

Eurochambres position on the Late Payment regulation



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Eurochambres supports the intention to promote a fairer business environment but expresses concerns over the Commission's proposal for a regulation on Late Payment. The new proposal will not necessarily support companies and risks adding limitations to doing business in the single market. Eurochambres believes that the proposal *de facto* eliminates the freedom of contract between businesses and risks creating excessive pressure on SMEs and reducing the overall competitiveness of the single market.

1. Executive summary

In September 2023, the Commission published the SME Relief Package, including a proposal for a Late Payment regulation, a proposal for a directive on tax simplification for SMEs, and a set of measures to improve SMEs' performance.

The revision of the legal framework of the Late Payment Directive was considered necessary to address the shortcomings resulting from the current EU legislation, focusing on preventive measures, the enforcement of late payment mechanisms, the maximum payment term, and access to redress mechanisms.

The Commission Impact Assessment published in September 2023¹ reports that in 2021 roughly half of all EU businesses declared accepting longer payment terms². Eurochambres therefore believes that late payments, in principle, affect and involve businesses of all sizes as well as public authorities.

Differently from SMEs, public authorities and large companies are able to differentiate their portfolio of customers and suppliers. Small companies, instead, rely on a limited number of customers, financial volumes, and reserves. The limited stream of cash often forces

entrepreneurs to request external financing. Despite this pressing need for liquidity, SMEs experience limited access to bank loans. In this sense, longer payment terms represent in some cases a source of financing and help them to cope with liquidity shortages.

Moreover, SMEs operate mostly at the regional and local levels and according to contractual relationships developed over time, tailored to their needs, and based on smaller ecosystems.

Eurochambres supports the Commission's intention to improve the capacity to conduct business in a fairer and more conducive environment but expresses concerns over the Commission's over-stringent proposal and invites the European co-legislators to respect the principle of proportionality in the implementation of new measures on late payments.

The freedom of contract represents an essential pillar of commercial transactions. We are convinced that restricting private autonomy in such a substantial and far-reaching manner would certainly not bring about relief or improvements.

¹[Late Payments – update of EU rules](#)

² [European Payment Report 2021 | Intrum](#)

2. Why the chamber network considers the Late Payment regulation relevant

In a historical moment where the business confidence level is dangerously low as reported by the latest [Eurochambres Economic Survey 2024](#), supporting the entrepreneurial sector and providing the level playing field necessary to invest and thrive in the European Union remains key.

Eurochambres stands by a culture of prompt payments in government-to-business (G2B) and business-to-business (B2B) transactions as elements of a healthy and stable economic framework. The chamber network supports the Commission's intention to promote a fairer business environment but expresses concerns over the Commission's proposal as it risks adding limitations to doing business in the single market. Co-legislators should not overlook the external dimension of the proposal and the impact of excessively stringent terms on the competitiveness of Europe. If B2B conditions become more restrictive in Europe, this will eventually lead to a shift in demand towards non-EU suppliers in countries where legislation allows more flexible payment terms. Such asymmetry risks leading to significant market distortion and must be avoided.

Following the adoption of the Late Payment Directive (Directive 2000/35/EC) in 2000 and its first revision with the Directive 2011/7/EU, the evidence of late payment practices among all concerned actors (public authorities, large companies, and SMEs) became more evident, especially for payments from public authorities to companies³. Considering that every year, over 250.000 public authorities in the EU spend around 14% of GDP (around EUR 2 trillion per year) on the purchase of services, works, and supplies⁴, Eurochambres highlights that the unfair practice still prevails in some EU member states⁵ and is often sector-specific.

Eurochambres recognises that the current Directive 2011/7/EU has strongly contributed to improving payment practices and guaranteeing a fairer business environment. The rules proved to be relatively clear and understandable, as confirmed by the ex-post evaluation of the Late Payment Directive 2011/7/EU published by the Commission in 2015⁶. However, recent independent studies confirmed that the proportion of businesses that have been asked to accept longer payment terms has been growing year after year, with public authorities and large companies particularly likely to ask for extensions⁷. Therefore, Eurochambres considers it appropriate to discuss the possible updating of its content to meet the needs of today's economy, with the main focus being on G2B transactions.

³ As reported by the European Commission, in some member states, public authorities take on average 100 days to settle their invoices, with peaks which can considerably exceed this figure: [Late payment: Commission refers Italy to Court of Justice for failing to ensure suppliers are paid on time \(europa.eu\)](#)
[Late payments – 16 November 2023: Commission decides to refer BELGIUM, GREECE and ITALY to the Court of Justice of the European Union for breach of the Late Payments Directive \(europa.eu\)](#)

⁴ Source: European Commission [Impact assessment report - SWD\(2023\)314](#)

⁵ The results of a survey carried out by the Czech Chamber of Commerce concluded that the majority of companies (53.4%) stated that their customers pay their invoices within 30 days.

⁶ [Ex-post evaluation of Late Payment Directive, Publications Office of the EU.](#)

⁷ The European Payment Report (EPR) published by Intrum is based on a survey of 10,556 companies across 29 European countries, conducted between November 2022 and March 2023. The full report is available at: [European Payment Report \(EPR\) 2023](#)

3. Summary of Eurochambres' main messages and recommendations

- To prevent late payments in B2B transactions, the Commission considered it necessary to intervene in the negotiation capacity of two contractual parties, limiting the freedom of contract and the flexibility deriving from it. In doing so, the proposed regulation sets a maximum payment term of 30 days for B2B transactions. Eurochambres considers the introduction of a maximum limit for payment periods in business transactions at 30 days to be too restrictive and results in encroachment on private autonomy. The proposed measure is also not targeted enough as it interferes with B2B transactions that function effectively, where the extended payment term is practical for both parties (and where there are no asymmetries in bargaining power). The Commission's action to achieve timely payments should not compromise the possibility of the parties involved in the negotiations of contracts to agree on longer payment terms. Eurochambres stresses that the proposal does not consider the reality on the ground and risks, instead, to undermine long-lasting contractual relationships, developed to support the entrepreneurial ecosystem.
- As a direct consequence of a restriction in agreeable payment terms, market adjustments will inevitably lead to reconsideration of other factors usually determined when concluding a commercial contract, such as prices and quantities. The ultimate risk is that businesses – especially SMEs – will be further exposed to financial vulnerability and to liquidity bottlenecks, instead of improving their cash flow.
- Eurochambres points out that the proposed 30-day cap *de facto* eliminates the contractual freedom between businesses and refers to the European Parliament resolution on the state of the SME Union published in July 2023 calling on “*addressing payment delays [...] while ensuring a balanced approach that preserves the freedom of contracts*”⁸. Moreover, the results of the open public consultation carried out by the Commission conclude that maintaining the current rules on payment terms is the preferred option among the respondents (29% of respondents). Several stakeholders, by indicating ‘Other options’ among the available, specified their aversion to limiting the freedom of contract.
- Eurochambres believes that limiting the ability to conduct an acceptance or verification process is not practical. The limited period for the verification of goods or services as proposed in Article 3 might be beneficial only in some commercial transactions. The proposed measure does not consider cases where longer periods are necessary such as in the case of large-volume transactions, technically demanding projects, or for the construction and assembly of buildings and structures or complex technological equipment. After their completion, the processes of testing, inspection, defect elimination and final acceptance may objectively require a longer period than 30 days. Limiting the term for the procedure of acceptance or verification could potentially increase the cases of delaying the acceptance of executed works to gain additional time for the necessary inspections. While such a provision might in some cases reduce the uncertainty linked to existing rules, more flexibility is certainly necessary to capture the complexities of everyday business as already clearly addressed in recital 26 of the Directive 2011/7/EU⁹.

⁸ [JOINT MOTION FOR A RESOLUTION on the state of the SME Union | European Parliament \(europa.eu\)](#)

⁹ Recital 26 of the current directive 2011/7/EU reads as follows: “In order not to jeopardise the achievement of the objective of this Directive, Member States should ensure that in commercial transactions the maximum duration of a procedure of acceptance or verification does not exceed, as a general rule, 30 calendar days.

- According to Article 3(4) of the Commission's proposal, member states with more stringent rules already in place, resulting from the transposition of the previous directive, are not obliged to adhere to the payment terms proposed by the regulation. Eurochambres agrees that this element should be maintained to guarantee legal certainty and avoid unnecessary adjustment costs at the level of undertakings and public authorities in member states with more stringent national laws. The Commission's approach to this issue, confirms once again how the late payment issue is not a widespread problem across the EU and therefore a "one-fits-all" approach risks being detrimental.
- Eurochambres acknowledges that one of the main shortcomings of the current directive is the lack of a clear definition of "grossly unfair". This provision raised concerns over the years as it left companies space to deviate from the "reference" of 30 days that can be extended to 60 days in B2B transactions. In this regard, Eurochambres takes note of the Commission's intention to replace this concept with a list of practices null and void under Article 9 of the proposed regulation. At the same time, Eurochambres stresses that the current directive, by including such a provision on 'grossly unfair', allows for a tailored contractual legal framework that fits the circumstances of the individual case.
- In the event that the list of null and void contractual clauses as in Article 9 is maintained, in order to avoid massive legal uncertainties, it is necessary to lay down rules on the legal consequences of such void contractual clauses. It is essential to provide a mechanism for gap-filling by stipulating that, if a provision in a contract is deemed null and void under this regulation, the validity of the remaining provisions of the contract shall remain unaffected. Instead of the null and void provision, the provisions that most closely align with the intended purpose shall apply.
- Eurochambres highlights that, from a legal perspective and its current configuration, Article 9 will be difficult to enforce. The reason for this is to be found in the impossibility of declaring practices null and void as, for instance, in Article 9(1)(d) with the practice of "*intentionally delaying or preventing the moment of sending the invoice*". Moreover, Eurochambres considers it necessary to remove all the references that interfere with payment periods in B2B transactions from Article 9(1). This is necessary to guarantee the freedom of agreement among the contractual parties.
- The Commission's proposal does not adequately reflect the crucial role played by public authorities. Public authorities should lead by example as they represent an essential partner for businesses. It should be noted that public contracting authorities are inclined to exhaust the review and payment periods – as they can usually choose their contractual partner from a large number of providers under the specifications of the contract terms. Hence, Eurochambres welcomes the proposed payment term set at 30 days for G2B transactions¹⁰.
- According to the evidence proposed by the Commission, the lack of timely payments

Nevertheless, it should be possible for a verification procedure to exceed 30 calendar days, for example in the case of particularly complex contracts, when expressly agreed in the contract and in any tender documents and if it is not grossly unfair to the creditor."

¹⁰ The results of a survey published in October 2023 by the Luxembourg Chamber of Commerce conclude that almost 40% of surveyed businesses experience late payments from public authorities. In addition, 65% of businesses surveyed stated that they never receive payment of late interest and compensation from public authorities: [Results LPD final.pdf \(cc.lu\)](#)

by public authorities is among the main factors discouraging companies from tendering for public contracts. With Article 4, the Commission's proposal for a regulation attempts to increase the protection of subcontractors in public works by requesting that contractors provide evidence to contracting authorities (or entities) that they have paid their direct subcontractors. Considering that the subcontractor's payment is oftentimes made in full only after the main contractor has been paid by the public entity, this risks having a considerable impact on suppliers who use payment from the contracting authority to pay subcontractors. Eurochambres believes that the text of the provision concerned should reflect the objective set by the Commission to “support that payments are passed down the supply chain”¹¹. In practical terms, this mechanism should only be applicable if the contracting authority fulfills its payment obligation to the contractor according to the 30-day limit proposed for G2B transactions.

- Moreover, the stipulation of mandatory notification by the contracting authority to the enforcement authorities— as described in Article 4, paragraph 2 – results in an unjustifiable imbalance, as there are no comparable automatic mechanisms for late payment in G2B transactions.
- The automatic obligation to notify, based on Article 4 (2) is not appropriate and can lead to the enforcement authority being burdened with many cases in which there is no delay in payment at all (e.g. misunderstandings, excusable oversight to upload the evidence, but also unjustified accusations by subcontractors or competitors). Given the serious consequences of involving the enforcement authorities, the contracting authority should be required to contact the contractor prior to the notification to the enforcement authority. The contracting authority should request the contractor (i) to submit the evidence as provided within a reasonable period of time or (ii) to respond to the allegation and provide reasons explaining why there is no payment delay.
- Article 4 fails therefore in addressing the main problem of delays from public authorities paying contractors after the agreed terms. Such practice makes it difficult, if not impossible, for the main contracting companies to pay their subcontractors on time. Payments in contracts for public works should be better monitored at the early stages if we want to guarantee more timely payments from the business sector. Moreover, public construction contracts are already heavily burdened with bureaucracy, especially due to requirements in procurement law. New proof requirements contradict any political effort to reduce bureaucratic obstacles.
- Eurochambres expresses concerns over the introduction of national enforcement authorities proposed with Article 13 and Article 14 as they will inevitably overlap with already existing judicial systems across the EU¹². Such systems will be cost-intensive and would lead to complex issues in the area where the competencies of the courts and enforcement authorities overlap, resulting in far-reaching legal uncertainties. The EU has dedicated substantial time and effort to fostering judicial cooperation in civil matters and has enacted numerous regulations addressing this area, e.g. Reg. No. 1215/2012 Reg. No. 805/2004, Reg. No. 1896/2006, Reg. No. 861/200. If deficiencies with the

¹¹ See page 10 of the proposed regulation, explanatory memorandum, explanation of the specific provisions of the proposal, Article 4.

¹² Some member states already have in place efficient court proceedings or judicial dunning procedures. The creation of enforcement authorities that risk replacing tasks belonging to public administrations to investigate and intervene in cases of noncompliance with civil law provisions is therefore rejected as it would constitute a violation of the principle of private autonomy, a core principle of German Civil Law.

judicial system persists across member states, such deficiencies should be rectified through amendments to the just-mentioned regulations, rather than developing an entirely new system of enforcement authorities.

- In addition, Eurochambres points out that, in some member states, national authorities have failed to guarantee the necessary functioning of enforcement mechanisms – especially in G2B transactions. With evidence of chronic late payments from the public sector to businesses, Eurochambres highlights the risk of very limited ability of such authorities to enforce the measures of the Commission proposal against public authorities belonging to the same public structure. This represents a major risk that the current text does not tackle appropriately and will inevitably jeopardise the objective of achieving timely payments.
- Considering that the actions will require businesses to report to authorities, Eurochambres highlights the risk of introducing new and unnecessary information and disclosure obligations and compliance costs for the control and monitoring of payment behavior in business transactions. In line with the objective of reducing reporting requirements for businesses, such investigations should be initiated only in the presence of an official complaint made by the debtor to the enforcement authority. Only in the presence of an official complaint, the enforcement authorities should be allowed to issue proportionate sanctions. Eurochambres is therefore against granting such enforcement bodies the capacity to initiate their own initiative investigations and market surveillance actions, as outlined in Article 14. Eurochambres expresses concerns over the capacity of such authorities to operate objectively and guarantee maximum confidentiality in treating commercially sensitive information of undertakings (Article 15). Moreover, a materiality threshold should be introduced as it does not appear proportionate that one single unpaid invoice of a small amount could initiate an apparently over-complex and time-consuming mechanism, as described in the proposal.
- The Commission has an important role in ensuring that member states apply the current rules in the first place. In this regard, Eurochambres suggests the Commission to increase the monitoring of member states' performances and promptly act with infringement procedures, if needed. As already stressed, not all member states are responsible for late payments and therefore a more targeted approach is strongly encouraged to guarantee the correct application of national laws. In this regard, Eurochambres welcomes the Commission's attempt to address the lack of official data on late payments in Europe and remarks on the need to exchange good practices at the European level through the EU Observatory on Late Payment.
- Oftentimes, payment practices include the forfeit of the interest as long as the underlying amount is paid. Eurochambres points out that making the payment of interest for late payments automatically due raises concerns among businesses. This comes from the prohibition of such practice, even if agreed upon consensually, possibly even retrospectively (as in supplier credits, etc). Moreover, the compatibility of Article 5(3) with Article 16 of the EU Charter of Fundamental Rights of the European Union on the freedom to conduct a business, is more than doubtful. Ultimately, this provision also restricts the possibilities of settlement solutions in court proceedings and out-of-court settlements.
- Eurochambres expresses its disagreement with the increase of the flat fee

compensation for recovery costs from the previously fixed sum of EUR 40 to the new proposed fixed sum of EUR 50, without taking into account the proportionality with the transaction amount. Including a provision in Article 8 to make such an amount automatically due, without the possibility for the creditor to waive its right to obtain the compensation is considered excessive.

- The uptake of digital tools for facilitating timely payments is crucial. The implementation of voluntary or even mandatory processes for electronic invoicing and transfers is a major prerequisite as it would guarantee more legal certainty through electronic evidence. Eurochambres therefore agrees with the Commission's invitation to member states to encourage SMEs to use digital tools and access credit management training, while taking into account the precarious economic framework that SMEs are currently facing. As SMEs often lack financial and digital literacy, member states should enhance collaborations with business support organisations – such as the network of chambers of commerce and industry – to collect best practices and train companies on this matter. Considering the limited financial resources to be allocated for such training, business organisations should be granted support and means to train companies.
- Eurochambres fully supports Article 16 and underlines the importance of minimising existing barriers such as the complexity of initiating legal proceedings against debtors. In light of such lengthy and costly court proceedings, voluntary mediation as well as other forms of voluntary alternative dispute resolution (ADR) should be encouraged by member states to quickly solve payment disputes. Moreover, the EU's most recent Rule of Law Report points to considerable deficits in the effectiveness of court proceedings in some member states. In this respect, Eurochambres notes the lack of proposals to address and improve this situation.
- Lastly, Eurochambres supports deferring the application of the rules laid down in the proposal for a regulation, as in Article 20, to provide sufficient time for all relevant actors to put in place the arrangements needed. At the same time, Eurochambres agrees that commercial transactions that are to be paid after the date of entry into force of this regulation should be subject to its provisions. However, this provision should only be applicable if the relevant contract was signed after its date of application. In case of contracts signed before the date of application of the regulation, the rules of the current directive should be applied. Eurochambres considers this necessary to provide a stable transition to both companies and public authorities from the current legal framework to the one proposed in the regulation.

Eurochambres – the association of European chambers of commerce and industry – represents more than 20 million businesses through its members and a network of 1700 regional and local chambers across Europe. Eurochambres is the leading voice for the broad business community at EU level, building on chambers’ strong connections with the grass roots economy and their hands-on support to entrepreneurs. Chambers’ member businesses – over 93% of which are SMEs – employ over 120 million people.

Previous positions can be found here: <https://bit.ly/ECHPositions>

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