



13. February 2024

Clear Criticism of the Late Payments Regulation

Dear Member of the Committee on the Internal Market and Consumer Protection,

We would like to begin this letter by highlighting our support for the SME Relief Package published on 12 September 2023 and the Commission's stated objectives to introduce new measures that will provide short-term relief, boost SMEs' long-term competitiveness, and strengthen fairness in the business environment across the Single Market. As a part of the SME Relief Package, the Commission published the Proposal for Regulation 2023/0323 (COD) on Combatting Late Payments in Commercial Transactions. We are particularly concerned about the one-size-fits-all approach applied by the Proposal to late payments, the inclusion of national enforcement authorities, any inclusion or alteration to the UTP Directive (2019/633) (Directive on Unfair Trading Practices in Business-to-Business Transactions in the Agricultural and Food Supply Chain), and additional reporting requirements as these provisions are largely impractical and create new burdens for SMEs, which runs counter to the stated objectives of the Commission.

The Commission's proposed regulation on combatting late payments in commercial transactions includes a maximum statutory payment period of 30 days for contracts in business-to-business (B2B) relationships. Agreed-upon longer payment periods, including in favour of the creditor of the payment claim, would no longer be possible. Thereby the proposed regulation not only undermines the concept of freedom of contracting which is fundamental to the civil law system of the Member States, but it also jeopardises the open market economy with free competition guaranteed by EU law (Art. 3 para. 2 TEU, Art. 119, 120 TFEU, Art. 16 Charter of Fundamental Rights), and which is inconceivable without private autonomy.

Furthermore, the statutory definition of payment periods does not take into account the fact that longer payment periods often serve as a form of financing, especially for SMEs. To name just one example: stationery shops usually pay for school products on a seasonal basis, and this process usually takes longer than 30 days. Also, with regard to verification and acceptance periods as well as interest payments, the proposed regulation fails to take into account, for example, - that the acceptance of complex products - e.g. technically sophisticated works - in practice takes significantly longer than 30 days. In order to guarantee appropriate payment periods, a blanket legal requirement with a generally applicable upper limit that does not allow for the flexible consideration of the specific contractual situation in individual cases is not appropriate. It must therefore remain possible for the contracting parties to agree on a longer period within the framework of contractual freedom.

Additionally, a fixed maximum payment period would cause considerable liquidity problems for already vulnerable companies that are economically dependent on longer payment periods. This would impact SMEs in particular, whose competitiveness the EU Commission actually wants to improve with the proposed regulation.

Furthermore, we are also concerned with the designation of national enforcement authorities to take legal and administrative action to enforce the Regulation. According to the proposal, national authorities would be given considerable discretion and powers to enforce civil law regulations. The business community is unanimously opposed to the establishment of new official structures to enforce private law. As plaintiffs already have access to a comprehensive range of instruments, including claims for damages and injunctive relief, it is

unclear why national enforcement authorities are necessary to ensure that payment deadlines are met. Instead, the legislator should work to ensure faster and more effective court proceedings in all Member States. The benefits of new, mandatory and extended competences for national authorities are not apparent. On the contrary, companies rightly fear that this would be accompanied by new information and disclosure obligations, which would run counter to all promises made by the European Commission to reduce bureaucracy.

In addition, we are troubled by the de facto change to the recently agreed upon requirements of the UTP Directive through the Late Payments Regulation. The payment conditions regulated within the UTP Directive have been transposed into national law, have been implemented by the companies and have proven themselves in practice. Therefore, there is no justification to repeal these UTP provisions, especially without an evaluation.

Finally, we are critical of any additional reporting requirements on payment practices. These reporting requirements would result in high administrative burden with no easily ascertainable value while contradicting the Commission's announced efforts to reduce bureaucracy.

We would be very grateful if you could consider our comments in the current discussions on the Late Payments Regulation to ensure that the objectives of this Regulation can be met while also creating a practicable and effective legislation. We remain at your disposal for any questions.

Yours sincerely,

Bundesverband der Deutschen Industrie e.V.

Bundesverband Großhandel, Außenhandel, Dienstleistungen e.V.

Börsenverein des Deutschen Buchhandels e.V.

Deutsches Aktieninstitut e.V.

Deutsche Industrie- und Handelskammer

Gesamtverband der deutschen Versicherungswirtschaft e.V.

Handelsverband Deutschland e.V.

Markenverband e.V.

Der Mittelstandsverbund – ZGV e.V.