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Transposition and implementation of the Directive on Late Payments in Commercial Transactions

Implementation in Action

IN-DEPTH ANALYSIS

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Update on the transposition and implementation of Directive 2011/7/EU on Late Payments in Commercial Transactions

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Abstract

This in-depth analysis, produced by the Ex-Post Impact Assessment Unit of the European Parliamentary Research Service (EPRS), aims to present an updated overview of the state of transposition of Directive 2011/7/EU on late payments in commercial transactions. An analysis of the state of implementation and on the operation in practice of the directive is also provided. It has been drafted following the Internal Market and Consumer Protection (IMCO) Committee's first "scrutiny session" with the European Commission, on 23rd June 2015, focussing on this directive.

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1. Background

The most up-to-date EU instrument which aims to tackle the problem of late payments in commercial transactions is Directive 2011/7/EU (recast). This Directive committed EU Member States to give effect to its provisions in their national laws by the 16th of March 2013, date on which it replaced the original Directive 2000/35/EC, which featured the same objectives and basic operating principles. As of April 2015, the 2011 Directive had reportedly[1] been correctly transposed by only 21 of the 28 Member States, despite the deadline having passed over two years hitherto. As of July 2015, this figure has increased to 25 Member States: 3 Member States are still subject to open infringement proceedings in relation to transposition, namely France, Poland and Portugal, although these are expected to be concluded positively. There are however 3 open infringement proceedings for unsatisfactory application of the Directive, namely against Greece, Italy and Spain, despite them having correctly completed transposition.

Although the 2011 late payments directive is not due for a review as such, the Commission is required, by 16 March 2016, to submit a report to the European Parliament and to the Council on the implementation of this Directive, accompanied by any appropriate proposals. Accordingly, DG GROW engaged consultants to gather information from Member States relating to implementation and to publish a study, and in parallel, launched a country survey online on 8th June 2015.

The exact size of the economic impact of late payments in the EU is difficult to ascertain because implementation of the 2011 directive is still ongoing, and also because of the variable effects according to the specific situation (e.g. national credit conditions, economic sectors, payment delay periods, ongoing adaptations to a number of Member State practices). Survey results are however clear on the detrimental impact of late payments on business, in particular on small and medium sized enterprises (SMEs).

To address this, EU policy highlights the need to tackle, as a priority, payment delays by public administrations given the importance of public procurement in the EU, representing more than €1,9 trillion per year at the time of the proposal. The executive summary of the Commission's impact assessment for the 2011 directive notably stressed how "*late payments by public bodies undermine the creation of stable and predictable economic conditions for businesses and policies to drive*

[1] Alina Gîrbea, *The implementation of the Directive 2011/7/EU on late payment: A contribution from the European civil society,* European Economic and Social Committee Section for the Single Market, Production and Consumption, 09/06/2015, p.1

growth and employment." More recently (September 2014), the European Commission Economic Paper on Late Payments, reveals that "*the estimated implicit financial costs associated with payment delays by public administrations observed in 2012 ranged from 0.005% of GDP in Finland to 0.19% of GDP in Greece*". Furthermore, a 2015 IMF Working Paper demonstrates, inter alia, that "*a standard deviation increase in delayed* (government) *payments reduces profit growth by 1.5 to 3.4 percentage points*". Finally, perhaps the most poignant example of the scale of the problem was recorded in Intrum Justitia's European Payment Index 2012 survey, which identified that written-off debt owing to the non-payment of invoices in the EU had grown to at least 2.8% of total receivables to reach €340 billion, equivalent to the total debt of Greece. In Intrum Justitia's European Payment Report of 2015 this amount has reportedly risen further to 3.1% of total receivables[2].

2. Strengthened rules

The objective of the new 2011 late payments directive is to tighten EU regulation on late payments to ensure that businesses, in particular SMEs, benefit from strengthened rights for receiving payment owed by public sector or private debtors. It places stricter requirements on public sector debtors to process their accounts payable within 30 days (with an extension to 60 days in exceptional circumstances), and within 60 days for private sector debtors. It is however important to note that a higher payment term can be agreed for business to business transactions provided that this is explicitly mentioned in the contract, and that the terms are not grossly unfair to the creditor. Furthermore, the new directive introduces a minimum debt-recovery processing compensation of €40 on public sector bodies and businesses failing to meet their accounts payable within these deadlines, and increases interest penalties. These interest rates are pegged to the rate set by the European Central Bank adding a mandatory 8 percentage points to the base rate (up from 7 points in the 2000 directive). Furthermore, Article 10 of the directive provides that Member States shall ensure that an enforceable title can be obtained within 90 calendar days of the lodging of the creditor's action or application to a court. This procedure may still incur costs, but it is novel in that it is expedited (a court ruling can no longer take years) and can be pursued irrespective of the amount of the debt owed.

Thus, the new directive reinforces the credit policies of EU enterprises, in particular of providers to the public sector or to large corporations, typically SMEs and subcontractors, ensuring greater protection of SME revenue and generally minimising instances of creditors being forced to write-off any accounts

[2] Lars Wollung, *European Payment Report 2015*, Intrum Justitia, 2015, p.8.

receivable as bad debts. Directive 2011/7/EU on late payments was also designed to harmonise late payment regulations across the European Union, and especially for the newer Member States. It also provided for the integration of the late payment recovery process across Member States, allowing an enterprise to successfully pursue a debt in another Member State in the same manner as they would in their resident Member State, although the effectiveness of these provisions is very likely to be hindered by the problems with debt recovery explained in section 5 on "related issues".

3. Heightened impacts of late payments in the wake of the credit crunch

Late payments are most likely to affect SMEs and subcontractors. Their short-term operating costs depend on safeguarding a healthy credit policy. A disproportionate level of accounts payable can have a strong impact on a small to medium-sized enterprise. Business owners surveyed during a previous consultation claimed that they are often forced to resort to making staff redundant if they do not receive their payments on time, and that they would be able to sustain higher employment levels and innovation in a culture of prompt payment[3]. It has also been reported that late payments have become far more damaging in the wake of the financial crisis, with banks having slashed credit conditions, in particular SME overdraft facilities, often resulting in severe cash flow difficulties for the smaller firms leading to a rise in the number of bankruptcies. It has also been suggested that offenders are more likely to be large corporations and public authorities, with the latter considered as the worst offenders[4]. And finally, it is regularly argued that austerity measures in certain Member States have meant that late payments by public bodies have become a common occurrence. However, evidence also suggests that this problem predates the global financial crisis.

4. Scrutiny of transposition and initial feedback on implementation problems

The table in section 7 is based on an ad hoc survey of Member States carried out by DG EPRS in June and July of 2015, to identify national measures transposing the directive, and to form an overview of reported problems encountered with transposition and implementation of the 2011 late payments directive. The colour

[3] *Op. cit.* Alina Gîrbea, p.1.
[4] Ibid.

codes in the table relate to the state of play on transposition for the first column, and to state of play on implementation for the second column, namely the effects of the legislation in practice (evaluation), where a number of application or implementation problems remain despite the essentially complete and correct transposition of the 2011 late payments directive by the Member States.

A small number of transposition problems, now resolved, were linked to adapting existing national laws to the strengthened rules, and to national pressures to go beyond the scope of the directive in order to provide for additional protections for specific vulnerable sectors. In terms of implementation problems, a possible correlation exists between late payments and administrative burdens, the shortcomings of national judicial systems, and also national debt refinancing problems. The real test on implementation is whether the expected gains of the 2011 directive have been realised, and here it is worrying that despite the timely and correct transposition of this directive by the majority of Member States, including a number with longstanding policies and laws to curb late payments in commercial transactions, some persistent problems remain, not least extended payment delays in certain Member States. This tends to indicate that the directives' impact may be more limited than originally foreseen.

5. Related issues

5.1. Cross-border late payments and variations in national debt collection systems

The legislative measures addressed in the 2011 late payments directive are limited to the enforcement of deadlines for late payments, to the charging of interest on late payments and to the charging to debtors of the costs of the recovery of late payments. The directive does not address the process of recovering late payments, as this does not fall within EU competence, which is limited, according to Article 81 of the Treaty, to judicial cooperation in civil matters having cross border implications only.

Typically, throughout the EU, if a debt collection agency fails to recover a debt, creditors then pursue their debts via small claims courts. Cross border small claims court procedures are addressed through two EU instruments: Regulation (EC) 1896 (2006), which established a European order for payment procedure, and Regulation (EC) No 861/2007, which established a European small claims procedure. The objective of these two regulations was to harmonise and facilitate the pursuit of small claims between creditors and debtors, but limited, in light of the Treaty's scope, to cross border transactions only.

However, a 2011 report by the Belgian law cabinet Monard D'Hulst on Debt Collection in Europe found that the two regulations above have failed to drive the convergence of cross border debt recovery procedures in Europe. The report exemplified that the debt recovery procedures in Europe are still far from uniform and that the costs (fees) and the time required to pursue a cross border debt in a court owing to unfamiliar processes are particularly prohibitive for small businesses. To demonstrate this, the variations in procedures and fees involved in a selection of Member States for the pursuit of a commercial debt, which were cited in the report, are captured in the table below.

Member State	Variations in national procedures and fees involved in debt recovery: Examples from a selection of EU Member States
France	- Registration of an injunction charge of €38,87 and of €99,64 in case of opposition. - Fixed bailiff fees set at 12% for debts up to €125, at 11% for debts from €126 to €610, at 10.5% for debts from €610 to €1525 and at 4% for debts from €1525.
Germany	- Legal costs and fees depend on the value of the dispute. These are not based on a percentage of the debt, but fixed in a fee scale. - The professional costs and fees also depend on the value of the dispute. Negotiated fees are possible, but they cannot be lower than the statutory rate.
Italy	- In summary proceedings, there are fixed costs and court taxes, depending on the amount claimed, which vary from €100 to €500. - Lawyer fees vary, from €1000 for smaller claims to higher sums for more substantial claims. - The fees rise if the debtor contests the debt.
The Netherlands	- The costs and fees for a national procedure are between €71 and €5894, depending on the amount of the claim and the court instance (court of first instance, court of appeal, Supreme Court) and the financial capacity of the parties. - The costs of debt collecting agencies or lawyers can be based on an hourly rate or on graduated rates. Costs for formal bailiff services are based on a decree on tariffs for bailiff actions. - For the enforcement of a foreign judgement, the costs for an exequatur[5] are €568 when the creditor is a company and €258 when the creditor is a physical person (or €71 when the creditor is considered to be indigent).

[5] The legal instrument enabling the enforcement of a foreign judgement.

Member State	Variations in national procedures and fees involved in debt recovery: Examples from a selection of EU Member States
Poland	- The court fees vary from 30 Polish złoty[6] to 300 złoty (€7 to €70) when the subject of the litigation amounts to respectively 2000 złoty (€470) and 7500 złoty (€1780) or more. - In general, for procedures above 30 złoty (€7) and not exceeding 100000 złoty (€23700), court fees amount to 5 % of the claim value. - In the event a claimant wins, the defendant shall pay the costs. - In payment order procedures (not less than 30 złoty or €7), court fees amount to 1.25% of the claim value. If the debtor brings objections to the order for payment, he shall pay court fees of 3.75% of the claim value. - In writ proceedings (not less than 30 złoty or €7 and not exceeding 100000 złoty or €23700), court fees are also set at 5% of the claim value. However, if in writ proceedings, the order of payment becomes final and enforceable, the court shall return 3.75% of the court fee and the remaining part of this fee shall be returned by the defendant.
Spain	- Flat rate costs and fees for a national procedure. - There are taxes ranging between €90, for debts of less than €6000, and €600 in case of a high court appeal. - To determine lawyer fees, two variables have to be taken into consideration: the type of proceeding and the amount involved in the proceeding. For example, when the claim reaches €50000 in an ordinary proceeding, lawyer fees are recorded at €8800. - Professional and legal fees are recoverable and the amount is fixed by law and administered by the court, according to bar association rules. In the case of a late payment, the debtor will be charged with the legal fees as well as interest on late payment.
United Kingdom	- The fees in the County Court and High Court vary from £30 (€42) for debts up to £300 (€420), to fees of £1530 (€2132) for debts above the £300000 (€418030)[7]. - Attorney fees and court fees can be claimed back. The interest can also be recovered at the maximum rate of 8% above the bank base rate. Suppliers can also charge a business a fixed sum for the cost of recovering a late commercial payment on top of claiming interest from it. There are no other penalties for late payments. The recoverability of attorney fees and court fees varies.

[6] 1 Polish złoty = €0.24 at time of writing.
[7] 1 British Pound = €1.39 at time of writing.

5.2. Combatting extortion in debt recovery

The recovery of a debt typically involves the employment of debt collection agencies and processing through small claims courts. Debt collection agencies are either public authorities or private companies in Member States where the commercial debt collection process has been privatised. The European debt collection market is growing, particularly in Eastern Europe. Debt collection agencies all take a percentage of the late payment as a fee for their services once it has been recovered. The problem here it that the prohibitive process of debt collection through small claims courts at the national level encourages some creditors to engage in the extortion of debtors in order to recover their debts.

A 2012 report published by London Economics and the European Commission singled out the absence of EU regulation on the protection of debtors against abusive practices by debt collection agencies. The report highlights abusive practices engaged in by registered debt collection agencies, citing specific cases. An earlier 2008 report financed by the European Commission's Directorate-General for Justice and Home Affairs (DG JUST) also found that criminal organisations are engaging in extortion in order to collect commercial debts. In particular, the report found that mafia groups and outlaw gangs are employed for the purpose of debt collection. Another DG JUST report, published in 2010, examined the links between corruption and organised crime in the EU. It also found strong evidence of organised crime involved in extortion for the purposes of commercial debt collection, suggesting a need for tighter regulation of debt collection at the national level.

6. Conclusions

It is clear that EU legislation on late payments and the Commission's follow up action on infringements since the adoption of the 2011 late payments directive has brought about a change in culture in public administrations across the EU, characterised by a general decline in payment delays. Payment delays in business to business transactions do not appear to be an especially grave concern in the sense that they are reportedly processed, for the vast majority of Member States, within the 60 day limit laid down in the directive (unless otherwise stated in the contract), with the important caveat however, that this conclusion is derived solely from an analysis of the surveys conducted, and does not take into account negative feedback received at EU level by the Commission and MEPs. Moreover, the problem of public sector late payments to businesses (within 30 days) is not yet resolved throughout the whole of the Union. Although the 2011 late payments directive further harmonises and improves the provisions for payment period limits and the charging of interest on late payments, the actual effect of these provisions is debatable, due to a variety of intrinsic problems associated to the recovery of a small claims debt.

These problems concern mainly the costs to SMEs of recovering debt owed, which remain generally too high, the weak financial penalties for late payment (a minimum debt-recovery processing compensation of only €40) furthermore rendered insufficient by historically-low base interest rates throughout the Union, and the risk of damaging business relationships, which is a real concern for SMEs in a difficult economic climate. In particular, the prohibitive nature of the recovery process for small claims does not encourage a culture of prompt payment, and holding on to funds for as long as possible tends to outweigh concerns about reputational damage. Furthermore, the commercial debt recovery process across borders is limited by variations in national debt recovery systems. To summarise, aside from budgetary or financial difficulties, the expensive and complex process required to recover a debt is perhaps the single most important factor explaining the staggering amount of money, which is still written-off annually as bad debt in the EU.

Accordingly, it may seem logical to subject the 2011 late payments directive, Regulation (EC) 1896 (2006) on the European payment procedure and Regulation (EC) No 861/2007 on small claims, to a joint review exercise in the future, striving to deliver greater consistency and effective enforcement mechanisms for these separate but interlinked instruments. Such a review could consider measures to ensure businesses are better able to recover their debts across EU borders and could also cover how best to encourage Member States to address the worrying correlation between commercial late payment recovery and the numerous reported instances of extortion engaged in by organised criminals in this context.

7. Table: State of play on the transposition and implementation of the 2011 late payments directive by Member States.

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Generally satisfactory although problems remain Unsatisfactory	
Austria	Austria transposed the 2011 late payments directive into national legislation (Artikel 9).	No reported problems.		The KSV credit organization ran a survey and found that 73% of all business clients fulfil their payment obligations in the agreed period of time and that the average time of late payment for public contracts is 7 days (down from 11 days in 2012). This is consistent with the September 2014 Commission Economic Paper on Late Payments data, which shows that Austria ranks among the Member States with the shortest payment durations and delays. This downward trend is consistent with Intrum Jusitia's 2015 payment report which suggests an average payment duration for public authority to business transactions of 32 days (2 days delay). In addition, the average payment duration in business to business transactions are well within the terms set by the directive.	
Belgium	Belgium transposed the 2011 Late Payments Directive into its national law in November 2013. This law applies retroactively back to the transposition deadline of 16 March 2013, except for specific measures relating to general provisions of Belgian public procurement legislation in the case of a commercial transaction between an enterprise and a public body. For this, entry into force coincides with that of the Royal Decree of 14 January 2013 on public procurement and public works concessions i.e. on 1st July 2013. See the consolidated version of the original Act of 2 August 2002 with the modifications inserted by the Act of 22 November 2013.	According to Belgian authorities, there were no major difficulties in the process of transposing the directive, apart from minor problems that are inherent to the political process of law-making in Belgium.		According to the Belgian authorities, there have been no reported difficulties concerning the application of the Directive. An information campaign day was organized in June 2014 by the EU Commission to raise awareness of the new rules amongst Belgian entrepreneurs, policy makers from national and regional authorities, business associations and SMEs. However, data from Intrum Jusitia's 2015 payment report clearly suggests otherwise, with an average payment duration in Belgium for public authority to business transactions of 69 days (39 days delay), well above the requirements of the Directive, although average payment delays in business to business transactions are within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Generally satisfactory although problems remain Unsatisfactory	
Bulgaria	The requirements of the 2011 late payments directive have been transposed by changes to the Bulgarian Commercial Law Act. The amendments were published in the Official Journal on 28 February 2013 and entered into force on 4 March 2013.	No reported problems.		Late payments remains a significant problem for businesses in Bulgaria. February 2015 estimations of the Bulgarian Industrial Association (a member of Business Europe) show that in 2013, debt between companies (including late payments) continued to increase reaching BGN 117 billion (around €59 billion), especially in the trade, transport, tourism, and energy sectors. This is an increase of 1,9% compared to 2012, and 8,3% compared to 2010 levels. On the other hand, in 2013, late payments by public (central and local) authorities to businesses amounted to BGN 277 million (around €140 million), with late payments by local authorities representing a bigger share. Moreover, anecdotal evidence suggests that, owing to the significant number of business-to-business grey economy transactions, creditors cannot rely on the justice system to execute late payments, and for public sector to business transactions, there are frequently reported problems with budgetary execution at the local level, namely with local authorities running out of funds before the end of the financial year. Data from Intrum Jusitia's 2015 payment report tends to confirm the problem for late payments by public authorities, with an average payment duration of 52 days (22 days delay), although average payments in business to business transactions are apparently within the terms set by the directive.	
Croatia	The 2011 late payments directive has been transposed by the Croatian Financial Operations and Pre-Bankruptcy Settlement Act *"Zakon o financijskom poslovanju i predstečajnoj nagodbi"*, which entered into force on 1 st October 2012.	No reported problems.		Data from Intrum Jusitia's 2015 payment report tends to confirm that there is still a late payments problem in Croatia, with average payment duration for public authority to business transactions of 48 days (18 days delay), although average payments in business to business transactions are well within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Generally satisfactory although problems remain Unsatisfactory	
Cyprus	Cyprus claims to be the first Member State to have transposed the late payments directive into its national laws, on 27 July 2012.	No reported problems.	Complete	Cyprus remains one of the Member States with long average payment delays, as reported in the September 2014 Commission Economic Paper on Late Payments. Intrum Justitia's 2014 European Payment Index confirms this, with stated average payment durations of 84 days for public sector to business payments (54 days delay) and average payment durations in business to business transactions of 85 days (25 days delay).	Generally satisfactory although problems remain
Czech Republic	The Czech republic transposed the 2011 late payments directive into national legislation (paragraph 61), specifically into Civil Code Act No 89/2012 Sb. The statutory interest rate for late payment and the compensation for recovery costs are regulated in Government Decree No 351/2013 Sb, sections 2 and 3.	According to the Czech authorities, there were no difficulties associated with transposition.	Complete	According to the Czech authorities there are no reported problems with the application of the Directive. Unconfirmed reports and figures based on private sector research present data showing further improvements in the average contractual period and the percentage of payments made within 30 days between 2012 and 2014 with the problem of late payments improving overall although payments in the public health sector remain more problematic. Data from Intrum Jusitia's 2015 payment report also tends to confirm that late payments is not a significant problem in the Czech Republic, with average payment durations for public authority to business transactions of 29 days, and average payments in business to business transactions well within the terms set by the directive. However, one area to watch is that it is likely that the possibility of damaging business relations with government has limited the use of recovery procedures introduced by the Directive. Finally, there is some anecdotal evidence of Czech SMEs being discouraged from court recovery proceedings owing to the costs and length of the legal process.	Satisfactory

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Generally satisfactory although problems remain Unsatisfactory	
Denmark	The 2011 late payments directive was transposed through amendment no. 1244 of 18 December 2012 to the Danish Interest Act.	The amendment transposing the 2011 late payments directive into Danish law entered into force on 1 March 2013. The bill to the amendment was the subject of a report on the transposition.		There are no reported problems with implementation of the directive in Denmark. Data from Intrum Justitia's 2015 payment report shows an average payment duration for public authority to business transactions of 27 days, with payments in business to business transactions also well within the terms set by the directive. Furthermore, as regards the monitoring of implementation, the Danish Ministry of Finance has issued an administrative order relating to transparency measures for late payments by public authorities, which recently came into force.	
Estonia	Estonia has transposed the 2011 late payments directive into its Law of Obligations Act and its Code of Civil Procedure	No reported problems.		Estonia ranks amongst the Member States featuring the shortest payment durations and delays for public sector to business transactions, as evidenced in the September 2014 Commission Economic Paper on Late Payments and in data from Intrum Justitia's 2015 payment report showing an average payment duration for public authority to business transactions of 21 days, with average payments in business to business transactions well within the terms set by the directive.	
Finland	Finland has transposed the 2011 late payments directive into its national legislation, namely through a new Act on Payment Terms in Commercial Contracts and through amendments to the Collection of Receivables Act and to the Interest Act. Finland's regulations on late payments predated the 2011 late payments directive and are amongst the strictest in Europe.	No reported problems.		As evidenced in the September 2014 Commission Economic Paper on Late Payments, the average payment duration in Finland is the shortest in the EU for government to business payments. However, there have been signs of payment timescales lengthening, particularly in the industrial sector. Therefore, the Finnish Parliament has recently amended the Act of Payment Terms in Commercial Relations so that the period for payment fixed in the contract may now not exceed 30 days (down from 60 days), unless otherwise expressly stated in the contract. Data from Intrum Justitia's 2015 payment report also shows an average payment duration in Finland for public authority to business transactions to be one of the best in the EU at 22 days, as is also the case for average payments in business to business transactions, which are also well within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
France	For transactions between undertakings and public authorities, France finalised its transposition of the 2011 Late Payments Directive into its national legislation in 2013 with decree No. 2013-269 of 29 March 2013 on combatting late payments in public contracts covering the application of law No. 2013-100 of 28th January 2013 adapting national law to the provisions of the 2011 directive, and in particular, extending the scope of previous national regulation to all public sector contracting authorities. For transactions between undertakings, France has completed the transposition of the 2011 Late Payments directive into the Commercial Code by law n° 2012-387 of 22 mars 2012. Some provisions of the Directive had previously been included into the Commercial Code in 2008 by law n° 2008-776 of 4 August 2008. The provisions amended in accordance with the directive are found in articles L. 441-6 and L. 443-1 of the commercial code.	France was late in its transposition of the 2011 Late Payments Directive. Furthermore, infringement proceedings are still outstanding as of the 15 July 2015. However, these proceedings are clearly in the process of being closed very shortly, with only one remaining procedural hurdle.		To improve the implementation of the provisions of the directive relevant to transactions between public authorities and businesses, a number of national targets have been set, notably to reduce the average payment delays by state bodies to 20 days by 2017, and on mandating e-invoicing for large enterprises by 2017, which will also apply to all firms, including micro-enterprises, by 2020. Furthermore, to improve the implementation of the provisions of the directive relating to business to business transactions, the Ministry of Finance performs around 2500 checks per year, which has revealed a downward trend in late payment delays. The challenge for France is whether these measures will be able to remedy the average payment durations recorded in Intrum Jusitia's 2015 payment report of around 62 days for public authority to business payments (32 days delay). Business to business payment durations are however already within the limits set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Germany	In Germany, the directive has been transposed by the law known as the "*Gesetz zur Bekämpfung von Zahlungsverzug im Geschäftsverkehr und zur Änderung des Erneuerbare-Energien-Gesetzes*". Germany has given greater protections to creditors than those mandated by the 2011 late payments directive, pursuant to pressure from the crafts industry.	Germany transposed the 2011 late payments directive with a slight delay owing to difficulties reconciling the instrument with predating national law on unfair contract conditions. Furthermore, there was a debate in the German Bundestag about whether or not national law which addresses the problem of late payments from the angle of unfair contract conditions actually needed to be updated at all in light of the 2011 late payments directive. Infringement proceedings owing to late transposition were brought by the Commission against Germany, but the German government complied, and these proceedings have since been closed.		Data from Intrum Jusitia's 2015 payment report shows an average payment duration in Germany for public authority to business transactions to be one of the best in the EU at 19 days, and average payments in business to business transactions to be well within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Greece	Greece transposed the 2011 late payments directive into Greek law (Paragraph Z).	According to the Commission paper on the economic impact of late payments (September 2014), the Commission launched infringement proceedings against Greece for its failure to transpose the 2011 late payments directive correctly, in particular given that the national transposition law did not guarantee that an enforceable title for unchallenged claims could be obtained within 90 calendar days. Furthermore, a separate law stated that an enforceable title could not be used in Court against public administrations and bodies governed by public law. The relevant laws were amended in 2014, and transposition is now complete. Accordingly, the infringement was closed in February 2015.		Late payments in commercial transactions are a longstanding problem in Greece. Payment procedures in Greece are historically very slow. Eurochambres has previously reported that the average length of payment by Greek public administrations to SMEs was amongst the highest in the EU, with an average duration of 155 days (125 days delay). However, Greek authorities have adopted new measures which have shifted the responsibility for payment execution from taxation authorities to fiscal audit offices with the objective of streamlining the process. These would appear to have been effective when cross referenced against data from Intrum Jusitia's 2015 payment report, which shows significantly reduced average payment duration for public authority to business transactions, which now stands at 49 days (19 days delay), and average payments in business to business transactions well within the terms set by the directive. Nevertheless, Greece is still the subject of an open infringement case for unsatisfactory application of the 2011 late payments directive.	
Hungary	Hungary has transposed the 2011 late payments directive into national legislation (paragraph 48).	No reported problems.		Data from Intrum Jusitia's 2015 payment report shows an average payment duration in Hungary for public authority to business transactions to be 42 days (12 days delay), above the legal requirements of the 2011 late payments directive. Average payments in business to business transactions are however well within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Ireland	Ireland transposed the 2011 Late Payments Directive by reference into national regulations in 2012.	No reported problems.		The Department of Jobs, Enterprise and Innovation promotes improved payment practices and monitors the operation of the Prompt Payment of Accounts Act 1997, and the Late Payment in Commercial Transactions Act 2012. The Department also collates and publishes the composite quarterly returns of central Government Departments concerning payments made to their suppliers within 15 days. Data published by the Irish government indicates that, over the past two years, central Government Departments paid 84% of all invoices within 15 days (92% in value terms). Ireland is currently examining the possibility of incorporating the 15 day commitment (an administrative arrangement by government decision) into national legislation. Furthermore, Ireland has introduced various initiatives including, in particular, a Prompt Payment Code, and is also following up the national late payment campaign with a closer focus on problems experienced at the regional level. The Government has also committed to establishing a 'Payment Forum' under the Action Plan for Jobs 2015. Data from Intrum Jusitia's 2015 payment report shows an average payment duration in Ireland for public authority to business transactions of 28 days (below the 30 day limit), and average payment durations in business to business transactions to be well within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Italy	The main act transposing the late payments directive into Italian national law is the law of the Decreto Legislativo 9 novembre 2012, n. 192. This was later amended with a second European Law of 2013, to make sure that the Commission's remarks on the need to make the transposition clearer were fully taken into account.	The European Commission had launched infringement proceedings against Italy, seeking clarification on their application and implementation of the EU's Late Payments Directive. In order to effectively transpose the 2011 late payments directive, new rules for transparency and penalties were introduced, which went beyond the penalties required by the directive. In order to improve transparency, public authorities are now required to publish all bills which they owe onto a government website. The new penalties include the blocking of all new staff recruitment for public authorities which do not meet their payments, and the official responsible is held personally liable (civil and criminal liability). Accordingly, these infringement proceedings are now closed.	Complete	The Commission has launched infringement proceedings against Italy in relation to problems with the application of the directive, namely excessive delays in payments by public authorities. Indeed, according to Eurochambres in 2014, the average length of payment by public administrations to SMEs was 165 days (135 days delay). Data from Intrum Jusitia's 2015 payment report shows however some improvement, with an average payment duration in Italy for public authority to business transactions of 144 days (114 days delay), and average payments in business to business transactions at 80 days (20 days delay). These delays are still well above the requirements of the directive. The Italian authorities argue that the reason for the infringement was due to a loophole in Italian law, which has now been fixed, allowing public authorities to neglect to pay their bills for contracts to which they had agreed. Funds had to be redistributed from the national treasury to town halls and regional authorities in order to pay money owed to remedy this problem. A Commission paper on the economic impact of late payments (September 2014) notes that the Italian government set up a €66 billion programme to clear arrears over two years, and that, by October 2014, €32.5 billion had already been paid out. Furthermore, the paper explains that the Italian government introduced compulsory electronic invoices for central government administrations in mid-2014 and plans to extend them to local governments by spring 2015 with the objective of speeding up payments to suppliers. Moreover, to increase transparency, related data is to be published online. However, the implementation test on these corrective actions will be whether Italy can effectively reduce average payment durations, and bring them within the requirements of the directive.	Unsatisfactory

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Latvia	Latvia has transposed the 2011 late payments Directive into Latvian law. Two laws were amended to transpose the Late Payment Directive: A new chapter (Articles 1668^{1}-1668^{11}) *Default in Respect of Contracts Regarding the Supply of Goods, Purchase or Provision of Services* was incorporated into Civil Law. Furthermore, Article 1765 on the late payment interest rate for contracts concerning the supply of goods and the purchase or the provision of services, was also amended. The law was added with provisions setting the timeframe and order of entry into force of the Civil Law chapter regarding *default in respect of contracts regarding the supply of goods, purchase or provision of services.*	No reported problems.		According to the Latvian authorities, there are no reported problems with the implementation of the directive. Data from Intrum Jusitia's 2015 payment report tends to confirm this as it shows an average payment duration in Latvia for public authority to business transactions of only 18 days, and average payments in business to business transactions well within the terms set by the directive.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Lithuania	The main act transposing the 2011 late payments directive into Lithuanian national law is the law on prevention of late payments in commercial transactions. The 2011 late payments directive was also transposed by the law on payment for agriculture products (Articles 5, 6, 7, 11, 12, and 13).	No reported problems.		A survey on payment delays in the public and private sectors was carried out in October 2014. 70% of respondents said that most payments are made on time in the public sector, as is the case for 63% of payments in the private sector. For both the public and the private sectors, 30% of debts are paid before 60 days and 70% of debts are settled after 60 days. This is confirmed by data from Intrum Jusitia's 2015 payment report, which shows an average payment duration in Lithuania for public authority to business transactions of only 15 days, and average payments in business to business transactions well within the terms set by the directive. One area to watch relates to the frequent clarifications requested by public bodies to the responsible ministry in relation to the possibility of extending payments from 30 to 60 days, where procurement officers are calling for clarity on the interpretation of the *"particular nature or features of the contract"* as a justification for the extension.	
Luxembourg	Luxembourg transposed the 2011 late payments directive into national law on 29 March 2013. Late payment in commercial transactions are governed by two laws in Luxembourg, the law of 18 April 2004 "*relative aux délais de paiement et aux intérêts de retard*", which has been modified by the law of 29 Mars 2013 *"concernant la lutte contre le retard de paiement dans les transactions commerciales"*, transposing the 2011 late payments directive.	No reported problems. Luxembourg's transposition went beyond the scope of the directive by limiting the basic deadline of late payments to 30 days, and not allowing for extending it to 60 days.		In Luxembourg, the Chamber of Commerce and the Chamber of Trade hailed the national law for not including Article 4 (Paragraph 4) of the late payments directive (allowing for Member States to extend the basic deadline of 30 days to 60 days for public contracts under certain conditions), as a course of action guaranteeing prompt payment. However, the Chamber of Commerce criticised the risk that larger businesses could continue to impose longer payment delays onto smaller businesses. Furthermore, Luxembourg's State Council expressed its regrets that the legislator did not repeal the law of 18 April 2004, considering the numerous changes made to it, especially in Section I. The Council would have preferred the repeal of the old law and replacing it with an entirely new law. Unfortunately no data could be sourced regarding average payment durations in Luxembourg, so while implementation appears to be satisfactory, this could not be independently verified in this analysis.	

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Malta	The 2011 late payments directive was transposed into the Maltese law through Legal Notice 272 published on 14 August 2012. The transposition forms part of the Commercial Code (Chapter 13 of the Laws of Malta). Further legal amendments were carried out following initial transposition and full transposition was completed through Legal Notice 13 published on 17th January 2014. This transposition also forms part of the Commercial Code (Chapter 13 of the Laws of Malta).	Malta did not face any significant issues with transposition.	Complete	Malta faced some expected implementation problems, namely creating awareness about the implications of the Directive and the importance of paying on time. Accordingly, the Maltese government conducted three information seminars in 2012, targeted at government departments, public entities and local councils. In 2012, the Ministry for Finance also issued an internal circular explaining the main elements of the directive. In addition, the Malta Association of Credit Management (sponsored by the European Commission Representation in Malta) organised an information session on 14 February 2013, directed at the business community. Two additional presentations were delivered to public authorities and to SMEs in 2014. Furthermore, the Maltese government has launched website on the subject of late payments www.late-payment.gov.mt, including a list of frequently asked questions and the applicable legal interest rate for a late payment. On a bi-annual basis, Maltese authorities collect creditor data from all public authorities to understand better the extent of the problem and the trends. Unfortunately no data could be sourced regarding average payment durations in Malta, so while implementation appears to be satisfactory, this could not be independently verified in this analysis.	Satisfactory
The Netherlands	The Dutch government transposed the relevant parts of the 2011 late payments directive into national law on public procurement in 2014.	No reported problems.	Complete	There are reports of a heightened public interest on combatting late payments with unofficial surveys revealing that business to business transactions payment delays could be improved. In terms of additional soft implementing measures, a Prompt Payment Charter is in the process of being drafted. Data from Intrum Jusitia's 2015 payment report tends to confirm that the situation on late payments in the Netherlands is not especially problematic as it records an average payment duration for public authority to business transactions of 32 days (2 days delay), and average payments in business to business transactions well within the terms set by the directive.	Satisfactory

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Poland	The text which transposes the late payments directive into Polish law is: "*Ustawa z dnia 8 marca 2013 r. o terminach zapłaty w transakcjach handlowych*".	Poland faced problems regarding the transposition of the directive which resulted in infringement proceedings, which are still outstanding as of 15 July 2015, but which are expected to close in the course of 2015. These reportedly resulted from the absence of a harmonised approach, in civil law, for the calculation of interest. In particular, there was a risk of computing a lower interest than required by the directive. Polish authorities also had to adjust the existing act after transposing the 2011 directive, given some interpretation problems linked to existing Polish provisions relating to the compensation of recovery costs (art. 6 of the 2011 directive).		According to a survey by the National Debt Register (KRD) in 2012, which was reported on by the Enterprise Europe Network, 91.1% of Polish companies face late payments or even non-payments. As a result, about 35% of companies had failed to fulfil their own financial obligations to other parties, incurring reputational damage. Almost twice as many businesses have limited their investments, a point which is considered to be particularly damaging for the economy. Other studies show that 2012 was the worst year for the number of bankruptcies filed in Poland over an 8 year period. The main reason was worsening payment backlogs. Most bankruptcies were recorded in the construction sector and, to a lesser degree, in the retail and manufacturing sectors. However data from Intrum Jusitia's 2015 payment report tends to point to satisfactory figures on late payments, with average payment durations for public authority to business transactions of 33 days (3 days delay), and average payments in business to business transactions well within the terms set by the directive, suggesting that the situation reported above has improved since 2012.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Portugal	The instrument transposing the 2011 late payments directive into Portuguese law is Decreto-Lei = DL 62/2013 of 10 May 2013.	Portugal faced problems regarding the transposition of the directive which resulted in infringement proceedings being launched by the Commission. These are still outstanding as of 15 July 2015 but are expected to close in 2016.		As regards implementation of the directive, it has been reported by Eurochambres that a high risk of late payments subsists in Portugal despite the new law, with a reported average length of payment by public administrations to SMEs of 129 days (99 days delay). However, after peaking at an average of 141 days in 2012 (111 days delay), the average delay for payments owed by public entities dropped to 80 days in 2014 according to Portuguese authorities. This downward trend tends to be confirmed by the 94 days average payment duration (64 days delay) by public bodies, which was recorded in Intrum Jusitia's 2015 payment report. Intrum Justitia's 2015 figures also show average payment durations of 70 days (10 day delay) in business to business transactions. These figures are still well above the requirements for payment within 30 days for public bodies and 60 days for businesses laid down in the directive. Nevertheless, a sustained downward trend in late payments can be observed since 2012, with average payment delays, which the government monitors, now below 2009 levels. The implementation challenge for Portugal is to continue on this path.	
Romania	Romania has transposed the 2011 late payments directive into national law with Legea 72/2013.	The transposition of the directive into Romanian national law was considered by the Commission to be satisfactory.		Although Eurochambres had previously reported on a high risk of late payment in Romania, with media reports of particularly acute problems as regards public sector to business transactions, Intrum Jusitia's 2015 payment report tends to point on the contrary, to good figures on late payments, with average payment durations for public authority to business transactions of 25 days, and average payments in business to business transactions well within the terms set by the directive, suggesting that the situation has now improved.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Slovakia	The directive was transposed into Slovakian law through two legal instruments: The amendment to the Commercial code no. 9/2013 and Government Regulation no. 21/2013	No reported problems.		The European Commission launched infringement proceedings against Slovakia, seeking clarification on their application and implementation of the EU's late payments directive. The infringement was rectified and the proceedings were closed on 15 March 2015. Slovakian SMEs reportedly welcomed the transposition of the 2011 Directive although the impact is perceived as limited owing to similar rules already being in place hitherto. Data from Intrum Jusitia's 2015 payment report tends to confirm that the situation on late payments in Slovakia is not problematic as it shows an average payment duration for public authority to business transactions of 23 days, and average payments in business to business transactions to be well within the terms set by the directive.	
Slovenia	Slovenia has transposed the 2011 late payments directive into national law.	No reported problems.		Data from Intrum Jusitia's 2015 payment report tends to confirm that the situation on late payments in Slovenia is not especially problematic as it shows an average payment duration for public authority to business transactions of 35 days, and average payments in business to business transactions to be well within the terms set by the directive, with the main cause of late payments being reportedly debtors' financial difficulties.	

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Spain	The instrument transposing the 2011 late payments directive into Spanish law is Real Decreto-Ley 4/2013.	In response to a written question (ES version) tabled by Ramón Tremosa i Balcells MEP (ALDE), the Commission responded in January 2014 that the Commission was verifying compliance of the Spanish transposition instrument with the new directive. The Commission has since concluded that the Spanish instrument complies with the directive.		Spain has reportedly been beset by a high risk of late payments in the past, with the average length of payment by public administrations to SMEs reported as 154 days (124 days delay) according to Eurochambres in May 2014. These figures tend to be confirmed in the findings of Intrum Jusitia's 2015 payment report, with average payment durations for public authority to business transactions of 103 days (73 days delay), and average payments in business to business transactions of 70 days (10 days delay). However, according to Spanish authorities, these figures have fallen. The Spanish ministry responsible for late payments policy supplied the following statistics: From 1 January 2012 to April 2015, the balance of commercial debt of the 14 autonomous communities attached to funding mechanisms decreased by 69.5%. Moreover, between December 2014 and April 2015, the commercial debt of the autonomous regions decreased by 12.62%. Additionally, the average payment period of invoices for the Spanish autonomous communities is now 52.83 days (22.83 days delay), whilst the figure for the Spanish local authorities has also fallen to within acceptable margins of 31.47 days (1.47 days delay). It has also been noted, in the Commission paper on the economic impact of late payments (September 2014), that Spain announced in May 2012 a mechanism in the form of a government guaranteed syndicated loan worth €30 billion with which the central government helps regional and local governments clear their arrears, with the effect of accelerating payments to suppliers. Accordingly, Spain implemented a plan to clear arrears in its public administrations including: a fund for financing payments to suppliers, (rolled out in three stages during 2012 and 2013); an autonomous liquidity fund (FLA[1]) in 2012, 2013, 2014 and 2015; a new social fund in 2015; a	

[1] "Fondo de liquidez autonómica"

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
Spain (ctd.)			Complete	new finance facility in 2015 for the CCAA[2]; a new impulse fund and fund management scheme in 2015 for the EELL[3]. Nevertheless, at the end of June 2015, the European Commission launched infringement proceedings against the Spanish government for unsatisfactory application of the 2011 late payments directive. The launch of this procedure followed a number of complaints and reports *inter alia* in relation to the domestic case brought by Union of the Pharmacists of the Community of Valencia, who originally launched a domestic action against the Community of Valencia for failure to pay interest on defaulted payments and collection costs for late payments. Taking up this case and others, the Commission has launched proceedings against the Spanish government arguing that Article 6 of the Real Decreto-Ley 4/2013 violates Articles 4, 6 & 7 of the 2011/7 of the late payments directive.	Satisfactory although problems remain
Sweden	The 2011 late payments directive was transposed into Swedish legislation under Section 2 a-c, 4 a and 6 of the Interest Act (1975:635), section 4 a, 5 and 6 of the Act (1981:739) on compensation for recovery costs, and furthermore by Act (1984:292) on contract terms between undertakings and section 36 of the Contracts Act (1915:218). For further information see prop 2012/13:36.	No reported problems.	Complete	The implementation of the 2011 directive did not have a significant impact in Sweden because national legislation already contained strict measures to limit payment delays. As evidenced in the September 2014 Commission Economic Paper on Late Payments, Sweden's public sector to business average payment duration features amongst the shorter EU averages (27-28 days). Data from Intrum Jusitia's 2015 payment report tends to confirm that the situation on late payments in Sweden is not especially problematic as it shows an average payment duration for public authority to business transactions of 32 days (2 days delay), and average payments in business to business transactions to be well within the terms set by the directive.	Satisfactory

[2] Refers to the Spanish autonomous communities (comunidades autónomas)
[3] Refers to the Spanish local authorities (Entes Locales)

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
United Kingdom	Specific EU legislative measures targeting late payments in commercial transactions were likely inspired by those contained in the United Kingdom Late Payments of Commercial Debts (Interest) Act of 1998. This act, according to the UK, was the first dedicated piece of legislation on late payments to be introduced by a Member State targeting debtors in order to foster a culture of prompt payment by public bodies and large enterprises.	The UK transposed the 2011 late payments directive in to national law without problems since many of its provisions already featured in UK law.		Although legislation imposing interest for late payment has been in place for some time, few businesses in the UK use it to tackle problems they are facing with other businesses. A recent private sector survey indicated only 10% have considered claiming interest under the late payment legislation despite 22% of businesses ending a relationship with a business customer because of continued late payment. In January 2015, BACS reported that 59% of UK SMEs were impacted negatively by late payments, with a total debt burden of £32.4 billion (€45.5 billion) which breaks down to an average of £31901 (€44850) of overdue payments per SME. The Government is taking forward a suite of measures – legislative and non-legislative - to bring down the scale of late payments, in particular a new legal requirement for the UK's largest firms to report on their payment practices. This tough new requirement will increase transparency on payment performance, allowing for full public scrutiny. Furthermore, in response to concerns that the voluntary Prompt Payment Code was not effective, the Government launched a review to strengthen the Code. Changes are currently being phased in, with the Code moving to promote 30 day terms as the norm, and 60 day terms as a maximum. A new Code Compliance Board will monitor signatories and enforce the Code's principles. In the public sector, the Public Contracts Regulations 2015 have introduced 30 day payment terms throughout public sector supply chains. All public contracting authorities will have to report on their payment performance from 2016. Central Government Departments have a target to pay 80% of undisputed invoices within 5 days and an obligation to report on their payment performance quarterly. In addition, suppliers (especially SMEs) can use the mystery shopper procurement feedback service to investigate concerns about slow payment in public sector supply chains.	

Member State	National measures transposing Directive 2011/7/EU on late payments in commercial transactions	State of Transposition Complete Not yet complete Incorrect		State of Implementation Satisfactory Satisfactory although problems remain Unsatisfactory	
United Kingdom (ctd.)				The implementation challenge for the UK is whether these measures will effectively address reports that the cost for recovery of a late payment in a small-claims court outweighs the amount of the outstanding payment, meaning that the debt-pursuit process is prohibitive for many SMEs. However on balance, the situation in the UK appears overall to be satisfactory when cross-referenced against Intrum Jusitia's 2015 payment report, which already records an average payment duration for public authority to business transactions of 24 days (below the 30 day limit), and average payments in business to business transactions as also well within the limits set by the directive.	

This in-depth analysis, produced by the Ex-Post Impact Assessment Unit of the European Parliamentary Research Service (EPRS), aims to present an updated overview of the state of transposition of Directive 2011/7/EU on late payments in commercial transactions. An analysis of the state of implementation and on the operation in practice of the directive is also provided. It has been drafted following the Internal Market and Consumer Protection (IMCO) Committee's first "scrutiny session" with the European Commission, on 23rd June 2015, focussing on this directive.

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