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COVER NOTE

From:	The Irish Houses of the Oireachtas
date of receipt:	15 December 2023
To:	The President of the Council of the European Union
Subject:	Proposal for a Regulation of the European Parliament and of the Council on combating late payment in commercial transactions [12976/23 REV1 - COM(2023) 533 final/2] - Opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find enclosed the opinion[1] of the Irish Houses of the Oireachtas on the above.

[1] The translation(s) of the opinion may be available on the Interparliamentary EU Information Exchange website (IPEX) at the following address: https://secure.ipex.eu/IPEXL-WEB/document/COM-2023-0533

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Our Ref: ETE-i-588

15 December 2023

President of the European Commission, Dr Ursula von der Leyen
President of the European Parliament, Roberta Metsola MEP
President of the Council of the European Union, c/o Secretary General

Sent by email to: SG-NATIONAL-PARLIAMENTS@ec.europa.eu;
documentsreception@europarl.europa.eu;
natparl@consilium.europa.eu

Re: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions.

Dear Presidents,

The Joint Committee on Enterprise, Trade and Employment of the Houses of the Oireachtas has considered the recent proposal, COM(2023)533, concerning the regulation combating late payments in commercial transactions.

The Committee considers this proposal to be of major significance to Ireland and to the European Union.

The Committee has agreed to issue the enclosed contribution for your consideration as part of the political dialogue process between the European Union institutions and national parliaments.

Yours sincerely,

Maurice Quinlivan, TD
Cathaoirleach of the Joint Committee

Cuirfear fáilte roimh chomhfhreagras i nGaeilge

Tithe an Oireachtais

An Comhchoiste um Fhiontair, Trádáil agus Fostaíocht

Cion Polaitiúil maidir le COM (2023) 533

Togra le haghaidh RIALACHÁN Ó PHARLAIMINT NA hEorpa AGUS ÓN gCOMHAIRLE maidir le cur in aghaidh íocaíochtaí déanacha in idirbhearta tráchtála

Nollaig 2023

Houses of the Oireachtas

Joint Committee on Enterprise, Trade and Employment

Political Contribution on COM (2023) 533

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions.

December 2023

33/ETE/23

INTRODUCTION

1. The Oireachtas Joint Committee on Enterprise, Trade and Employment ("the Committee") considers the EU Legislative proposal of COM (2023) 533 to be significantly important to Ireland and the EU.

- COM (2023) 533

  Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions (Text with EEA relevance) {SEC(2023) 313 final} - {SWD(2023) 312 final} - {SWD(2023) 313 final} - {SWD(2023) 314 final}

COMMITTEE SCRUTINY

2. The Committee first considered the proposal at a private meeting on the 8th of November. Following this meeting, the Committee agreed in the first instance to invite officials from Ireland's Department of Enterprise, Trade and Employment to brief the Committee further on the proposal.

   The private engagement took place on 14 November 2023 with officials from the Department of Enterprise, Trade and Employment on MS Teams. The Committee considered the proposal again in private session on 15 November and agreed to seek written submissions from interested stakeholders on 22 November. Written submissions were received from four stakeholders;

- Irish Business and Employers Confederation,
- Irish Congress Trade Unions,
- Small Firms Association, and
- Irish Small and Medium Enterprises.

The Committee formally considered COM (2023)533 in private session, on 8 November, 14 November, 15 November, and 13 December. The Committee agreed to provide a Political Contribution in response to the proposal on 13 December 2023.

DECISION OF THE COMMITTEE

3. On 13 December 2023, the Committee agreed to forward a copy of this political contribution to:

- the Minister for Enterprise, Trade and Employment, Simon Coveney T.D.,
- the President of the European Commission, Ms Ursula von der Leyen,
- the President of the European Parliament, Ms Roberta Metsola, and
- the President of the Council of the European Union.

The Committee further agreed that, in the interests of interparliamentary cooperation on European Union matters, a copy of this political contribution would be forwarded to the appropriate body in the national parliament of each European Union Member State and to Ireland's Members of the European Parliament.

OPINION OF THE JOINT COMMITTEE

4. The Committee understands and supports the importance of preventing late payments in commercial transactions. The Committee does have concerns as to whether a regulation in this area is proportionate and justified and further considers that the proposal, which is correctly based on Article 114 of the Treaty on the Functioning of the European Union, respects the principle of subsidiarity, but that it does not fully respect the principle of proportionality.

Having considered the proposal in detail, the Oireachtas Joint Committee on Enterprise, Trade and Employment makes the following observations:

a. The Committee takes note in relation to Article 3, in particular, by providing a single maximum payment period of 30 days in relations between businesses, would undermine their freedom, as private economic enterprises, to agree to different payment terms, also considering the different degrees of exposure to credit and the financial sector as between large and small/medium-sized enterprises.

b. The Committee therefore believes that the mandatory maximum payment period of 30 days, under Article 3, with the prohibition for the creditor to be able to waive interest for late payment, as determined by the proposed regulation, is excessively restrictive of contractual freedom, limiting the opportunities for businesses to agree on payment times and interest for late payment, thus going beyond what is necessary to achieve the objective. This measure disproportionately affects the long-established freedom of contract between parties and does not provide for adaptation or amendment for companies having regard to varying, separate and individual requirements of the business sector. This proposal therefore runs the risk of significantly undermining market dynamics and adversely affecting competition, since enterprises would not be able to look for suppliers offering favourable payment terms.

c. The Committee regrets that the complete fiscal impacts of the proposal have not been fully considered and has concerns the proposal may have a negative impact on an entire supply chain of businesses in different sectors and may have significant consequences for cross border trading and may undermine European competitiveness.

d. The Committee agrees that any EU rule changes aimed changing credit terms cannot put Ireland and smaller states at a competitive

disadvantage in cross border trading with differing working capital cycles.

e. The Committee notes with concern the regulatory impacts and unintended consequences of introducing a regulation to replace a directive. Regulations must not only be evidence-based, but they must also contain all necessary detail and context in the provisions set out.

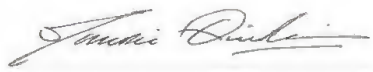
f. The Committee notes with concern that the proposed regulation does not distinguish between late payments and long payment terms, agreed by parties to a contract in a commercial transaction. The Committee is further concerned in relation to Article 6, late payment interest will remain at the reference rate plus 8 percentage points and in relation to a flat fee compensation for recovery costs of €50 per commercial transaction. The automatic and compulsory payment of interest may have greater unintended effects in larger supply chains where longer payment terms under flexibility and freedom of contracts are the norm. The rate may also be too high for small and micro firms.

g. The Committee has concerns about the full regulatory impacts of a 30-day cycle, and whether this will amount to a new legal definition of insolvency in Ireland. It should be noted that the term “insolvency” is not currently defined in the Companies Act. The question therefore is whether an EU Regulation imposing a hard-stop 30-day limit on payables will create a de facto definition of insolvency where there currently is none.

h. The Committee recommends the inclusion of the entire value chain in the European legislative proposals.

i. Having consulted with stakeholders, the Committee does not support the creation of a new state body to enforce late payment legislation. On-time payment is a matter of the given business environment.

Introducing additional mandatory measures are unlikely to achieve the desired impact and could instead have the unintended consequence of increasing business insolvency. Instead, collecting and sharing best practices should be the first step to shift towards a new business culture that minimises late payments.



Maurice Quinlivan T.D.,
Cathaoirleach,
Joint Committee on Enterprise, Trade and Employment
13 December 2023