



2023/0323(COD)

14.11.2023

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on combating late payment in commercial transactions
(COM(2023)0533 – C9-0338/2023 – 2023/0323(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Róza Thun und Hohenstein

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on combating late payment in commercial transactions (COM(2023)0533 – C9-0338/2023 – 2023/0323(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0533),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0338/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) The procedures of acceptance or verification for ascertaining the conformity of the goods or services provided with the requirements of the contract, as well as verification of the correctness and conformity of the invoice, are often used to delay intentionally the payment period. Their inclusion in the contract should therefore be objectively justified by the particular nature of the contract in question or by certain of its characteristics⁴³. It should therefore be possible to provide for such procedure of verification or acceptance in a contract only when provided for in national law where necessary, due to the specific nature of the goods or services. To avoid that the procedure of acceptance or verification is used to extend the payment period, the contract should clearly describe the details of such procedure, including its duration. For the same purpose, the debtor should initiate the verification or acceptance procedure immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction, regardless of whether the creditor has issued an invoice or equivalent request for payment. In order not to jeopardise the achievement of the objectives of this Regulation, it is appropriate to set a maximum duration of a procedure of acceptance or verification.

Amendment

(12) The procedures of acceptance or verification for ascertaining the conformity of the goods or services provided with the requirements of the contract, as well as verification of the correctness and conformity of the invoice, are ***very useful tools in many commercial transactions, in particular to protect the interests of the seller and to avoid unnecessary legal disputes between the parties. This Regulation does not seek to limit the use of these tools. However, these procedures*** are often used to delay intentionally the payment period. ***In the context of establishing the payment period,*** their inclusion in the contract should therefore be objectively justified by the particular nature of the contract in question or by certain of its characteristics⁴³. It should therefore be possible to provide for such procedure of verification or acceptance in a contract only when provided for in national law where necessary, due to the specific nature of the goods or services. To avoid that the procedure of acceptance or verification is used to extend the payment period, the contract should clearly describe the details of such procedure, including its duration. For the same purpose, the debtor should initiate the verification or acceptance procedure immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction, regardless of whether the creditor has issued an invoice or equivalent request for payment. In order not to jeopardise the achievement of the objectives of this Regulation, it is appropriate to set a maximum duration of a procedure of acceptance or verification ***for***

the purposes of establishing the payment period.

⁴³ Judgment of 20 October 2022, BFF Finance Iberia SAU v Gerencia Regional de Salud de la Junta de Castilla y León (OJ C 53, 15.2.2021, p. 19) C585/20, EU:C:2022:806, paragraph 53.

⁴³ Judgment of 20 October 2022, BFF Finance Iberia SAU v Gerencia Regional de Salud de la Junta de Castilla y León (OJ C 53, 15.2.2021, p. 19) C585/20, EU:C:2022:806, paragraph 53.

Or. en

Amendment 2

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) Fair compensation of creditors for the recovery costs incurred due to late payment is necessary to discourage late payment. These costs should include the recovery of administrative costs and compensation for internal costs incurred due to the late payment and should be cumulated with interest for the late payment for every single commercial transaction that has been paid late as determined by the Court of Justice⁴⁸. The fixed minimum sum of compensation for the recovery costs should be determined without prejudice to national provisions according to which a national court may award compensation to the creditor for any additional damage regarding the debtor's late payment.

⁴⁸ Judgement of 20 October 2022, BFF Finance Iberia SAU vs Gerencia Regional de Salud de la Junta de Castilla y León, C-585/20, ECLI:EU:C:2022:806.

Amendment

(18) Fair compensation of creditors for the recovery costs incurred due to late payment is necessary to discourage late payment. These costs should include the recovery of administrative costs and compensation for internal costs incurred due to the late payment, ***should be adapted to the value of the invoice in question*** and should be cumulated with interest for the late payment for every single commercial transaction that has been paid late as determined by the Court of Justice⁴⁸. The fixed minimum sum of compensation for the recovery costs should be determined without prejudice to national provisions according to which a national court may award compensation to the creditor for any additional damage regarding the debtor's late payment.

⁴⁸ Judgement of 20 October 2022, BFF Finance Iberia SAU vs Gerencia Regional de Salud de la Junta de Castilla y León, C-585/20, ECLI:EU:C:2022:806.

Or. en

Amendment 3

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) Abuse of freedom of contract to the disadvantage of the creditor should be avoided. As a result, where a clause in a contract or a practice relating to the date or term of payment, the payment or rate of interest for late payment, the compensation for recovery costs, extending the duration the procedure of verification or acceptance or ***intentionally delaying or*** preventing the moment of sending the invoice is not in conformity with this Regulation, it should be null and void.

Amendment

(21) Abuse of freedom of contract to the disadvantage of the creditor should be avoided. As a result, where a clause in a contract or a practice relating to the date or term of payment, the payment or rate of interest for late payment, the compensation for recovery costs, extending the duration the procedure of verification or acceptance or preventing the moment of sending the invoice is not in conformity with this Regulation, it should be null and void ***or, respectively, prohibited. In the same vein, certain practices leading to the abuse of freedom of contract to the disadvantage of the creditor, should also be prohibited. Making assignments of credit to third parties or using an executive order issued by a court, by a creditor, should not be prevented or restricted by the debtor.***

Or. en

Amendment 4

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) To facilitate and ensure compliance with this Regulation, Member States should designate authorities responsible for its enforcement, which perform their duties and tasks in an objective and fair manner and ensure equal treatment of private undertakings and public authorities. Those enforcement authorities should carry out investigations on their own initiative, act on complaints, and be empowered, among other things, to impose sanctions and publish their decisions on a regular basis. In addition, for more effective enforcement, Member States should use

Amendment

(26) To facilitate and ensure compliance with this Regulation, Member States should designate ***independent*** authorities responsible for its enforcement, which perform their duties and tasks in an objective and fair manner and ensure equal treatment of private undertakings and public authorities. Those enforcement authorities should carry out investigations on their own initiative, act on complaints, and be empowered, among other things, to impose sanctions and publish their decisions on a regular basis. In addition, for more effective enforcement, Member

digital tools *to the extent possible*.

States should use digital tools *in order to facilitate this process. The Commission should control whether the enforcement authorities carry out the tasks conferred to them by this Regulation in an effective manner.*

Or. en

Amendment 5

Proposal for a regulation Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In order to increase transparency and improve enforcement of this Regulation, new requirements with regard to reporting obligations on payment practices by large undertakings should be introduced.

Or. en

Amendment 6

Proposal for a regulation Recital 32

Text proposed by the Commission

Amendment

(32) To provide sufficient time for all relevant actors to put in place the arrangements needed to comply with this Regulation, its application should be deferred. However, to ensure better protection of the creditors, commercial transactions that are to be paid after the date of entry into force of this Regulation, shall be subject to its provisions, even if the relevant contract was signed before its date of application.

(32) To provide sufficient time for all relevant actors to put in place the arrangements needed to comply with this Regulation, its application should be deferred. However, to ensure better protection of the creditors, commercial transactions that are to be paid after the date of entry into force of this Regulation, shall be subject to its provisions, even if the relevant contract was signed before its date of application. ***In the case of micro-undertakings which encounter the biggest challenges in terms of cash flow, the application of this Regulation in situations where they are debtors should be deferred for a further 12 months.***

Or. en

Amendment 7

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘late payment’ means payment not made within the contractual or statutory payment period as set out in Article 3;

Amendment

(3) ‘late payment’ means payment ***of the amount due that is*** not made within the contractual or statutory payment period as set out in Article 3;

Or. en

Amendment 8

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

2. A procedure of acceptance or verification may be exceptionally provided for in national law only where strictly necessary due to the specific nature of the goods or services. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration.

Amendment

2. A procedure of acceptance or verification may be exceptionally provided for in national law only where strictly necessary due to the specific nature of the goods or services, ***subject to approval by the Commission***. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration.

Or. en

Amendment 9

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

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

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.

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.

Notwithstanding the first subparagraph of this paragraph, a procedure of acceptance or verification lasting longer than 30 days may be provided for in national law. However, such longer duration is without prejudice to the provisions on the payment period referred to in this Article.

Or. en

Amendment 10

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. Where interest for late payment becomes payable in accordance with Article 5, a flat fee compensation for recovery costs shall be automatically due by the debtor to the creditor and shall amount to a fixed sum of EUR 50, per every single commercial transaction.

Amendment

1. Where interest for late payment becomes payable in accordance with Article 5, a flat fee compensation for recovery costs shall be automatically due by the debtor to the creditor and shall amount to a fixed sum of EUR 50, per every single commercial transaction ***of a value between 0 and EUR 1 500, EUR 100 per every single commercial transaction of a value between 1 501 and EUR 15 000, and EUR 150 per every single commercial transaction above 15 000 EUR.***

Or. en

Amendment 11

Proposal for a regulation Article 9 – title

Text proposed by the Commission

Amendment

Null and void contractual terms and practices

Prohibition of certain contractual terms and practices

Or. en

Amendment 12

Proposal for a regulation Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The following contractual terms and practices shall be null and void:

1. The following contractual terms and practices shall be null and void, **and in any case shall be prohibited:**

Or. en

Amendment 13

Proposal for a regulation Article 9 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) excluding or limiting the right of the creditor to:

Or. en

Amendment 14

Proposal for a regulation Article 9 – paragraph 1 – point b a (new) – point i (new)

Text proposed by the Commission

Amendment

(i) make assignments of the credit to third parties for the purpose of accessing financing services;

Or. en

Amendment 15

Proposal for a regulation Article 9 – paragraph 1 – point b a (new) – point ii (new)

Text proposed by the Commission

Amendment

(ii) make use of an executive order of payments issued by a court;

Or. en

Amendment 16

Proposal for a regulation Article 9 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) ***intentionally delaying or*** preventing the moment of sending the invoice.

(d) preventing ***or postponing*** the moment of sending the invoice.

Or. en

Amendment 17

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Each Member State shall designate one or more authorities responsible for the enforcement of this Regulation ('enforcement authority') ***and communicate them to the Commission without undue delay.***

Or. en

Amendment 18

Proposal for a regulation Article 13 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Enforcement authorities shall ***be independent and shall*** cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations

dimension.

that have a cross-border dimension.

Or. en

Amendment 19

Proposal for a regulation

Article 14 – paragraph 1 – point d

Text proposed by the Commission

(d) the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8;

Amendment

(d) the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8 **or both**;

Or. en

Amendment 20

Proposal for a regulation

Article 14 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall check whether the enforcement authorities carry out all the tasks conferred to them under this Regulation in an effective manner.

Or. en

Amendment 21

Proposal for a regulation

Article 14 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall, [**by** .../without delay], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

3. Member States shall, [without **undue delay and in any case not later than 12 months from the entry into force of this Regulation**], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Amendment 22

**Proposal for a regulation
Article 14 a (new)**

Text proposed by the Commission

Amendment

Article 14a

Reporting obligations

- 1. Large undertakings, as referred to in Article 3(4) of Directive 2013/34/EU shall report on a yearly basis on their payment practices.**
- 2. Reporting obligation referred to in paragraph 1 shall contain:**
 - (a) the amount, in EUR, of invoices paid:**
 - 1 to 30 days after the deadline referred to in Article 3(1) of this Regulation;**
 - 31 to 60 days after the deadline referred to in Article 3(1) of this Regulation;**
 - 61 to 90 days after the deadline referred to in Article 3(1) of this Regulation;**
 - more than 90 days after the deadline referred to in Article 3(1) of this Regulation;**
 - (b) the amount, in EUR, of invoices received:**
 - 1 to 30 days after the deadline referred to in Article 3(1) of this Regulation;**
 - 31 to 60 days after the deadline referred to in Article 3(1) of this Regulation;**
 - 61 to 90 days after the deadline referred to in Article 3(1) of this Regulation;**
 - more than 90 days after the deadline referred to in Article 3(1) of this Regulation;**
 - (c) average time to pay an invoice.**
- 3. The report referred to paragraph 1 of this Article shall be submitted by the large undertakings to the Member State**

enforcement authority referred to in Article 13 and be accessible to the public.

Or. en

Amendment 23

Proposal for a regulation Article 18 – paragraph 1

Text proposed by the Commission

By [OP: please insert the date = 4years after the entry into force of this Regulation], the Commission shall submit a report on the implementation of this Regulation to the European Parliament and the Council.

Amendment

By [OP: please insert the date = 4years after the entry into force of this Regulation **and every 4 years thereafter**], the Commission shall submit a report on the implementation of this Regulation to the European Parliament and the Council.

Or. en

Amendment 24

Proposal for a regulation Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

However, from [the date of application of this Regulation] until [24 months after the entry into force of this Regulation], it shall continue to apply to the situations where micro-undertakings referred to in Article 3(1) of Directive 2013/34/EU are debtors.

Or. en

Amendment 25

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

2. It shall apply from [OP: please insert the date = 12 months after the date of entry into force of this Regulation].

Amendment

2. It shall apply from [OP: please insert the date = 12 months after the date of entry into force of this Regulation], **subject to Article 19(1a).**

EXPLANATORY STATEMENT

The Rapporteur recognized the alarming need for an updated legislative approach to late payments, particularly concerning small and medium-sized enterprises (SMEs) and micro-undertakings. The conversion from a directive to a Late Payment Regulation is critical for safeguarding the economic dynamism of SMEs and, by extension, the European Single Market. This reform is integral to creating a European landscape where SMEs can prosper unaffected by financial unpredictability, and it embodies the vision of a flourishing, innovative, and competitive European economy.

The draft report highlights the crucial role of SMEs as the bedrock of Europe's economy, emphasizing the importance of a regulatory framework that enforces timely payments to avert cash flow disruptions. There is a widespread call across the Single Market for a cultural shift towards prompt payment practices and removing the stigma associated with collecting debts. This shift is vital for upholding the integrity of financial transactions and the operational viability of SMEs, which is why standardized payment terms, like the 30-day term advocated by the European Commission, are being seriously considered to establish consistency in payment practices.

In addressing the power imbalance in commercial relationships that often leads to unfair payment terms for SMEs, the proposed legislation aims to clear up ambiguities and legal gaps. While interventions in the payment process are minimal, the necessity of future policy measures, such as automated payment systems and education about the impacts of late payments, is acknowledged. The objective is to prevent late payment practices and to uphold respect for contractual obligations, ensuring that SMEs can compete fairly and maintain financial stability. To this end, the legislation calls for ongoing impact assessments and enforcement measures to monitor and address late payment issues across businesses of all sizes.

The Rapporteur considered it imperative to introduce new provisions requiring large undertakings to adhere to reporting obligations concerning payment practices. These measures are set to create a more transparent business environment, which will enable more effective monitoring and enforcement of timely payment regulations. Such transparency is expected to facilitate smoother commercial operations and ensure that large entities are held accountable, thus fostering a culture of reliability and trust in the payment ecosystem. This strategic action aligns with IMCO's aim to protect and empower SMEs by providing them with a clear visibility of larger corporations' payment behaviors.

In alignment with our commitment to a seamless and equitable transition towards the Late Payment Regulation, it is acknowledged that a strategic deferral in applying this new framework is necessary. This deferral is designed to afford all pertinent parties the requisite period to establish and fine-tune the systems essential for adhering to the Regulation. Recognizing the acute cash flow challenges faced by micro-undertakings, it is prudent to extend the grace period for these entities by an additional twelve months when they find themselves in the debtor's position. This thoughtful approach underscores the Rapporteur's commitment to a balanced and considerate implementation of the Regulation, which judiciously safeguards all market participants' interests, particularly the most vulnerable.

In pursuing a robust and uniform application of the Late Payment Regulation, the Rapporteur calls for the Member States to establish independent enforcement authorities. These bodies must operate objectively and impartially, guaranteeing a fair and equal approach to private enterprises and public authorities. The Rapporteur considers these authorities pivotal in upholding the Regulation's integrity. Furthermore, regularly publishing their decisions is vital to maintaining transparency and accountability. At the same time, the European Commission's role in overseeing the effective execution of these responsibilities by the enforcement authorities is required, ensuring that the Regulation's objectives are achieved and that compliance is not just an aspiration, but an enforced standard across the Union.

In an environment where the equilibrium of contractual power is essential, the Rapporteur sees the Late Payment Regulation unequivocally addresses the abuse of contractual freedom to the detriment of creditors. Clauses within contracts or related practices that distort the timelines or terms of payments, interest rates on late payments, or compensation for recovery costs are deemed null and void if not aligned with the Regulation's standards. Such provisions fortify the creditor's position, ensuring fair play in commercial transactions. Furthermore, the Regulation prohibits manipulating contractual freedom to the disadvantage of creditors, safeguarding their rights. This includes the unobstructed right of creditors to assign credit to third parties or to use executive orders issued by courts, which should not be hindered or limited by debtors. This provision ensures that the integrity of contractual agreements is maintained and the financial health of creditors is protected from exploitative practices.

In conclusion, this legislative shift is a cornerstone to reinforce the economic environment of the European Single Market by fostering conditions where SMEs and micro-undertakings can flourish free from the unpredictability of delayed financial remuneration. The report's foresight in advocating for transparent reporting obligations, a deferral period accommodating all market participants, and establishing independent enforcement authorities speak to a deep understanding of the complexities of achieving a balanced, fair, and competitive marketplace. The Rapporteur's vision underlines a relentless commitment to safeguarding the dynamism of SMEs, ensuring that the European economy's backbone remains strong and that the principles of fairness and timely financial conduct become hallmarks of the Single Market.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the [draft report / report, until the adoption thereof in committee]:

Entity and/or person

The list above is drawn up under the exclusive responsibility of the rapporteur.