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REGULATORY SCRUTINY BOARD OPINION

Revision of Directive 2011/7/EU on combating late payments in commercial transactions

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EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment / Revision of Directive 2011/7/EU on combating late payments in commercial transactions

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

This initiative deals with late payments in commercial transactions between businesses (B2B) and between governments and businesses (G2B). The 2000 Late Payments Directive was last revised in 2011.

This initiative, which is part of the SME relief package, aims to reduce late payments between commercial actors and promote a fairer business environment.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspect:

(1) The report does not sufficiently explain the choice of a Regulation rather than a Directive as the preferred legal instrument to address the identified problems.

(2) It does not sufficiently assess and compare the impacts of the options as a Regulation or as a Directive respectively.

(C) What to improve

(1) The report should clearly outline those provisions that would be directly applicable and those that leave discretion to Member States. It should clarify how these provisions fit best in one legal instrument or another (Regulation or Directive). In the case of the definition of 'unfair practices', it should explain how leaving this to Member States is compatible with the need for legal certainty.

This opinion concerns a draft impact assessment which may differ from the final version.

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(2) The report should assess the impacts related to the choice of legal delivery instrument and compare the options in terms of effectiveness, efficiency and coherence under each instrument. To inform better the policy choice, it should better describe the advantages and disadvantages of the preferred legal instrument.

(3) The coherence of the options with the Directive on unfair trading practices in the agricultural and food supply should be presented clearly.

(4) The report should strengthen its subsidiarity analysis. It should provide evidence that Member States cannot address the identified problems on their own and show that there is an actual risk of market fragmentation in the absence of EU-level action.

(5) The report should provide a clear split between Business-to-Business and Government-to-Business transactions throughout the document, in particular for the problem definition and the problem drivers.

(6) The report should strengthen the impact analysis. It should further explain and justify the assumption of the expected reduction in late payments under the preferred combination of options. It should also provide a summary of the costs and benefits for all options, including net benefit/cost estimates and Benefit Cost Ratios.

(7) The report should improve the comparison of options based on effectiveness, efficiency, coherence, and proportionality with a clearer justification of the scoring. Effectiveness of options should be assessed against their delivery on the specific objectives.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Revision of Directive 2011/7/EU on combating late payments in commercial transactions
Reference number	PLAN/2022/1955
Submitted to RSB on	12 April 2023
Date of RSB meeting	10 May 2023

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

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

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

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

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

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
	Direct enforcement costs				Cost on debtors who pay late. Debtors can avoid these costs by paying on time. Costs of automatic payment of interest compensation: EUR 228.3 million. These costs for B2B are based on the 14% / 86% allocation keys between public procurement's and private sector's share of GDP. These costs for business are also a benefit for business (redistributed from businesses to businesses). Assumptions and calculation in Annex 4.		Cost on debtors who pay late. Debtors can avoid these costs by paying on time. Costs of automatic payment of interest compensation: EUR 37.2 million. These costs for G2B are based on the 14% / 86% allocation keys between public procurement's and private sector's share of GDP. These costs are transferred from public debtors to business creditors. Assumptions and calculation in Annex 4.
	Indirect costs						
Leave the rate of interests for late payment as such (ECB+8%) but adapt the flat fee compensation to inflation	Direct adjustment costs			Adjustment of invoices and terms, the cost of updating general payment terms/invoices: EUR 243 million. This amount includes the EUR 56.1 million cost for adaptations of standard terms doe to the introduction of the 30-day cap.		Adjustment of invoices and terms: EUR 10 per public entity.	

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

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

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

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