**Follow-up to the European Parliament non-legislative resolution on the implementation of Directive 2011/7/EU on combating late payments in commercial transactions**

1. Rapporteur: Lara COMI (EPP / IT)

2. Reference numbers: 2018/2056 (INI) / A8-0456/2018 / P8 TA-PROV(2019)0042

**3. Date of adoption of the Resolution:** 17 January 2019

**4.** **Competent Parliamentary Committee**: Internal Market and Consumer Protection (IMCO)

**5. Brief analysis/ assessment of the resolution and requests made in it:**

The resolution takes stock of the implementation of Directive 2011/7/EU on combating late payments in commercial transactions (hereafter referred to as LPD). It is the European Parliament's follow-up to the Report that the Commission presented in 2016 to the Council and the Parliament, according to Article 11 of the LPD[[1]](#footnote-1).

The resolution underlines that, despite the progress made since the directive entered into force, late payment remains a harmful practice for European businesses, hampering their growth, and destroying jobs. Actually, only 4 out of 10 companies in the EU are paid within the agreed contractual terms. Late payment still accounts for 1 out of 4 bankruptcies in the EU, and it is particularly pervasive in those sectors with a prevalence of small and medium sized enterprises (SMEs) in the relevant value chain (e.g. construction, utilities and transport, professional services, retail, food and drink and medical devices).

The resolution identifies two key problems: a) a lack of effective enforcement of the directive and the relevant national implementing measures by the Member States b) the “*loophole”* of the current provisions on business-to-business transactions (B2B) in the LPD, whereby the lack of a maximum payment term, which cannot be exceeded under any circumstance, results in systemic abuse of larger companies to the detriment of SMEs.

The resolution, however, does not call for an immediate revision of the LPD. On the contrary, it stipulates that late payment is a multi-faceted, complex problem that cannot be solved by legislation alone. According to the resolution, the most effective solution is to be found in a mix of both “hard”/ binding rules and “soft”/ voluntary measures. To this purpose, the resolution lists a set of “preventive” and “remedial” measures that the Member States and the Commission should put in place. Most of these measures are based on the results from the study on the effectiveness of existing measures to combat late payments in B2B, released by the Commission last year[[2]](#footnote-2).

Preventive measures proposed are:

* For the Member States: to lay down national legislation setting **stricter or specific maximum deadlines** by sector, to consider **mandatory publication of information** on payment behaviour both for the private and public sectors, to allocate EU funds for **education and training** of SMEs on financial management
* For the Commission**:** to **carry out a study** on existing national systems providing information on good payment behavior (“*name and fame*”) and explore the **feasibility of establishing common criteria** for these systems at EU level; to continue providing **information and support to businesses** to recover debts in cross-border transactions.

Remedial measures proposed are:

* For the Member States: to consider the setting up of **national and regional mediation services for businesses**, as cost-free alternatives to court proceedings; to foster more effective involvement of **business associations in providing confidential support to SMEs**; to ensure **effective access to justice** in matters relating to the recovery of debts in cross-border transactions; to **use administrative sanctions** that are effective, proportionate and dissuasive; to make **public authorities lead by example,** by paying their suppliers on time or, when payments are late, by paying interests and compensations **automatically**; to put in place **synergies** between the Public Procurement Directive and the LPD.
* For the Commission: to consider proposals **for mandatory offsetting of tax, and social security debts** against outstanding amounts owed by the public authorities; to issue **guidance** on the concept of **“grossly unfair”** in the LPD; to foster better use of **supply chain financing** to ensure that creditors are paid in real time as soon as they issue an invoice.

The resolution contains also general conclusions, to ensure that, gradually but constantly, a “*decisive shift towards a culture of prompt payment*” is built in the business environment.

As the Commission has a key role in bringing about this cultural change, the resolution asks the Commission to mainstream prompt payment requirements into all policy and legislation affecting businesses (corporate social responsibility (CSR), platform-to business relationships, etc.). Finally, the Commission, together with the Member States, should continue raising awareness promoting information campaigns and access to appropriate funding lines for European entrepreneurs.

**6. Response to requests and overview of action taken, or intended to be taken, by the Commission**

The Commission shares the overall vision presented in the resolution. Far too many SMEs do not use the rights that the LPD has granted to them, out of fear to lose future businesses. To fight effectively against late payment it will be crucial to remove the “fear-factor”: this requires a mix of measures, both binding and voluntary, but, above all, a change of culture. The Commission is determined to continue its work on combatting late payments, by adhering to its strict enforcement policy on the one hand and on the other, by examining the potential of alternative measures to foster a better payment culture in Europe.

The resolution also enshrines the principle that the public authorities bear a “*special responsibility”* in promoting timely payment.

On this basis, the Commission would like to comment on the following aspects:

1. *Providing support and information to business in claiming payment in cross-border transactions*

The Commission is already active in providing information and support to business on their rights and how to defend them, when it comes to claim payment in cross-border transactions. The “Late Payment” page on the Your Europe Portal[[3]](#footnote-3) was recently revamped. In 2018, it received almost 250.000 visits. Via the portal page and through an interactive menu, businesses are guided to the information they seek, and can calculate the interests and compensations they are owed in all the EU Member States via a dedicated and easy-to-use calculator (+17 % visits in 2018). Finally, they are put in touch with the local branch of the European Enterprise Network[[4]](#footnote-4) for additional, customised cost-free support.

1. *Fostering supply chain solutions in market*

As part of the Mid-term Review of the Capital Markets Union (CMU) Action Plan, the Commission launched last year a study to obtain a comprehensive analysis of the supply chain finance[[5]](#footnote-5) market (SCF) and the applicable regulatory landscape at the EU and the Member State levels. The study will be completed in the third quarter of 2019. It will identify barriers to the SCF growth and cross-border development and potential ways to overcome them, as well as best practices that to be replicated.

1. *Information campaigns/Raising awareness*

The resolution correctly highlights the “educational gap” of business about credit and financial management. Currently, only 30 % of SMEs in Europe are aware of the LPD and its rules. Next to traditional information campaigns, the Commission also believes in the effectiveness of dedicated networks and fora, such as the SME envoys[[6]](#footnote-6) and SME week[[7]](#footnote-7), or participation at events and roundtables organised at national level, by business organisations and other stakeholders. These channels allow reaching the target audiences more effectively.

1. *Fostering “name and fame” at EU level*

The Commission agrees with the resolution that fostering and rewarding good payment behaviour can be a very effective way to fight against late payments. Prompt payment is a powerful and smart business strategy: it reinforces supply chains, by bringing fairness in commercial relations and by creating networks of trusted partners and suppliers willing to offer better deals. In the Commission’s study[[8]](#footnote-8) released last year, there are extensive analysis and examples of these practices and measures (e.g. awards, voluntary codes, CSR) in the Member States. The Commission is currently discussing the recommendations of the study with national authorities and stakeholders in order to analyse the potential for implementing measures at EU wide level and will, where necessary, collect additional information to assess the effectiveness of these schemes. However, the Commission points out that “name and fame” can only contribute to creating a responsible payment culture, as long as it is equipped with rigorous auditing and enforcement criteria, with no tolerance for those businesses who do not play by the rules which they have publicly pledged to follow.

1. *Offsetting fiscal and social security obligation with unpaid invoices*

During the preparation of the resolution, the Commission expressed to the Rapporteur it concerns about proposals on mandatory offsetting of taxes owed to the State with credits owed by the State. In addition to unpredictable impacts on tax revenues, these measures would require a complete overhaul of taxation systems in the Member States. Instead, measures to speed up VAT reimbursements could be very effective in providing business with liquidity.

In the Commission’s proposal for a Council recommendation on access to social protection for workers and self-employed[[9]](#footnote-9), Recital 33 stipulates that “*the obligations under the Recommendation should not aggravate further the liquidity of undertakings – and especially of SMEs – when their financial situation has been negatively affected by late payments from public authorities”*.

1. *Guidance*

The Commission will collect information and examples of how the principle of grossly unfair payment terms has been interpreted in legislation and applied in judicial proceedings. Additional sources, such as the Draft Common Frame of Reference[[10]](#footnote-10), and other relevant sources at international level (e.g. the United Nations Commission on International Trade Law - UNCITRAL) could also be assessed. Nevertheless, as the Commission has informed the Rapporteur, the definition of grossly unfair cannot be isolated in an abstract concept, but depends on the specific circumstances of the contract, of the parties, of the nature of the goods or services exchanged: what is grossly unfair under certain circumstances might not be in a different context.

The Commission will continue providing information to the national authorities via the dedicated Late Payment Expert Group[[11]](#footnote-11). In this context, and with the view to address the resolutions’ recommendation, the Commission will explore the possibility of issuing non-binding guidance on creating better synergies between the LPD and the Public Procurement Directives[[12]](#footnote-12), and will continue disseminating best practices that are in place in the Member States.

1. COM (2016) 534 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2016%3A534%3AFIN> [↑](#footnote-ref-1)
2. <https://publications.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1> [↑](#footnote-ref-2)
3. <https://europa.eu/youreurope/business/finance-funding/making-receiving-payments/index_en.htm> [↑](#footnote-ref-3)
4. <https://een.ec.europa.eu/> [↑](#footnote-ref-4)
5. <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=3894> [↑](#footnote-ref-5)
6. <https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/sme-envoys_en> [↑](#footnote-ref-6)
7. <https://ec.europa.eu/growth/smes/support/sme-week_en> [↑](#footnote-ref-7)
8. See footnote 2 [↑](#footnote-ref-8)
9. COM(2018)132 <https://ec.europa.eu/social/main.jsp?langId=en&catId=1312&> [↑](#footnote-ref-9)
10. Directive 2011/7/EU, recital 28 [↑](#footnote-ref-10)
11. <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2710> [↑](#footnote-ref-11)
12. <https://ec.europa.eu/info/sites/info/files/refit-platform-opinions-v15june2018_en.pdf>

 <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-3051-F1-EN-MAIN-PART-1.PDF>

 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2016:0278:FIN:EN:PDF [↑](#footnote-ref-12)