

Amendment 110

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Martina Dlabajová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Deirdre Clune, Geoffroy Didier, Laurence Sailliet, Jessica Polfjård

Report

A9-0156/2024

Róza Thun und Hohenstein

Combating late payment in commercial transactions
(COM(2023)0533 – C9-0338/2023 – 2023/0323(COD))

Proposal for a regulation**Article 3 – paragraph 1***Text proposed by the Commission**Amendment*

1. In commercial transactions, the payment period shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. ***This period shall apply both to the transactions between undertakings and between public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive (EU) 2019/633, unless Member States provide for a shorter payment period for such products.***

1. In commercial transactions, ***where the debtor is a public authority***, the payment period shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services ***in accordance with contractual agreement. Where the date of the receipt of the invoice or the equivalent request for payment is uncertain, the payment*** period shall ***not exceed 30 calendar days from the date of receipt of the goods or services.***

In commercial transactions between undertakings, ***the*** payment period shall ***not exceed 30 calendar days from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the***

creditor.

Or. en

Justification

Flexibility regarding the payment period in B2B commercial transactions should be preserved to reflect market realities and meet the needs of certain sectors. The absence of an upper limit on the payment period, along with the condition of fairness and equal benefits to both debtor and creditor, will encourage contractual parties to opt for the shortest necessary payment period and avoid unnecessary bureaucracy and complexity for companies.

Amendment 111

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Martina Dlabajová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Deirdre Clune, Geoffroy Didier, Laurence Saight, Jessica Polfjård

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Proposal for a regulation**Article 3 – paragraph 3***Text proposed by the Commission*

3. Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. The payment period shall not exceed 30 calendar days after such procedure has taken place.

Amendment

3. Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, ***for the purposes of this Regulation***, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment, ***unless otherwise expressly agreed within the limits of national law in the contract and provided it is not grossly unfair to the creditor***. In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. The payment period shall not exceed 30 calendar days after such procedure has taken place ***been concluded or after receipt of the invoice, or an equivalent request for payment, if the latter takes place later***.

Or. en

Justification

To support the objective of this regulation, the default maximum duration for the acceptance or verification procedure should not exceed 30 days. Nevertheless, to ensure full conformity of goods or services with the contract or the law, contractual flexibility should be permitted within the limits of national law, when expressly agreed upon in the contract, and provided it is not grossly unfair to the creditor, especially in the case of particularly complex contracts.

Amendment 112

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zile, Sven Simon, Tomas Tobé, Deirdre Clune, Geoffroy Didier, Laurence Salliet, Jessica Polfjärd

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Proposal for a regulation**Article 4***Text proposed by the Commission**Amendment***Article 4****deleted**

Payments to subcontractors in public procurement

1. For public works contracts falling within the scope of Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC⁵⁶ of the European Parliament and of the Council, contractors shall provide evidence to contracting authorities or contracting entities within the meaning of those Directives that, where applicable, they have paid their direct subcontractors involved in the execution of the contract within the deadlines and under the conditions set out in this Regulation. The evidence may take the form of a written declaration by the contractor and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment.

2. Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by

the main contractor to its direct subcontractors, the contracting authority or contracting entity shall notify the enforcement authority of its Member State thereof without delay.

⁵⁶ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

Or. en

Justification

This regulation should not establish new rules for public procurement procedures that are already regulated by the Public Procurement Directives 2014/23/EU, 2014/24/EU, or 2014/25/EU. The introduction of new provisions, such as an obligation for contracting authorities to verify all payments to subcontractors, imposes unnecessary burdens without guaranteeing the desired prompt payment outcomes. Additionally, the issue of contractual confidentiality remains unresolved.

Amendment 113

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Martina Dlabajová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Jessica Polfjärd

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Proposal for a regulation**Article 5 – paragraph 3***Text proposed by the Commission*

3. *It shall not **be possible** for the creditor to waive its right to obtain interest for late payment.*

Amendment

3. ***A debtor** shall not **request** the creditor to waive its right to obtain interest for late payment **as a precondition for making payments.***

Or. en

Justification

A waiver of interest or the flat fee compensation is often part of amicable settlements or agreements to regulate outstanding payments with debtors which are in economic difficulties. The prohibition to waive these rights should therefore be targeted to cases where the debtor abuses its power by demanding such a waiver from the creditor, e. g. as a condition for making payments.

Amendment 114

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Martina Dlabajová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Jessica Polfjärd

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Proposal for a regulation**Article 8 – paragraph 3***Text proposed by the Commission**Amendment*

3. *It shall not **be possible** for the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1.*

3. ***A debtor** shall not **request** the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1 **as a precondition for making payments.***

Or. en

Justification

A waiver of interest or the flat fee compensation is often part of amicable settlements or agreements to regulate outstanding payments with debtors which are in economic difficulties. The prohibition to waive these rights should therefore be targeted to cases where the debtor abuses its power by demanding such a waiver from the creditor, e. g. as a condition for making payments.

Amendment 115

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Jessica Polfjärd

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Proposal for a regulation**Article 13***Text proposed by the Commission**Amendment***Article 13***deleted***Enforcement authorities**

1. Each Member State shall designate one or more authorities responsible for the enforcement of this Regulation ('enforcement authority').

2. Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with.

3. Enforcement authorities shall cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations that have a cross-border dimension.

4. Enforcement authorities shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations.

5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food

***sector to the competent enforcement
authorities under Directive (EU)
2019/633.***

Or. en

Justification

The Commission proposes to establish in all Member States a completely new enforcement system which would consist of administrative authorities that would perform the task of courts. Such a system would place a considerable burden on Member States and lead to additional bureaucracy for businesses. The Commission has not provided evidence that enforcement of late payment through administrative authorities is more effective than the traditional enforcement. Member States should be free to develop an enforcement system that fits best with their needs and legal tradition.

Amendment 116

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Jessica Polfjärd

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Proposal for a regulation**Article 13 – paragraph 5***Text proposed by the Commission**Amendment*

5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food sector to the competent enforcement authorities under Directive (EU) 2019/633. *deleted*

Or. en

Amendment 117

Svenja Hahn, Moritz Körner, Jan-Christoph Oetjen, Andreas Glück, Michael Kauch, Malik Azmani, Catharina Rinzema, Bart Groothuis, Caroline Nagtegaal, Jan Huitema, Engin Eroglu, Ulrike Müller, Dita Charanzová, Ondřej Kovařík, Martin Hlaváček, Ondřej Knotek, Vlad-Marius Botoș, Ivars Ijabs, Andrus Ansip, Urmas Paet, Andreas Schwab, Sabine Verheyen, Arba Kokalari, Norbert Lins, Niclas Herbst, Christian Doleschal, Marion Walsmann, Jörgen Warborn, Rasa Juknevičienė, Andrius Kubilius, Michiel Hoogeveen, Jens Gieseke, Roberts Zīle, Sven Simon, Tomas Tobé, Jessica Polfjärd

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Proposal for a regulation**Article 15***Text proposed by the Commission**Amendment**Article 15**deleted****Complaints and confidentiality***

1. Creditors may address complaints either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member States in which the debtor is established. The enforcement authority to which the complaint is addressed shall be competent to enforce this Regulation.

2. Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint to the enforcement authorities referred to in Article 13 at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by an infringement of this Regulation.

3. Where the complainant so requests, the enforcement authority shall take the

necessary measures for the appropriate protection of the identity of the complainant. The complainant shall identify any information for which it requests confidentiality.

4. The enforcement authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.

5. Where an enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons of its decision within a reasonable period of time after the receipt of the complaint.

6. Where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.

7. Where an enforcement authority finds that a debtor has infringed this Regulation, it shall require the debtor to bring the illegal practice to an end.

Or. en