BRIEFING

Initial Appraisal of a European Commission Impact Assessment

European Parliament

Combating late payment

Impact assessment (SWD(2023) 314, SWD(2023) 313 (summary)) accompanying a Commission proposal for a Regulation of the European Parliament and of the Council on combating late payment in commercial transactions, COM(2023) 533

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's impact assessment (IA) accompanying the above-mentioned proposal, put forward on 12 September 2023 and referred to the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO). The Commission presented the proposal to combat late payment in commercial transactions as part of a wider relief package for small and medium-sized enterprises (SMEs) ('SME relief package'), which delivers on the objectives of the March 2023 communication on long-term competitiveness. The package aims to provide short-term relief to SMEs, boost their competitiveness, and foster a fair and SME-friendly business environment across the single market. It comprises

- the present proposal for a late payment regulation;
- a proposal for a Council directive on tax simplification for SMEs, establishing a head office taxation system;[1] and
- a communication introducing a bundle of 19 legislative and non-legislative actions to strengthen SMEs; in terms of better regulation, these actions include the participation of the EU SME envoy[2] in the Commission's Regulatory Scrutiny Board's meetings for initiatives that are highly relevant for SMEs, and the promotion of experimentation and innovation for start-ups through regulatory sandboxes.[3]

The proposed late payment initiative seeks to address shortcomings identified in the EU's current legal framework. Once adopted, it would repeal and replace the Late Payment Directive (2011/7/EU). The initiative was first announced in Commission President Ursula von der Leyen's 2022 State of the Union address and subsequently included in the 2023 Commission work programme and the 2023 joint declaration on legislative priorities. It takes the 2021 opinion of the Fit for Future Platform into account, and also responds to repeated calls from the European Parliament to tackle the widespread problem of late payments.[4]

To fill a data gap regarding enforcement of the Late Payment Directive, the Commission in March 2023 launched a temporary EU Payment Observatory. Its role is to monitor public and private actors' payment performance and behaviour, and collect data on unfair commercial practices and contract clauses.[5]

Problem definition

The IA presents a well-substantiated problem definition, thoroughly analysing the complexity and extent of this issue at stake. It also describes the **underlying problem drivers** and the **consequences** in sufficient detail (IA, pp. 18-22). Moreover, it cites some international examples to compare the EU late payment culture on a global scale.

The **main problem** identified in the IA is that, under the current late payment framework, **almost half of the invoices in the EU are paid late** (i.e. not within the contractual or statutory payment

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term). This affects all Member States and business sectors, **primarily SMEs**. The IA argues that inadequate payment behaviour slows down the EU economy's productivity growth and impacts the EU's competitiveness (IA, p. 11). Late payments lead to an increased risk of bankruptcy, uncertainty in business planning and budgeting, and reduced participation in public procurement. Even if the adoption of the Late Payment Directive in 2011 helped to tackle the problem to some extent, payment delays rose again in 2020 and have never returned to pre-crisis levels since then.

The **main problem drivers identified in the IA** are:

- insufficient preventive framework conditions;
- asymmetries in bargaining power between larger and smaller companies; and
- insufficient enforcement and redress mechanisms.

According to the IA, unfavourable economic conditions, including high interest rates and inflation, incentivise **companies** to hold on to cash flows at the expense of not paying their suppliers. The IA finds that the current legal framework does not impose sufficient boundaries for payment terms, nor does it encourage companies to claim interests or compensation fees for invoices paid late. Therefore, companies may prefer liquidity borrowing to other means of financing (e.g. bank loans). If late payment occurs at the beginning of the supply chain, it may cause a 'domino effect', with SMEs being particularly vulnerable. The IA argues that large companies with more bargaining power delay payments more often than SMEs, since smaller companies tend to rely on their reputation and strong business relationships. However, the findings of the SME panel consultation support this claim only partially (IA, p. 171). Given their huge market volume,[6] the IA places specific emphasis on **public authorities'** payment practices; it notes that across the EU, payments by public authorities are on average more delayed than by businesses, indicating an average delay of 16.8 days for government-to-business (G2B) compared with 13.3 days for business-to-business (B2B) transactions (IA, p. 14).

With regard to **redress mechanisms**, the IA holds that legal action – the only redress measure envisaged in the Late Payment Directive – is 'disproportionately costly, disproportionately time-consuming, and likely to damage business relations between the parties' (IA, p. 22). Furthermore, the IA notes that the concepts 'unfair' and 'grossly unfair' are not defined sufficiently in Article 7 of the current directive and thus make it hard to seek redress (IA, pp. 22 and 115).

Subsidiarity / proportionality

Based on Article 114 of the Treaty on the Functioning of the EU (TFEU), this initiative aims to enhance competitiveness in the single market by reinforcing the EU framework for combating late payments. As to **subsidiarity**, the IA duly justifies the necessity and added value of EU action, arguing that a coherent legal framework for payment terms, interests and compensation fees, as well as enforcement can only be achieved at EU level (IA, p. 24). The IA and the accompanying subsidiarity grid also stress the initiative's observance of the **proportionality principle**.

This was, however, contested by several national parliaments. In the context of the subsidiarity check (which ended on 28 November 2023), **two national parliaments/chambers submitted reasoned opinions** in accordance with Article 6 of Protocol No 2 on the application of the principles of subsidiarity and proportionality. The Swedish Riksdag considered the proposal 'not in all its parts compliant with the principle of subsidiarity', questioning in particular the conversion of the current directive into a regulation. Moreover, with regard to proportionality, it found the proposal 'excessively far-reaching' on certain elements, such as the contractual or statutory payment period of 30 days and the fixed interest rate for late payment. Similarly, the Italian Chamber of Deputies concluded to a violation of the subsidiarity principle, also casting doubt on the choice of legal instrument and arguing that some of the proposed provisions would 'unjustifiably result in curtailing the contractual independence of businesses'. In addition, the Italian Senate, the Irish Houses of Oireachtas, the Portuguese Parliament and the Romanian Senate raised concerns in the context of the **political dialogue**. For instance, the Irish Parliament warned that 'the complete fiscal

impacts of the proposal have not been fully considered', suggesting that 'the proposal may have a negative impact on an entire supply chain of businesses in different sectors'.

Objectives of the initiative

The objectives put forward in the IA correspond to the outlined problem drivers. The **general objective** of the IA is to ensure the proper functioning of the EU internal market by laying down rules to grant companies appropriate conditions to receive timely payment for their goods and services (IA, p. 25). In particular, the initiative aims to improve the payment discipline of all actors concerned (large companies, SMEs and public authorities), and to protect SMEs against the negative effects of delayed payments in commercial transactions.

The general objective is broken down into **three specific objectives** (SOs):

- **SO 1**: Preventing late payments from occurring
- **SO 2**: Facilitating timely payment
- **SO 3**: Empowering SMEs and ensuring fairness in commercial transactions.

Although the SOs are phrased rather generally, the IA does not define any operational objectives. However, concrete indicators for measuring the rate and success of implementation are presented in dedicated sections pertaining to the monitoring and evaluation of impacts (IA, pp. 73-74 and Annex 24). Taken together, the SOs and the monitoring indicators appear to meet the S.M.A.R.T. criteria of being specific, measurable, achievable, relevant, and time-bound.

With regard to **foresight**, the IA notes that no megatrend would apply to the initiative.[7] However, in direct reference to the Commission's 2022 Foresight report, the IA states that the initiative would 'support developing a future-proof and agile EU regulatory framework' for the single market that would be 'conducive to sustainable business models and consumer patterns' (IA, p. 23). The IA explains how the initiative's objectives contribute to the achievement of several Sustainable Development Goals (**SDGs**), in particular SDG 8 (Decent work and economic growth), SDG 3 (Ensure healthy lives and promote well-being for all at all ages), SDG 4 (Quality education), and SDG 9 (Industry, innovation and infrastructure) (see IA, Annex 3 (pp. 99-100)).

Range of options considered

The IA presents a comprehensive **baseline scenario** that thoroughly examines how the situation would evolve in the event of no EU action (IA, pp. 27-29). The IA expects the shortcomings of the existing late payment framework to persist. It notes that at present, 70 % of businesses do not claim interests or compensation when paid late, nor do businesses claim the €40 flat fee compensation for recovery costs; this would likely continue. Moreover, according to the IA, the current directive would continue to be enforced mainly through the Commission's country-specific recommendations in the context of the European Semester and infringement procedures, both deemed 'lengthy procedures unlikely to have the desired effects' (IA, p. 28).

The IA concedes that modern digital tools such as e-invoicing, automated payment services and accountancy programmes facilitate timely payments. Furthermore, certain other, recently adopted EU acts are expected to have a positive effect, such as the Directive on unfair trading practices, which aims to protect farmers and SME suppliers against unfair trading practices in the agro-food sector, and the Corporate Sustainability Reporting Directive, which requires payment practices to be covered in the reporting standards. Notwithstanding, the IA also notes that under unfavourable economic conditions, incentives to delay payments tend to increase. The baseline therefore concludes to an overall negative outlook, in light of the Russian war on Ukraine, high inflation and interest rates, and energy price shocks.

The IA presents **three policy options** (POs), each putting forward several sub-options. As the POs correspond to the three specific objectives, they are rather cumulative than real alternatives. Instead, alternatives are presented at the level of sub-options. Overall, the description of the policy

options appears clear and balanced, although it is noteworthy that some of the measures under the different sub-options are identical. The IA could be more explicit about whether measures apply only to B2B or also to G2B transactions. Table 1 provides a succinct overview of the proposed policy options, with the **elements eventually forming the preferred option highlighted in blue**.

Table 1 – Policy options (POs) considered by the IA

<table>
<tr><th>PO</th><th colspan="4">Measures</th></tr>
<tr><td>PO1</td><td colspan="4">Preventing late payments from occurring</td></tr>
<tr><td>1a</td><td>Capping payment terms at 30 days;
capping verification or acceptance procedure at 30 days (no derogation)</td><td colspan="3" rowspan="3">Member States facilitating access to credit management tools and financial literacy training;
fostering SMEs' use of digital payment tools</td></tr>
<tr><td>1b</td><td>Capping payment terms at 60 days;
capping verification or acceptance procedure at 30 days (no derogation)</td></tr>
<tr><td>1c</td><td>Capping payment terms at 60 days if creditor is an SME (for all other transactions, the current terms under the Late Payment Directive remain applicable);
capping verification or acceptance procedure at 30 days (no derogation)</td></tr>
<tr><td>PO2</td><td colspan="4">Facilitating timely payments</td></tr>
<tr><td>2a</td><td>Adjusting the flat fee compensation to €50 on account of inflation;
interest rates remain at European Central Bank (ECB) rate + 8 %</td><td rowspan="2">Making payment of interests and flat fee compensations automatic</td><td>Member States to designate enforcement bodies;
Use of digital tools for more effective enforcement</td><td rowspan="2">Proof of payment to subcontractors in public works contracts</td></tr>
<tr><td>2b</td><td>Adjusting flat fee compensation to €40 for debts up to €1 000, and €70 for debts between €1 000 and €10 000;
interest rates remain at ECB + 8%</td><td>Member States to designate monitoring bodies</td></tr>
<tr><td>PO3</td><td colspan="4">Strengthening redress mechanisms to ensure fair payment conditions and empowering SMEs</td></tr>
<tr><td>3a</td><td>Member States appointing national payment envoys</td><td colspan="3" rowspan="2">Member States to address unfair contractual terms through their applicable national law</td></tr>
<tr><td>3b</td><td>Member States establishing national mediation systems to solve payment disputes</td></tr>
</table>

Source: Compiled by the authors on the basis of the IA, pp. 30-38.

In line with SO1, **policy option 1** aims at prevention. It proposes stricter payment terms to reduce the occurrence of unfair contracts. According to the IA, capping the payment terms would

'introduce a clear legal limit to B2B transactions' (IA, p. 31). Similarly, limiting the duration of acceptance or verification procedures to 30 days could help avoid 'delay[ing] artificially the payment period' (IA, p. 32). The measures under the three sub-options differ mainly in the caps' strictness, as shown in Table 1. Furthermore, all sub-options promote the availability of training on credit and invoice management, and the use of digital tools for SMEs.

Policy option 2 is geared towards deterrence of late payments. It would make the payment of interests and compensation fees legally automatic. PO2a and PO2b suggest different approaches for fee setting (see Table 1) and establishing control mechanisms in the Member States. While PO2a proposes to designate national enforcement bodies that would investigate and sanction offenders and publish their names, PO2b suggests setting up national bodies to monitor the implementation of the act. Digitalisation plays a role, too. For instance, SMEs would be encouraged to use digital payment tools. To ensure the flow of payments across the supply chain in public procurement, PO2 requires the main contractor to prove to the contracting authority the effective payment of direct subcontractors (IA, p. 35).

Policy option 3 targets fairer payment conditions, support for SMEs and effective voluntary out-of-court redress mechanisms. PO3a envisages the appointment of national payment envoys, who would raise awareness, facilitate access to training, collect data and advise on the design of national laws to combat late payments. In comparison, PO3b proposes a national mediation system to help resolve payment disputes, thereby assisting SMEs. Under both sub-options, Member States would have to address issues of unfair contractual terms through their national law.

The IA is transparent about measures considered but **discarded at an early stage**, and about the reasons for not pursuing them further (IA, p. 39 and more detailed in Annex 14). These include:

- mandatory use of e-invoicing in payments;
- a system of mandatory offsetting of credits owed by public authorities with debts owed to public authorities (e.g. income taxes, local taxes);
- mandatory reporting on payment practices for businesses and public authorities;
- obliging contracting authorities to exclude from procurement contractors with overall bad payment performance towards their subcontractors
- in G2B transactions, accelerating payments for low value contracts beyond the Late Payment Directive's current provisions, not requiring a verification procedure.

Assessment of impacts

Since all policy options are expected to have **significant economic impacts**, the IA places much attention on the analysis of the policy options' economic costs and benefits for businesses (including SMEs) and public authorities (IA, pp. 39-58 and Annex 25). According to the IA, 'none of the policy options entail direct impact on citizens or consumers' (IA, p. 40). The assumptions and estimates made in the IA are generally clearly explained (additional justification is provided in Annex 4).

PO1: According to the IA, capping payment terms at 30 days (under PO1a) would reduce actual payment duration by 23.5 % (IA, p. 41), and less significantly under the other sub-options. Stakeholders largely support these caps; however, some businesses object to limits to their 'freedom of contract' (IA, p. 41). Furthermore, the IA suggests that the high enforcement costs companies incur under the baseline for chasing late payments would decrease under PO1. Conversely, the IA expects PO1 also to impose some costs (quantified) on businesses, particularly on debtors (IA, p. 44). The direct impact (costs and benefits) of the proposed cap on public authorities (under PO1) would be limited, although public authorities would benefit indirectly from higher tax revenue and reduced unemployment benefits (IA, p. 47). Facilitating SMEs' access to credit management and financial literacy training would entail some adjustment cost for public authorities.

PO2: Making payment of compensation fees and interests legally automatic would have a substantial economic impact on businesses, entailing benefits for creditors and costs for debtors.

With regard to G2B transactions, businesses would benefit from public authorities' tendency to avoid the payment of compensation fees (IA, p. 50). The IA considers national enforcement bodies with sanction powers more effective than monitoring bodies. It estimates that the combined measures under PO2 would reduce payment times by up to 40 % in G2B transactions (applicable to PO2a and PO2b) and up to 17.8 % in B2B transactions under PO2a (from stronger enforcement bodies, which would, however, cause costs for public authorities).

PO3: The IA considers national mediation systems (PO3b) more effective than national payment envoys (PO3a), as they would provide for an independent alternative dispute resolution mechanism for businesses. Both measures would bring costs for public authorities for setting up and running these systems, although payment envoys would be less costly (IA, p. 57).

In terms of **social impact**, the IA notes that all policy options would have a positive effect on employment, fairness in business culture and entrepreneurs' wellbeing. It assumes that increased solvency and liquidity of businesses could lead to an increase in employment of up to 1.5 million jobs under PO1a (duly justifying this assumption), whereas the other policy options are expected to create fewer jobs. An improved payment culture would reduce entrepreneurs' stress, anxiety and fear of bankruptcy (this impact is hard to quantify, as the IA notes on p. 58). In this context, the IA states that no specific data are collected regarding the impact of late payments on entrepreneurship, a gap the European Payment Observatory might be able to fill.

The IA does not expect any of the policy options to cause any significant harm to the environment, nor to have a direct **environmental impact**. However, it assumes indirectly that higher cash flow might incentivise companies to green investments (IA, p. 59). With regard to **fundamental rights**, the initiative may limit the freedom to conduct a business (Article 16 of the EU Charter of Fundamental Rights) 'by affecting contractual freedom between businesses to set their own payment terms' (IA, p. 59).

Following a thorough analysis of how each policy option would meet the initiative's objectives, and of their impacts, the IA compares the options based on costs and benefits to businesses and public authorities and against the criteria of effectiveness, efficiency, proportionality and coherence (IA, pp. 59-71). The **preferred option consists of a combination of sub-options PO1a, PO2a, and PO3b** as highlighted in Table 1. Pointing to synergies, the IA holds that the cumulative benefits of the combined sub-options would exceed the benefits of each individual option (IA, p. 70). With its emphasis on digital tools, the preferred option complies with the '**digital by default**' principle.

SMEs / Competitiveness

While late payments concern companies across all sectors, the IA stresses that they 'disproportionately severely' affect SMEs (IA, p. 12), in particular micro-enterprises. This makes the present initiative highly relevant for SMEs. Consequently, it is listed in the SME envoys network's SME filter, and a four-step **SME test** (IA, pp. 153-169) was carried out as part of the IA, in line with the Better Regulation Guidelines (BRG) (tool #23). The SME test appears thorough and evidence-based. It is underpinned by qualitative and quantitative data, providing a detailed assessment of the benefits and costs of the policy measures for SMEs under the preferred option package. According to the IA, the preferred option enjoys broad support from SMEs. The latter would benefit from higher liquidity, better predictability, entrepreneurs' improved mental health, less hassle with redeeming unpaid invoices, and improved financial literacy. The SME test does not come up with mitigation measures for SMEs (usually step 4 of the test), arguing that 'policy options in this proposal have been designed with SMEs in mind' (IA, p. 169).

The IA also features a **competitiveness check** (Annex 5), which expects the preferred option package to have a positive effect on the price/cost and innovation competitiveness, owing to the increased aggregate cash flow in the economy. With regard to international competitiveness, the IA cautions that non-EU companies (not bound by strict payment terms) might undercut EU companies in world markets by offering longer payment terms (IA, p. 47). The IA concludes,

however, that such an effect is unlikely, as also some other jurisdictions (e.g. Canada, the United States and the United Kingdom) impose legislation against late payment.

Simplification and other regulatory implications

As the present proposal is a REFIT initiative, it aims at simplification and better enforcement. The IA proposes to repeal the current directive and replace it with a regulation. This proposed **change of legal instrument** appears well-substantiated (IA, pp. 38). A separate chapter compares the impacts the measures under the preferred option would have as a regulation and as a directive (IA, pp. 71-73). The IA argues that a regulation would facilitate legal certainty and judicial control while avoiding transposition issues. In this context, the IA recalls the high number of infringement procedures the current Late Payment Directive (and the preceding Directive 2000/35/EC) had prompted. Weighing the pros and cons of a change of legal instrument, the IA concludes that a regulation would be more effective and efficient, as it 'would take effect more quickly, be more easily enforceable and offer clear rules for businesses, applicable across the entire EU'; moreover, it would offer quicker relief for SMEs (IA, p. 73). The IA stresses that the proposed regulation would remain a **minimum harmonisation instrument**. As such, it would lay down obligations and definitions concerning the designation of national enforcement bodies, credit management, financial literacy training, and unfair contractual practices and provisions, while allowing Member States to complement these provisions (IA, p. 38). As noted in this briefing (section on Subsidiarity / proportionality), some national parliaments contested the proposed conversion of legal instrument.

In light of the **'one in, one out'** (OIOO) approach (BRG, tool #59), the IA considers that, under the preferred policy option package, businesses would incur one-off adjustment costs for updating standard maximum payment terms and adjusted compensation fees. These costs are estimated at €243 million (IA, p. 73). In addition, the IA identifies recurring administrative costs for businesses of €2.2 million arising from the verification that payments to the main contractor have been passed on to the subcontractors in public works contracts, which would mostly affect large or mid-sized companies. Conversely, the preferred policy option would not generate any administrative cost savings.

Monitoring and evaluation

Annex 24 of the IA defines several key performance indicators linked to the specific objectives. However, these indicators cover only two of the three specific objectives (no indicators are proposed for the SO 'Empowering SMEs and ensuring more fairness in commercial transactions'). They would provide for gathering 'hard data' and allow for measuring progress in implementing the regulation. Furthermore, the IA suggests carrying out an evaluation 4 years after the new legal framework's entry into force. While the proposed regulation maintains the 4-year deadline (Article 18), it mandates an implementation report rather than a fully fledged evaluation.

Stakeholder consultation

In line with the BRG, the Commission undertook a mix of open public and targeted consultations to obtain input from the public. It identified the following stakeholder groups as particularly relevant:

- authorities in the Member States (at the national, regional and local levels);
- companies (including SMEs) and business associations (at the national and EU level);
- the Commission's Late Payment Expert Group, composed of Member States' representatives, and
- the Industrial Forum, which advises the Commission on the implementation of the EU's industrial strategy.[8]

A **call for evidence** on the inception IA and a questionnaire-based **open public consultation** were run in parallel between 12 January and 17 March 2023. While this is less than the 12 weeks required by the BRG (tool #51), the IA does not provide a justification for the shortened consultation period.

Each of the two consultations yielded well over 100 responses, mainly from businesses, business associations and public authorities.

As late payments particularly affect SMEs, the Commission also **consulted SMEs specifically**, between 26 January and 16 March 2023. A total of 939 SMEs provided their feedback, nearly half of them from Spain. The results of this targeted consultation (summarised in the IA, Annex 16) also fed into the SME test (IA, Annex 15). In addition, the Commission – through bilateral meetings transparently listed in Annex 21 – sought input from individual stakeholders and expert groups, such as European and national business associations, the Industrial Forum, the SME envoys network, and the Late Payment Expert Group.

In line with the BRG, Annex 2 to the IA ('synopsis report') provides a comprehensive account of all stakeholder consultations, outlining for each policy option how these consultations informed the IA. Overall, according to the IA, broad stakeholder support existed for capping the payment terms at 30 days (or at 60 days in B2B transactions), facilitating access to training on credit management and financial literacy, and setting up a European Payment Observatory.

Supporting data and analytical methods used

The IA draws on a wide range of sources, including the Commission's 2015 ex-post evaluation and 2016 implementation report of the Late Payment Directive, which are, however, quite dated. The Commission did not carry out a more recent evaluation to support the legislative revision, although this seems to go against the 'evaluate first' principle set out in the Better Regulation Guidelines.

The cited reports were complemented by recent, highly relevant studies (e.g. on a responsible payment culture and the effect of inflation on late payments; a Joint Research Centre assessment of the economic impact of faster payments in B2B transactions; and a comparative analysis of legal versus soft-law instruments for improving payment behaviour), as well as the Commission's annual SME performance review. Furthermore, the IA was informed by the European Parliament's 2019 resolution on the topical implementation report (prepared by the IMCO committee and underpinned by an EPRS analysis), and the 2021 opinion of the Fit for Future Platform. External surveys, market data and reports (e.g. the European Payment Report) provided further insights, in particular on payment delays at the European level. Finally, the IA also took recent European Court of Justice case law into consideration (IA, Annex 11).

Annex 4 explains in detail the various calculations used in the IA, in particular to quantify the different policy options' impacts. It appears that no modelling was used. The IA gives a transparent account of the sources used, and of limitations regarding the quantifications. One such limitation is the extrapolation from the data of only a few Member States to the whole EU economy (IA, p. 102).

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

On 12 May 2023, the Regulatory Scrutiny Board (RSB) issued a positive opinion with reservations on an earlier draft version of the IA, identifying several shortcomings. The RSB requested, among other things, better to explain the choice of legal instrument, and to assess and compare the options' impacts as a regulation and a directive, respectively. Moreover, the RSB asked to strengthen the subsidiarity analysis; to present clearly the options' coherence with the Directive on unfair trading practices in the agricultural and food supply; and better to distinguish between B2B and G2B transactions, in particular for the analysis of the problem definition and their drivers. The requested changes seem to have been duly addressed.

Coherence between the Commission's legislative proposal and IA

The proposed regulation appears to be broadly coherent with the IA, with a few minor exceptions.

- While the IA (in particular the description of the policy options) leaves some ambiguity regarding the initiative's scope, as it refers only to B2B transactions, the proposal makes

it clear that both B2B and G2B transactions fall under its scope (Article 1 and recital 11 of the proposed regulation).

- With regard to evaluation, the proposed regulation maintains the 4-year deadline (Article 18), but mandates an implementation report rather than a fully fledged ex-post evaluation.
- Regarding fundamental rights impacts, the IA notes that PO1 would limit the freedom to conduct business (by affecting contractual freedom between businesses to set their own payment terms); in contrast, the proposal's explanatory memorandum anticipates a positive impact, noting that 'prompt payments increase trust in the market and spur entrepreneurship'.

Presented as part of the 'SME relief package', the initiative aims to tighten the EU's late payment framework and improve its enforcement. It proposes, among other things, to convert the current Late Payment Directive into a regulation, a move that several national parliaments contested. National parliaments also raised subsidiarity and proportionality concerns on several provisions. The impact assessment (IA) adequately justifies the need to revise the late payment framework, and substantiates the envisaged change of legal instrument. Overall, it presents a clear intervention logic. It puts forward three well-developed policy options (each with sub-options). Because of the initiative's high relevance for SMEs, a comprehensive SME test was carried out, in addition to a competitiveness check. The focus of the impact analysis lies clearly on economic impacts. The IA draws on a wide range of evidence (including relevant studies, surveys and market analyses) and broad stakeholder input (including from SMEs). It builds on qualitative and quantitative data and is transparent about data limitations. The wide evidence base somewhat compensates for the fact that the Commission's 2015 evaluation is rather dated. That fact that no separate evaluation was carried out prior to the revision is not fully in line with the 'evaluate first' principle. Of note, the Commission's open public consultation, which ran in parallel with the feedback to the inception IA, lasted merely 9 weeks (instead of the mandatory 12 weeks), without the IA disclosing the reasons for the shortened period. The IA provides a vast amount of background information and additional explanations in annexes (26 in total) and appears broadly coherent with the legislative proposal.

ENDNOTES

1. For details, see P. Baert, HOT – A head office tax system for small companies, EPRS, European Parliament, November 2023.
2. On 31 January 2024, Markus Pieper was appointed as EU SME Envoy, see related Commission press release.
3. Regulatory sandboxes are a structured form of testing innovations in a controlled real-world environment, prior to formal regulation (see BRG, tool #69).
4. See in particular resolution of 13 July 2023 on the state of the SME Union (2023/2750(RSP)), points 3-5; resolution of 16 December 2020 on a new strategy for European SMEs (2020/2131(INI)), points 24 and 25; and resolution of 17 January 2019 on Parliament's implementation report on the Late Payment Directive (2018/2056(INI)).
5. The EU Payment Observatory released its first thematic report in October 2023, on Preventive measures for tackling late payments in B2B and G2B transactions.
6. The IA quantifies the market volume as follows: '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 supplies'. (IA, p. 13).
7. The Commission's Joint Research Centre (JRC) identified 14 global megatrends, or 'long-term driving forces' deemed relevant for depicting and anticipating probable futures.
8. The Industrial Forum is composed of representatives of national economy and industry ministries, sectoral and SME organisations, civil society, non-governmental organisations, the European Economic and Social Committee and the European Committee of the Regions.

This briefing, prepared for the IMCO committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the impact assessment. It does not attempt to deal with the substance of the proposal.

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