=0
[706] Available at: http://www.legislation.gov.uk/ukpga/1996/53/contents
[707] Hughes, Paul, 2015, The introduction of construction adjudication in Ireland. Available at: http://www.engineersjournal.ie/2015/06/16/introduction-construction-adjudication-ireland/
[708] Available at: http://www.legislation.gov.uk/uksi/1998/649/contents
[709] Available at: http://www.legislation.gov.uk/uksi/2011/2333/introduction/made
[710] Cunningham Tony, 2013, Will The Construction Contracts Bill Improve Subcontractor Cash Flow? Available at: https://arrow.dit.ie/beschreoth/10/

perspective the genesis of payment difficulties in the Irish construction sector is found in unfair risk transfer in public sector contracting, where fixed-price lump sum contracts mean that contractors cannot recover any increase of costs.[711]

Adjudication is available to all parties of an applicable construction contract, regardless of size or role. The Irish and UK systems are broadly similar in terms of adjudication, while the Irish Act has stricter regulation for the payment terms in subcontractor contracts.

Both acts take a largely similar approach to supporting a sector that has been identified as particularly affected by late payment, and that consists primarily of SMEs. It should be noted that SMEs form a significant portion of the construction sector in Ireland. In 2012, the SME share of the sector's turnover was 86.4%, and 96% of the persons engaged in the sector worked in SMEs.[712] In the UK, as well as in Ireland, SMEs constitute a significant part of the sector, with 99.9% of construction contracting businesses being SMEs.[713]

The sector representative noted that while the main contractor is obliged to pay subcontractors within 30 days, no such limit is applied on payments from the client to the main contractor. This can lead to obvious cashflow problems for the main contractor.[714]

7.3.2.3 Progress and impact

It should be noted that the Act has been in force for a relatively short period of time and has no retrospective effect on any pre-existing contracts entered into force before commencement. Early indications from industry sources, however, suggest that cashflow has improved as a result of the Act.

A number of adjudication cases have taken place to date.[715] So far there has been one case where an appointment of an adjudicator by the chairperson of the panel was requested. This case was closed without an appointment, as it referred to contractual commitments entered into before 25 July 2016. Another dispute has also been reported, where the adjudicator's appointment was agreed between the involved parties.[716] This dispute occurred between a main contractor and a client and was resolved in favour of the main contractor.[717] Given that the legislation does not have a mandatory reporting provision in respect of adjudications carried out, assessing the instance of relevant payment disputes and adjudications is challenging.[718]

The low level of reported disputes may be due to the fact that the construction sector in Ireland is gradually recovering after the economic downturn (the Irish construction

[711] Interview with a participant, 15/02/2018.
[712] Central Statistics Office, 2012, Business in Ireland Abridged 2012: Small and Medium Enterprises. Available at: http://www.cso.ie/en/releasesandpublications/ep/p-bii/businessinirelandabridged2012/smallandmediumenterprises/
[713] Department for Business Innovation & Skills, 2013, UK Construction – An economic analysis of the sector. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210060/bis-13-958-uk-construction-an-economic-analysis-of-sector.pdf
[714] Interview with a participant, 15/02/2018.
[715] Written comments from initiator, received 09/02/2018.
[716] Department of Business, Enterprise and Innovation, 2017, First Annual Report of the implementation of the Construction Contracts Act, 2013. Available at: https://dbei.gov.ie/en/Construction-Contracts-Adjudication-Service/Annual-Report/
[717] Interview with a participant, 15/02/2018.
[718] Written comments from initiator, received 09/02/2018.

enterprise bankruptcy rate[719] went down from 17.69% to 1.30% between 2009 and 2015[720]).

However, anecdotal evidence suggests that the subcontractors are reluctant to engage in a potentially adversarial process in a small sector where a lot of players are familiar with each other. There also appears to be a lack of knowledge and awareness of the legislation among subcontractors, despite the support of and engagement with the stakeholder organisations in anticipation and post commencement of the legislation, and the publicity campaign by the Department of Jobs, Enterprise, and Innovation. Other reasons for the lack of activity suggested by the First Annual Report of the Act include:

- Remaining tolerance towards the long-established payment procedures among subcontractors;
- The success of conciliation as a method of dispute resolution (with the parties in complete control of the process) discouraging any cultural change;
- The fear of potential escalating costs if a hearing is required or ordered, especially if the duration of an adjudication case is extended; and
- A recent move in Ireland to follow the international experience towards methods of dispute avoidance, which now also exists in the latest version of the Conditions of Contract for Public works.[721]

A survey conducted in 2013 found that consensual dispute approaches are preferred over adjudication, arbitration and litigation, which are considered less effective resolution methods by the survey respondents. It was, however, suggested that with larger sums, respondents might be more willing to resort to 'hard' approaches, as the financial benefits would be more evident. 49% of the survey respondents considered that the legislation would be helpful, and 21% that it would be 'very effective'.[722]

The sector representative also noted that the small number of adjudication cases can be seen as a sign that the Act has mitigated late payment issues, particularly for subcontractors, but there is no detailed evidence to support this view. Regarding the schedule of payment between subcontractors, the statutory requirement in itself seems to be sufficient to cause a behavioural change.[723]

The sector representative noted that the rapidly expanding national market means that projects priced two years ago are now being constructed in a market with higher costs, putting pressure on margins. This development could lead to more adjudication cases in the future.[724]

In comparison, in the UK where a similar system has been in place since 1998, the number of Adjudicating Nominating Bodies (ANBs) adjudication referrals increased by 600% (from 187 to 1309 referrals) between the first year and the second year after the relevant Act came into force.[725] There were 1,439 adjudication referrals in the period May 2014 to April 2015 and the main subject of referrals was payment issues (29% of cases).[726] This focus on disputes regarding the updated payment provisions introduced

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[719] Death rate: number of enterprise deaths in the reference period (t) divided by the number of enterprises active in t

[720] Eurostat dataset on business demography by size class (from 2004 onwards, NACE Rev. 2). Available at: http://ec.europa.eu/eurostat/web/products-datasets/-/bd_9bd_sz_cl_r2

[721] Department of Business, Enterprise and Innovation, 2017, First Annual Report of the implementation of the Construction Contracts Act, 2013. Available at: https://dbei.gov.ie/en/Construction-Contracts-Adjudication-Service/Annual-Report/

[722] Cunningham, Tony, 2017, The Construction Contracts Act 2013 – An Overview. Available at: https://arrow.dit.ie/beschreoth/67/

[723] Interview with a participant, 15/02/2018.

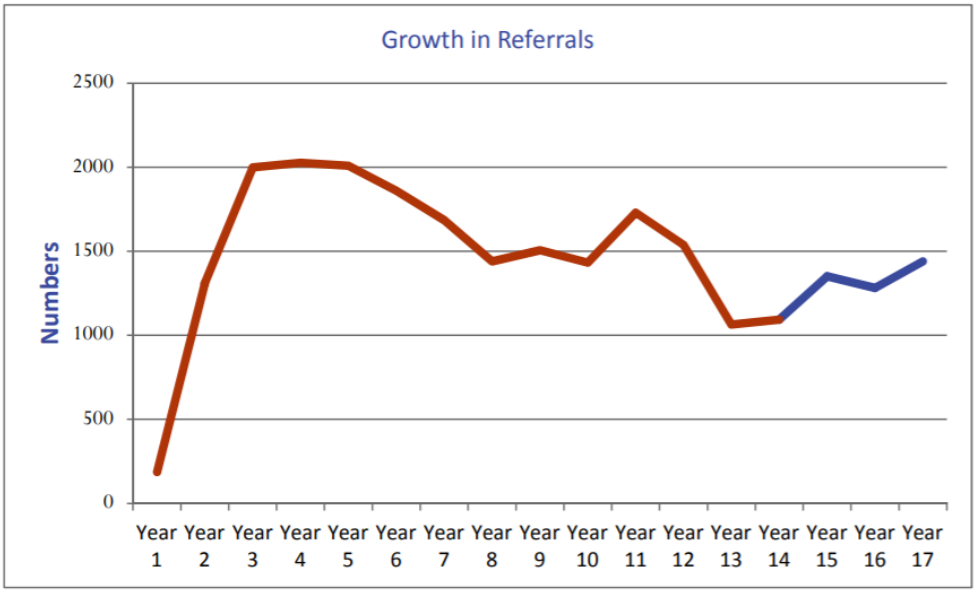
[724] Ibid.

[725] McCluskey, E., Milligan, J., Cattanach, L. and Kennedy, P., 2009, The Development of UK Statutory Adjudications; its relationship with construction workload and the costs. Available at: http://cdr.uk.com/wp-content/uploads/2017/01/The-Development-of-UK-Statutory-Adjudication-its-relation-with-construction-workload-and-costs-2011.pdf

[726] Adjudication Society, 2016a, Report No. 14, April 2016: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators. Available at: https://www.adjudication.org/sites/default/files/Report%2014%20April%202016%202.pdf

by the Local Democracy, Economic, Development and Construction Act 2009 can be linked to the level of recent case laws which has put these terms under the spotlight. Between 2012 and 2015, an average of 50% of adjudication decisions were given within 28 days. In the majority of cases (40%), the disputes were referred by subcontractors against the main contractor.[727]

Figure 16: Growth Rate in Adjudication Referrals in the UK



Source: Adjudication Society, 2016a, Report
Note: Year 1 = May 1998 – April 1999; Year 17 = May 2014 – April 2015

The number of adjudication appointments proceeding to a decision has fallen from 71% in 2012 to 63% in 2015, while the share of adjudication cases settled by the parties has risen from 19% in 2012 to 25% in 2015. This may indicate that **parties are increasingly utilising adjudication as a vehicle to bring a party to the table to negotiate a dispute, rather than intending to follow through with the adjudication process in full**.[728]

More recently, it has been found that adjudication is often used in inappropriate situations, exploiting loopholes and stopping the flow of money through the supply chain, and that it is becoming increasingly legalistic, with "rather pointless jurisdictional and procedural wrangling".[729] The increasing costs, associated with the fact that it is more and more common to have legal representation, also means that the process remains largely inaccessible to small subcontractors. Overall, the adjudication system is considered to have proved itself, but it is more adversarial than anticipated, meaning that it does not necessarily preserve or encourage positive business relationships.[730]

[727] Adjudication Society, 2016a, Report No. 14, April 2016: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators. Available at: https://www.adjudication.org/sites/default/files/Report%2014%20April%202016%202.pdf

[728] Adjudication Society, 2016a, Report No. 14, April 2016: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators. Available at: https://www.adjudication.org/sites/default/files/Report%2014%20April%202016%202.pdf

[729] Agapiou, Andrew, 2013, UK construction participants' experiences of adjudication. Management, Procurement and Law, Volume 116, Issue MP3. ICE Publishing. Available at: https://pure.strath.ac.uk/portal/files/63518764/Agapiou_ICE_2013_UK_construction_practitioners_experience_of_adjudication.pdf

[730] Agapiou, Andrew, 2013, UK construction participants' experiences of adjudication. Management, Procurement and Law, Volume 116, Issue MP3. ICE Publishing. Available at:

In recent years, a slight improvement of construction payment practices can be observed in Ireland, but not in the UK. Days sales outstanding[731] in the UK construction sector rose from 52 in 2012 to 54 in 2016.[732] In Ireland, the share of payments in the construction sector construction companies made up to 30 days after due date decreased from 69.4% in 2015 to 67.5% in 2016.[733]

The adjudication process incurs some costs for the parties involved, namely the fees and expenses of the adjudicator, and the costs to the involved parties of legal and commercial advice. The Act provides that the adjudicator is entitled to decide how much of the adjudicator's costs each party should pay.[734] No specific criteria or thresholds have been set, but in lengthy and complicated cases, or cases where a party aims to stall payment by prolonging the process and escalating the cost of resolving the dispute, the costs can become significant.[735]

Since there has only been one adjudication case so far where the adjudicator was appointed by the chairperson, the efficiency of the system under increased demand has not been tested. As noted above, there has been one reported case which was resolved in favour of the main contractor. Cost of the adjudication process was considered as insignificant.[736] Due to the small amount of adjudication cases, assessing the benefits is challenging, especially for adjudication cases that are resolved within 28 days, it can be expected that the process is faster and cheaper than going to court. However, as discussed in the previous chapter, adjudication can still be seen as an adversarial process, negatively affecting the business relationship with the client.

In the UK between November 2014 and October 2015, the most common hourly rate of fees of adjudicators (65.78% of the sample) was more than GBP 200 (EUR 278.74).[737] In the period of May 2015 to April 2016 the range of nominating fees charged by the ANBs was between GBP 0 and GBP 800 (EUR 0 and EUR 1,113.90), with a median nominating fee calculated at GBP 300 (EUR 417.71[738]).[739]

More than 25% of construction adjudication referrals in the UK concern a value range of GBP 10,000 – 50,000 (EUR 13,000 – 68,000). This indicates that parties are not put off referring small value disputes by the rising cost of adjudication. **A steady increase of the value range (EUR 1 million – 6.8 million) can be noted in recent years**, from 4% of referrals in May 2012 to April 2013, to 7% in November 2014 to October 2015.[740] These statistics suggest that **parties see benefits in referring high**

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https://pure.strath.ac.uk/portal/files/63518764/Agapiou_ICE_2013_UK_construction_practitioners_experience_of_adjudication.pdf

[731] Days Sales Outstanding (DSO) is a measure of the average number of days it takes a company to collect payment after a sale has been made.

[732] Euler Hermes, n.d., Mind Your Receivables. Available at: https://mindyourreceivables.eulerhermes.com/euler?report=0&dashboard=0

[733] Dun & Bradstreet, n.d., Payment Study 2016. Available at: http://www.dnb.com/content/dam/english/economic-and-industry-insight/payment-study-2016-international.pdf; Dun & Bradstreet, n.d., Payment Study 2017. Available at: https://www.dnb.ru/media/entry/54/Payment_Study_2017_Light.pdf

[734] Construction Industry Council, 2017, User's Guide to Adjudication: Ireland – A guide for participants in Ireland conducted under the Construction Contracts Act 2013. Available at: http://cic.org.uk/services/users-guide-to-adjudication.php

[735] Cunningham, Tony, 2017, The Construction Contracts Act 2013 – An Overview. Available at: https://arrow.dit.ie/beschreoth/67/

[736] Ibid.

[737] Adjudication Society, 2016a, Report No. 14, April 2016: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators. Available at: https://www.adjudication.org/sites/default/files/Report%2014%20April%202016%202.pdf

[738] Conversion rate 1 EUR = 0.7182 GBP, all values excluding VAT.

[739] Adjudication Society, 2016b, Report No. 15, September 2016: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs). Available at: https://www.adjudication.org/sites/default/files/Report%2015.pdf

[740] Adjudication Society, 2016a, Report No. 14, April 2016: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a

value disputes to adjudication, as opposed to comparatively expensive litigation or arbitration, which adds weight to the argument advanced by some industry commentators that adjudication provides access to justice in respect of a wide range of disputes, both in terms of value and complexity.

7.3.2.4 Conclusions

The Construction Contracts Act 2013 is still relatively new. The government and sector organisation have received early indications and anecdotal evidence suggesting that cash flows have improved, and first adjudication cases have taken place. By focusing on subcontractor contracts in the construction sector, the Act aims to support companies that have been identified as particularly vulnerable to late payments, many of which are also SMEs. Leaving the relationship between the client and the main contractor out of the scope, however, can cause financial problems for the main contractor.

The costs of the Act will depend on the number and duration of adjudications, and the fees and expenses of adjudicators. The example from the UK indicates that the fees may rise over time, and a significant number of cases may not be solved within the envisioned 28 days. However, at the moment it seems that the act is having a beneficial impact on the payment culture even without the adjudication process being frequently used, and the adjudication costs are not currently seen as a significant issue.

sample of Adjudicators. Available at: https://www.adjudication.org/sites/default/files/Report%2014%20April%202016%202.pdf

7.3.3 United Kingdom: The Reporting on Payment Practices and Performance Regulations 2017

7.3.3.1 Background and description

Long payment has been acknowledged as an issue in the UK for a while, particularly for small businesses, as the domestic regulation addressing the problem predates EU legislation. The main instrument, the Late Payment Act 1998, has been updated to be in line with the related EU Directive, and to further improve the payment culture, the Prompt Payment Code was introduced in 2008, as an industry-driven, voluntary code of practice.[741]

This combination of legislative and voluntary measures has still not been found to address the issue of late payment to a sufficient degree. In 2013, the overall level of late payment owed to SMEs stood at GBP 30.1 billion (EUR 36.1 billion[742]).[743] A report of the Federation of Small Businesses from 2016[744] estimates that 50,000 businesses that went bankrupt in 2014 in the UK would have survived, generating a growth of over GBP 1 billion (EUR 1.2 billion) in the gross annual turnover had late payment been eliminated.[745]

The Department for Business, Energy & Industrial Strategy (DBEIS) introduced the Reporting on Payment Practices and Performance Regulations in the spring of 2017, to bring about a new requirement for transparency and to promote a culture of better payment practices.[746] It was preceded by a consultation[747] and a discussion paper[748]. A total of 59 responses were received to the consultation, primarily from business representative bodies, trade organisations and professional bodies, as well as large businesses in the retail and construction sectors.[749] There was strong support towards transparency, while it was felt that a legislation setting specific payment terms would interfere with markets, the freedom of contract, and recognition that payment terms differ across sectors and products. Another consultation focusing on reporting was run in 2014. The primary legislation received royal assent in March 2015.[750]

The Regulations came into force on 6 April 2017.[751] It is pan-sectorial, affecting all large companies and limited liability partnerships (LLPs) that exceed at least two of the three thresholds for qualifying as a medium-sized company under the Companies Act 2006 (section 465 (3)). The thresholds are:

- GBP 36 million (EUR 41 million[752]) annual turnover;
- GBP 18 million (EUR 20.5 million) balance sheet total; and

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[741] Interview with the initiator, 26/01/2018
[742] Conversion rate: 1 EUR = 0.8337 GBP.
[743] Interview with the initiator, 26/01/2018.
[744] Federation of Small Businesses, November 2016, Time to Act: The Economic Impact of Poor Payment Practice' available at https://www.fsb.org.uk/media-centre/publications/?q=Time%20to%20Act:%20The%20Economic%20Impact%20of%20Poor%20Payment%20Practice.
[745] Ibid., p. 6.
[746] Kidd, Oliver, 2017, Regulations on reporting payment practices now in force. Available at: http://www.stevens-bolton.com/site/insights/articles/regulations-on-reporting-payment-practices-now-in-force
[747] Department for Business Innovation & Skills, November 2014, Duty to Report on Payment Practices and Policies, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380183/bis-14-1203-duty-to-report-on-payment-practices-and-policies.pdf
[748] Department for Business Innovation & Skills, December 2013, Building a Responsible Payment Culture, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273436/bis-13-1234-building-a-responsible-payment-culture.pdf
[749] Ibid., p. 3.
[750] Interview with the initiator, 26/01/2018
[751] Legislation.gov.uk, 2017, The Reporting on Payment Practices and Performance Regulations 2017, available at: http://www.legislation.gov.uk/uksi/2017/395/contents/made
[752] Conversion rate: 1 EUR = 0.8785 GBP

- 250 employees.[753]

All companies in the scope report on a half-yearly basis. The reports are openly available on the government website.[754] The report must include, among other information, a narrative description of payment terms, the average time taken to pay invoices, and the percentage of payments made within 30 days, in 31 to 60 days, and in 61 days or more.[755]

7.3.3.2 Links with the needs of companies

The Regulations are the latest development of payment control in the UK, designed to address what the national stakeholders considered an issue, namely payment transparency.[756]

The Regulations target large companies in the UK, with the aim of helping SMEs without being disproportionate for the large companies. SMEs can participate and report voluntarily, although so far none have done so.[757] By providing increased transparency, the Regulations will make it easier for companies to choose with whom to do business. The stakeholders note that the increased peer pressure will also encourage companies to improve their payment practices.[758]

An SME representative has observed that late payments and supply chain mistreatment are still rather prevalent in the UK, and further cultural change is needed to address the issue. A construction sector representative noted that companies will want to be perceived as better paying clients and easier to do business with subcontractors.[759]

7.3.3.3 Progress and impact

Given that the first reporting cycle is still ongoing, limited data are available on the performance of individual companies. Over 300 reports have been submitted so far, with around 15,000 expected. Subsequently, no behavioural change has become evident so far because the Regulations are still at the initial stages.[760]

Of the first 333 submitted reports, **63 companies report that they make 75% or more of their payments within 30 days, while seven companies report that they make 75% or more of their payments later than 60 days**.

The highest maximum contract length reported is 730 days, and the longest standard payment period is 395 days.[761]

Five companies report that they have changed their payment terms in the reporting period. Two of these are part of the same group, which had amended its supplier terms

[753] Department for Business, Energy & Industrial Strategy, October 2017, Duty to Report on Payment Practices and Performance – Guidance to reporting on payment practices and performance, p. 4, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649941/payment-practices-performance-reporting-requirements-oct-2017.pdf
[754] The reports can be accessed at: https://check-payment-practices.service.gov.uk/search
[755] Interview with the initiator, 26/01/2018.
[756] Interview with the initiator, 26/01/2018.
[757] Interview with a participant, 02/02/2018.
[758] Interview with a participant, 02/02/2018; interview with a participant, 07/02/2018.
[759] Interview with a participant, 02/02/2018; interview with a participant, 07/02/2018.
[760] Interview with a participant, 02/02/2018.
[761] UK Government, 2017, Export data for published reports. Available at: https://check-payment-practices.service.gov.uk/export

and conditions to update the standard payment terms to 60 days.[762,763] One had changed terms for expense suppliers from 30 days from invoice to 30 days from end of the month;[764] one was in the process of increasing the standard payment terms from 30 days to 60 days;[765] and one had changed overseas imports supplier terms from 60 to 90 days.[766] All five companies report that suppliers have been notified of the changes.[767]

According to the DBEIS, some of the large, well-known UK businesses pride themselves on being ethical and treating their business partners fairly, and did so even before the Regulations,[768] but the awareness of the Regulations has increased rapidly with businesses now looking at their cash flows and considering accountability.

An SME representative noted that visibility and access of data reported by companies will be important. To create sufficient pressure for the companies to change their payment behaviour, private customers also need to change their shopping behaviour to favour the companies with good payment practices. They also observed that in some cases, especially in competitive markets, the suppliers may not have ability to pick and choose with whom to do business, even if data of negative payment behaviour is available and they are aware of it.[769] A construction sector representative noted that once more reports are published, they will produce league tables of their members, to improve awareness, transparency and fair competition.[770]

As the first reporting cycle is ongoing, it is still difficult to establish whether the Regulations will have a sufficient impact on the payment culture. **If companies are motivated to improve their image by improving their payment practices, and the information helps subcontractors to make informed choices about who to do business with, the stakeholders consider that the Regulations can become very helpful**.

As observed by the 2016 Impact Assessment, the costs and benefits of the Regulations fall on different populations of businesses. The costs apply directly to the affected large companies, while the benefits accrue indirectly, e.g. through behaviour change of suppliers to contract with faster payers, or of slower payers to improve their payment performance.

The Impact Assessment estimated the **total transition costs per firm at GBP 1,798 (EUR 2,028[771]), and ongoing costs at GBP 1,012 (EUR 1,141.46)**. The overall costs to businesses was estimated at GBP 27.33 million (EUR 30.83 million), and ongoing costs at GBP 15.38 million (EUR 17.35 million).[772] However, the **businesses in scope have vastly different ways of capturing the relevant data, and therefore there will be large differences in costs to individual businesses**.[773] The requirement for

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[762] Avant Homes Group Limited Payment report, 30 November 2017. Available at: https://check-payment-practices.service.gov.uk/report/147
[763] Avant Homes (England) Limited Payment report, 30 November 2017. Available at: https://check-payment-practices.service.gov.uk/report/149
[764] The Works Stores Limited Payment report, 30 November 2017. Available at: https://check-payment-practices.service.gov.uk/report/195
[765] Suttons Takers Limited Payment report, 29 November 2017. Available at: https://check-payment-practices.service.gov.uk/report/115
[766] Radley + co. Limited Payment report, 6 December 2017. Available at: https://check-payment-practices.service.gov.uk/report/215
[767] UK Government, 2017, Export data for published reports. Available at: https://check-payment-practices.service.gov.uk/export
[768] Interview with the initiator, 26/01/2018.
[769] Interview with a participant, 02/02/2018.
[770] Interview with a participant, 07/02/2018.
[771] Conversion rate: 1 EUR = 0.88658 GBP
[772] Department for Business, Energy and Industrial Strategy, 2016, Payment Reporting Requirement, Impact Assessment. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/586815/payment-reporting-requirements-final-impact-assessment-sig.pdf
[773] Interview with the initiator, 26/01/2018

members of groups to report as separate entities may also bring additional administrative burden.[774]

The benefits, being indirect, are more difficult to assess. According to the Impact Assessment, the **ultimate benefits should be a reduction of costs incurred by businesses suffering from late payment**, including:

- Reduced need to pay interest on external finance or forego alternative returns on
  cash reserves;
- Reduced administrative costs by not having to chase payments or make contingency plans to find alternative liquidity when expected receipts are late;
- Increased ability to finance the hiring extra employees or increase capital investment due to not needing to use cash reserves to cover for late payments; and
- Lower likelihood of the business going bankrupt.[775]

The estimated administrative costs to businesses from chasing late payment is GBP 8.8 billion (EUR 9.9 billion) for SMEs and GBP 359 million (EUR 405 million) for corporates per annum. A 0.25% reduction in these costs would result in GBP 22.9 million (EUR 25.8 million) benefits to UK businesses.[776] **Stakeholders noted that it is too early to assess the monetary impact of the Regulations, but they are optimistic that the impact will be positive**. An SME representative suggested that the benefits to the economy and SMEs will be greater than the administrative costs and costs of improving payment systems to large companies.[777]

7.3.3.4 Conclusions

The Reporting on Payment Practices and Performance Regulations 2017 have been implemented less than a year ago, thus their effectiveness or efficiency have not yet been demonstrated. Both the initiator and the stakeholders, however, are of the opinion that improving payment transparency will contribute to an informed decision-making regarding with whom to do business. Awareness and access to data collected due to requirements of the Regulations will be key to its effectiveness and efficiency.

The monetary savings for the SMEs can be significant, as currently the level of late payment owed to SMEs runs into the tens of billions, and late payment has a significant impact on the business survival rate.

The fact that further legislation was considered necessary after the Late Payment Act 1998 and the voluntary Prompt Payment Code suggests that legal measures are seen as necessary for late payment in B2B interactions in the UK.

[774] Interview with a participant, 07/02/2018.
[775] Department for Business, Energy and Industrial Strategy, 2016, Payment Reporting Requirement, Impact Assessment. p. 26. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/586815/payment-reporting-requirements-final-impact-assessment-sig.pdf
[776] Department for Business, Energy and Industrial Strategy, 2016, Payment Reporting Requirement, Impact Assessment. p. 27. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/586815/payment-reporting-requirements-final-impact-assessment-sig.pdf
[777] Interview with a participant, 02/02/2018.

7.3.4 Poland: National Debt Register Economic Information Bureau

7.3.4.1 Background and description

Within Polish legislative framework it is possible to exchange creditworthiness data of enterprises and other entities participating in business operations.[778] The Act of 14 February 2003 on the disclosure of commercial information enabled exchange of information and data regarding financial credibility of consumers and business entities, creating the Economic Information Bureaus (hereafter "EIBs").

EIB is the only type of entity authorised to receive, store and disclose economic information and data on unreliable debtors.[779] The Ministry of Economic Growth supervises the EIB activity and the Inspector General for Personal Data Protection controls the processing of personal data.[780]

The customers subscribed to the EIB's services can verify the information concerning the economic track record of their future contractors before signing the contract. If enterprises are recorded in the register, it means that the companies have payment arrears (negative information).[781] This information can prevent enterprises from engaging in contractual relationship with unreliable partners, and in turn, prevent potential late payment from occurring.

The creditor can submit information on its debtor (client) when the total amount of debt is more than EUR 48[782] for an individual and more than EUR 120[783] for an enterprise.[784] The reported payments delays should be at least 30 days.[785] The submission of information is possible one month after the creditor sent a reminder to the debtor. The reminder should reiterate the order to pay and inform the debtor about the intention to transfer the debtor's data to the EIB.[786] The logging on the EIBs' register can reduce the creditworthiness of the entity, and thus any attempt of defamation is punished with a fine of EUR 7,200.[787]

The EIBs are economic operators, although some of their names are partially misleading by including the adjective 'national'. All EBIs in Poland are individual and competing entities, with their own databases. There is no central coordination or exchange of information between them. None of the EIBs can therefore provide an overview of existing debtors.

Since 2010, the EIBs can also store positive information (related to timely payment history) on consumers and enterprises that meet their payment obligation on time.

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[778] Act of April 9, 2010 on the Disclosure of Economic Information and Exchange of Economic Data and Act of 7 April 2017 amending certain other acts, on facilitation of debt recovery.

[779] After the establishment of EIBs in 2003, the Act of 9 April 2010 on the disclosure of Economic Information and Exchange of Economic Data and its amendment from 13 November 2017 further defined their role and rules of operation. Act of 9 April 2010 on the Disclosure of Economic Information and Exchange of Economic Data (Journal of Laws No. 81, item 530, as amended), available at: http://www.dziennikustaw.gov.pl/DU/2010/s/81/530/1

[780] ERIS Economic Information Bureau, *Legal basis,* available at: *https://erif.pl/en/about-us/legal-basis/* .

[781] Arrears consist in overdue debts that were not paid.

[782] 200 PLN, according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.

[783] 500 PLN, according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.

[784] Op.cit. Act of 9 April 2010, Articles 14 and 15.

[785] Act of 7 April 2017 amending certain other acts, on facilitation of debt recovery (Journal of Laws 2017, item 933), amending the Act of 2010 reduced this period from 60 days to 30 days, available at: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170000933/O/D20170933.pdf.

[786] Op cit. act of 2010, Article 15.

[787] Ibid.

InfoMonitor study showed that in 2014 six times more data on timely payments has been received by EIBs. [788]

Furthermore, since 13 November 2017, EIBs can use and store information available in other public registers, e.g. the Central Register and Information about Business Activity, the National Court Register and the Central Register of Restructuring and Insolvency.[789] Upon specific disclosure request from a company, one EIB can request a disclosure of information stored by another EIB.[790] Thus, the recent modifications have considerably widened access to information.

Five different EIBs currently operate in Poland[791] :

- **ERIF Economic Information Bureau[792]** (established in 2003), offers access to the database of the capital group KRUK[793] (the biggest Professional Debt recovery firm in Poland);
- **Economic Information Bureau InfoMonitor[794]** (established in 2004), only EIB having access to the Credit Information Bureau[795], which is one of the company's shareholders;
- **National Debt Register Economic Information Bureau (NDR)[796]** (established in 2003), providing information about all enterprises including also SME and micro-enterprises;
- **National Economic Information Bureau (NEIB)[797]** (established in 2003), as part of the international group CRIF (Deltavista), it offers information from western European countries; and
- **National Information of Telecommunication Debts (TITD)[798]** (established in 2013), the office was created to support the telecommunications market and therefore focuses on companies, such as fixed-line operators, mobile operators, cable TV, data centres and their clients.

[788] Baranowska-Skimina Aleksandra, *Pozytywna informacja gospodarcza, to sie przydaje, eGospodarka.pl, 3 March 2015, available at: http://www.finanse.egospodarka.pl/120810,Pozytywna-informacja-gospodarcza-to-sie-przydaje,1,63,1.html*

[789] Strefa Biznesu, *Od 13 listopada łatwiejdla wierzycieli i trudniej dla dłużnika: e-mailem wezwą do zapłaty,* Pomorska, 13 November 2017, available at : http://www.pomorska.pl/strefa-biznesu/pieniadze/a/od-13-listopada-latwiej-dla-wierzycieli-i-trudniej-dla-dluznika-emailem-wezwa-go-do-zaplaty,12658356/ .

[790] The applicant should specifically demand a disclosure of information within another existing EIB.

[791] Groszowo.pl, Wszystko o KRD,ERIF, InfoMonitor, bazy gospodarcze pod lupą, available at : http://groszowo.pl/porady/wszystko-o-krd-erif-i-infomonitor-bazy-gospodarcze-pod-lupa. ; Biznes.gov.pl, Biura Informacji Gospodarczej, Janvier 2017, available at: https://www.biznes.gov.pl/administracja/rejestry-publiczne/biura-informacji-gospodarczej.

[792] https://erif.pl/

[793] https://pl.kruk.eu/partnerzy-biznesowi

[794] https://www.infomonitor.pl/

[795] Exchanging information about the previous and current credits charges. Everyone who is a debtor of banking institution is registered in Credit Information office.

[796] https://krd.pl/

[797] http://www.kbig.pl/

[798] http://www.kidt.pl/

Table 7: Characteristics of the most used EIBs[799]

	NDR	InfoMonitor	ERIF
Revenues in 2010[800]	EUR 15.5 million	EUR 2.3 million	EUR 0.5 million
Benefits in 2010[801]	EUR 0.6 million	EUR 0.09 million	EUR 0.04 million
Awareness of existence in 2017[802]	88%	39%	1%
Use in 2017[803]	26%	4%	2%

Source: VVA

The awareness and use are linked with the origin of each EIB database. While ERIF and InfoMonitor were set up by large companies (which set up their own databases of debtors), the NDR database was created by individual enterprises (big, medium, small and micro) with a bottom-up approach. Due to its larger use and coverage, NRD will be the main focus of this case study, complemented with information from other EIBs where relevant.

7.3.4.2 Links with the needs of companies

The EIBs are the only entities entitled by law to receive, store and disclose this information. However, these details can only be disclosed at the request of the enterprises for a fee.

Companies can either subscribe for a monthly fee (i.e. NDR for at least six months at EUR 38 to EUR 238 per month[804])[805] pay a one-off fee for a report on the individual company. NDR subscribers can also contact the Customer Services Centre. Table 8 presents an overview of access and the fees of the main three EIBs.

Table 8: Comparison of fees for services in three major EIBs in Poland[806]

	NDR	**ERIF**	**InfoMonitor**
Subscription	EUR 38 -238	x	x
One-off report on individual company	x	EUR 7.2 – 9.6	EUR 7.2

Source: VVA

NDR subscription packages allow a monthly monitoring of existing contractors – the more you pay, the more data on contractors you receive. Each subscription package offers a different number of verifications as shown in the table below.

[799] According to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[800] National Debt Register, KRD przed ERIF I Big InfoMonitor, available at: http://krd.pl/Specjalne/Informacje-dodatkowe/KRD-przed-ERIF-i-BIG-Infomonitor.
[801] Ibid.
[802] Information Provided by NDR
[803] Ibid.
[804] NDR offers different package and their cost varies from one to another by the types of services provided and their number (e.g. number of services included, number of reports provided etc.). This enables NDR to meet the needs of different seizes of enterprises.
[805] Between 160 PLN and 990 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[806] According to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.

Table 9: NDR price list of services according to packages[807] [808]

Package		Reliable Business	Debut Business	Growth Business	Comfort Business	Expert Business
Monthly Payment [EUR]		**38**	**84**	**108**	**156**	**238**
Number of services free of charge						
Start package "Safe Company" (to activate within first month)		-	100	150	200	300
Number of contractors monitored						
Basic services	**Monthly free of charge**	**After reaching the limit of free services**				
Verifying contractors	N°	-	5	15	30	50
	Price [EUR]	-	5.76	5.76	4.56	3.36
Monthly monitoring for additional contractors (daily per contractor)	N°	-	5	15	30	50
	Price [EUR]	-	0.024	0.024	0.024	0.024
Adding information on debtors	N°	-	Without limits	Without limits	Without limits	Without limits
	Price [EUR]	-	Free	Free	Free	Free
Removal of information on debtors	N°	-	1	3	5	10
	Price [EUR]	-	16.56	14.16	11.76	9.36

Source: VVA

In 2009, the NDR also introduced the **'Reliable Company'**[809] (*Rzetelna Firma)* label to increase awareness and promotion of reliable and trustworthy enterprises.[810] Only NDR subscribers can be awarded with the label. The label can be used by the company in any communication materials, including on its website, and can be hyperlinked to its economic track record (see figure below).[811]

[807] According to the NDR List of prices for services, available at http://krd.pl/Dokumenty/Cenniki.
[808] According to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[809] http://rzetelnafirma.pl/
[810] The label was first delivered in paper form. Currently, it is an interactive image that companies can upload on their website. By clicking on the sign, the interested party will be directly transferred to the company track record in the NDR database.
[811] Only a company not recorded on the NDR register can have the label granted. Consequently, the label can be taken away, if the company appears in the register. In addition, the label can be taken away if the NDR's employees come across any online complaints or information on a conclusion of contracts detrimental to business or individual clients.

Figure 17: Label Rzetelna Firma

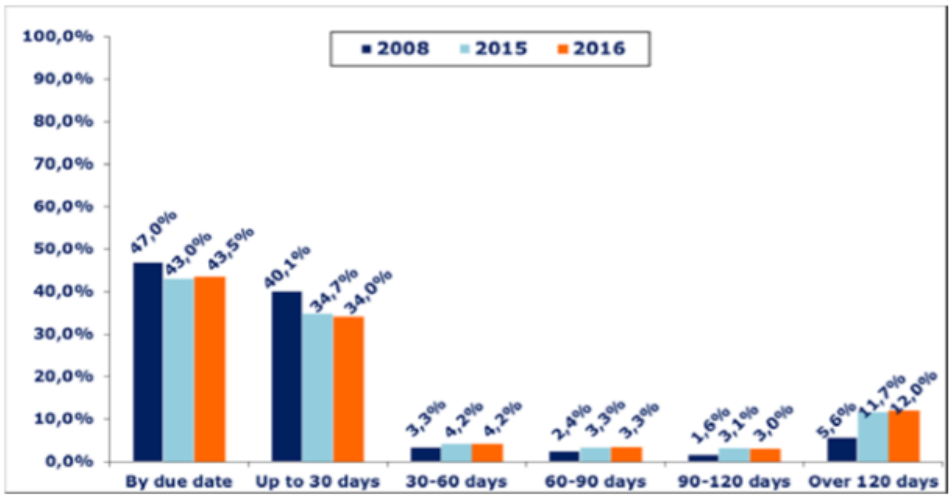


In addition, since 2004, NDR has organised an annual nationwide social campaign 'Great Spring Cleaning Debt', targeting mainly SMEs. The participants can verify the reliability of their clients and notify new debtors to the NDR register.

7.3.4.3 Progress and impact

Overall, B2B payment practices in Poland have remained stable in recent years, with 43.5% of companies paying on time in 2016. Although the number of companies delaying payment up to 30 days has dropped in 2016 (by 0.7% compared to 2015), the number of very bad payers, having 90 days or more in arrears (including the group over 120 days) has increased by 7.8%.[812]

Figure 18: Payment practices in Poland: share of payment by due date and extent of late payment, 2008-2016

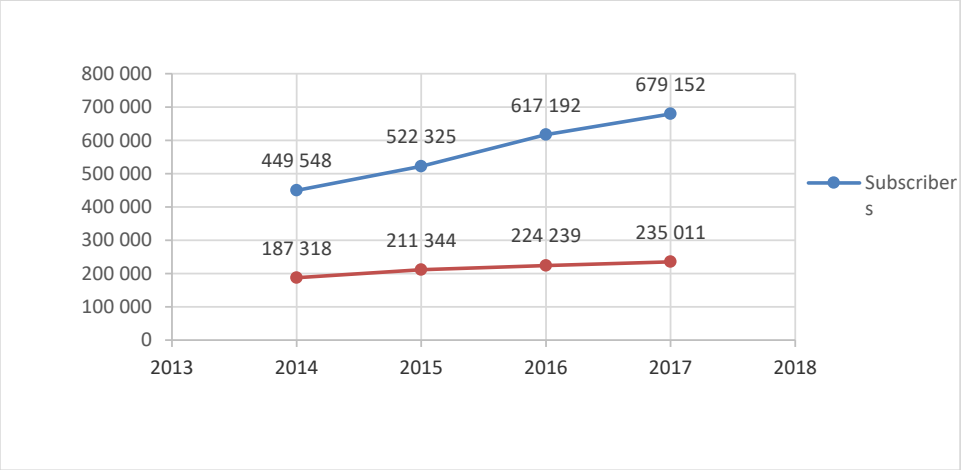


Source: BiSNODE D&B Poland

[812] CRIBIS D&B, *Payment Study 2017*, available at: https://www.dnb.ru/media/entry/54/Payment_Study_2017_Light.pdf.

According to the NDR representative, in the wake of the economic crisis, many large Polish enterprises strengthened their internal processes by checking the creditworthiness of contractors before signing the contract.[813] The number of NDR subscribers and listed debtors grew steadily over the recent years (see Figure 19 below). At the end of 2017, the NDR had 679,152 subscribers[814] and 235,011 listed debtor companies, that represented a total debt of EUR 2.1 billion.[815] [816]

Figure 19: Overall number of NDR's subscribers and listed debtors[817]



Source: VVA

It is challenging to measure the direct impact of EIBs. First of all, a fear of being recorded on EIB can prevent late payment from occurring and companies make an effort to pay their suppliers on time. On the other hand, enterprises recorded on EIBs are incentivised (in the form of the removal from the register) to pay their debts. Since its establishment, the NDR estimated that EUR 39.12 million[818] of debts have been paid back:

- 2015: EUR 6.56 million[819]
- 2016: EUR 7.3 million[820]
- 2017: EUR 8.1 million[821,822]

Among debtors who default on their payments for a period shorter than one year, 85% pay the outstanding debt within two months after they appear on the register. [823]

In addition, by 2016, companies that had participated in the 'Great Spring Cleaning Debt' campaign had submitted information on 577,144 debtors and had recovered EUR

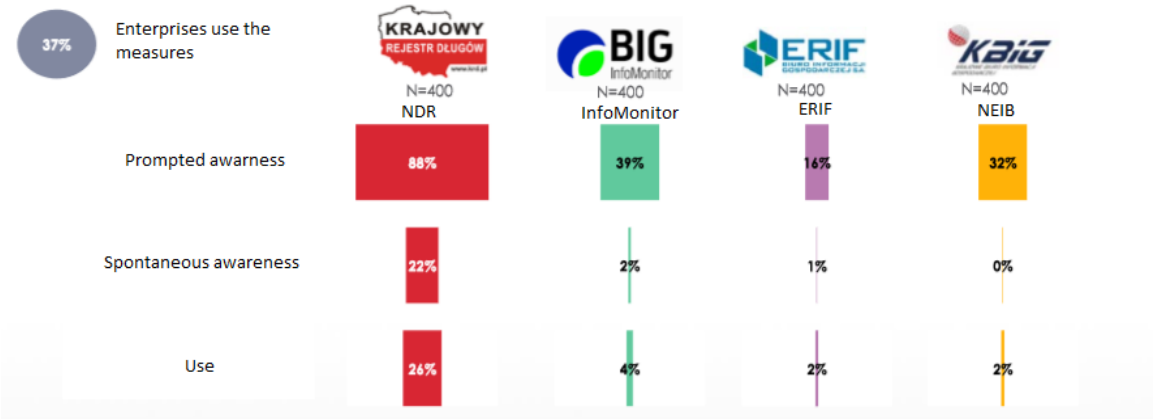
[813] Interview with the National Debt Register, 05/02/2018.
[814] NDR figures do not disentangle subscribers between individual consumers and companies
[815] PLN 8,774,729,852.94
[816] Figures provided by NDR
[817] Data provided by NDR
[818] 163,000,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[819] 27,324,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[820] 30,500,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[821] 33,764,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.
[822] Interview with the National Debt Register, 05/02/2018. The figures comprise the debts paid back both to consumers and to companies.
[823] KRD, Benefits for business clients. Available at: http://en.krd.pl/Adding-debtor/For-business-clients/Benefits

419.33 million.[824,825] According to the statistics developed by the NDR, 68% of these debts could have been avoided if the companies checked their future business partners.

Although there are clear benefits of knowing the payment practices of future business partners, SMEs are rather reluctant to use the payment databases. A 2017 study by Keralla Research highlighted that in Poland, 50% of enterprises (mainly SMEs) do not verify information on their contractors and 33% verify information only regarding their new contractors.[826,827]

A recent study held by the IQS in November 2017 shows that among all EIBs, NDR is mostly known about, with 88% of respondents being aware of its services[828] as shown below.

Figure 20: Ranking of the best known EIB in Poland (2017)



Source: Information provided by NDR

According to the Ministry of Economic Growth, the establishment of the EIBs and the 'Reliable Company' label has contributed to improved payment practices in Poland. [829] The label offers quick and free of charge verification of future business partners, by a simple click on the hyperlink on the enterprise's website.[830] According to the local public authority[831], a company with a label is encouraged to follow a non-profit goal, treat partners and clients with respect, respect employees, engage socially, and have consideration for the economic environment. Although other EIBs also developed similar services (e.g. ERIF has developed a Certificate for Responsible Business, TITD, has developed a Certificate for Reliable Enterprises), the 'Reliable Company' label remains most recognised by Polish companies.[832]

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[824] PLN 1,747.23 million according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.

[825] National Debt Registor, Wielkie-Wiosenne-Sprzatanie-Dlugow-warto-zaczac-od-sprawdzenia-kontrahenta, 24 Mars 2014, available at: https://krd.pl/Centrum-prasowe/Informacje-prasowe/2016/Wielkie-Wiosenne-Sprzatanie-Dlugow-warto-zaczac-od-sprawdzenia-kontrahenta.

[826] Taking into account that in Poland SMEs constitute almost 95% of enterprises, it can be considered that this information can refer to the SME situation.

[827] Nation Debt Register, *Nie chca sprzedawac dluznikom ale…sprzedaja,* 9 January 2018, available at:http://krd.pl/Centrum-prasowe/Informacje-prasowe/2018/Nie-chca-sprzedawac-dluznikom--ale%E2%80%A6-sprzedaja

[828] Information provided by NDR.

[829] Interview with the Ministry of Economic Growth, 22/12/2017.

[830] Interview with a company, 18/01/2018.

[831] Dolnoslaska Izba Turystyki, *Krajowy Rejestr Dlugow i Rzetlna Firma Kompendium* available at: http://dit.wroc.pl/doc/KRD_RzF_kompedium.pdf.

[832] Interview with the Ministry of Economic Growth, 22/12/2017; Interview with a company, 18/01/2018; Interview with the National Debt Register, 05/02/2018; Baranowska-Skimina Aleksandra, *Pozytywna informacja gospodarcza, to sie przydaje, eGospodarka.pl, 3 March 2015, available at : http://www.finanse.egospodarka.pl/120810,Pozytywna-informacja-gospodarcza-to-sie-przydaje,1,63,1.html.*

One of the reasons limiting SMEs use of the NDR services is the price of subscription.[833] NDR does not allow one-off data requests. In fact, companies can either subscribe to ongoing access to the database or request individual reports – none of the database offer both access points to data as shown in Table 8. A limited paid access combined with fragmented coverage of EIBs can prevent SMEs from systematic use of creditworthiness data. Furthermore, SMEs, if they use payment practices databases, tend to verify the reliability of new clients, but not existing clients.[834]

Polish SMEs tend to verify the information about their future clients via other business relations in their sector.[835] Some SMEs, notably in the construction sector, confirmed that they rely on their own network of contacts to informally check new clients.

Finally, another barrier limiting the use of EIB services by SMEs is the interactive format of the web-platform. According to the NDR representative, computer skills are still very low among entrepreneurs in Poland, and the online services provided by the NDR are thus only available to a limited share of the business population.[836]

The lack of a comprehensive database might create a potential difficulty for enterprises interested in EIB services. Companies wishing to access the creditworthiness data of potential business partners do not know in advance which EIB stores data on specific companies. Therefore, having one centralised EIB could increase the effectiveness and efficiency of the service. It should be noted, however, that a recent law amendment[837] enabling EIB to access data in other databases (upon request from a company) might contribute to an increased coverage and use of EIBs.

7.3.4.4 Conclusions

It is challenging to measure the direct impact of EIBs. On the one hand, a fear of being recorded on EIB can prevent late payment from occurring and companies make an effort to pay their suppliers on time. On the other hand, enterprises recorded on EIBs are incentivised to pay their debts. Among existing EIBs in Poland, the NDR is mostly known about by Polish businesses, and since its establishment, the NDR estimated that EUR 39.12 million[838] of debts have been paid back.

In a wake of the economic crisis, many large Polish enterprises strengthen their internal processes by checking the creditworthiness of contractors before signing a contract. The number of NDR subscribers and listed debtors grew steadily in recent years. Between 2014 and 2017, the number of subscribers grew from 449,548 to 679,152.

Although there are clear benefits of knowing the payment practices of future business partners, SMEs are rather reluctant to use the payment databases. A limited paid access combined with fragmented coverage of EIBs can prevent SMEs from systematic use of creditworthiness data. Furthermore, 33% of SMEs, tend to verify the reliability of new

[833] Interview with a company, 18/01/2018.
[834] Nation Debt Register, *Nie chca sprzedawac dluznikom ale…sprzedaja,* 9 January 2018, available at:http://krd.pl/Centrum-prasowe/Informacje-prasowe/2018/Nie-chca-sprzedawac-dluznikom--ale%E2%80%A6-sprzedaja
[835] Ibid.
[836] Interview with the National Debt Register, 05/02/2018.
[837] Op.cit. Act of 7 April 2017.
[838] 163,000,000 PLN according to the currency rate of the European Central Bank from 15 January 2018 where 1 PLN =0,24 EUR.

clients, but not existing ones.[839] Another barrier limiting the use of EIB services by SMEs is the online/mobile format.

The recent legislative amendment has considerably widened EIB's access to information. Since November 2017, EIBs can use and store information available in other public registers.[840] Upon a specific request by a company, one EIB can request a disclosure of information stored by another EIB.

[839]Nation Debt Register, *Nie chca sprzedawac dluznikom ale…sprzedaja,* 9 January 2018, available at:http://krd.pl/Centrum-prasowe/Informacje-prasowe/2018/Nie-chca-sprzedawac-dluznikom--ale%E2%80%A6-sprzedaja

[840] Strefa Biznesu, *Od 13 listopada łatwiejdla wierzycieli i trudniej dla dłużnika: e-mailem wezwą do zapłaty,* Pomorska, 13 November 2017, available at : http://www.pomorska.pl/strefa-biznesu/pieniadze/a/od-13-listopada-latwiej-dla-wierzycieli-i-trudniej-dla-dluznika-emailem-wezwa-go-do-zaplaty,12658356/ .

7.3.5 France: Ombudsman for undertakings

7.3.5.1 Background and description

Following a government report[841] highlighting the difficulties encountered by SMEs with large companies in the manufacturing sector, a first mediation system, the Ombudsman for manufacturing B2B relations, was created in 2010. Poor relations between companies in the supply chain exacerbate mistrust between stakeholders and can have a negative impact on the economy, which the government intended to address with the introduction of this new office.[842]

At the end of 2012, the services of Ombudsman were extended for all sectors for B2B relations, and a specific office of Ombudsman for public procurement was created.

In order to offer a single service to all companies faced with commercial issues such as late payment, an Ombudsman for Undertakings was appointed by presidential decree on 14 January 2016, merging the two previous systems.[843]

The Ombudsman is supported by 18 associate national ombudsmen and 44 regional ombudsmen.[844] The associate national ombudsmen are former company directors and commercial judges, while the regional ombudsmen are civil servants in the regional administration (*Directions régionales des entreprises, de la concurrence, de la consommation, du travail et de l'emploi - DIRECCTE*), and all received specific mediation training.[845] The Ombudsman also works in cooperation with business associations (representatives of employers, SMEs, sector associations) as well as with the Observatory of Late Payment.

The mediation process starts with a request from a company via an online form. The Ombudsman assesses the request and contacts the company for more information. The Ombudsman then invites the other company involved to come to the negotiation table and leads the talks so that the two parties find a solution. The entire process is confidential.
The Ombudsman has developed the Charter for Responsible Supplier Relations which has reached 1,900 signatories in eight years.[846] In addition, a label is awarded for three years to signatories proving that they respect the Charter, based on an audit and including the international ISO 20400:2017 norm for sustainable procurement.[847] The label was first open to public entities (two currently labelled) and large companies (37 currently labelled) but is now open to SMEs. The Ombudsman awards a prize every year to companies with exemplary payment behaviour. In addition, the Ombudsman has been appointed by the government to lead a working group reflecting on best practices against late payment and another working group for drawing up a simplified and harmonised invoice template.[848] Finally, the Ombudsman publishes a newsletter and has

[841] Présidence de la République, March 2010, Conclusions des états généraux de l'industrie. Available at: http://www.cgpme.fr/upload/docs/10-03-04Dossier_de_presse_EGI.pdf
[842] Interview with the Ombudsman for Undertakings
[843] Décret du 14 janvier 2016 portant nomination du médiateur des entreprises - M. PELOUZET (Pierre). Available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031844854
[844] Ombudsman for Undertakings, 2017 Annual Report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf
[845] Interview with the Ombudsman for Undertakings
[846] List of Charter signatories by 31 January 2018: https://www.economie.gouv.fr/files/files/directions_services/mediateur-des-entreprises/IMAGES/3_ACHETER_RESPONSABLE/20180131_Liste_Signataires_Charte_alpha.pdf
[847] ISO standard 20400:2017. Available at: https://www.iso.org/standard/63026.html
[848] Ombudsman for Undertakings, 2017 Annual report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf

taken part in a weekly radio broadcast on BFM Business since 2016, where companies that have used mediation share their experience.[849]
Both debtors and creditors can initiate mediation and the Ombudsman is also competent in international cases. For example, a French manufacturing company resorted to the Ombudsman against an Italian supplier.[850] A company can use mediation individually, but collective cases whereby several companies can target the same client are also brought to the attention of Ombudsmen. These accounted for 5% of mediation cases in 2016.[851]

7.3.5.2 Links with the needs of companies

The Law on Modernisation of the Economy (LME), which introduced maximum payment terms in 2008, led to a decrease in payment terms and fewer payment delays. While B2B payment terms have stabilised in recent years, structural payment delays still occur in some sectors such as construction and IT/software/telecommunication.[852]

According to the Observatory of Late Payment, the legislator and business associations agree that **there is a need for better LME enforcement**. According to the Ombudsman, there is a specific business culture in France whereby commercial issues are solved by power relationship or in a court. Mediation has been introduced to provide a third way to solve such issues. Given that payment delays are not always voluntary, the Ombudsman can foster discussion between companies to find a compromise. In addition, as companies are not always aware of all legislative provisions, the Ombudsman plays a pedagogic role during mediation and via its other initiatives.

To serve the needs of business community in specific sectors, the government appointed associate national ombudsmen for the railway sector, the wood industry, the agri-food industry and engineering. These sector ombudsmen also carry out additional initiatives such as creating a charter of good practice in the railway sector or a label specific to the agri-food sector. An SME that resorted to the railway ombudsman mentioned that the sector knowledge had been of added value for solving the case.[853]

The Ombudsman is particularly useful to help SMEs as it ensures a level playing field in the negotiations:[854]

- Clients (in particular large companies) that ignore payment reminders or requests from SMEs are more reactive and open to dialogue when the Ombudsman calls them on behalf of the SME to initiate the mediation process.
- SMEs are not always aware of their rights and remedies in cases of late payment. The Ombudsman reminds or informs the company about its rights and proposes appropriate solutions. This compensates the asymmetry of legal knowledge between the SME and its larger client, which may have a legal department.

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[849] BFM Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

[850] BFM Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

[851] BFM Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

[852] Observatory of Late Payment, 2016 Annual report. Available at: http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/22331.pdf

[853] BFM Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

[854] Interview with the Confederation of Small and Middle-sized Enterprises (CPME)

- The SMEs can benefit from more bargaining power with its client thanks to the presence of the Ombudsman. The small business may feel more confident and claim for more damages.

With mediation and the dissemination of good practices via the Charter and the label, the Ombudsman intends to create a change in business behaviour. By offering mediation services to companies, the Ombudsman helps to find amicable solutions that avoid issues such as late payment having severe impacts such as bankruptcies. According to the Ombudsman, mediation is complementary to legislative intervention such as stricter payment terms or sanctions. Soft measures including mediation and the promotion of good practices raise awareness about the impact of late payment and have a long-term preventive effect.

The Ombudsman usually intervenes after late payment has occurred. Companies and especially SMEs are usually afraid of damaging their business relationships or losing a future contract if they ask for compensation or if they go to court. As explained by the Ombudsman and business associations, mediation helps maintain a dialogue between the client and the supplier, allowing them to find a solution together and to continue business relations. To avoid an escalation leading to late payment or non-payment, the Ombudsman can intervene when commercial relations are tense. Several SMEs that used mediation mentioned that they continued working with their client afterwards including on new projects.[855]

7.3.5.3 Progress and impact

Overall, payment delays have decreased from 14 days in 2015 to 11 days in 2017.[856] The Ombudsman and business associations consider that the slight improvement in payment delays is due to a combination of soft measures including mediation, the charter and label, and corrective measures such as the introduction of administrative sanctions. Both types of interventions are thus essential for improving payment behaviour, and it is not possible to link the evolution of late payment to a single measure. The Observatory of Late Payment also notes that the economic recovery may have had an influence on stabilising or decreasing late payment.

However, late payment remains an issue in France. In 2014 and 2015, 32% of companies experienced late payment on average, with some sectors recording higher figures (54% in the construction sector and 63% in the IT/software/telecommunication).[857] Late payment led to a quarter of SME bankruptcies. Data show that SMEs could create 100,000 jobs if all companies paid on time.[858]

According to the CATI survey, 35% of companies[859] are aware of mediation measures. Mediation is known by 23% of micro-enterprises and by 40% of medium and large companies.[860] The Ombudsman takes part in numerous conferences and meetings with

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[855] Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

[856] Altares, 2017, Comportement de paiement des entreprises aux premier et deuxième trimestres 2017. Available at : http://www.altares.com/fr/actualites/nos-publications/comportements-de-paiement-183/article/comportements-de-paiement-des-entreprises-en-france-et-en-europe-aux-1er-et-2e-trimestres-2017

[857] Observatory of Late Payment, 2016 Annual report. Available at: http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/22331.pdf

[858] Jean-Noël Barrot, Julien Sauvagnat, 2015, Délais de paiement : L'effet sur l'emploi du non-respect de la LME. Available at: http://didattica.unibocconi.it/mypage/dwload.php?nomefile=LME20160920152218.pdf

[859] 25 out of 72 French companies responding to the CATI survey

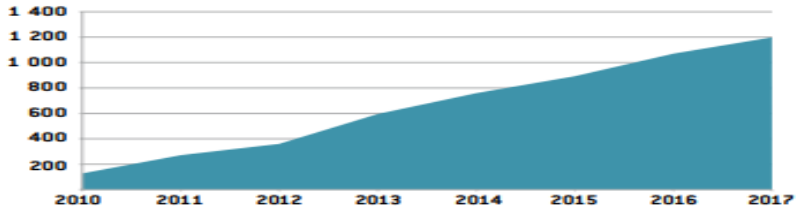
[860] CODINF Letter, April 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Avril%202018.pdf

companies across the country. He also participates in a weekly radio broadcast on BFM business where companies who used mediation share their experience.[861] In addition, training sessions are organised for signatories to the Charter of Responsible Supplier Relations to raise their awareness of mediation.[862]

According to the Ombudsman, a higher number of lawyers redirect companies to mediation services. This could be linked to a requirement introduced by the Decree of April 2015[863], whereby litigants must prove to the judge that they have first attempted an amicable resolution of the dispute (e.g. by direct negotiation, mediation, conciliation).

The number of mediation cases has considerably increased, from 100 cases per year in 2010 to 100 cases per month in 2016. Eight percent of French companies say that they have used mediation (6% often, 2% sometimes).[864]

Figure 21: Evolution of the number of mediation cases



Source: Ombudsman for Undertakings, 2017 Annual report

According to the Ombudsman, late payment is the first cause of mediation, representing at least a quarter of cases every year.

The Ombudsman is generally called in by small companies. In 2016-2017, 93% of the mediation cases were initiated by SMEs, of which half had fewer than 10 employees.[865]

As illustrated in the figure below, B2B mediation cases involve mostly companies from the services, manufacturing and retail sector.

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[861] BFM Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

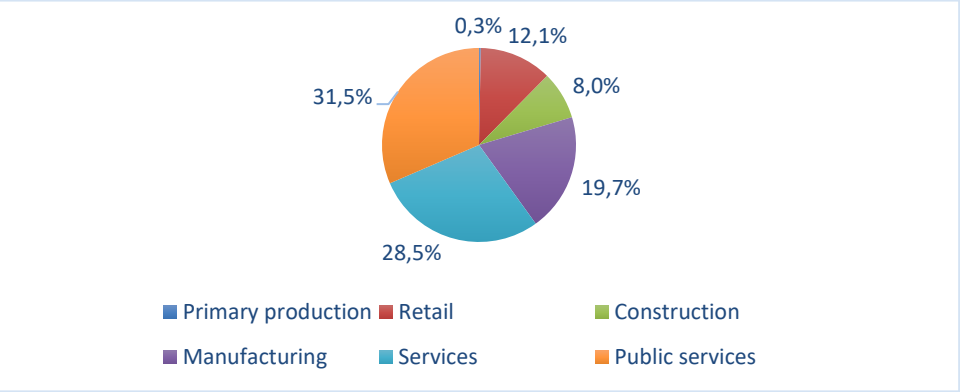
[862] Ombudsman for Undertakings, 2017 Annual report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf

[863] Décret n° 2015-282 du 11 mars 2015 relatif à la simplification de la procédure civile à la communication électronique et à la résolution amiable des différends. Available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030348201&categorieLien=id

[864] CODINF Letter, April 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Avril%202018.pdf

[865] Ombudsman for Undertakings, 2017 Annual report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf

Figure 22: Sector of companies in mediation cases since 2010



Source: Ombudsman for Undertakings, 2017 Annual report
Note: This figure should be read as "12.1% of cases concern a dispute against a company in the retail sector".

In nearly three out of four cases, mediation leads to a solution between the parties and to a verbal or written agreement. Mediation cases are usually solved within 2 or 3 months, after an average of two meetings between the parties.[866] According to the Ombudsman, this duration has remained stable over the years. SMEs who shared their mediation experience mentioned that the period for solving their case ranged from one week to 10 months.[867]

The Ombudsman and business associations agreed that companies do not use the mediation services as they either are not aware of them or they fear damaging business relations with their clients. Suppliers fear that the intervention of the Ombudsman will upset their client and make them lose future contracts. Collected evidence suggests that companies tend to wait until the impact of late payment is severe before resorting to the Ombudsman. Again, a better communication about the positive results of mediation should help reassure companies and encourage them to use mediation as soon as the issue arises.

Mediation is free of charge, and the only cost for companies is the time spent on the process. However, business associations and SMEs agree that the invested time is much shorter than any court litigation (two to three months against several years according to interviewees). With 75% of mediation cases ending in a compromise between the parties, mediation helps to maintain dialogue and to continue business relations, while a court case usually breaks off business relations for good.

Interviewed stakeholders agreed that mediation allows cases involving late payment to be solved. Large companies are also compelled to send high-level representatives, which accelerates the resolution of the case. Some companies add a mediation clause directly in their contract.[868]

7.3.5.4 Conclusions

Together with other French initiatives, such as stricter payment terms or administrative sanctions, the mediation provided by the Ombudsman has induced a change in payment

[866] Ombudsman for Undertakings, 2017 Annual report. Available at: https://www.economie.gouv.fr/files/files/PDF/2017/RA2017_Mediateur_Entreprises.pdf
[867] Interviews with SMEs; podcasts of the Ombudsman on BFM Business
[868] BFM Business Club de France, les podcasts du Médiateur 2016-2018. Available at: https://businessclubdefrance.com/un-probleme-nous-pouvons-vous-aider/mediation-interentreprise-les-emissions/

behaviour as evidenced by data on the extent of late payment. However, late payment remains an issue leading to a quarter of SME bankruptcies in France.

The Ombudsman ensures a balanced negotiation between the parties and also educates companies about their rights and remedies against late payment.

Mediation is free of charge and can lead to a faster solution allowing companies to maintain dialogue and to continue business relations. SMEs benefit especially from the Ombudsman services, but a lack of awareness and a persistent fear of damaging business relations still prevent wider use.

The Ombudsman is involved in various awareness-raising activities (e.g. conferences, radio programmes, newsletters). To broaden awareness and use of mediation, more widespread and recurrent engagement is needed from national and regional public authorities, business associations and chambers of commerce.

7.3.6 Germany: Food Supply Chain Dialogue Platform (supported by findings from the Belgian Supply Chain Initiative)

7.3.6.1 Background and description

In 2011, on the suggestion of the European Commission, 11 EU-level business associations representing different sectors of the food supply chain[869] initiated the European Supply Chain Initiative (SCI) by adopting a set of principles of good practice. This was followed in 2013 by the adoption of a framework for the implementation and enforcement of the principles in the Member States.

In Germany, the European Supply Chain Initiative was implemented through the Food Supply Chain Dialogue Platform (*Dialogplattform Lebensmittellieferkette*). Its four initiators are the Federal Association of the German Food Industry (*Bundesvereinigung der Deutschen Ernährungsindustrie, BVE*), the German Farmers' Association (*Deutscher Bauernverband, DBV*), the Retail Association Germany (*Deutscher Handelsverband, HDE*) and the Brands Association (*Markenverband*).

The associations representing the retail sector, the food industry and the brands preferred a voluntary mechanism over a legal mechanism, considering the wealth of sectoral knowledge needed to deal with complex cases and to adequately address the needs of their members. Moreover, there was a consensus that a mechanism initiated by the business associations would find higher acceptance among businesses.[870] In this context, the participation of the German Farmers' Association is particularly noteworthy. At the EU level, the associations representing farmers decided to not take part in the Supply Chain Initiative because they favoured the adoption of a legal over a voluntary measure. The German Farmers' Association shared this point of view, but at the same time perceived the Dialogue Platform to be complementary to a potential legal initiative.[871]

The Dialogue Platform was launched in spring 2016, after around two years of negotiations among the partners. As a means of ensuring the implementation of the SCI principles of good practice, the **Dialogue Platform aims to provide an out-of-court mechanism to resolve disputes between businesses**. It offers three different dispute settlement mechanisms to all businesses that are part of the food supply chain:

- Mediation – in the mediation process, disputing businesses are guided by a neutral mediator to find a consensual solution by themselves.
- Arbitration – in the arbitration process, the arbitrator suggests a solution based on the parties' positions.
- Expert assessment – it goes beyond the individual case and assesses questions that are of general relevance for the food supply chain.

[869] AIM (European Brands Association), CEJA (Conseil Européen des Jeunes Agriculteurs), CELCAA (European Liaison Committee for Agricultural and Agri-Food Trade), CITRAVI (Liaison Center for the Meat Processing Industry in the European Union), Copa Cogeca (Committee of Professional Agricultural Organisations – General Committee for Agricultural Cooperation in the European Union), ERRT (European Retail Round Table), EuroCommerce, Euro Coop (European Community of Consumer Co-operatives), FoodDrinkEurope, UEAPME (European Association of Craft, Small and Medium-Sized Enterprises), UGAL (Union of Groups of Independent Retailers of Europe).

[870] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018; interview with the *Handelsverband Deutschland (HDE)*, conducted on 18/01/2018.

[871] Interview with the *Deutscher Bauernverband (DBV)*, conducted on 30/01/2018.

To guarantee impartiality, the dispute settlement measures are conducted by external legal experts who are not affiliated with any actors (associations or businesses) in the food supply chain.

Participation in the mechanisms is voluntary and businesses are not required to be a member of the Dialogue Platform to launch a procedure. Procedures are generally confidential but can be made public if all the parties concerned agree. In addition, for all three settlement mechanisms it is possible to ensure the anonymity of one or more parties in aggregated cases of general significance for the supply chain as a whole.[872]
A comparable dispute resolution mechanism, the Supply Chain Initiative, was set up in Belgium in 2010 prior to the development of the European Supply Chain Initiative. As in Germany, the initiators are associations (nine in total) representing the sectors of retail, food industry, brands and farmers.[873] One major difference between the two national mechanisms are the access requirements: while in Germany businesses can initiate dispute settlement via the Dialogue Platform directly, in Belgium only a signatory association may file an aggregated complaint on behalf of its members. Furthermore, under the Belgian mechanism disputes are settled by a governance committee, which is composed of representatives from all the signatory associations and makes decisions based on the principle of 'comply or explain'. Businesses thus have the possibility to deviate from the code of conduct by publicly explaining their reasons for doing so.[874]

7.3.6.2 Links with the needs of companies

The Dialogue Platform is in line with the goals of the European Supply Chain Initiative, which aims to promote fair practices among businesses within the food supply chain.[875] The principles of good practice of the SCI focus on how business partners should communicate with each other and what can be considered a fair contract. Within these limits, the Dialogue Platform thus covers the issue of fair payment terms as part of good contracting practices. Payment delays, however, are a clear breach of contract, which goes beyond the SCI principles and therefore does not fall under the scope of the Dialogue Platform.[876] A supplier who is paid late may instead resort to legal dispute settlement measures.

Although the Dialogue Platform is open to all businesses of the food supply chain regardless of their size, in practice the vast majority of businesses in the sector are SMEs.[877] In addition, membership of the Dialogue Platform is not a requirement for initiating a dispute settlement procedure, and for aggregated disputes brought by an association on behalf of several of its members, applicants can remain anonymous. These features are intended to reduce potential barriers to SMEs using the Dialogue Platform.[878]

Similar to the Dialogue Platform, the Belgian Supply Chain Initiative is also an implementation of the European Supply Chain Initiative and the respective good practices. In order to benefit from the Belgian Supply Chain Initiative's offers, businesses need to be registered either directly with the European Supply Chain Initiative or with one of the signatory associations. The registration procedure for SMEs

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[872] Interview with the *Handelsverband Deutschland (HDE)*, conducted on 16/05/2017.
[873] ABS (Algemeen Boerensyndicaat), BABM (Belgilux Association of Branded Products Manufacturers), Boerenbond, BFA/BEMEFA/APFACA (Belgian Feed Association), COMEOS (Fédération belge du commerce et des services), Fevia (Fédération de l'industrie alimentaire belge), FWA (Fédération Wallonne de l'Agriculture), UCM (Union des classes moyennes), Unizo (Unie van Zelfstandige Ondernemers).
[874] Supply Chain Initiative Belgium, Official website. Available at: http://supplychaininitiative.be/en.
[875] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018.
[876] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018; interview with the *Handelsverband Deutschland (HDE)*, conducted on 18/01/2018.
[877] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018.
[878] Interview with the *Handelsverband Deutschland (HDE)*, conducted on 16/05/2017.

is slightly simplified, but beyond that the Belgian Supply Chain Initiative does not specifically target the needs of SMEs.[879]

7.3.6.3 Progress and impact

All the initiators of the Dialogue Platform have announced the platform's launch to their members through their newsletters, dedicated events and specialised press publications, and they consider that awareness of the measure among businesses is quite high. Nevertheless, as of January 2018 the dispute settlement mechanisms offered via the Dialogue Platform have not been used by any businesses. The initiators have different views on the reasons for this lack of use.

The Federal Association of the German Food Industry and the German Farmers' Association have indicated the oligopolistic structure of the food retail sector as a major problem. The majority of the food retail sector is dominated by fewer than 10 large businesses, while the suppliers in the food production and processing sector are mostly SMEs which, for the retailers, are easily replaceable in many cases. This puts businesses at the start of the supply chain, particularly farmers, in a weak negotiation position vis-à-vis their clients. Given that making use of a dispute settlement mechanism (be it voluntary or legal) would require businesses to name names and expose themselves, businesses are cautious about taking these steps because they do not want to risk damaging business relations and losing future contracts with the retailers.[880]

The Retail Association Germany denies this depiction. Although they acknowledge that there is a concentration in the food retail sector, this does not necessarily go hand in hand with a stronger market position. Moreover, under certain conditions the Dialogue Platform allows businesses to remain anonymous, which limits the fear factor that results from the issue of naming names. Although the Dialogue Platform has not yet been used, it might nevertheless have indirect effects on the business partners. According to the association, several of the association's members have stated that the mere existence of the Dialogue Platform and the principles of good conduct have raised awareness among businesses and led to faster dispute resolution on a bilateral level. In this sense, the Dialogue Platform should not only be considered a dispute settlement tool, but also a dispute prevention measure.[881]

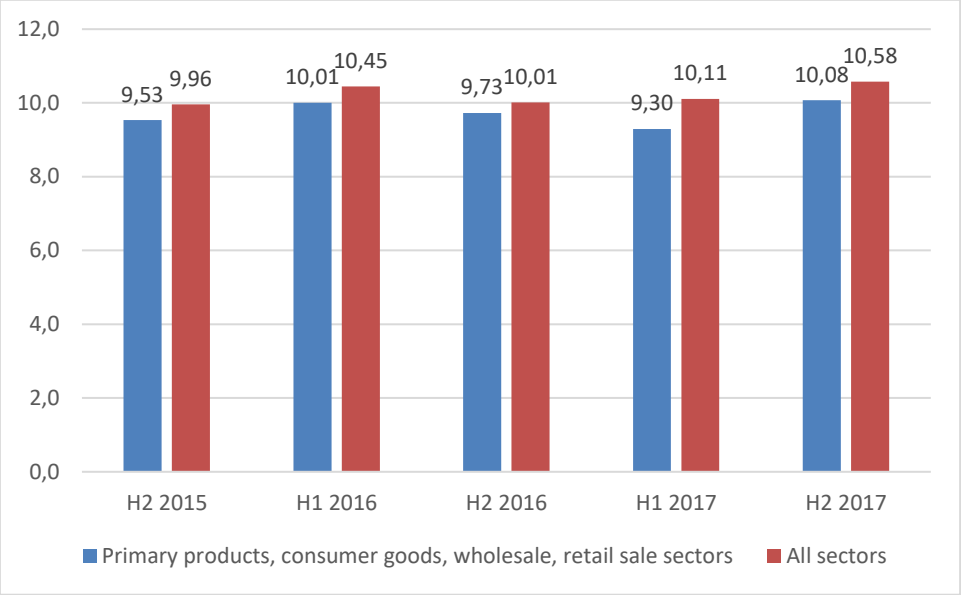
The figures on payment behaviour in Germany do not show any clear trend in the evolution of payment delays when looking at the relevant sectors of the supply chain (primary products including agriculture, consumer goods including food processing, wholesale, retail sale). From the second half of 2015 to the second half of 2017, the average payment delay increased by half a day, but the data show variations in this period (figure below). This fluctuating trend corresponds to the general development for all sectors in Germany.

[879] Supply Chain Initiative Belgium, Official website. Available at: http://supplychaininitiative.be/en.

[880] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018; interview with the *Deutscher Bauernverband (DBV)*, conducted on 30/01/2018.

[881] Interview with the *Handelsverband Deutschland (HDE)*, conducted on 18/01/2018.

Figure 23: B2B payment delays in Germany, in days

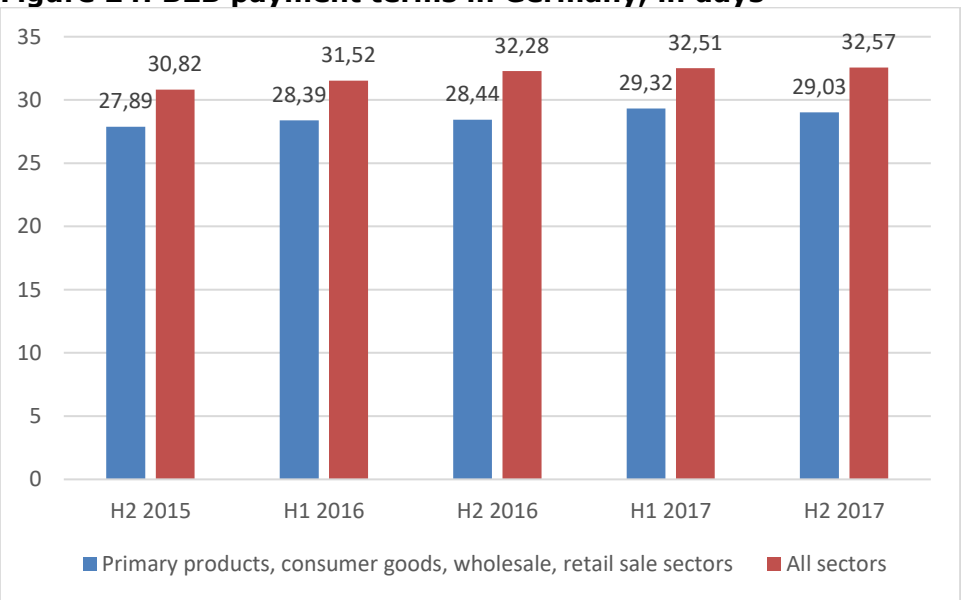


Source: Creditreform, Zahlungsindikator Deutschland

Note: Based on a calculation of the average of the results for the primary products, consumer goods, wholesale and retail sale sectors

For payment terms (which are more pertinent than payment delays with regards to the Dialogue Platform), the evolution between the second half of 2015 and the second half of 2017 is more stable. Average payment terms in the relevant sector have increased by one day (Figure 24).

Figure 24: B2B payment terms in Germany, in days



Source: Creditreform, Zahlungsindikator Deutschland

Note: Based on a calculation of the average of the results for the primary products, consumer goods, wholesale and retail sale sectors

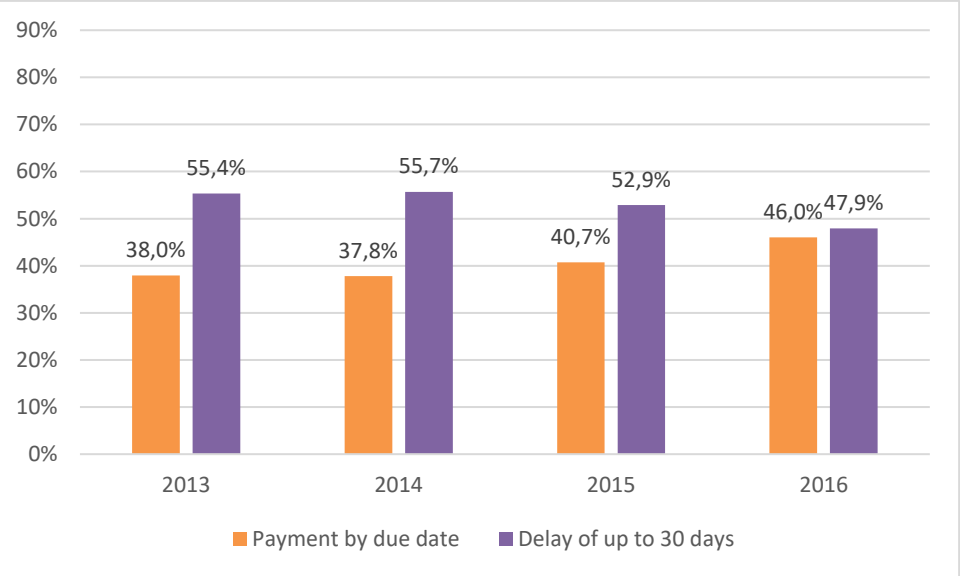
Although the data do not permit any direct correlation between the Dialogue Platform and the evolution of payment behaviour to be established, it still shows that payment

terms and delays have not decreased according to the shared goals of the associations involved, but they have instead increased. However, as the reasons behind the non-use of the Dialogue Platform have not been explored systematically (for instance through a survey among the associations' members), all the interviewed associations acknowledge that opinion of the platform's effectiveness is merely speculative. A first formal evaluation of the Dialogue Platform is scheduled for mid-2018, after a two-year pilot phase following the platform's launch.[882]

In comparison to the Dialogue Platform, the Belgian Supply Chain Initiative has already registered a number of dispute settlement cases. In total 21 aggregated disputes have been brought before the Supply Chain Initiative between 2010 and 2016. While the majority of incidents concerned pricing issues or the charging of additional expenses, one case from the period 2013-2014 dealt with the extension of payment terms.

The Belgian Farmers' Association (*Boerenbond*) noted that the initiative may have long-term effects on the general business conduct in the sector, suggesting that over time businesses incorporate the principles of the code of conduct into their everyday behaviour.[883] Indeed, in 2015 the median payment time in the food supply chain was 46 days between retailers and processors and 44 days between processors and farmers. Compared to 2013, this is a decrease of three days.[884] Data on payment practices in the relevant sectors (agriculture, wholesale and retail sale) support this observation by indicating a clear increase in payments that are made by due day (from 38% of all payments in 2013 to 46% in 2016, Figure 25).

Figure 25: B2B payment practices in Belgium in the agriculture, wholesale and retail sale sectors



Source: Dun & Bradstreet payment studies 2014-2017

Note: Based on a calculation of the average of the results for the agriculture, wholesale and retail sale sectors

According to a member survey conducted in 2015 by the Belgian Farmers' Association, 28% of respondents said that they have had an issue regarding late payments (either

[882] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018; interview with the *Deutscher Bauernverband (DBV)*, conducted on 30/01/2018; interview with the *Handelsverband Deutschland (HDE)*, conducted on 18/01/2018.
[883] Interview with the *Boerenbond*, conducted on 07/07/2017.
[884] Interview with Fevia, conducted on 22/06/2017.

facing difficulties in setting the contract terms or being confronted with business partners not respecting payment terms).[885] Thus, there is in any case still room for improvement of the business practices within the food supply chain in Belgium.

The fear factor, which potentially keeps businesses from lodging a complaint out of fear of risking business relations, was mentioned by all stakeholders involved in the food supply chain. The European Commission and the European Parliament in their 2016 reports on unfair trading practices in the food supply chain reported similar findings.[886] Both institutions underlined the particularly vulnerable position of farmers who, as producers of perishable goods which cannot be stored for a long time, have little bargaining power within the supply chain. The recommendations for improvement issued by the two institutions are comparable. Two of these recommendations, in particular, are applicable to the German Dialogue Platform and could potentially improve its effectiveness. Firstly, **the possibility to lodge anonymous individual complaints appears essential for reducing fear factor effects**. Secondly, the platform could be enhanced with an independent **body that has the power to launch investigations on its own initiative and to adopt sanctions against businesses that do not comply with the good practices**.

The European Parliament considers a legal framework necessary for complementing the voluntary Supply Chain Initiative in order to foster its effectiveness. This framework should include a ban of the most severe unfair trading practices as well as effective enforcement mechanisms.[887] The demand for EU legislation is supported by farmers' associations at both the EU and the national level.[888] However, as one interviewee pointed out[889], the issue of naming names, one of the main drivers behind the fear factor, applies to legal measures in the same way as it does to voluntary measures. Any further step, be it a modification of the Dialogue Platform or the introduction of EU legislation, should take account the fear factor and try to develop and implement effective countermeasures.

The Dialogue Platform is considered to be relatively cost efficient. The costs of the procedure are shared by the parties concerned in accordance with § 10 of the rules of arbitration and amount to EUR 250 for the registration of a complaint along with between EUR 150 and EUR 300 per arbitrator and hour.[890] In Belgium, businesses must go through the signatory association of which they are member, and the association then bears the cost of the procedure.[891]

These features are intentional in order to enable SMEs, which often have limited financial and time resources, to make use of the dispute settlement mechanisms. The initiators of the Dialogue Platform agree that costs are most certainly not a factor preventing

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[885] Interview with the *Boerenbond*, conducted on 07/07/2017.

[886] European Commission, January 2016, Report on unfair business-to-business trading practices in the food supply chain (COM(2016) 32 final). Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0032&from=EN; European Parliament, June 2016, Resolution on unfair trading practices in the food supply chain (2015/2065(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0250+0+DOC+PDF+V0//EN.

[887] European Parliament, June 2016, Resolution on unfair trading practices in the food supply chain (2015/2065(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0250+0+DOC+PDF+V0//EN.

[888] Agricultural Markets Task Force, November 2016, Enhancing the position of farmers in the supply chain. Available at: https://ec.europa.eu/agriculture/sites/agriculture/files/agri-markets-task-force/improving-markets-outcomes_en.pdf.

[889] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018; interview with the *Deutscher Bauernverband (DBV)*, conducted on 30/01/2018; interview with the *Handelsverband Deutschland (HDE)*, conducted on 18/01/2018.

[890] Rules of arbitration for the arbitration body of the Food Supply Chain Dialogue Platform. Available at: http://www.lebensmittellieferkette.de/wp-content/uploads/2016/03/Schlichtungsordnung-Dialogplattform-final.pdf.

[891] Supply Chain Initiative Belgium, Code of Conduct for fair relations between suppliers and purchasers in the agro food chain. Available at: http://supplychaininitiative.be/_library/_files/Code_140610_EN.pdf.

businesses from using the platform.[892] Costs are indeed much lower than the costs of an ordinary court proceeding. In addition, voluntary dispute settlement procedures are generally much faster and less confrontational than court proceedings. The cost efficiency of voluntary dispute resolution tools such as the Dialogue Platform is also acknowledged by the European Parliament.[893]

7.3.6.4 Conclusions

As of January 2018, the Food Supply Chain Dialogue Platform in Germany had been in place for around 18 months and no claim has been filed to date. It is therefore difficult to measure the initiative's impact on changing the payment behaviour of companies. It might be possible that the Dialogue Platform serves as a deterrent that influences businesses' behaviour without having to settle any actual cases. It is also possible that the platform is rendered ineffective by the fear factor that prevents businesses from lodging any complaints out of concern over their business relations. However, the lack of data prevents any definitive statement to be made.

The fact that the fear factor is acknowledged by most of the relevant stakeholders, including the European Commission and the European Parliament, underlines its importance for business relations within the food supply chain. Improvement measures could start there and may include, for instance, comprehensive anonymisation mechanisms, autonomous investigation bodies and legal measures that outlaw the most severe unfair practices.

Unlike the Dialogue Platform, the Belgian Supply Chain Initiative has already registered concrete dispute settlement cases, although the number is still rather low (on average three cases per year). The initiative has been in place since 2010 (the Dialogue Platform since 2016), which could be one of the reasons why it shows higher performance than its German counterpart. In addition, as no national legislation on unfair trading practices exists in Belgium, the Supply Chain Initiative fills a clear gap by offering businesses a minimum level of protection. The European Commission considers this element to be one of the main reasons behind the initiative's relative effectiveness.[894] This factor, however, cannot simply be replicated in Germany, because the existing legal framework already includes certain provisions against unfair trading practices on which businesses can rely on as a last resort.

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[892] Interview with the *Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)*, conducted on 17/01/2018; interview with the *Deutscher Bauernverband (DBV)*, conducted on 30/01/2018; interview with the *Handelsverband Deutschland (HDE)*, conducted on 18/01/2018.

[893] European Parliament, June 2016, Resolution on unfair trading practices in the food supply chain (2015/2065(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0250+0+DOC+PDF+V0//EN.

[894] European Commission, January 2016, Report on unfair business-to-business trading practices in the food supply chain (COM(2016) 32 final). Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0032&from=EN; European Parliament, June 2016, Resolution on unfair trading practices in the food supply chain (2015/2065(INI). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0250+0+DOC+PDF+V0//EN.

7.3.7 France: Hamon Law and Sapin II Law

7.3.7.1 Background and description

For the first time into the French Commercial Code[895] , the 2008 Law on the Modernization of the Economy (hereafter "LME") introduced the limitation of payment periods. Article 441-6 (§8 and § 9) of the Commercial Code provides that the payment terms should be set in 30 days from the date of receipt of the goods or performance of the service, unless otherwise agreed between the parties. The maximum payment terms may not exceed 45 days end of the month or 60 days from the date of issue of the invoice.

The breach of the maximum payment terms set in the LME was subject to criminal and civil sanctions. The French administration carried out annual controls on payment practices (3,500 to 4,000 per year between 2009 and 2013) but could not directly sanction bad payers. The administration was obliged to proceed with civil or criminal cases, the procedure was therefore long and not effective. The Ministry of Economy estimated that based on the late payment figures provided by the Observatory of Late Payment, only 8% of the cases of late payment led to court cases in 2012.[896]

In order to strengthen the existing regulatory system, the new *Hamon Law*[897] adopted on 17 March 2014 replaced the civil and criminal sanctions with new administrative sanctions for non-compliance with payment terms.

The *Hamon law* modified Article L465-2 and Article L450-1 of the Commercial Code by strengthening the powers of the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (DGCCRF).[898] More specifically, the officers of the DGCCRF are empowered to monitor the implementation of provisions related to late payment, and to impose sanctions when the breach of law is observed.[899] According to most stakeholders interviewed, the new legislative regime is more effective as the administration can directly sanction the companies. One stakeholder noted that even though since the LME companies can sue their debtors for breaching the law, they are often too afraid to denounce the payments delays of their clients in fear of damaging their business relations.[900]

In case of breach of payment terms, Article 123 of the *Hamon Law* prescribed administrative sanctions of EUR 75,000 for an individual and EUR 375,000 for businesses. The sanction value can be doubled in case late payment happens again within two years.[901] The *Hamon Law* also established a cap setting the highest value in case cumulative sanctions are imposed on the same individual or company.[902]

Since the Hamon Law had only a limited impact on deterring unfair practices, the system of administrative sanctions was reinforced on 9 December 2016 with the adoption of the

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[895] Law n° 2008-776 of 4 August 2008 on the modernization of the economy (Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie), Official Journal of the French Republic of 5 August 2008, available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019283050.

[896] Interview with Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, conducted on 01/02/2018.

[897] Law n° 2014-344 of 17 March 2014 on consumer affairs (*loi n° 2014-344 du 17 mars 2014 relative à la consommation*), Official Journal of the French Republic of 18 March 2014 (*Hamon Law*).

[898] Observatory of Late Payment, 2016, *'Délais de paiement: un enjeu économique majeur'*. Available at: http://www.economie.gouv.fr/observatoire-delais-paiement-rapport-2014-2015.

[899] Title IV of Chapter IV of the Commercial Code, available at: https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379

[900] Interview with the Confederation of SME, conducted on 04/01/2018.

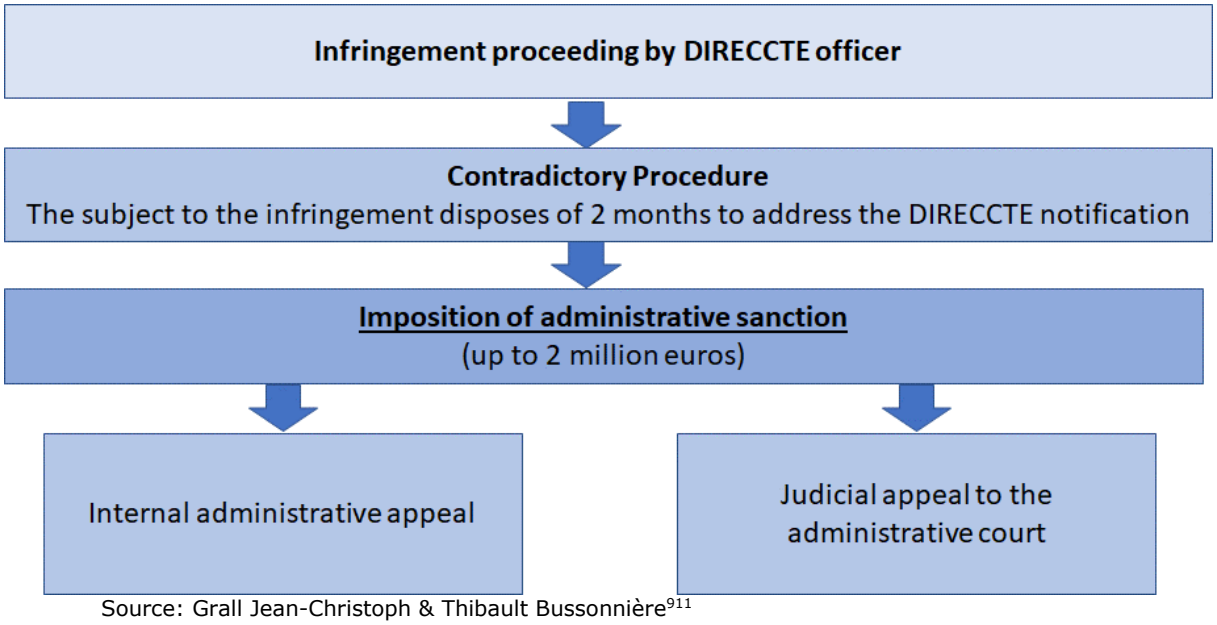
[901] Law n° 2014-344 of 17 March 2014 on consumer affairs (*loi n° 2014-344 du 17 mars 2014 relative à la consommation*), Official Journal of the French Republic of 18 March 2014 (*Hamon Law*), available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028738036&categorieLien=id.

[902] *Op.cit. Commercial Code,* Article L465-2 in force between 29 mars 2014 and 8 August 2015 (*on application of Hamon Law*)

Sapin II Law.[903,904] Article 123 of the *Sapin II Law* has considerably increased the value of the sanctions for businesses, from EUR 375,000 to EUR 2 million.[905,906] The *Sapin II Law* also removed the cap for cumulation of sanctions.[907]

In addition, Article L465-2-V of the Commercial Code provides that all decisions imposing administrative sanctions for non-compliance with payment terms are published on the DGCCRF website. [908,909] Finally, the *Sapin II Law* amended articles L441-6 and L443-1 of the Commercial Code by granting exporting SMEs a derogation to agree on payment terms of up to 90 days from the date of issue of the invoice. Figure 26 presents the procedure of imposition of the administrative sanctions.

Figure 26: Procedure of imposition of administrative sanctions[910]



Source: Grall Jean-Christoph & Thibault Bussonnière[911]

[903] Interview with the Confederation of SME, conducted on 04/01/2018.
[904] Law n° 2016-1691 of 9 December 2016 regarding the transparency, the fight against corruption and the modernisation of the economic life (*law 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*), Official Journal of the French Republic of 10 December 2017 (*Law Sapin II*), available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&categorieLien=id
[905] Ibid.
[906] Administrative Sanctions for natural person remain unchanged.
[907] *Op.cit.* Commercial Code, Article L465-2 in force on 11 mars 2017.
[908] Available at: https://www.economie.gouv.fr/dgccrf/sanctions-delais-paiement.
[909] *Op.cit.* Commercial Code , Article L465-2-V.
[910] Grall Jean-Christoph & Thibault Bussonnière, Septembre 2016, *Les sanctions administratives en droit de la transparence tarifaire et des pratiques restrictives de concurrence : premier bilan et perspectives,* N°53, available at : https://www.grall-legal.fr/wp-content/uploads/2017/02/Lamy-de-la-concurrence-transparence-tarifaire-sanctions-administratives-sept-2016.pdf .
[911] DIRECCTE are the Regional Directorates for Enterprise, Competition, Consumption, Labour and Employment, regional directorates, placed under the authority of Regional Prefecture, to coordinate the public policies of economic development, employment, labour and consumer protection. Among others, DIRECCTE is in charge of DGCCRF activities in the regions.

7.3.7.2 Links with the needs of companies

According to most interviewees, administrative sanctions are the most appropriate remedial measure, as companies do not need to initiate the procedure. The administration directly enforces the law and takes discretionary action against enterprises with bad payment practices.[912,913] The value of sanctions and their cumulative nature can deter companies from paying late. The public access to information (publication of sanctions) can directly harm the company's image. Interviewees noted that large companies are very sensitive to the "name and shame" element.[914] According to business organisations, administrative sanctions are complementary to the provisions of the Late Payment Directive. For instance, the recovery costs of EUR 40 are considered too low to be an effective deterrent for companies.

The DGCCRF controls mostly target large companies, which payment delays are more frequent, and thus are mostly sanctioned for their delays.[915] **The administrative sanctions aim to reduce persistent and voluntary late payment but not to over-penalise SMEs.** During Parliamentary debate on the *Sapin II Law*, the French Ministry of Economy declared that the DGCCRF would not impose 'fatal' sanctions (disproportionate to the enterprise's turnover) against SMEs.[916] The DGCCRF should take into consideration the size of the companies and their effort to improve payment practices. Thus, SMEs which are not engaged in a serious misconduct, instead of a sanction, may in the first place receive a warning or an injunction to improve their payment behaviour.[917]

7.3.7.3 Progress and impact

Overall, payment behaviour has improved in France in recent years. 70% of companies across all sizes noted a stabilisation of payment terms.[918] In addition, there was a small decrease in the average payment delay – from 13.2 days in in 2015 to 10.9 days in 2017.[919] The sectors mostly impacted by late payment included transport (average delay of 14 days); information, communication, IT (13,7 days); agriculture (13,8 days); accommodation and catering services (14,2 days).[920]

Since 2014, when the *Hamon Law* came into force, around 10,000 enterprises have been controlled and the following actions were undertaken:

- 389 warnings were issued in 2016, and 235 in 2017;
- 192 injunctions were issued in 2016, and 170 in 2017;
- 274 notifications of the application of administrative sanctions[921] were issued 2016, 230 in 2017.[922]

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[912] Discretionary power of administration refers to a degree of freedom that administration is entrusted with while it takes decisions. As a consequence, the margin of appreciation is left to the administration to choose among available legal measures, the one that appears to the administration as the most appropriate for the given situation.

[913] Interview with Federation of Mechanical Engineering Industries, conducted on 19/12/2017.

[914] Interview with Movement of French Enterprises, conducted on23/01/2018.

[915] Interview with Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, conducted on 01/02/2018.

[916] *Op.cit.* Grall & Bussonnière.

[917] Interview with Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, conducted on 01/02/2018.

[918] CODINF Letter, January 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Janvier%202018.pdf

[919] Op.Cit. *Altares*

[920] Op.Cit. *Altares*

[921] In French Law 'procès-verbal' is a statement of proof and presumption, drafted in a due form of law by the public officer, which informs enterprises about an application of administrative sanctions. The 'procès-verbal' officially opens an administrative procedure where the given enterprise can still defend itself by raising counter evidence.

[922] Observatory of Late Payment, 2016 and 2017 Annual reports.

In 2016, the total value of sanctions was EUR 10.9 million, while in 2017 it reached EUR 15 million.[923] The value of fines was diverse as shown in Figure 27.

Figure 27: Fines distribution in France per amount in 2016[924]

Amount	N° of fines in 2016	N° of fines in 2017
Fines below EUR 10,000	92	89
Fines between EUR 10,000 and < 20,000	42	42
Fines between EUR 20,000 and < 30,000	26	21
Fines between EUR 30,000 and < 40,000	9	5
Fines between EUR 40,000 and < 50,000	7	16
Fines between EUR 50,000 and < 100,000	13	15
Fines of EUR 100,000 and more	39	42

Source: DGCCRF

The DGCCRF published 29 sanction decisions in 2016 and 23 in 2017. [925] The sanctioned companies were mostly large, in sectors with longest average payment delay (transport; information and communication; agriculture, and accommodation and catering services).[926] The SMEs with less significant delays are subject to administrative warnings or injunctions rather than sanctions. In 2017, only 16% of the administrative sanctions were imposed on SMEs.[927]

Although the introduction of administrative sanctions into national French law is relatively recent, the DGCCFR considers that the companies are mostly aware of the legal provisions. Some interviewees noted that the publication of sanctions is frequently covered by the media. The published sanctions are known by 16% of micro-enterprises and 55% of medium and large companies.[928] However, the latest report from the Observatory of Late Payment showed that small enterprises in particular do not have good knowledge of the legislation in force.[929]

As the administrative sanctions only recently came into force, it is difficult to assess their direct impact on payment practices. However, several suppliers whose clients were subject to administrative sanctions confirmed that the paying behaviour of these clients had improved.[930] According to a survey, 25% of companies consulted in their role as clients indicated that the stricter controls had an effect on their payment behaviour, with a higher proportion among large companies

[923] Altares, le 1er et 2e trimestres 2017, Comportement de paiement des entreprises et organismes publics en France et en Europe, 2017 ; Interview with the Observatory of Late Payment, conducted on 29/01/2019 ; Interview with the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, conducted on 01/02/2018.

[924] Observatory of Late Payment, 2016 and 2017 Annual Reports, available at https://publications.banque-france.fr/liste-chronologique/rapport-de-lobservatoire-des-delais-de-paiement.

[925] Ibid.

[926] Op.cit. *Altares.*

[927] Op.cit. Observatory of Late Payment, 2017 Annual Report

[928] CODINF Letter, April 2018. Available at: http://www.codinf.fr/documents/flashs_codinf/Lettre%20CODINF%20Avril%202018.pdf

[929] Observatory of Late Payment, 2016 Annual Report.

[930] Ibid. ; *Op.cit*. Altares, le 1er et 2e trimestres 2017.

(49%).[931] In addition, SME representatives mentioned that even if not directly targeted or sanctioned, SMEs try to conform to payment terms in fear of the administrative sanctions. Indeed, recent statistics show that the decrease of late payment is observed for SMEs rather than for large companies.[932] However, for some interviewees, the reduction of average payment delays is a result of the economic recovery in France rather than the result of new legislative framework. However, according to the Observatory of Late Payment, the influence of the economic cycle on the evolution of late payment is challenging to establish. For example, while late payment increased in Europe at the beginning of the economic crisis (2008-2010), it remained stable in France, possibly due to the introduction of the LME in 2008.[933] On the other hand, for the DGCCRF and the Observatory of Late Payment, the economic recovery can also lead to a rise in late payment, as companies need more liquidity for investment.

Despite encouraging results, the enforcement of administrative sanctions could be further improved. All interviewed stakeholders mentioned that the DGCCRF has limited resources to carry out inspections. Although the *Hamon Law and Sapin II Law* have foreseen strengthening the DGCCRF, only 2,500 controls are carried out (in line with the objectives) representing 20% of existing payment delays, according to the DGCCRF.[934] Some stakeholders noted that the limited number of controls do not effectively deter companies from paying late, as they are not threatened by the likelihood of being sanctioned. Due to limited resources, the DGCCRF targets the largest enterprises – in sectors most prone to payment delays.[935]

Application of administrative sanctions can bring risks for enterprises. It was argued by several business organisations that very high sanctions can lead to bankruptcies.[936] Two business associations noted that the enforcement authority should pay more attention to the efforts companies make to pay on time, especially in sectors most vulnerable to payment delays. Furthermore, in line with the publication of sanctioned enterprises, companies with virtuous payment practices should be also publicly acknowledged.[937]

7.3.7.4 Conclusions

The *Hamon Law* adopted on 17 March 2014 strengthens the existing regulatory system governing late payment. This new law replaced the existing civil and criminal sanctions with new administrative sanctions for non-compliance with payment terms. The DGCCFR was empowered to monitor the implementation of provisions related to late payment and to impose sanctions when the breach of law is observed.

While *the Hamon Law* prescribed administrative sanctions, the subsequent *Sapin II Law* has considerably increased the value of the sanctions for businesses, from EUR 375,000 to EUR 2 million. *The Sapin II Law* also removed the cap for cumulation of sanctions and imposed the publication of all administrative sanctions for non-compliance with payment terms.

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[931] 68% of companies surveyed said that the stricter controls introduced did not have an impact on their payment behaviour. Teresa Monroe, Enquête sur les délais de paiement «l'affaire de tous», July 2017 (available at: http://www.finyear.com/attachment/876498/).

[932] Op.Cit. *Altares*

[933] Observatory of Late Payment, 2012 Annual Report, available at: https://publications.banque-france.fr/liste-chronologique/rapport-de-lobservatoire-des-delais-de-paiement.

[934] *Op.cit.* Observatory of Late Payment, 2016 Annual Report.; Interview with the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, conducted on 01/02/2018.

[935] Interview with the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud, conducted on 01/02/2018.

[936] Interview with the Confederation of SME, conducted on 04/01/2018; Interview with Movement of French Enterprises, conducted on 23/01/2018.

[937] Interview with the Confederation of SME, conducted on 04/01/2018; Interview with Movement of French Enterprises, conducted on 23/01/2018.

As the administrative sanctions only recently came into force, it is difficult to assess their direct impact on payment practices. While some stakeholders question the reduction of average payment delays and argue that it is a result of the economic recovery, several suppliers whose clients were subject to administrative sanctions confirmed that the paying behaviour of these clients had improved.

The sanctioned companies were mostly large, in sectors with longest average payment delay (transport; information and communication; agriculture, and accommodation and catering service). Despite encouraging results, the enforcement of administrative sanctions could be further improved. All interviewed stakeholders mentioned that the DGCCRF has limited resources to carry out inspections. Although *the Hamon Law* and *Sapin II Law* have foreseen strengthening the DGCCRF, only 2,500 controls are carried out (in line with the objectives) representing 20% of existing payment delays, according to the DGCCRF.

7.3.8 Netherlands: Betaalme.nu

7.3.8.1 Background and description

Betaalme.nu[938] ('Pay Me Now') is a non-profit initiative set up at the end of 2015 by Jan Joost van den Hondel and Michiel Steenman. After working 20 years in the financial services industry and having seen the impact of cash-flow issues for small and medium-sized companies (SMEs), the two partners decided to establish a scheme aimed at helping these companies to get easier access to finance.

The Betaalme.nu initiative started from the two partners' observation that Dutch SMEs were very vulnerable to liquidity problems, which had negative impacts for the Dutch economy. Firstly, it is less easy for them to access loan financing and to participate in public procurement.[939] Secondly, as emphasised by Betaalme.nu and confirmed by business organisations, Dutch SMEs are reluctant to negotiate payment terms with their large customers for fear of damaging the business relationship.[940]

The Betaalme.nu founders' initial idea was to spread the use of supply chain finance[941] between large Dutch companies and their SME suppliers. When the two founders started approaching large companies, they realised that many of them were willing to pay their small suppliers within shorter timeframes. The Betaalme.nu initiative therefore started focusing on accelerating invoice payments of large companies to their SME suppliers by encouraging them to set up shorter payment terms.

At the end of 2015, the Betaalme.nu initiative was launched with **three main goals**:

4. Set a payment term of 30 days as the norm between Dutch companies;
5. Unlock EUR 2.5 billion of liquidity for SMEs; and
6. Raise media attention around issues surrounding late payment.

Large companies are invited to produce a public statement in which they set out their commitment to treating their suppliers and/or specify payment terms for each supplier group. Every half year, Betaalme.nu signatories measure their results and are invited to justify why they have not followed their statement. According to one Betaalme.nu founder, this system allows the payment practices of large corporates to be monitored while improving SMEs' access to cash flow.

Box 38: Example of a company statement – Heineken

The beverage company Heineken was one of the first companies to submit a statement in November 2015. In its statement, the company committed to:[942]

- Setting a payment term of 30 days for suppliers with annual invoicing up to EUR 50 000;
- Increasing the use of supply chain finance for suppliers with annual invoicing between EUR 50 000 and EUR 200,000; and
- Systematically using supply chain finance for suppliers with annual invoicing of above EUR 200,000.

The statement specifies that the company will monitor compliance with these commitments and report its contribution to Betaalme.nu.

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[938] Betaalme.nu. Available at: https://www.betaalme.nu

[939] 2016 SBA Fact Sheet Netherlands. Available at: https://ec.europa.eu/docsroom/documents/22382/attachments/26/translations/en/renditions/native

[940] Interview with VNO-NCW & MKB representative on 19/12/2017, Interview with TLN representative on 07/02/2018, Interview with Betaalme.nu on 04/01/2018.

[941] Supply chain finance is a set of solutions that optimises cash flow by allowing businesses to lengthen their payment terms to their suppliers while providing the option for some other suppliers to get paid early. Supply chain finance solutions use a platform where suppliers indicate a preferred payment duration. Buyers receive a discount in case they make payment on time using their own cash flow. In case buyers do not have enough cash flow, supply chain finance systems allow them to access several solutions from banks and investors for paying suppliers within their preferred timeframe. Available at: https://primerevenue.com/what-is-supply-chain-finance/

[942] Please see the complete statement at: https://www.betaalme.nu/wp-content/uploads/2016/10/PLEDGE_Heineken_oktober-2016.pdf

Betaalme.nu relies on **corporate social responsibility (CSR) principles**, which aim to encourage companies to take responsibility for the improvement of their business behaviour. CSR measures consist of the companies' voluntary actions to integrate social, environmental and ethical concerns into their business operations and into their interaction with stakeholders.[943]

Box 39: CSR measures in Europe and the United Kingdom

Over the last decade, European companies have increasingly set up CSR measures and placed more attention on ethics, transparency and responsible behaviour.[944] In 2011, the European Commission launched a Strategy on CSR[945] in order to encourage companies to adhere to CSR guidelines and principles. The European Commission Strategy has led to several initiatives from EU national governments aimed at spreading CSR practices.[946]

The UK government, for instance, has had a long-standing national CSR policy. Since 1992, the Financial Reporting Council regularly publishes the UK Corporate Governance Code[947] which provides guidance to companies for improving their CSR practices. In addition, the Companies Act 2006[948] states that a company has an overarching duty to take account of a range of stakeholders in making decisions in promoting its success, including suppliers.

The Act states that: "A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) (…) the need to foster the company's business relationships with suppliers (…)"

The aim of this measure is to encourage a culture where large companies, especially their boards, consider the wider consequences of their decisions, and take into account stakeholders' interests.[949]

In addition to its CSR objectives, the Betaalme.nu initiative also conducts **awareness-raising activities** about cash-flow management. In particular, the initiative encourages large companies to increase their use of supply chain finance, and SMEs to familiarise themselves with electronic invoicing systems.

The Betaalme.nu initiative started with four large Dutch corporates in November 2015 (i.e. the beverage company Heineken, the consulting company Randstad, the supermarket chain Jumbo and the dairy cooperative Friesland Campina).[950] As of 2018, 50 large companies were signatories of Betaalme.nu including companies in retail and wholesale (e.g. Unilever), manufacturing (e.g. Philips), IT/software/telecommunications (e.g. SAP, TomTom), food and drink (e.g. Heineken), utilities and transport (e.g. Gasunie, Nederlandse Spoorwegen), and banking and financial services (e.g. ING,

[943] European Commission, 2011. Communication on "A renewed EU strategy 2011-2014 for Corporate Social Responsibility", COM(2011) 681 final. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN

[944] International Finance Corporation, 2015, A Guide to Corporate Governance Practices in the European Union. Available at: https://www.ifc.org/wps/wcm/connect/c44d6d0047b7597bb7d9f7299ede9589/CG_Practices_in_EU_Guide.pdf?MOD=AJPERES

[945] European Commission, 2011. Communication on "A renewed EU strategy 2011-2014 for Corporate Social Responsibility", COM(2011) 681 final. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN

[946] European Commission, 2014. Corporate Social Responsibility. National Public Policies in the European Union. Compendium 2014. Available at: https://ec.europa.eu/digital-single-market/en/news/corporate-social-responsibility-national-public-policies-european-union-compendium-2014

[947] The 2016 version of the Code is available at: https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf

[948] Companies Act 2006, Section 172. Available at: http://www.legislation.gov.uk/ukpga/2006/46/contents

[949] Companies Act 2006 Explanatory Notes. Available at: https://www.legislation.gov.uk/ukpga/2006/46/notes/division/6/2

[950] Betaalme.nu, 18 November 2015. "Grote bedrijven gaan MKB leveranciers sneller betalen". Available at: https://www.betaalme.nu/news/grote-bedrijven-gaan-mkb-leveranciers-sneller-betalen/

Rabobank).[951] Table 10 shows the 50 Betaalme.nu signatories and their sector of activity.

Table 10: List of Betaalme.nu signatories

Company	Sector
ISS	Business and professional services
Nedflex	Business and professional services
Olympia	Business and professional services
Randstad	Business and professional services
USG People	Business and professional services
Cargill	Food and drink
FrieslandCampina	Food and drink
Heineken	Food and drink
Jumbo	Food and drink
Rijk Zwaan	Food and drink
Van Oers United	Food and drink
Vion	Food and drink
KPN	IT/software/telecommunications
SAP	IT/software/telecommunications
TomTom	IT/software/telecommunications
Philips	Manufacturing
Royal Cosun	Manufacturing
Basiq Dental	Retail and wholesale
Unilever	Retail and wholesale
Enexis	Utilities and transport
Gasunie	Utilities and transport
HVC	Utilities and transport
Nederlandse Aardolie Maatschappij	Utilities and transport
Nederlandse Spoorwegen	Utilities and transport
NLE	Utilities and transport
Port of Amsterdam	Utilities and transport
PostNL	Utilities and transport
ProRail	Utilities and transport
Schiphol Group	Utilities and transport
Shell	Utilities and transport
Vopak	Utilities and transport
WML	Utilities and transport
Kamer van Koophandel	Business association
MKB	Business association
ABN AMRO	Banking and financial services
ABP	Banking and financial services
Achmea	Banking and financial services
APG	Banking and financial services
ASR	Banking and financial services
De Volksbank	Banking and financial services
ING	Banking and financial services
Intrum	Banking and financial services
MN	Banking and financial services
NIBC	Banking and financial services

[951] For a complete list of the signatory companies, please see: https://www.betaalme.nu/manifesten/

Company	Sector
PGGM	Banking and financial services
Rabobank	Banking and financial services
Van Landschot	Banking and financial services
Wereldhave	Banking and financial services
Zicht	Banking and financial services
Gemeente Rotterdam	Public authority

Source: Betaalme.nu.

Betaalme.nu is currently subsidised by the Dutch Ministry of Economic Affairs. Betaalme.nu and the business organisations VNO-NCW (large companies) and MKB-Nederland (SMEs) will collaborate further. Notably, the Betaalme.nu offices will move into the VNO-NCW MKB building, which will allow them to share resources and scale up the Betaame.nu initiative.[952]

7.3.8.2 Links with the needs of companies

The Betaalme.nu is an important initiative taking place in a country where the central government is committed to improving payment practices among businesses. The new Dutch Law on payment terms[953] entered into force in July 2017 and obliges large companies to pay their SME suppliers within 60 days, which goes beyond the requirements set by the Late Payment Directive (LPD).[954]

Yet, according to a study conducted by the Dutch Ministry of Economic Affairs in 2015, late payment issues are not prevalent in the Netherlands. Agreed payment terms are short, i.e. 30 days for 77.5% of Dutch businesses, and 14 days for 15% of all businesses in 2014. Payment delays have remained stable since 2012 and accounted for an average of nine days in 2015.[955]

However, as one Betaalme.nu founder noted[956], payment practices had slightly deteriorated when the initiative was established. Payment duration had increased from 37 days in 2014 to 40 days in 2015[957] and the share of payment terms of more than 60 days had increased from 0.7% in 2004 to 1.2% in 2015.[958]

The Betaalme.nu founder interviewed also noted there was the need at the time for an initiative specifically **targeted to SMEs**.[959] According to a Betaame.nu survey of 614 SMEs in 2017:[960]

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[952] Interview with a VNO-NCW MKB representative on 19/12/2017.

[953] *Wet van 18 april 2017 tot wijziging van Boek 6 van het Burgerlijk Wetboek in verband met het tegengaan van onredelijk lange betaaltermijnen* (Act of 18 April 2017 amending Book 6 of the Dutch Civil Code in connection with the countering of unreasonably long payment terms).

[954] The LPD (Directive 2011/7/EU) provides that the period for payment fixed in the contract shall not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor.

[955] Dutch Ministry of Economic Affairs, Dun & Bradstreet, 2015. "Investigation of payment terms with companies." Available at: http://docplayer.nl/10966999-Dun-bradstreet-onderzoek-naar-betalingstermijnen-bij-bedrijven-onderling.html

[956] Interview with Betaalme.nu on 04/01/2018

[957] PwC, Working Capital Study 2016. Available at: https://www.pwc.nl/nl/publicaties/werkkapitaalstudie-2016.html

[958] Dutch Ministry of Economic Affairs, Dun & Bradstreet, 2015. "Investigation of payment terms with companies." Available at: http://docplayer.nl/10966999-Dun-bradstreet-onderzoek-naar-betalingstermijnen-bij-bedrijven-onderling.html

[959] SCF Briefing, 30 March 2017, "Dealing with the new payment terms law for Netherlands SMEs". Available at: http://www.scfbriefing.com/dealing-with-the-new-dutch-payment-term-law/

[960] Betaalme.nu, May 2017, Rapportage Onderzoek MKB en ZZP. Available at: https://www.betaalme.nu/news/helft-leveranciers-mkb-geconfronteerd-langere-betaaltermijnen/

- 44% of Dutch SMEs faced extended payment terms;
- 45% of them were forced to accept longer payment terms than they were comfortable with;
- One third of them had already been paid later than the agreed payment term;
- 48% of them had already been asked for a discount on their invoice; and
- More than 20% of the respondents said that they were facing a risk for their company's survival because of liquidity problems.

In addition, according to the Dutch business organisations' representative, the Betaalme.nu initiative addresses the specificities of SMEs[961]: SMEs do not use their right to take legal actions against late payers because of a lack of resources, and fear of damaging the business relationship.[962] The same interviewee was also concerned that the gold-plating of the LPD by the new 2017 Act, which sets a mandatory 60-day payment term for small suppliers, disincentives large companies to pay earlier than the threshold set by law and in turn can increase average payment duration in the country.

Betaalme.nu relies on large companies' willingness to improve their behaviour with suppliers instead of constraining them by law. The interviewed stakeholders agreed that this approach can be more effective than regulatory intervention.[963] Notably, the lack of a name and shame element and the focus on encouraging good practices was welcomed by the interviewed signatory company.[964] Compared to other CSR measures in Europe, the Betaalme.nu initiative explicitly targets issues surrounding late payment, whereas CSR policies usually cover a broader range of issues. For instance, the provisions of the UK 2006 Company Act address business relationships more generally (see Box 39).

According to the stakeholders interviewed, the Betaalme.nu initiative is therefore a useful complement to the LPD. The Dutch business organisations' representative highlighted that the LPD allowed awareness of payment issues to be raised but did not provide SMEs with sufficient tools to fight against late payment.[965] On the contrary, Betaalme.nu fosters a change of behaviour from the business community itself.[966] In addition, Betaalme.nu promotes the use of **e-invoicing** in parallel with CSR-related actions.

One potential limitation of Betaalme.nu is that the initiative does not target the sectors most affected by late payment. As Table 10 shows, the sectorial spread of Betaalme.nu signatories is uneven, with almost 60% of signatories belonging to the financial services industry and the utilities and transport sector. There are no signatories from the construction sector, and only four signatories from the manufacturing and retail and wholesale sector, which are the sectors the most impacted by late payment in the Netherlands, according to Atradius.[967] On the other hand, late payment issues are not prevalent in the utilities and transport sector according to the Dutch transport association TLN.[968]

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[961] Interview with VNO-NCW & MKB representative on 19/12/2017.
[962] Interview with VNO-NCW & MKB representative on 19/12/2017, Interview with TLN representative on 07/02/2018.
[963] Interview with Betaalme.nu on 04/01/2018, Interview with VNO-NCW & MKB representative on 19/12/2017, Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018.
[964] Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018.
[965] Interview with VNO-NCW & MKB representative on 19/12/2017.
[966] Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018, Interview with VNO-NCW & MKB representative on 19/12/2017, Interview with TLN representative on 07/02/2018.
[967] Atradius, Payment Practices Barometer Netherlands 2017. Available at: https://group.atradius.com/publications/payment-practices-barometer-netherlands-2017.html
[968] Interview with TLN representative on 07/02/2018.

7.3.8.3 Progress and impact

In 2017, the average payment period for B2B transactions in the Netherlands was 32 days and had been stable since 2015.[969] A PwC study recorded an improvement in payment behaviour in 2017 but noted that this improvement was made at the expense of SMEs, which had more difficulty in collecting their invoices than the previous year (average collection days have increased by two days between 2017 and 2016).[970] One signatory company from the food and drink sector noted that their average payment terms dropped from 54 days to 44 days after 1.5 years being part of the initiative.[971]

According to one signatory company from the IT/software/telecommunications sector, the effectiveness of Betaalme.nu has increased over time. When the company joined the initiative at the beginning of 2016, they committed to paying their smaller suppliers within 30 days, which at the time represented 77% of their suppliers. As of 2018, they pay 90% of their suppliers within this timeframe as they also grant 30 days payment terms to medium-sized companies upon their demand. According to the company representative, joining the Betaalme.nu initiative has a positive effect on the company's reputation. It has notably raised attention to the company's favourable policy towards small suppliers and incentivised them to ask for shorter payment terms.[972]

The Betaalme.nu initiative aimed to engage the **largest 500 Dutch companies**. As of 2018, 50 companies were signatories, 10% of the target. Furthermore, as noted above, the sectorial coverage is still uneven, with a lack of companies from the sectors most impacted by late payment. The Betaalme.nu founder explained that involving signatory companies was a long process as it requires reaching out to top management levels, which could be difficult in large structures. The collaboration with VNO-NCW and MKB-Nederland will help achieve this objective by facilitating access to more companies through the associations' networks.

In the framework of the partnership between Betaalme.nu and the Dutch business organisations, the setting of new objectives for the initiative is being discussed. These suggestions include extending the amount of liquidity to be released for SMEs and scaling up the initiative to also target medium-sized enterprises.[973]

Compared to other CSR initiatives tackling the relationships between suppliers and customers in Europe, such as the aforementioned UK one, Betaalme.nu shows positive results. According to the UK Federation for Small Businesses, overall large British companies have failed to meet the responsibilities set up in the 2006 Companies Act.[974] The same organisation noted in an interview that payment behaviour has not significantly improved in recent years.[975] This is confirmed by Intrum's data, which shows that average payment terms and durations in the UK have risen of respectively seven and five days between 2015 and 2017.[976]

Moreover, the Betaalme.nu initiative is undertaken by a private non-for-profit organisation which monitors companies' results, which has not been the case of the UK Government. The evaluation of the 2006 Companies Act conducted in 2010 only briefly

[969] Intrum, 2017, European Payment Report 2017.
[970] PwC Press release, 2017. "Vooral grootbedrijven verbeteren werkkapitaalprestaties". Available at: https://www.pwc.nl/nl/publicaties/vooral-grootbedrijven-verbeteren-werkkapitaalprestaties.html
[971] Interview with a Betaalme.nu signatory company (food and drink) on 20/02/2018.
[972] Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018.
[973] Interview with VNO-NCW & MKB representative on 19/12/2017.
[974] Federation of Small Businesses, November 2016, Time to Act: the economic impact of poor payment practices. Available at: https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-report---late-payments-2016-(final).pdf
[975] Interview with the UK Federation of Small Businesses on 02/02/2018.
[976] Intrum, European Payment Report 2016 and 2017.

covered suppliers' relations, and there was no mention of late payment issues.[977] Due to the lack of specific public policies and monitoring schemes, companies do not systematically take CSR measures. When they do so, this is more the consequence of media pressure rather than government policy, as emphasised by the UK Federation for Small Businesses.[978] A 2013 survey reported that UK businesses felt that CSR was not something that could be driven or influenced by government, suggesting that businesses should determine for themselves the responsible practices that suit them.[979]

There are **no costs** for the signatory companies, as issuing a statement is free of charge. In terms of indirect costs, signatory companies may bear the cost of paying their smaller suppliers within a shorter timeframe. For instance, the signatory company interviewed pays 90% of its suppliers within 30 days, which implies more effort is needed to finance the company's needs using its own capital.[980] There are no costs incurred by SMEs.

In terms of **benefits**, according to Betaalme.nu data, the initiative has unlocked EUR 2 billion liquidity for SMEs by being paid earlier, and 200,000 small companies have been paid quicker.[981,982] In addition to this direct benefit, the initiative may have prevented SMEs having to close their business, as the lack of liquidity is one of the first causes of insolvency.[983]

The representatives of the signatory companies emphasised that the Betaalme.nu provided important benefits in terms of good supplier relations, which are difficult to quantify.[984] In addition, one signatory company from the food and drink sector estimated that the benefits of the supply chain finance system, which it had set up thanks to Betaalme.nu, to be worth EUR 2.3 million per year.[985]

7.3.8.4 Conclusions

The Betaalme.nu initiative is a Dutch CSR measure aimed at combating late payment among businesses. The initiative relies on the voluntary commitment of large companies to pay their small suppliers within short timeframes, i.e. up to 30 days. Since the launch of the initiative in 2015, 50 large Dutch companies have published statements where they commit to certain payment terms and fair relationships with their SME suppliers.

Betaalme.nu was initiated in a context where payment practices were deteriorating in the Netherlands and the voluntary aspect of the initiative was deemed useful to start changing business culture in the country. Signatory companies do not feel constrained and voluntarily commit to changing their behaviour, which improves business

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[977] Evaluation of the Companies Act 2006: summary of main findings. Available at: https://www.gov.uk/government/publications/companies-act-2006-main-findings-of-evaluation-report-table

[978] Interview with the UK Federation for Small Businesses on 02/02/2018.

[979] UK Department for Business Innovation & Skills, 2014. Corporate Responsibility. Good for business & society: government response to call for views on corporate responsibility. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300265/bis-14-651-good-for-business-and-society-government-response-to-call-for-views-on-corporate-responsibility.pdf

[980] Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018.

[981] Betaalme.nu, 12 September 2017. "Persbericht: Betaalme.nu bereikt mijlpaal: 50 grote bedrijven die MKB sneller betalen". Available at: https://www.betaalme.nu/news/persbericht-betaalme-nu-bereikt-mijlpaal-50-grote-bedrijven-mkb-sneller-betalen/

[982] This is the sum of the amounts signatory companies reported to pay to their smaller suppliers within 30 days during the year. Small suppliers are considered as suppliers to which signatory companies purchase for less than EUR 50,000 per year. Betaalme.nu founders consider that paying smaller suppliers within 30 days equals to freeing up liquidity as the money is made available to them earlier.

[983] 20% of the SMEs surveyed by Betaalme.nu said that they may end their business because of liquidity problems. Betaalme.nu, May 2017, Rapportage Onderzoek MKB en ZZP. Available at: https://www.betaalme.nu/news/helft-leveranciers-mkb-geconfronteerd-langere-betaaltermijnen/

[984] Interview with a Betaalme.nu signatory company (IT/software/telecommunications) on 07/02/2018. Interview with a Betaalme.nu signatory company (food and drink) on 20/02/2018.

[985] In the discounts they receive for early payment in their supply chain finance system. Their supply chain finance platform currently receives EUR 100 million in invoices. Interview with a Betaalme.nu signatory company (food and drink) on 20/02/2018.

relationships throughout the supply chain. On the other hand, SMEs benefit from shorter payment terms without having to undertake follow up actions, whether legal or using ADRs, which are costly and damage business relationships.

These advantages are common to other CSR initiatives in Europe. In addition, Betaalme.nu specifically targets late payment and is monitored by a private organisation, which ensures better monitoring of its effectiveness. Compared to the CSR measures comprised in the UK Companies Act, Betaalme.nu has shown more positive results.

However, only 50 companies have joined the initiative, which is far from the 500 signatories initially envisaged. In addition, the sectorial coverage could be broadened to integrate companies belonging to the sectors most vulnerable to late payment, i.e. construction, manufacturing, and retail and wholesale.

The enhanced collaboration with the Dutch business organisations VNO-NCW and MKB-Nederland is expected to help reach these targets by helping more potential signatories to be reached and by increasing media coverage of the initiative.

Betaalme.nu founders now have the task of scaling up the initiative to other European countries, and are in discussion with the Swedish SME association.[986] Furthermore, the Betaalme.nu initiative may be expanded via the creation of a digital platform on which SMEs can discuss payment practices and denounce bad payment practices, following the model of the UK Small Business Commissioner.[987]

[986] Interview with Betaalme.nu on 04/01/2018.
[987] Interview with VNO-NCW & MKB representative on 19/12/2017.

7.3.9 Hungary: Code of Ethics for Construction Entrepreneurs

7.3.9.1 Background and description

The Government Decree 1593/2012 (XII.17.) on the Acts Preventing the Emergence of Debt Chains[988] introduced a standardised Hungarian construction contract template.[989] Article 1 of the Decree requests the Hungarian Chamber of Commerce and Industry (MKIK) to draft and publish contract templates for construction projects and engaging subcontractors.[990]

To this end, MKIK prepared the Code of Ethics for Construction Entrepreneurs - the ***Építőipari Vállalkozók Etikai Kódexe***[991] (Code of Ethics for Construction Entrepreneurs) which was approved on 30 May 2013. The Code's objective is to provide construction entrepreneurs with a roadmap to fair competition and honest business conduct in respect of expected market and other business activities. In addition, the Code provides the basis for the conduct of ethical procedures and, in general, for entrepreneurs to develop their fair business practices.[992] The code was created in cooperation with the Hungarian National Association of Construction Entrepreneurs (EVOSZ).[993]

The Code applies to construction entrepreneurs registered with the Hungarian Chamber of Commerce and Industry as per Article 39 of the Act LXXVIII of 1997 on the Construction and Protection of the Construction Environment.[994] However, construction entrepreneurs on this registry do not need to be a member of the MKIK.[995]

The Code provides ethical rules for relations with clients, competitors, the state and internal relations, indicating how construction entrepreneurs should treat their employees and subcontractors.[996] For example, in the section on relations with competitors, the Code outlines the rules on prohibition of denigration, trade secrets violation, prohibition of luring of employees from other companies, protection of technological knowledge, prohibition of boycotting third parties or rules for fair competition.[997]

Further, the Code prohibits the misuse of a dominant position in the construction sector. More specifically, it is considered unfair market conduct when a main construction contractor imposes unilateral and unfair disadvantages in the contractual relationship with its subcontractors. Moreover, longer than reasonable payment terms are also considered an unfair market practice.[998]

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[988] Government Decree 1593/2012. (XII. 17.) on the Acts Preventing the Emergence of Debt Chains. Available at: http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk12171.pdf.

[989] However, this template has become obsolete as it was regulated by the old Hungarian Civil Code which has been ineffective since 2014.

[990] Government Decree 1593/2012. (XII. 17.) on the Acts Preventing the Emergence of Debt Chains. Available at: http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk12171.pdf.

[991] The Code is available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636

[992] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[993] Interview with MKIK representative on 19/02/2018.

[994] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[995] Varga, K. (2013). Etikai kódex, ajánlott szerződésminták az építőiparban. Available at: http://slideplayer.hu/slide/2645121/.

[996] Idem.

[997] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[998] The Code states that longer than reasonable payment terms are unfair but does not specify them further, i.e. it does not state what is a reasonable time limit.

The Code specifies that the sanctions, rules of ethical procedures and general ethical standards applicable to construction entrepreneurs and entities in cases of non-compliance with the Code will be dealt with according to the ethics code of the Hungarian Chamber of Commerce and Industry and of the regional chambers of commerce and industry (articles 44 to 46).[999] The Code outlines the procedures in front of the ethics committee of MKIK in cases of breach of any of the two codes.[1000] The procedures vary depending on whether or not the party is a member of MKIK and how severe the breach is: all companies are issued a warning if found in breach of the Code, but for MKIK members in severe cases this warning can be made public. If the law on prohibition of unfair competition practices has been violated, the injured party can start the necessary procedures in front of the competent competition authority. If during the proceedings of the ethics committee, information on phantom or botched work is discovered, the committee may initiate the appropriate procedure. Based on the committee's decision the chamber will arrange for the necessary procedures to be started.[1001]

The Code is complemented by templates of contract agreements. The aim of the contract templates is to present a more balanced and unified concept of contractual relationship in order to provide and secure the interests of both the client and the contractor.[1002]

The Code introduces four templates for construction contracts:

- Contract for general construction – flat rate payment;
- Contract for general construction – itemised payment;
- Contract for specialised construction – flat rate payment; and
- Contract for specialised construction – itemised payment.[1003]

The templates were prepared to fit the needs of small and micro-enterprises and were prepared with smaller projects in mind.[1004] The templates contain both general provisions and parts that can be adjusted according to the project within the existing legislative framework. Further guidance is included to help with the application of the templates.[1005] MKIK published an explanatory document[1006] accompanying the code of ethics and the contract templates.

The second chapter of the template deals with payments and includes clauses on late payment, particularly the statutory interest set at Hungarian Central Bank's base rate

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[999] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[1000] The Code of Ethics for Construction Entrepreneurs, and the Ethics Code of the Hungarian Chamber of Commerce and Industry and of the regional chambers of commerce and industry

[1001] Magyar Kereskedelmi és Iparkamara (2009). A Magyar Kereskedelmi és Iparkamara és a területi kereskedelmi és iparkamarák ETIKAI KÓDEXE. Available at: http://mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/az-mkik-etikai-kodexe-2009.

[1002] Kocsis, D. (2017). Securing performance and payment in construction projects: A comparison of industry practices in Hungary and in the U. S.. LL. M. Short Thesis. Central European University. April 5, 2017. Available at: www.etd.ceu.hu/2017/kocsis_domokos.pdf. Varga, K. (2013). Etikai kódex, ajánlott szerződésminták az építőiparban. Available at: http://slideplayer.hu/slide/2645121/.

[1003] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[1004] Varga, K. (2013). Etikai kódex, ajánlott szerződésminták az építőiparban. Available at: http://slideplayer.hu/slide/2645121/.

[1005] Magyar Kereskedelmi és Iparkamara. Építőipari Vállalkozók Etikai Kódexe, valamint Építési szerződésminták. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[1006] Magyar Kereskedelmi és Iparkamara (2014). Magyarázatok a Magyar Kereskedelmi és Iparkamara által kis- és mikrovállalkozások részére alkalmazásra javasolt vállalkozási mintaszerződésekhez. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

plus 8%.[1007] The explanatory document also details the rights and remedies stemming from the Late Payment Directive. In the case of a business-to-business (B2B) contract, the amount of interest on late payment and default interest, which unilaterally and unjustifiably breaches the requirement of good faith and fairness, may be challenged by an eligible party as an unfair term.[1008]

If the parties agree on partial payments (and, accordingly, sub-invoices), the interests of both parties require that the partial performance, which the customer must justify before the sub-invoice is issued, is proportional to the sub-invoice's amount.[1009] The textbox below showcases parts of the template for Contract for general construction – flat rate payment.

Box 40 : Contract for general construction - flat rate payment template

In B2B contracts, both the client and the contractor can provide their company name, address, company number, VAT number, bank account, name of representative in this contract, telephone, fax, e-mail. In addition, the client should indicate its customer log reference[1010], while the contractor should add its MKIK registration number, MKIK construction contractor registration number, and customer log reference.

Vállalkozási szerződés
Generálkivitelezésre
(átalánydíjas)

mely létrejött egyrészről a

(Fogyasztói szerződés esetén)
név.....
lakcím:.....
telefon: .....
fax: .....
e-mail: .....
bankszámlaszám:.....
naplóügyfél-jel:.....
mint **Megrendelő** – a továbbiakban: Megrendelő -,

(Nem fogyasztói szerződés esetén)
.....
székhely: .....
cégjegyzékszám/egyéni vállalkozói ig. száma:.....
adószám:.....
bankszámlaszám:.....
képviseli:.....
telefon: .....
fax: .....
e-mail: .....
naplóügyfél-jel:.....

mint **Megrendelő** – a továbbiakban: Megrendelő -,

másrészről a .....
székhely:.....,,
cégjegyzékszám/egyéni vállalkozói ig. száma: .....
adószám:.....
bankszámlaszám:.....
képviseli:.....
telefon: .....
fax: .....
e-mail: .....
MKIK nyilvántartási száma:.....
MKIK építőipari kivitelezői nyilvántartási szám:
naplóügyfél-jel:.....
mint **Vállalkozó** – a továbbiakban: Vállalkozó –

között a mai napon az alábbi feltételekkel:

Chapter I then describes the objective of the contract, such as what the customer is asking of the contractor to complete, where, when and how, and what are the main responsibilities of both sides. Chapter II then goes on to describe the fee for which the works are to be performed. As seen in the image below, points 3 and 4 of Chapter II are connected to late payment. Point 3 states that if the customer fails to meet a payment obligation within the deadline, the contractor is entitled to suspend the execution of his works until the payment has been made, prior written notice. Point 4 outlines that in the event of a customer's delay in payment, the contractor shall calculate interest at the rate as stated in the applicable Securities Markets Act as default interest.

[1007] Varga, K. (2013). Etikai kódex, ajánlott szerződésminták az építőiparban. Available at: http://slideplayer.hu/slide/2645121/.

[1008] Magyar Kereskedelmi és Iparkamara (2014). Magyarázatok a Magyar Kereskedelmi és Iparkamara által kis- és mikrovállalkozások részére alkalmazásra javasolt vállalkozási mintaszerződésekhez. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636.

[1009] Idem.

[1010] Electronic diary used in the construction sector.

3. Amennyiben a Megrendelő valamely fizetési kötelezettségét nem teljesíti határidőben, a Vállalkozó jogosult annak kiegyenlítéséig – előzetes írásbeli felszólítást követően - a Kivitelezést felfüggeszteni.

4. Megrendelő fizetési késedelme esetén Vállalkozó a mindenkori Ptk-ban szereplő mértékű kamatot számolja fel késedelmi kamatként.

Chapter III. discusses the different types of financing, such as prepayment and lien security, deposit, depositing the contractor's fee with a lawyer or a bank guarantee for the contractor's fee. Chapter IV deals with delivery terms and deadlines. Chapter V outlines procedures for delays or improper work performance, assurance and warranty. For example, in the case of delayed execution of the contract, the contractor is required to pay a penalty fee, which can be set as a percentage of the weekly contract fee. Chapter VI contains miscellaneous provisions such as who are the representatives of the parties entitled to make decisions in connection to the contract or what are the conditions to terminate the contract.

Additionally, construction entrepreneurs and companies who are members of EVOSZ[1011] also have to comply with their code of ethics[1012]. The code of ethics for construction entrepreneurs is very similar to the EVOSZ code of ethics, but it does not directly mention any provisions regarding late payment.[1013] Table 11 summarises the different codes of ethics applicable to construction entrepreneurs in Hungary.

Table 11: Overview of codes of ethics applicable to the construction industry in Hungary

Name of the code	Initiator	Applicable to
Code of Ethics for Construction Entrepreneurs	**Hungarian Chamber of Commerce and Industry (MKIK)**	**Construction entrepreneurs registered to the Hungarian Chamber of Commerce and Industry as per Article 39 of the Act LXXVIII of 1997 on the Construction and Protection of the Construction Environment**
Ethics Code of the Hungarian Chamber of Commerce and Industry and the regional chambers of commerce and industry	Hungarian Chamber of Commerce and Industry (MKIK)	Members of MKIK
EVOSZ Code of Ethics	National Association of Construction Entrepreneurs (EVOSZ)	Members of EVOSZ

7.3.9.2 Links with the needs of companies

The Hungarian construction industry has been severely affected by late payment issues.[1014] In 2011, the value of construction industry debt chains was around HUF 400 billion (EUR 1.3 billion[1015]).

According to an SME representative, the code of ethics for construction entrepreneurs and its templates are complementary to the national legislation implementing Late Payment Directive, as it further promotes fair payment and business practices in the

[1011] Építési Vállalkozók Országos Szakszövetsége (EVOSZ). Available at: http://www.evosz.hu/.
[1012] Építési Vállalkozók Országos Szakszövetsége (2010). ÉVOSZ Etikai kódexe. Available at: http://www.evosz.hu/dokumentumok/letoeltheto-dokumentumok.
[1013] Idem.
[1014] Kocsis, D. (2017). Securing performance and payment in construction projects: A comparison of industry practices in Hungary and in the U. S.. LL. M. Short Thesis. Central European University. April 5, 2017. Available at: www.etd.ceu.hu/2017/kocsis_domokos.pdf.
[1015] Converted using the exchange rate of 30/12/2011. EUR 1 = HUF 314.58. European Central Bank (2018). Currency converter. Available at: https://sdw.ecb.europa.eu/curConverter.do?.

Hungarian construction sector by providing guidelines on how to build and maintain fair business relations with clients, competitors and the state.[1016]

The contract templates were drafted to assist micro and small enterprises and give them guidance when negotiating contracts.[1017] The same interviewee noted that there is a greater support for voluntary measures than legislative intervention. Stricter payment terms, according to the interviewee, could lead to too many insolvencies in the construction sector, affecting the whole supply chain. [1018]

The SME representative noted that companies which adopt unfair practices in the construction sector usually have good knowledge of legal loopholes and can use them to their advantage. Therefore, it is very time and resource consuming to try to resolve matters through litigation or arbitration.[1019] The unfair practices do not always have to be a prerogative of the larger players in the construction industry. In 2013, it was estimated that out of the 97,000 SMEs that were active on the construction market in Hungary around 20,000 to 30,000 were using unfair business practices.[1020]

7.3.9.3 Progress and impact

There was wide media coverage shortly after the Code came into force.[1021]

According to the SME representative, there is great awareness of the Code among companies. While small and micro companies can benefit from the contract templates, they are too generic to be widely applied to the industry.[1022]

According to the interviewed stakeholders, payment practices in the construction sector have steadily improved after 2008 - 2010 legislative amendments: Act CXXVII. of 2007 on the general sales tax[1023]; Act CXLIII. of 2015 on public procurement[1024]; and Government Decree 322/2015 (X. 30.) on the detailed rules for the procurement of works and work and engineering services related to works[1025].[1026]

Even though this legislative package mainly concerned contracts between public authorities and businesses, the changes has made an impact on B2B relations according to the stakeholders. The changes included, for example, a requirement for the invoices to be issued within 15 days of the completion of the works or introduction of reversed taxation. In construction, reversed taxation is when the tax is paid to the state by the purchaser of the product or by the recipient of the service, meaning that the invoice will be issued by the contractor without VAT calculation and the tax will be paid by the buyer to the state.[1027] Further, the Act CXLIII. laid down the rules for public procurement where the winning entity only receives the payment of the balance from the public administration/authority once it proves that it has paid all its suppliers. This has been

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[1016] Interview with an SME representative on 07/02/2018.
[1017] Kocsis, D. (2017). Securing performance and payment in construction projects: A comparison of industry practices in Hungary and in the U. S.. LL. M. Short Thesis. Central European University. April 5, 2017. Available at: www.etd.ceu.hu/2017/kocsis_domokos.pdf.
[1018] Interview with an SME representative on 07/02/2018.
[1019] Idem.
[1020] Varga, Sz. (2013). "Mi sem fizetünk le senkit és mástól is csak ennyit várunk". HVG 19 February 2013. Available at: http://hvg.hu/kkv/20130219_A_vallakozoi_kornyezet_generalja_a_korrup.
[1021] Idem.
[1022] Interview with an SME representative on 07/02/2018.
[1023] 2007. évi CXXVII. törvény az általános forgalmi adóról. Available at: https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700127.TV.
[1024] 2015. évi CXLIII. törvény a közbeszerzésekről. Available at: https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1500143.TV.
[1025] 322/2015. (X. 30.) Korm. rendelet az építési beruházások, valamint az építési beruházásokhoz kapcsolódó tervezői és mérnöki szolgáltatások közbeszerzésének részletes szabályairól. Available at: https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1500322.KOR.
[1026] Interview with an SME representative on 07/02/2018.
[1027] Naturasoft (2018). FORDÍTOTT ÁFA 2018 TUDNIVALÓK A FORDÍTOTT ADÓZÁSRÓL. Available at: https://www.naturasoft.hu/forditott_afa_adozas.php.

greatly appreciated by the sector given its structure.[1028] It is not uncommon for a winner of a public procurement contract in construction to have multiple subcontractors and suppliers who in turn might have subcontractors/suppliers themselves.[1029]

The average payment terms in the construction sector were 38 days in 2013, dropping to 31 days in 2015 and continuing to steadily decrease.[1030] According to the EPR Industry White Paper 2017, the average time it actually takes customers to pay the invoice is 29 days[1031] and the issue of late payments is not the most prioritised issue in the construction sector.[1032]

It is challenging to assess the impact that the Code has had on practices in the construction sector since its introduction.[1033] The MKIK does not assess the effectiveness of the Code, nor monitors its enforcement.[1034]

In fact, the enforcement of the Code is not entirely clear. According to the initiator of the Code, MKIK, the update, application and practice of the Ethics Code for Construction Entrepreneurs is in the competence of the EVOSZ.[1035] However, the interviewed representative of EVOSZ pointed out that the association cannot, due to the internal charter, oversee the implementation of the Code, since it also applies to parties who are not members of the association.[1036]

The MKIK mentioned that given that the MKIK ethics committee's scope of authority is quite wide they seldom deal with breaches of one of their codes of ethics.[1037]

Further, the sanctions imposed by the MKIK ethics code on the offending parties are viewed as being soft. It is not unusual for companies or even consumers to use conciliation bodies to obtain better conditions and results. Given that the rulings of these bodies are mandatory, the injured party can often obtain monetary or other types of compensation. For example, the unsatisfactory work must be performed again in accordance with the required standards for no extra payment. The MKIK representative was not aware of any case in front of a conciliation body that would include the provisions of the code of ethics.[1038]

About a year and half ago, MKIK's ethics committee sent an official request for explanation to the ministry of justice enquiring about the compulsory nature of these types of ethics codes, such as the code of ethics for construction entrepreneurs, for those entities who are not members of the organisation who published the Code. The response was that for those entities that are not members of the organisation issuing the code, the code cannot be compulsory.[1039]

[1028] More, L. (2016). Mi lesz az építőiparral 2017-ben? Available at: http://epiteszforum.hu/mi-lesz-az-epitoiparral-2017-ben
[1029] Interview with an SME representative on 07/02/2018.
[1030] Dun&Bradstreet (2015). Payment Study 2015. Dun&Bradstreet (2016). Payment Study 2016. Available at: http://www.dnb.com/content/dam/english/economic-and-industry-insight/payment-study-2016-international.pdf
[1031] Intrum (2017). European Payment Industry White Paper 2017. Available at: https://www.intrum.com/en/about-us/publications/white-paper/.
[1032] Interview with an SME representative on 07/02/2018.
[1033] Idem.
[1034] Interviews with EVOSZ representative on 15/02/2018 and MKIK representative on 19/02/2018.
[1035] Information obtained from correspondence with MKIK.
[1036] Interview with EVOSZ representative on 15/02/2018.
[1037] Interview with MKIK representative on 19/02/2018.
[1038] Idem.
[1039] Idem.

The SME representative is in favour of the Code becoming compulsory, at least for larger companies. It is possible that some construction micro-enterprises might not have the capacity to fulfil all the obligations required by the Code, such as written contracts.

Neither MKIK nor EVOSZ have performed any studies on the costs and benefits for the companies that comply with the code of ethics.[1040]

First and foremost, the Code outlines the ideal conduct of all entities in the construction sector for fostering fair competition, and therefore the direct benefits of the Code for the sector should outweigh any compliance costs for individual companies.

7.3.9.4 Conclusions

The code of ethics for construction entrepreneurs promotes fair payment and business practices in the Hungarian construction sector. This is done by providing guidelines on how to build and maintain fair business relations with clients, competitors and the state. The issue of late payment is also included in the Code, but it is not its sole focus.

The issue of late payment in the construction sector in Hungary is not widespread, since according to the EPR White Paper 2017, on average companies in the sector pay their invoices within the required payment term of 30 days. Further, stakeholders agreed that the average payment terms in the construction sector have improved in the last decade due to the laws regulating public procurement contracts, given that the state remains an important client in Hungary.

While the Section II. of the Code outlines for which companies the Code is compulsory (those on the MKIK registry established under Article 39 of Act LXXVIII of 1997), the interpretation of the Ministry of Justice means that the measure is only compulsory to those who are members of MKIK.

Overall, the initiator of the Code, MKIK, and other stakeholders involved found it challenging to evaluate the effectiveness of the Code. The Code was adopted in 2013 and since then neither the initiator, MKIK, nor the sector association, EVOSZ, could recall any cases of the Code being breached.

[1040] Interviews with EVOSZ representative on 15/02/2018 and MKIK representative on 19/02/2018.

7.3.10 Malta: Seminars of the Malta Association of Credit Management

7.3.10.1 Background and description

The **Malta Association of Credit Management (MACM)**[1041] is a non-profit organisation that aims to promote sound credit management among Maltese businesses.[1042] The association was created in 2001 following several bankruptcies in the retail sector, a lengthening of payment periods by business customers and the growing number of unpaid cheques in the Maltese business community.[1043]

The MACM is directed and managed by a former banker specialised in financial advice. The MACM staff is composed of six additional employees who help administer the organisation.[1044]

The objectives of the MACM are threefold[1045]:

- Provide information to the Maltese business community about credit and cash flow;
- Educate the Maltese business community on solutions for improving credit and cash flow management; and
- Lobby the Maltese government to promote changes to the legislation facilitating a healthier credit environment.

The MACM conducts a wide range of activities. First, the association has an online Credit Management Information System where MACM members can find up-to-date information on the credit behaviour of other members. This allows MACM members to check the creditworthiness of potential debtors and to take informed decisions on whether to grant them credit. In addition to this tool, the MACM publishes yearly statistics on late payment, which allows payment practices in the country to be monitored.

Second, MACM organises several conferences, seminars and workshops on credit and cash-flow management topics. Finally, the MACM lobbies the Maltese government on various legislative areas, e.g. data protection, business promotion, banking, consumer credit, dishonoured cheques and late payment.

The MACM is also member of the Federation of European Credit Management Associations (FECMA) which promotes information exchange on credit and cash flow management topics at European level. Since November 2016, the MACM Director General is the also the President of FECMA.

Awareness-raising activities on late payment issues are part of the second set of MACM activities. Since its creation, the association has held several information seminars on the Late Payment Directive (LPD)[1046], legal actions for recovery of debt, credit and business law, and cash-flow managing. These events are open to their members and to externals, across all sectors.

A non-exhaustive list of MACM awareness-raising activities since 2005 can be found in

[1041] Malta Association of Credit Management. Available at: http://www.macm.org.mt/home
[1042] While other credit management education initiatives are identified in Section 4.4.3 and awareness raising activities in Section 4.5.2, the activities carried out by MACM offer a multi-dimension intervention within those identified in this study.
[1043] MACM website. "About MACM". Available at: http://www.macm.org.mt/aboutmacm
[1044] MACM website. "Our team". Available at: http://www.macm.org.mt/ourteam
[1045] MACM website. Available at: http://www.macm.org.mt/home
[1046] Directive 2011/7/EU.

Table 12 below.

Table 12: List of MACM awareness-raising activities since 2005

Topic	Date	Type
Sales & Credit	May-05	Seminar
Late Payments in Commercial Transactions	Sep-05	Seminar
Improvement Debt Collection through the Maltese Courts	May-06	Conference
Debt recovery through the Maltese Courts	May-07	Conference
Practical Credit Management	May-08	Conference
Effective Interest Charging. Legal implications	Sep-08	Conference
Credit Crunch Matters	May-09	Conference
Financing International Business	Feb-10	Seminar
Managing credit in 2010	Apr-10	Conference
Best practices for Managing Credit in Today's Business Environment	May-11	Conference
Managing credit	May-11	Conference
Joint Seminar on cash-flow management with the Malta Institute of Accountants	May-12	Seminar
Execution of Judgement and Other Executive Titles	Oct-12	Seminar
EU Directive 2011/7 on combating late payment in commercial transactions	Feb-13	Seminar
Credit & Business Law - What's new?	Oct-13	Seminar
Neighbours. Impact on the Maltese economy and the Credit Environment	Nov-14	Conference
Managing credit profitability	May-15	Workshop
New amendments to the Companies Act	Jan-16	Seminar
Managing credit in 2016	May-16	Conference
Debt Recovery through the Law Courts	May-17	Seminar
The Dynamic Business World. Are you ready for change?	Nov-17	Seminar
Practical Credit Control and Management	Jan-18	Workshop
Collecting Money by Telephone Effectively	Feb-18	Workshop
The Road to GDPR Compliance	Mar-18	Seminar

Source: MACM.

In addition, the MACM sends an email twice a year with the European Central Bank interest rate, which is the base for the interest rate for late payment in commercial transactions, along with general information on the provisions of the LPD. The MACM

also sends a newsletter to its members and publishes various articles on credit management issues on its website[1047] to complement the events organised.

As of 2018, MACM has about 700 members, 80% of them being micro and small companies.[1048]

7.3.10.2 Links with the needs of companies

Late payment in commercial transactions is an important issue in Malta. According to the MACM, it is common practice for Maltese companies to request long credit terms from their suppliers of up to 120 days.[1049]

In 2016, the average payment duration reported by Maltese creditor companies was 89 days[1050], which was almost three times longer than the European average of 34 days,[1051] and nine days longer than Italy, the European country with the longest average payment time, according to Intrum.[1052]

According to the MACM director general, the reasons for late payment in commercial transactions in Malta are structural and therefore difficult to tackle. Malta is a small economy where there is intense competition among a restricted number of companies. Losing one customer can be very damaging for a business, especially for small suppliers.[1053] In order to remain competitive, companies tend to accommodate their customers by granting them long payment terms and have therefore very little leeway to negotiate payment terms.[1054] This, in combination with late payment, leads to an overall long payment duration, which is perceived as the norm by the Maltese business community.[1055]

According to the Malta Business Bureau, the healthcare and construction sectors are particularly affected by late payment. This is due to the importance of public procurement contracts in both sectors and the public sector's propensity to pay late in the country. In the case of the construction sector, the propensity to late payment is also explained by the economic downturn and the increased reluctance of banks to grant overdrafts and loans, which leads companies to increasingly bargain payment terms and/or not respect them.[1056]

Maltese businesses rarely use the remedies provided by the LPD for solving late payment issues. As noted by the MACM director general, it is very rare that companies claim interest for late payment or initiate judicial actions.[1057] The MACM awareness-raising activities around credit management solutions give companies the necessary understanding of the issues at stake. For instance, one MACM member interviewed

[1047] MACM website. "Media releases". Available at: http://www.macm.org.mt/mediareleases#
[1048] Interview with MACM Director General on 11/01/2018.
[1049] Times of Malta, 10 March 2016. "Payments taking longer". Available at: https://www.timesofmalta.com/articles/view/20160310/business-news/Payments-taking-longer.605150
[1050] MACM survey 2016.
[1051] Atradius, 2015. Atradius Payment Practices Barometer.
[1052] Average payment time for Italy in 2015 was 80 days. Source: Intrum, 2016. European Payment Report 2016.
[1053] Interview with MACM director general on 11/01/2018, Interview with a MACM member (food and drink sector) on 06/02/2018, Interview with a MACM member (business and professional services sector) on 06/02/2018.
[1054] Interview with MACM director general on 11/01/2018.
[1055] Interview with a MACM member (food and drink sector) on 06/02/2018, Interview with a MACM member (business and professional services sector) on 06/02/2018.
[1056] Malta Business Bureau, 2010. Settling late payments on time. Analysis and Recommendations on the Recast of the EU Late Payments Directive.
[1057] Interview with MACM director general on 11/01/2018, and the Malta Chamber of Commerce.

noted that suppliers often send incomplete and incorrect invoices which unnecessarily prolongs payment duration.[1058]

The MACM information events are not directed at specific types of companies. Yet, according to one MACM member, information activities are especially useful to smaller companies which are less aware of good practices around cash-flow management.[1059] Malta's business landscape is composed mostly of SMEs (99.8%), which suggests that late payment occurs on a larger scale than only between large and small companies.[1060]

The MACM information events do not target specific sectors of the Maltese economy.[1061] The MACM director general noted that the association was taking a 'holistic approach' to credit management in order to spread good payment practices as much as possible. Furthermore, the MACM awareness-raising activities do not only focus on late payment but also cover credit application, debt collection, and other good payment practices. The MACM has partnerships with other associations, such as the Malta Accountants Association, in order to reach out to more companies.

It is worth noting that MACM members praise the MACM Online Credit Management System, which allows them to check the credit behaviour of potential customers.[1062]

7.3.10.3 Progress and impact

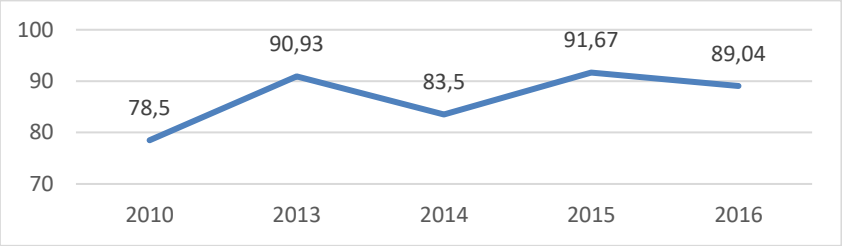
It is difficult to assess the extent to which the MACM information events have led to a reduction of late payment issues. In general, payment durations are very high compared to the EU-average, and the level of awareness of late payment remedies is low among Maltese businesses.

Payment practices in Malta have worsened since 2010. According to the MACM, the average payment time for both government and commercial transactions increased from 78.5 days in 2010 to 90.93 days in 2013 and more than 91 days in 2015.[1063] There was a slight decrease (two days) between 2015 and 2016,[1064] but the average payment time remains significantly high compared to the European average (34 days in 2016).

The figure below shows the evolution of the days sales outstanding[1065] reported by the MACM yearly survey.

[1058] Interview with a MACM member (business and professional services sector) on 06/02/2018.
[1059] Idem.
[1060] Estimates for 2014 produced by DIW Econ, based on 2008-2012 figures from the Structural Business Statistics Database (Eurostat). Source: European Commission, 2015. 2015 SBA Fact Sheet – Malta.
[1061] There is no recent data available on the most impacted sectors by late payment. In 2010, average payment times were the highest for the industrial equipment sector (179.3 days) and the lowest for the telecommunications sector (49.5 days). Times of Malta, 1 July 2017. "Payment is in the post!" Available at: https://www.timesofmalta.com/articles/view/20100701/business-comment/payment-is-in-the-post.315662
[1062] Interview with a MACM member (food and drink sector) on 06/02/2018, Interview with a MACM member (business and professional services sector) on 06/02/2018.
[1063] MACM surveys 2010, 2013, 2015.
[1064] MACM survey 2016.
[1065] Days sales outstanding estimate companies' average collection period. Available at: https://www.investopedia.com/terms/d/dso.asp

Figure 28: Average payment time in Malta for government and B2B transactions (2010-2016)



Source: MACM survey. Please note that no survey was conducted in 2011 and 2012.

It is worth noting, however, that the latest MACM survey reports improvements in the construction and pharmaceutical sectors, where payment duration has dropped by about six days between 2015 and 2016.[1066] According to the MACM director general, this improvement can be explained by the improvement of payment practices in the public sector and the recovery of the Maltese construction sector. There is therefore no evidence that the MACM activities have contributed to the improvement in payment behaviour. Moreover, it should be noted that despite this progress, payment duration is still much higher than the European average.[1067]

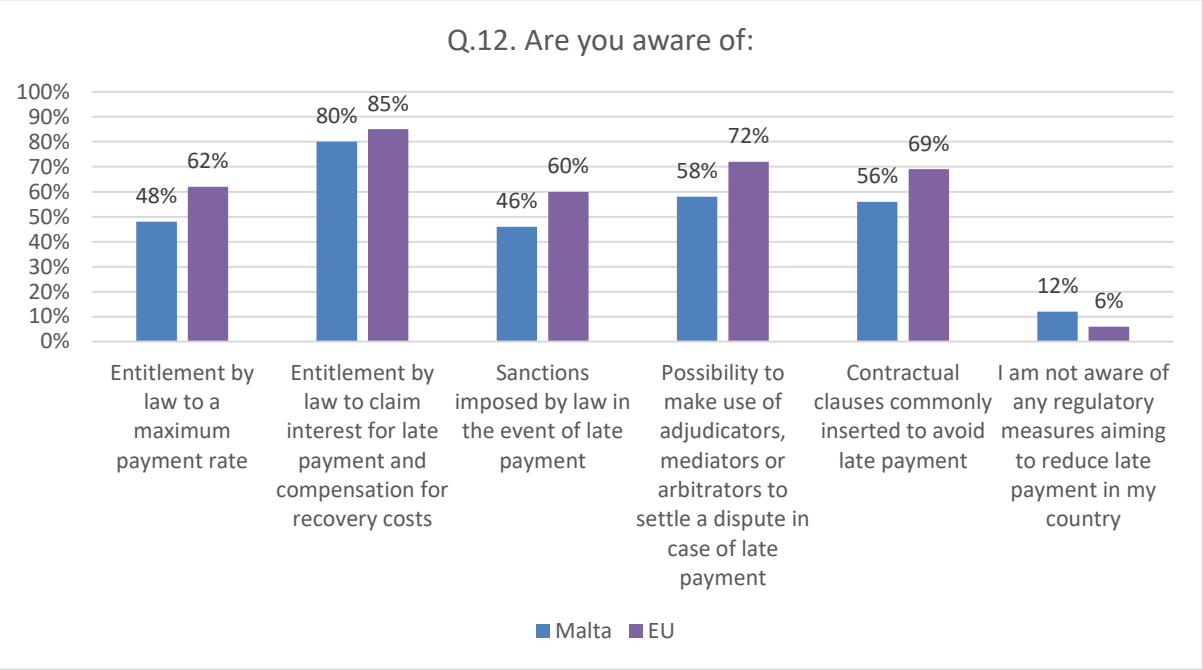
The MACM director general noted that credit and cash-flow management of Maltese businesses has improved in recent years. For instance, credit application forms are now very commonly used by the Maltese business community, which was not the case five years ago.[1068] Both MACM members interviewed agreed that the MACM information activities have contributed to improving the credit management practices of the Maltese business community, which was in general more informed.[1069] For instance, one MACM member noticed that the number of unpaid cheques has considerably reduced, from about 20 per week in the year 2000 to four or five per week today.[1070]

The MACM director general also noted an increase in the number of participants at the MACM information events. Conferences and seminars host between 150 and 200 participants, which is high given the size of the Maltese business community.[1071] In 2016, the MACM organised five workshops on credit management issues with 15 attendees each, whereas the association used to organise one per year before 2010.[1072]

Despite those positive notes, the CATI survey carried out for this study shows lower level of awareness of preventive measures than the EU average: 56% of the Maltese companies surveyed are aware of contractual clauses commonly inserted to avoid late payment, compared with 69% for the rest of the EU.

[1066] Interview with MACM Director General on 11/01/2018.
[1067] Interview with MACM Director General on 11/01/2018.
[1068] Idem.
[1069] Interview with a MACM member (food and drink sector) on 06/02/2018, Interview with a MACM member (business and professional services sector) on 06/02/2018.
[1070] Interview with a MACM member (business and professional services sector) on 06/02/2018.
[1071] Interview with a MACM member (food and drink sector) on 06/02/2018.
[1072] Interview with MACM Director General on 11/01/2018.

Figure 29: Companies' level of awareness of regulatory measures to reduce late payment in Malta and in the EU



Source: CATI survey.

While the low sample of respondents prevents definitive conclusions from being drawn, further analysis of the CATI survey gives rise to some insights. The CATI survey reports that only 12% of Maltese companies[1073] have heard of awareness-raising activities aiming to reduce late payment in the country, compared to the EU average of 20%. This could suggest that the MACM awareness-raising activities do not reach a sufficient portion of the Maltese business community, which is confirmed by the fact that the current MACM 700 members represent only 2.6% of all Maltese businesses.

In terms of **costs** for the companies, the MACM charges membership fees that range from EUR 250 per year for small companies to EUR 1,200 per year for companies with turnover exceeding EUR 15 million. Both MACM members interviewed estimated that their membership fee was fair given the services received.

Most MACM services are free of charge for MACM members. Conferences and seminars charge additional fees to cover organisation costs that range from EUR 20 to EUR 90. For instance, the last MACM seminar on 'Debt Recovery through the Law Courts charged EUR 22 for students, EUR 59 for MACM members and EUR 89 for non-members.[1074]

According to the stakeholders interviewed, it is difficult to estimate the monetary value of the **benefits** of MACM information events.[1075] One reason is that it is difficult to separate the impacts of the different MACM activities, especially the Online Credit Management System and the awareness-raising activities.

[1073] 6 out of 50 Maltese respondents to the CATI survey
[1074] Documentation sent by MACM on 20/07/2017.
[1075] Interview with MACM Director General on 11/01/2018, Interview with a MACM member (food and drink sector) on 06/02/2018, Interview with a MACM member (business and professional services sector) on 06/02/2018.

According to one MACM member, the debt collection techniques learnt thanks to the MACM seminars have allowed saving of EUR 40,000 to 60,000 per year through the avoidance of their debtors defaulting.[1076]

There are also potential economic benefits for the Maltese economy, as late payment has an impact on future investment: debtors represent about 40% of the balance sheet of Maltese companies.[1077] In the construction sector, in particular, it is estimated that the cost of late payment accounts for 24% to 60% of the net profit of companies.[1078] Maltese businesses generate EUR 4.2 billion value added, thus benefits from improved payment practices could be very high.[1079]

The stakeholders interviewed agreed that the benefits of MACM awareness-raising activities generally outweighed the costs. According to the MACM director general, however, these costs are still prohibitive for some companies.

7.3.10.4 Conclusions

The MACM information events aim to raise awareness of late payment issues, as well as spread good credit management practices among the Maltese business community. The MACM has also an online tool for monitoring Maltese companies' credit behaviour and conducts lobbying activities targeting the Maltese government.

The MACM activities are particularly relevant to the problems of Maltese businesses, especially SMEs, which are less aware of credit and cash-flow management solutions.

In terms of effectiveness, the stakeholders interviewed agree that that the MACM activities contributed to improved credit management practices in Malta. It is difficult to separate the impact of the information events from the other services offered by the MACM, i.e. the online credit management tool. Furthermore, although some improvements have been noted in the construction and pharmaceutical sectors, late payment is still an significant problem in Malta. In 2016, Malta is the country with the longest payment time for B2B transactions in the EU.[1080]Finally, the level of awareness of late payment remedies is still low in Malta, and only a small proportion of companies know about awareness-raising activities targeting late payment in the country.

One way to increase awareness could be to increase the number of attendees at MACM awareness-raising activities. This could be done by further increasing the number of MACM members. Another way would be to further increase the dissemination of the seminars and conferences that are open to non-MACM members.

Costs for companies consist of the MACM membership fees and event fees. Potential benefits are difficult to estimate but have been acknowledged to be quite high.

[1076] Interview with a MACM member (food and drink sector) on 06/02/2018

[1077] Times of Malta, 10 March 2016. "Payments taking longer". Available at: https://www.timesofmalta.com/articles/view/20160310/business-news/Payments-taking-longer.605150

[1078] Malta Business Bureau, 2010. Settling late payments on time. Analysis and Recommendations on the Recast of the EU Late Payments Directive.

[1079] Estimates for 2014 produced by DIW Econ, based on 2008-2012 figures from the Structural Business Statistics Database (Eurostat). Source: European Commission, 2015. 2015 SBA Fact Sheet – Malta.

[1080] Excluding Cyprus and Luxembourg, for which Intrum figures are not available.

7.4 Annex 4: Methodological approach

The methodological approach for the data collection included the following specific tasks:

- Desk research: The desk research has been completed in the 28 EU Member States, separately for the legal and voluntary measures. The national desk research spanned a variety of sources including national legislation and case laws, reports and studies from national authorities and business associations, as well as specialised articles and statistical databases. Statistical databases at EU level include the European Payment Reports (formerly European Payment Index) and Industry White Papers of Intrum, the Payment Practices Barometer of Atradius (divided into Western and Eastern Europe Barometers), the national Collection Profiles of Euler Hermes, the Payment Studies of CRIBIS D&B and the European Payment Practices surveys of EOS. The full bibliography of EU and national sources can be found in Annex 3.
- The CATI survey: a CATI survey was undertaken with 1696 SMEs across the 28 Member States and the seven sectors. The division of interviews by country and sector is presented in Table 13.

Table 13 : Final number and quota of the CATI survey

Sector/Country	Construction	Retail and wholesale	Manufacturing	IT Software Telecommunication	Food and drink	Utilities and transport	Business and professional services	Total
Austria	7	7	8	8	7	7	7	**51**
Belgium	7	7	8	7	7	7	9	**52**
Bulgaria	10	10	10	11	10	10	10	**71**
Croatia	10	10	10	10	10	10	10	**70**
Cyprus	7	8	8	7	7	7	7	**51**
Czech Republic	7	7	8	7	7	7	7	**50**
Denmark	7	7	8	7	7	7	7	**50**
Estonia	7	7	8	7	7	7	7	**50**
Finland	7	7	8	7	7	7	7	**50**
France	10	10	11	10	10	10	11	**72**
Germany	10	10	10	10	10	10	10	**70**
Greece	10	10	10	10	10	10	10	**70**
Hungary	10	10	10	10	10	10	11	**71**
Ireland	11	10	10	10	11	10	10	**72**
Italy	10	10	11	10	10	10	10	**71**
Latvia	7	7	8	7	7	7	7	**50**
Lithuania	7	7	8	7	7	7	7	**50**
Luxembourg	7	7	8	7	7	7	7	**50**
Malta	7	7	8	7	7	7	7	**50**
Netherlands	7	7	8	7	7	8	7	**51**
Poland	10	10	10	10	10	10	10	**70**
Portugal	10	10	10	10	11	10	10	**71**
Romania	10	10	10	10	10	10	10	**70**
Slovakia	7	7	8	7	7	7	7	**50**
Slovenia	7	7	8	7	7	7	7	**50**
Spain	10	10	10	10	10	10	10	**70**
Sweden	10	10	10	11	10	10	10	**71**
UK	10	10	10	10	11	11	10	**72**
Total	**239**	**239**	**254**	**241**	**241**	**240**	**242**	**1696**

- Interviews: A total of 124 interviews have been conducted across the 28 Member States and the seven sectors. The division of interviews by country and sector is presented in Table 14. 140 interviews were initially planned for this task, but the stakeholder involvement turned out to be lower in some smaller Member States such as Luxembourg or in countries relatively less affected by late payment such as Austria, Germany and Hungary. The remaining interviews will be carried out during the case studies, to assess more in-depth best practice measures and their impact on the reduction of late payment in B2B transactions.

Table 14 : Total number of interviews per sector and Member State

Sector/ Country	Construction	Retail and wholesale	Manufacturing	IT Software Telecommunication	Food and drink	Utilities and transport	Business and professional services	Pan-sectorial*	Total
Austria					2				**2**
Belgium	1				2			2	**5**
Bulgaria				1		1		3	**5**
Croatia		1		1		1	1		**4**
Cyprus	1	1		1			1	1	**5**
Czech Republic	1	1			1		1		**4**
Denmark		1	1				1		**3**
Estonia	1	1	1			1	1		**5**
Finland		1						2	**3**
France	1	1	1	1	1	1		1	**7**
Germany		1			1				**2**
Greece		1	1	1		1	1		**5**
Hungary						1			**1**
Ireland		1			1			1	**3**
Italy	1	1		2	1			1	**6**
Latvia	1	1		1		1		1	**5**
Lithuania			1			2		1	**4**
Luxembourg								1	**1**
Malta		1						2	**3**
Netherlands		2		2	2	1		3	**10**
Poland	1		1	1	1		1		**5**
Portugal	1		1	1	1				**4**
Romania					3				**3**
Slovakia	1	1	1		1		1		**5**
Slovenia	1	1	1		1	2	1	2	**9**
Spain	1	2			1		1		**5**
Sweden		1	1	1	1		1	1	**6**
UK					2	1		1	**4**
Total	**12**	**20**	**10**	**13**	**22**	**13**	**11**	**23**	**124**

* Pan-sectorial includes interviews with SME associations or Chamber of Commerce covering all sectors.

- Ten case studies were completed, assessing good practice examples of regulatory and voluntary measures aiming to tackle late payment. The table below presents the list of case studies.

Table 15: List of case studies

Category	Measure/Initiative
Stricter legislation (in the food and drink sector)	Article 62 of Food Law Decree No. 1 of 24 January 2012 "Urgent provisions on competition, development of the infrastructures and competitiveness"[1081], Italy
Dispute resolution system (in the construction sector)	Construction Contract Act[1082], Ireland (supported with findings from the UK Housing Grants, Construction and Regeneration Act 1996)
Legal provisions on transparency of payment behaviour	Regulation 395/2017[1083], United Kingdom
Voluntary measure of transparency of payment practices	KRD Economic Information Bureau[1084], Poland
Dispute resolution system	Ombudsman for undertakings[1085], France
Dispute resolution system measure (in the food and drink sector)	The dialogue platform of the Food Supply Chain[1086], Germany (supported by findings from the Belgian Supply Chain Initiative)
Administrative sanctions	'Law Hamon' (Law 344/2014)[1087] and 'Law Sapin II' (Law 1691/2016)[1088], France
Corporate social responsibilities measure	Betaalme.nu, the Netherlands[1089]
Prompt payment/good practice codes/charters (in the construction sector)	Code of Ethics for Construction Entrepreneurs[1090], Hungary
Awareness raising activities	Seminars of the Malta Association of Credit Management[1091]

The table below presents an overview of the interviews carried out in the context of the case studies.

[1081] Law Decree No. 1 of 24 January 2012 containing urgent provisions on competition, development and competitiveness, converted by Law No. 27 of 24 March 2012.
[1082] Construction Contracts Act 2013 No. 34 of 2013.
[1083] Legislation.gov.uk, 2017, The Reporting on Payment Practices and Performance Regulations 2017, available at: http://www.legislation.gov.uk/uksi/2017/395/contents/made
[1084] KRD Economic Information Bureau, available at: http://en.krd.pl/Home
[1085] Decree of 14 January 2016 appointing the ombudsman for undertakings (*décret du 14 janvier 2016 portant nomination du médiateur des entreprises),* Official Journal of the French Republic of 14 January 2016.
[1086] The dialogue platform of the Food Supply Chain, available at: http://www.lebensmittellieferkette.de/
[1087] Law n° 2014-344 of 17 March 2014 on consumer affairs (*loi n° 2014-344 du 17 mars 2014 relative à la consummation*), Official Journal of the French Republic of 18 March 2014 (*Hamon Law*).
[1088] Law n° 2016-1691 of 9 December 2016 regarding the transparency, the fight against corruption and the modernisation of the economic life (*law 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*), Official Journal of the French Republic of 10 December 2017 (*Law Sapin II*).
[1089] Betaalme.nu, available at: https://www.betaalme.nu
[1090] Code of Ethics for Construction Entrepreneurs. Available at: http://www.mkik.hu/hu/magyar-kereskedelmi-es-iparkamara/epitoipari-vallalkozok-etikai-kodexe-valamint-epitesi-szerzodesmintak-9636
[1091] Information seminars on debt recovery, and credit and business law, organised on 29/10/2012, 29/10/2013 and 10/05/2017. MACM annual conferences on managing credit, organised on 12/05/2011 and 19/05/2016 for MACM 10- and 15 years anniversary. MACM and Malta Institute of Accountants joint conference on cash flow, organised on 17/05/2012. Source: Interview with Malta Association of Credit Management (MACM). Available at: http://www.macm.org.mt/home

Table 16 : Interviews conducted in the context of the case studies

Case study	Initiator/ implementing body	Business association	Participant company	Other
Food law Decree (Italy)	1	1	2	1
Construction Contract Act (Ireland, UK)	1	4		
Regulations 395/2017 (UK)	1	2		
National Debt Register (Poland)	1	1	1	1
Ombudsman for Undertakings (France)	1	3	3	1
ADR in food sector (Germany, Belgium)	5			
Law Hamon and Law Sapin II (France)	1	3	1	1
Betaalme.nu (Netherlands)	1	3	2	
Construction code of ethics (Hungary)	1	1	1	
Seminars of Credit Management Association (Malta)	1	1	2	

Note: "Other" stakeholders included academic experts, external observatories and government representatives who were not initiators of the measures. For the case study on ADR in food sector (Germany, Belgium), five interviews were completed with business associations who were also the initiators of the measures.

- A peer-review workshop with stakeholders took place in Brussels on 25 April 2018. The aim of the workshop was to inform stakeholders about the preliminary results of the study, discuss these results and focus on validating and developing the recommendations on how already established initiatives can be used to improve payment behaviour in B2B transactions. About 30 participants took part in the workshop, including business associations, representatives of good practice initiatives, the study team and experts, as well as Commission representatives.

7.5 Annex 5: Challenges encountered and risk mitigation

During the project, the study team has faced the following challenges, and has applied the respective mitigation measures:

- Limited number of sector-specific measures in some sectors: No measures were identified in the IT/software/ telecommunication sector. We therefore focused on analysing the main issues and causes of late payment in the sector. In addition, no legal measures were identified in the manufacturing, and business and professional services sectors. The legal analysis, however, found that, in few cases, the scope of national laws applying to the construction, retail and wholesale or the food and drink sectors extends to companies operating in the manufacturing or in the business and professional services sectors.

- Some of the identified measures have been recently set up. In these cases, the analysis is mainly focused on the expected impacts of these measures.

- Some measures were not included in the CATI survey: when designing the CATI survey questionnaire, some types of voluntary measures had not yet been identified from the pilots and were not mentioned in the questions, so the surveyed companies were not able to react on these measures (namely the measures of transparency of payment practices, invoice management, measures and labels/certificates/prizes for payment behaviour). Therefore, we have mentioned in our analysis that when the respondents referred to "other measures", they may refer to one of these.

- Limited information on the impact of measures: there was limited evidence of the direct impact from specific measures on the reduction of B2B late payment. The desk research identified limited qualitative and quantitative information on the impact, from which it was often difficult to link the improvement of payment behaviour to one specific measure. In addition, the interviews were mostly providing answers of qualitative nature (although some stakeholders referred to specific figures from studies), which only allowed to add a qualitative opinion on the measures.

7.6 Annex 6: List of literature

The complete list of EU and national sources is enclosed as a separate document.

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