MALTA BUSINESS BUREAU

Late Payment Regulation

Position Paper

January 2024

Summary:

The European Commission has proposed a new Regulation on combating late payments in commercial transactions. The aim of the proposal is to address the problem of late payments, which has a major impact on businesses, especially SMEs.

The new key aspects of the proposal include:

- A single mandatory maximum payment term of 30 days for all commercial transactions
- Automatic payment of interest and compensation fees for late payments
- Stronger enforcement and redress measures to protect creditors against bad payers

The Commission believes that the proposal will benefit businesses and SMEs by reducing the burden of debt collection, freeing up cash flow, and improving the predictability of payments.

Key Words: **Late payments, Creditors, Debtors, Maximum payment term, Interest, Compensation fees**

Background

Reliable payment streams are key to a competitive economy, particularly for SMEs. Deferred payments, where suppliers grant clients payment terms to settle the invoice after receiving goods or services, is a common practice. When terms are not respected however is where late payment would occur, and this affects businesses across all sectors, with SMEs bearing a disproportionate burden.

The European Commission claims that the underlying cause of late payments lies in the unequal bargaining power between larger clients and smaller suppliers, often forcing the latter to accept unfair payment terms. Abusive debtors may find late payments an attractive form of cost-free financing, while creditors bear the associated costs. The Commission believes that this issue is exacerbated by the shortcomings of the current EU legal framework, Directive 2011/7/EU (Late Payment Directive), which lacks adequate preventive measures, deterrents, enforcement mechanisms, and redress options. The Late Payment Regulation therefore aims to improve payment discipline among all involved parties (public authorities, large companies, and SMEs).

Feedback from a survey conducted with Maltese businesses on the proposed regulation

The MBB conducted a survey with members of The Malta Chamber and Malta Hotels and Restaurants Association. The overall conclusion is that there is no one-size-fits-all approach to setting payment terms for B2B transactions. Businesses use a variety of methods, depending on their own circumstances and the preferences of their clients. It was determined that late payments are a common feature in B2B transactions. Over half of the respondents said that they have experienced late payments.

An important distinction in the feedback however is between late payments and longer payment terms. Several businesses confirmed that longer payment terms are necessary to accommodate and safeguard existing relationships with long standing clients.

Delving deeper into the reasons that cause late payments, could be among others: discrepancies between purchase orders and invoices, contested invoices with clients raising various objections of sorts, and varying payment attitudes.

Public authorities have been cited as being slow payers, with businesses facing delays in receiving payments despite sending regular invoices and reminders.

Overall, the survey confirms that payment delays have a significant negative impact on businesses' liquidity and cash flow, hindering their ability to take on new projects, invest in growth, and maintain financial stability.

It was determined that most businesses do not claim interests on late payments. This could be due to a variety of reasons, such as a preference to maintain good relationships with clients, a lack of awareness of their rights, or an understanding that the costs and effort involved in claiming interests outweigh the potential benefits.

Most businesses do not claim a flat fee compensation for recovery costs when they are paid late either. Once again, this could be due to a lack of awareness of their rights, a belief that the costs and effort involved in claiming the compensation outweigh the potential benefits, or a preference to maintain good relationships with clients by not pursuing additional fees.

The survey results highlight the importance of an on-time payment culture between businesses and also by public authorities to businesses, as well as the need for effective mechanisms to address payment delays and resolve disputes promptly and fairly, also through alternative dispute mechanisms.

Overall, the survey results suggest that there is a general support among businesses for the idea of establishing minimum common criteria on prompt payment codes to improve payment practices and reduce late payments across the EU. However, there are varying degrees of enthusiasm and serious concerns that would need to be addressed in the implementation of such measures to ensure their effectiveness in the context of practical ways in which business is conducted.

Furthermore, businesses tend to support the idea of applying interest on late payment and a flat fee compensation to recover costs if payment terms are not respected. This suggests that businesses believe that this would be a fair and effective way to deter late payments and ensure that they are compensated for the costs and inconvenience caused by late payments.

Comments by the Malta Business Bureau

Payment periods (Article 3(1))

The Malta Business Bureau welcomes any initiatives that help create a culture of on-time payment but believes that this cannot be addressed through a one size fits all solution. Lowering payment terms to a mandatory 30 days without allowing the flexibility to negotiate longer payment terms in B2B is disproportionate and can result in significant negative impacts for several companies operating in different sectors with varying economic realities.

A culture of on time payment is essential, and respecting payment terms in B2B transactions help with the liquidity of SMEs. However, the Regulation should also preserve the freedom of contract and provide flexibility for businesses to agree on bilateral terms according to their own circumstances.

While acknowledging that late payments can indeed place companies, particularly SMEs, under high financial pressure and, in some cases, lead to severe liquidity problems, however, it is important to distinguish between late payments and long payment terms. The latter are crucial for companies operating with low margins or where cash flow depends on the selling of supplied goods. Flexible terms in such cases provide companies the time they need to maximize sales before paying their suppliers. This is an established practice particularly between companies having long standing business relationships.

Meanwhile, parallel initiatives could be undertaken from a public policy perspective to improve the timely settling of payments, and these include: improving financial literacy about financing solutions such as factoring; creating the economic conditions for financial institutions to offer more favourable financing terms to companies; and strengthening mediation/alternative dispute resolution (ADR) mechanisms.

Public Authorities – Public authorities are not normally constrained by the same liquidity issues or commercial considerations as companies. Therefore, they should have a special responsibility to lead by example and follow a mandatory 30-day payment term requirement.

Verification or Acceptance of Goods or Services (Article 3(3))

The MBB agrees that the procedure of verification or acceptance of goods or services should not exceed 30 days from the date of the reception of the goods or services. This is a step towards a culture of prompt payments.

Payment of Interest for Late Payments (Article 6)

As long as companies are allowed to agree on the length of payment terms, the MBB supports making the payment of interest for late payments due if the terms pre-agreed are not respected. This will encourage debtors to respect the deadlines set in the contract.

Compensation for Recovery Costs (Article 8)

The MBB considers that there should be a proportionality clause allowing creditors to waive compensation for recovery costs of EUR 50 for invoices subject to a de minimis amount.

Null and Void Contractual Terms (Article 9)

The MBB believes that the provisions to nullify and make contractual terms void such as excluding or limiting the right of the creditor to obtain interest for late payment and extending the duration of the procedure of verification or acceptance beyond the term set (but excluding the setting the payment period) may be difficult to enforce in practice. Companies often prioritise customer relationships over enforcing such provisions.

Enforcement (Article 14(1a))

Enforcement is important, but it should not result in an unnecessary administrative and reporting burden for companies. The MBB does not support granting public enforcement authorities the capacity to carry out their own initiative investigations and market surveillance actions.

Links to more information:
https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4412

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The Malta Business Bureau is the EU business advisory organisation of;

THE MALTA CHAMBER

MALTA HOTELS & RESTAURANTS ASSOCIATION

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