

**Proposal for a Regulation
on combating late payment in commercial transactions
(2023/0323(COD))**

Compromise AMs - Articles and recitals

Final CA 1

(covering AMs 96-136, Rapp 7)

Article 1

Scope

- 1. *The aim of this Regulation is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular SMEs. (AM 97 Greens)***
1. This Regulation shall apply to payments made in transactions between undertakings or between undertakings and public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for remuneration ('commercial transactions').
 2. The delivery of goods or the provision of services referred to in paragraph 1 shall include the design and execution of public works, construction and civil engineering works.
 3. This Regulation shall not apply to any of the following payments:
 - (a) payments for transactions with consumers;
 - (b) payments made as compensation for damages, ~~including payments from insurance companies~~ (AM 102 Rapp),-
 - (c) payments resulting from obligations that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023¹ of the European Parliament and of the Council.

Notwithstanding point (b), payments made as performance of the obligations stemming from insurance contracts shall be covered by this Regulation. (AM 105 Rapp).
 4. With the exception of Article 3(1), this Regulation shall not affect the provisions laid down in ~~Regulation (EU) 1308/2013 and~~ Directive (EU) 2019/633. ~~(AM 108 ID, 109 EPP)~~

Recital 10:

¹ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

(10) Transactions with consumers, payments made as compensation for damages, ~~including payments from insurance companies~~, and obligations to pay that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/10238 of the European Parliament and of the Council, should be excluded from the scope of this Regulation. ***However, payments made in performance of obligations stemming from insurance contracts should be covered by this Regulation. In particular, payments made in transactions between insurance companies and undertakings in exchange for the delivery of goods or the provision of services for remuneration, including as a compensation to other third parties, should fall within the scope of this Regulation. (AM 38 RE)***

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (-1) ‘commercial transactions’ means transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration; (AM 113 Greens)**
- (1) ‘undertaking’ means any organisation, irrespective of its form and way of financing, carrying out an economic or professional activity independently;
- (2) ‘public authority’ means any contracting authority, as defined in Article 6(1) of Directive 2014/23/EU, Article 2(1), point (1), of Directive 2014/24/EU or in Article 3(1) of Directive 2014/25/EU ***regardless of the subject or value of the contract;*** (AM 119 EPP)
- (3) ‘late payment’ means payment ***of the amount due that is*** (AM 7 Rapp, 121 EPP, 122 ECR) not made within the contractual or statutory payment period as set out in Article 3;
- (4) ‘amount due’ means the sum which should have been paid within the contractual or statutory payment period, as set out in Article 3, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment;
- (5) ‘enforceable title’ means any decision, judgement, order for payment issued by a court or other competent authority, private deed or any other document issued, including those that are provisionally enforceable, whether for immediate payment or payment by instalments, which permits the creditor to have his or her claim against the debtor collected by means of forced execution;
- (6) ‘retention of title’ means the contractual agreement according to which the seller retains title to the goods in question until the price has been paid in full;
- (7) ‘procedure of acceptance or verification’ means the procedure for ascertaining the conformity of the goods delivered or services provided, with the requirements of the contract ***as well as the verification of the correctness and conformity of the invoice;*** (AM 124 Renew, 125 ID, 126 EPP)

- (8) 'debtor' means any natural or legal person or any public authority that owes a payment for a good delivered, ***or to be delivered***, or a service provided, ***or to be provided***;
- (9) 'creditor' means any natural or legal person ~~or any public authority~~ (AM 129 EPP) that delivered, ***or is obliged to deliver***, goods to a debtor or provided, ***or is obliged to provide***, services to a debtor.
- ~~(9a) — 'means of payment'~~

Final CA 2

(covering AMs 137-205, Rapp 8 and 9)

Article 3

Payment periods

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 ***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*** (146, 160 S&D, 154 RE, 199 EPP) 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.
- 1a. ***By way of derogation from paragraph 1, in transactions between undertakings for the purchase of certain slow moving and seasonal ~~and low rotation~~ goods, the payment period may be extended up to 60 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. ~~This derogation shall only apply where expressly agreed, in unambiguous terms, in the contract.~~***
The Commission shall adopt delegated act in accordance with Article 17b to supplement this Regulation by specifying the list of specific product categories, where the derogation is necessary in order to ensure a proper functioning of the internal market. This derogation regarding specific product categories shall only apply where expressly agreed, in unambiguous terms, in the contract.
2. A procedure of acceptance or verification, ***by which the conformity of the goods or services with the contract is to be ascertained***, (181 EPP, 182 RE) may be ***exceptionally*** provided for in national law ~~only~~ (AM 171 ECR, 172, 177 EPP, 175, 176 S&D) 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.
3. Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, ***for the purposes of this Regulation***, (9 Rapp) 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~~ ***been concluded or after receipt of the invoice, or an equivalent request for payment, if the latter takes place later.***

4. The payment period set out in paragraph 1 is the maximum payment period and is without prejudice to a shorter period which may be provided for in national law.
- 4a. *(new) Member States shall introduce appropriate measures to improve public authorities payment practices towards undertakings. In this regard, Member States shall consider introducing measures to ensure that an undertaking which is a creditor within the meaning of Article 2(9) is able to obtain upon request to the public authority, which has not paid the amount due within the maximum payment period set out in paragraph 1, the offsetting of the amount due against any outstanding amount that the creditor has towards the same public authority.* (AM 191, 220 Greens, 216 ID, 221, 223 S&D, 94, 166, 222 ECR 375 EPP)

Article 17b (new)

Exercise of the delegation

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
2. *The power to adopt delegated acts referred to in Article 3(1a) shall be conferred on the Commission for an indeterminate period of time.*
3. *The delegation of power referred to in Article 3(1a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
4. *Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*
5. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
6. *A delegated act adopted pursuant to Article 3(1a) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.*

Article 19

Repeal

Directive 2011/7/EU is repealed.

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 and self-employed are debtors. (AM 24 Rapp, 398 Greens)

References to the repealed Directive shall be construed as references to this Regulation.)

Recital 11a (new)

Against this background, it is necessary to acknowledge the existence of certain business models and industry practices, within the retail sector, which aim at keeping slightly longer payment periods. As these practices reflect low rotation and strong seasonality of certain product categories and are mutually beneficial for the creditors and the debtors, it is

desirable to allow for a limited flexibility in this matter. For this reason, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the identification of these specific product categories that can benefit from extended 60 calendar days payment period.

Recital 18a (new)

This Regulation upholds contractual freedom and the implementation of Article 16 of the Charter of Fundamental rights concerning the freedom to conduct a business. For this purpose, this Regulation leaves to the contracting parties the choice of contractual relations, type of contract and its modalities. Choice of different types of contracts, including consignment contracts, where the invoice is being issued at agreed point of time after the delivery of goods, is not restricted in any way. In case of consignment contracts or other similar types of contracts the deadline specified in Article 3 should be applicable after receipt of the invoice. As this Regulation ~~merely specifies~~ emphasizes on the payment period after issuing the invoice, thus contributing to improving the overall payment culture, and merely ensures that agreements on the payment period do not abuse the freedom of contract to the disadvantage of the creditor, it should be possible for the parties to benefit from the freedom of contract and consent to their preferred type of agreement thus benefitting from the freedom of contract;

Recital (23)

To guarantee full payment of the amount due, it is important to ensure that the seller retains the title to goods until they are fully paid for, if a retention of title has been expressly agreed between the buyer and the seller before the delivery of the goods. *To take into account the specificities of certain goods characterized by their slow rotation, retention of title can also be used by sellers to provide extended credit to their buyers in a manner that remains consistent with the provisions of this Regulation, as for example in consignment sales.*

(AM 71-73 S&D Greens EPP)

Final CA 3

(covering 206-263, Rapp 10)

Article 4

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/EC 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, *for the tasks that direct subcontractors have performed according to the contract or tender specifications*, within the deadlines *set out in Article 3* and under the conditions set out in this Regulation. The evidence ~~may~~ *shall* take the form of a written declaration by the contractor, ~~accompanied by valid documentary proof of payment or any other proof of payment without prejudice to trade confidentiality agreements that exist between main contractor and subcontractors~~, and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with,

any *subsequent* request for payment ~~to the contracting authority or contracting entity~~. *Member States may provide that public authorities pay subcontractors directly when it comes to public contracts.* (AM 209 Greens, 210 S&D, 211 ID, 212 Rapp, 213 S&D)

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.
- 2a. *This Article shall apply without prejudice to the stronger protection of subcontractors rights, which may be provided for in national law.* (AM 219 ECR)

Article 5 **Interest for late payment**

1. In case of late payment, the debtor shall ~~be liable to~~ (229, 230 EPP) pay interest for late payment *to the creditor*, (226 Greens) except where the debtor is not responsible for the payment delay.
2. Interest for late payment shall be automatically due by the debtor to the creditor, without the creditor needing to send a reminder, where the following conditions are satisfied:
 - (a) the creditor has fulfilled its contractual obligations and obligations provided for by law;
 - (b) the debtor has received the invoice or equivalent request for payment;
 - (c) the creditor has not received the amount due specified in the invoice or the equivalent request for payment, within the contractual or statutory payment period as set out in Article 3.
3. ~~A debtor~~ It shall not ~~request~~ be possible for the creditor to waive its right to obtain interest for late payment ~~as a precondition for making any payments to the creditor~~. (237, 239 ID, 238 EPP, 241 RE)
4. The date of receipt of the invoice, or equivalent request for payment, shall not be subject to a contractual agreement between the debtor and the creditor.
5. The debtor shall provide all relevant information to the creditor to ensure that the creditor's invoice or equivalent request for payment is accepted and processed by the debtor as soon as it is received.
6. Where the conditions set out in paragraph 2 are satisfied, interest for late payment shall start accruing from *the day following the expiry of contractual or statutory payment period and in accordance with Article 3. last one of the following events:*
 - ~~(a) receipt by the debtor of the invoice or an equivalent request for payment;~~
 - ~~(b) receipt by the debtor of the goods or services.~~ (AMs 243, 245, 246 EPP, 244 Greens, 247-249 ECR)
7. The interest for late payment shall accrue until *the creditor receives* (251 ECR) payment of the amount due.

Article 6 **Rate of the interest for late payment**

1. The interest for late payment shall be equal to the reference rate plus 8 percentage points.
2. Member States whose currency is the euro, shall ensure that the reference rate corresponds to either of the following:
 - (a) the interest rate applied by the European Central Bank to its main refinancing operations;
 - (b) the marginal interest rate resulting from variable-rate tender procedures for the most recent main refinancing operations of the European Central Bank.
3. In Member States whose currency is not the euro the reference rate shall be the rate set by its national central bank.
4. The reference rate for the first semester of the year concerned shall be the rate as determinable on 1 January of that year. The reference rate for the second semester of the year concerned shall be the rate as determinable on 1 July of that year.

Article 7 **Payment schedules**

Where payment is done on the basis of schedules providing for instalments, and any of the instalments is not paid by the agreed date, interest for late payment referred to in Article 5, shall be calculated on the basis of any overdue amount. Compensation shall also be paid in accordance with Article 8.

Article 8 **Compensation for recovery costs**

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.* (AMs 10 Rapp, 256 GUE, 257 S&D)
2. The flat fee compensation referred to in paragraph 1 shall be payable by the debtor to the creditor as a compensation for the creditor's own recovery costs, *without the necessity of a reminder.* (AM 260 EPP)
3. ~~A debtor~~ It shall not ~~request~~ be possible for the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1 ~~as a precondition for making any payments to the creditor.~~ (AMs 261, 262 EPP, 263 RE)
4. In addition to the flat fee compensation referred to in paragraph 1, the creditor shall be entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that flat fee compensation and incurred due to the debtor's late payment.
5. This Article shall apply without prejudice to the creditor's rights to receive any other compensation.

Final CA 4
(covering 264-284, Rapp 11-16)

Article 9

~~Null and void~~ Prohibition of certain contractual terms and practices (11 RE)

1. The following contractual terms and practices shall be null and void, ***and in any case shall be prohibited***: (12 RE, 265, 267, 279 S&D, 266, 280 ECR, 268 EPP)
 - (a) setting the payment period in breach of Article 3;
 - (b) excluding or limiting the right of the creditor to obtain interest for late payment provided for in Article 5 or the right to obtain compensation for recovery costs provided for in Article 8;
 - (ba) excluding or limiting the right of the creditor to:***
 - i. make assignments of the credit to third parties for the purpose of accessing financing services;***
 - ii. make use of an executive order of payments issued by a court;*** (13, 14, 15 RE)
 - (c) extending the duration of the procedure of verification or acceptance beyond the term set in Article 3(3);
 - (d) ~~intentionally delaying or preventing~~ ***or postponing*** the moment of sending the invoice ***by the debtor***. (16 RE, 273 GUE, 281 EPP)
 - (da) prohibiting, excluding or limiting the assignment of receivables to relevant financial institution.*** (274 ECR, 276 EPP)
 - (db) using means of payment altering payment terms*** (277 Greens)
2. Member States shall ensure that adequate and effective means exist to end the contractual terms and practices referred to in paragraph 1.
3. The means referred to in paragraph 2 shall include the possibility for an organisation officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings to take action before the courts or before competent administrative bodies.

Final CA 5

(covering AMs 285-301)

Article 10

Retention of title

A creditor shall retain title to goods until they are fully paid for, ~~*in accordance with Article 3*~~, if a retention of title has been expressly agreed between the debtor and the creditor before the delivery of the goods.

Article 11

Transparency and awareness raising (AM 288 Greens)

1. Member States shall ensure transparency regarding the rights and obligations laid down in this Regulation, including by making publicly available the applicable rate of interest for late payment.

2. The Commission shall make publicly available on the internet the current rates of interest for late payment which apply in the Member States.
- 2a. ***Member States shall, where appropriate, use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies for late payment among undertakings. (AM 292 Greens)***

Article 12

Recovery procedures for unchallenged claims

1. Creditors shall obtain an enforceable title, including through an expedited procedure and irrespective of the amount of debt, within ~~90~~ **60** calendar days (AM 298, 299 EPP) of the lodging of the action or application at the court or other competent authority, provided that the debt and the procedure are not disputed. ~~***Member States shall ensure that the creditor receives adequate judicial protection throughout the procedure for recovering unchallenged claims (AM 297, 300 ECR).***~~
2. When calculating the period referred to in paragraph 1, the following period shall not be taken into account:
 - (a) periods for service of documents;
 - (b) any delays caused by the creditor.
3. This Article shall be without prejudice to the provisions of Regulation (EC) 1896/2006 **and Regulation (EC) No 861/2007. (AM 301 EPP)**

Final CA 6

(covering AMs 302-377, Rapp 17-21)

Article 13

Enforcement authorities

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. (AM 17 Rapp, 316 Greens)*** ***Member States shall provide the authorities with appropriate human, technical and financial resources to carry out its tasks and use its powers efficiently. (AM 305 S&D, 306 the Left, 310 ID, 314 ECR, 315 S&D)***
- 1a. ***Enforcement authorities shall be independent from other public authorities, including those involved in public procurement procedures. (AM 311 S&D, 312 ECR, 313 Greens)***
2. Where appropriate, enforcement authorities shall take ***proportionate*** measures necessary to ensure that the deadlines for payments are complied with. (AM 318, 319 ECR, 320 S&D).
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 that have a cross-border dimension. (AM 18 Rapp, 316 Greens) ***The Commission shall oversee/facilitate the effective cooperation of the enforcement authorities. (AM 324 Greens, 325 S&D)***

- 3a. ***Enforcement authorities shall make publicly available aggregated information regarding the number of complaints lodged against undertakings and public authorities due to violation of Article 3 of this Regulation. (AM 327 Renew)***
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. ***Where appropriate, 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.***
- 5a. ***This Article shall be without prejudice to the provisions of Regulations (EC) 805/2004, (EC) 1896/2006, (EC) 861/2007 and (EU) 1215/2012. (AM 336 EPP)***

Article 14

Powers of enforcement authorities

1. Enforcement authorities shall have the necessary ***human, financial and technical (AM 342 Greens)*** resources and expertise to perform their duties ***effectively***, and shall have the following powers:
- (a) the power to initiate and conduct investigations on their own initiative or based on a complaint;
 - (b) the power to require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions;
 - (c) the power to carry out unannounced on-site inspections within the framework of their investigations;
 - (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***; (AM 19 Rapp, 350 the Left)
 - (e) the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement;
 - (f) the power to require the debtor to bring the infringement to an end;
 - (g) the power to publish its decisions referred to in paragraphs (d), (e) and (f).
- The Commission shall ~~check whether~~ assess how the enforcement authorities carry out all the tasks conferred to them under this Regulation in an effective manner. (AM 20 Rapp, 342324 Greens)***
2. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
3. Member States shall, ~~[by ...]~~ 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. (AM 21 Rapp, 353 EPP)

Article 15

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 **may submit a complaint to the enforcement authority anonymously** (AM 362 EPP, 363 ECR, 364 S&D, 365 EPP) **or** 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~~ **30 days** after the receipt of the complaint of how it intends to follow up on the complaint. (AM 359, 366 S&D, 367 EPP)
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 **30 days** ~~a reasonable period of time~~ after the receipt of the complaint. (AM 368 S&D, 369 EPP)
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 **90 days after the receipt of the complaint** ~~a reasonable period of time~~. (AM 370 S&D, 371 EPP)
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.
- 7a. **The Commission shall make a standard EU complaint form available for the enforcement authorities of the Member States.** (AM 360 Greens, 372 S&D, 373 EPP)

Article 16

Alternative dispute resolution

1. Without prejudice to the right of creditors to submit complaints under Article 15, and to the obligations and powers of enforcement authorities laid down in Articles 13, 14, and 15, Member States shall promote the voluntary use of effective and independent alternative dispute resolution mechanisms for the settlement of disputes between debtors and creditors. **Notwithstanding the provisions of Articles 5(3), 8(3), and 9(1) point (b) of this Regulation, parties, including public entities, may engage in negotiations to reach an amicable settlement regarding disputed debts. Such settlements may involve the adjustment of interest and compensation claims, provided they are in compliance with the principles of fairness and do not unduly disadvantage the creditor.** (AM 374 ECR)

2. Alternative dispute resolution mechanisms for late payment disputes shall encourage the parties to a dispute to find the solution by themselves and shall be fast, efficient, and cost-effective, while maintaining confidence and trust between the parties.

Recital 27:

“(27) To ensure easy and accessible means of redress, Member States should promote the voluntary use of effective and independent alternative dispute resolution mechanism to solve payment disputes in commercial transactions. *Member States could designate their respective chambers of commerce and industry as bodies responsible for alternative dispute resolution, as long as they can demonstrate impartiality and independence from the parties. As parties may engage in negotiations to reach an amicable settlement regarding disputed debts, such settlements may involve the adjustment of interest and compensation claims, provided they are in compliance with the principles of fairness and do not unduly disadvantage the creditor. (AM 374 ECR, 377 EPP)*

Final CA 7

(covering AMs 291, 296, 334, 354, 355, 378-389, Rapp 22)

Article 16a

Reporting obligations

(AM 22 Rapp, 296 ECR, 354 Greens, 355 the Left)

1. ***Large undertakings, as referred to in Article 3(4) of Directive 2013/34/EU, and contracting authorities, as referred to in Article 2(1) of Directive 2014/24/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 in paragraph 1 of this Article shall be submitted, in an electronic form, by the large undertakings and contracting authorities to the Member State enforcement authority referred to in Article 13 and be accessible to the public.

Article 17

Digital tools, credit management and financial literacy training

1. To the extent possible, ~~Where appropriate~~, (AM 379 ECR, 380 EPP) Member States shall use digital tools for effective enforcement of this Regulation.
2. Member States shall ensure that *invoice and* credit management tools, *including factoring and similar financing services, as well as* and financial literacy trainings *and any other initiatives that tackle late payment* are available and accessible to small and medium sized enterprises, including on the use of digital tools for timely payments. (AM 381 EPP, 382 Greens, 383 EPP, 384 ECR, 385 S&D)

Article 17a

European Observatory of late payments

(AM 291 RE, 334 ECR, 335, 354 Greens, 388 S&D)

1. The Commission shall set up an Observatory of Late Payment (The Observatory) by ... [OP: date of application of this Regulation].
2. The Observatory shall monitor payment as well as late payment practices within the Union in order to collect and share expertise, best practices and identify potential harmful practices, as well as effectiveness of enforcement authorities in carrying out their tasks, with a view to provide the Commission with advice and expertise on the evolution of payment and late payment practices.
3. Member States shall communicate to the Observatory:
 - a) lists of goods and services subject to the procedure of acceptance or verification set out in Article 3(2).
 - b) aggregated data containing information referred to in Articles 13(3a), 14(1), 14(2) and 16a(3);
 - c) information regarding enforcement authorities, number of complaints and investigations and measures taken;
4. The Observatory shall issue annual reports, opinions and written contributions related to the implementation of this Regulation, including the assessment and guidelines for the effective enforcement of this Regulation.

5. *The Observatory shall be chaired by the Commission and shall be composed of representatives of relevant experts and stakeholders. The composition of the board shall ensure a balanced representation of all interested stakeholders.*

Final CA 8

(covering AMs 390-405, Rapp 23-25)

Article 18

Report

By [OP: please insert the date = 4 years after the entry into force of this Regulation] *and every 3 years thereafter* (AM 23 Rapp, AM 391 Greens), the Commission shall, ~~with the input of the EU Payment Observatory, (AM 392 S&D)~~ submit a report on *its* the implementation of this Regulation to the European Parliament and the Council. (AM 393 EPP, 394 ECR)

The report shall assess the following: (AM 391 Greens, 395 ECR, 396 EPP, 397 Left)

(a) the impact of the scope as laid down in Article 1, including the impact on specific sectors and on specific business models;

(b) the impact of the measures implemented, in particular regarding the payment periods as laid down in Article 3, on increasing the cash flow and liquidity on the market (AM 395 ECR);

(c) the effectiveness of the enforcement authorities as laid down in Articles 13, 14 and 15;

(d) the potential benefits, of introducing EU wide e-invoicing, to shortening payment periods on the market;(AM 396 EPP)

Member States shall provide the Commission with the necessary information for the preparation of that report, including information regarding the investigations, inspections, decisions, proceedings and publications of the enforcement authorities referred to in Article 14(1). (AM 396 EPP)

The report shall include an evaluation of the impact of this Regulation on the commercial transactions and of the impact of the European Observatory of late payments on monitoring late payment practices in the EU.

The report shall be accompanied by a legislative proposal, if necessary and appropriate.

Article 20

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from [OP: please insert the date = 18 months after the date of entry into force of this Regulation], *subject to Article 19, second subparagraph.* (AM 25 Rapp)
3. Commercial transactions carried out after the date of application of this Regulation shall be subject to the provisions of the present Regulation, including when the underlying contract has been concluded before that date.

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Recital 2

Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions or by law, ***although the goods are delivered or the services provided. (AM 26 Greens)***

Recital 3

Late payments ***and deferred payments beyond the periods established by law*** directly affect liquidity and predictability of cash flows, thus increasing working capital needs and compromising ~~a company's access~~ ***profitability, when the creditor needs to obtain*** external financing ***because of late payment***. This affects competitiveness, reduces, leads to redundancies, increases the likelihood of insolvencies and bankruptcies and is a critical barrier for growth, ***also considering that inflation reduces the real value of credits over time***. The damaging effects of late payments spread along supply chains, as the payment delay is often passed onto suppliers. Small and medium sized enterprises (SMEs), ***and micro-enterprises, who which*** rely on regular and predictable streams of cash, are heavily affected by those negative consequences. Late payment thus represents a problem for the Union economy because of its negative economic and social consequences. ***The risk of such negative effects strongly increases in periods of economic downturn when access to financing is more difficult. (AM 27 Greens, 29 S&D)***

Recital 6

Directive 2011/7/EU of the European Parliament and of the Council⁴⁰ lays down rules to combat late payment in commercial transactions. In 2019, the European Parliament identified several shortcomings of that Directive. The SME Strategy for a sustainable and digital Europe⁴¹ called for ensuring a 'late-payment-free' environment for SMEs and strengthening the enforcement of Directive 2011/7/EU. In 2021, the Fit for Future Platform highlighted critical issues in the implementation of that Directive in its opinion. The main shortcomings identified in these initiatives are related to: the ambiguous provisions on 'grossly unfair' regarding the deadlines for payment in business to business transactions (B2B), the unfair payment practices and the deadlines for the procedures of acceptance and verification; the flat fee compensation; the asymmetry of rules for payments terms between G2B and B2B transactions; the ***asymmetries in bargaining power between large and more powerful debtors and small creditors; the*** lack of a maximum payment term for commercial transactions in B2B transactions; the lack of monitoring of compliance and enforcement; the absence of tools to combat the asymmetries of information; as well as tools for creditors to take action against their debtors, and the lack of synergies with the public procurement framework. ***(AM 32 Greens)***

Recital 11

(11) Late payment constitutes a breach of contract which is financially attractive to debtors, due to low or no interest rates charged on late payment, or slow procedures for redress. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest for late payment is null and void, is necessary to reverse this trend and

to discourage late payment. Consequently, contractual payment periods should be limited to 30 calendar days both in B2B transactions and G2B transactions, where the public authority is the debtor. ***This shift is also needed to limit the so-called ‘fear factor’ that micro and small undertakings suffer when they have a credit with bigger companies and that often brings such creditors to tolerate late payment against the promise of future business. Electronic invoicing can be a helpful tool in this regard, as it would help creditors prove the date of receipt of the invoice in case of doubt or dispute. (AM 42 Greens, 44, S&D)***

Recital 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. (Rapp 1)***

Recital 14

Public procurement can play a significant role in improving payment performance. Enhanced synergies should therefore be put in place between public procurement policies and rules and prompt payment objectives, ***introducing effective measures to discourage not only late payment by public authorities, but also the awarding of contracts to companies that do not pay on time and in the manner prescribed by this Regulation. Furthermore,*** in public construction works, subcontractors are often not paid on time by the main contractor, even when the contracting authorities or contracting entities have made the contractual payments to them, thus potentially creating a damaging domino-effect in the supply chain. It is therefore appropriate that contractors provide evidence to contracting authorities and contracting entities of payments to their direct subcontractors. ***(AM 60, 63 S&D, 61 ECR, 62 Greens)***

Recital 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. (Rapp 2)

Recital 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 *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.* (Rapp 3, AM 69 EPP)

Recital 22

To enhance the efforts to prevent the abuse of freedom of contract to the detriment of creditors, organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings should be able to take action before national courts or administrative bodies in order to prevent late payments *and to end null and void contractual terms and practices.* (AM 70 Greens)

Recital 24

To ensure correct application of this Regulation, it is important to provide transparency regarding the rights and obligations as laid down by this Regulation. To ensure that the correct rates of interest are applied, it is important that they are made public by the Member States and the Commission. *In order to contribute to the achievement of the objective of this Regulation, Member States should increase awareness of the remedies for late payment among undertakings through publications and campaigns and should foster the spread of good practices.* (AM 74 Greens)

Recital 25

The sanctions for late payment can be dissuasive only if they are accompanied by procedures for redress which are rapid and effective for the creditor. Expedient recovery procedures for unchallenged claims should therefore be available to all creditors who are established in the Union, *in accordance with the principle of non-discrimination set out in Article 18 of the Treaty on the Functioning of the European Union.* (AM 76 Greens)

Recital 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, ***including anonymous complaints or notifications***, 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 digital tools ***in order to facilitate this process. The Commission should assess how the enforcement authorities carry out the tasks conferred to them by this Regulation. (AM Rapp 4, 78 S&D, 79 ECR, 80 EPP)***

Recital 27a

Considering the necessity to enhance transparency and accountability in commercial transactions, and in line with the objectives of promoting responsible financial management and fair business practices, it is imperative to introduce specific reporting obligations for large undertakings as defined in Article 3(4) of Directive 2013/34/EU, and for contracting authorities as described in Article 2(1) of Directive 2014/24/EU. Large undertakings and contracting authorities should annually report on their payment practices, providing detailed insights into the timeliness of their payments. A structured approach to reporting is necessary to foster greater transparency in payment practices and to assist in identifying areas where improvements are needed. The reporting obligation should contain the disclosure of amounts, in euros, paid and received within various time frames after the payment deadline as set out in Article 3(1) of this Regulation. The detailed reporting should include categorizing payments made and received in intervals of 1 to 30 days, 31 to 60 days, 61 to 90 days, and beyond 90 days after the stipulated payment deadline, and the average time taken to pay an invoice should be part of the report. To ensure that the information is not only used for regulatory compliance but also serves as a tool for public scrutiny and encourages best practices in payment disciplines, the reports should be made publicly accessible and should be submitted in an electronic format to the relevant Member State enforcement authority as specified in Article 13. (Rapp AM 5, 91 ECR)

Recital 28

Invoices trigger requests for payment and are important documents in the chain of transactions for the supply of goods and services, inter alia, for determining payment deadlines. It is important to promote systems that give legal certainty as regards the exact date of receipt of invoices by the debtors, including in the field of e-invoicing where the receipt of invoices could generate electronic evidence ***and can also help improving compliance with VAT obligations***, and which is partly governed by the provisions on invoicing contained in Council Directive 2006/112/EC⁴⁹ and Directive 2014/55/EC⁵⁰ of the European Parliament and the Council. ***(AM 81 Greens)***

Recital 28a

The gradual introduction of compulsory e-invoicing can reduce payment times, increase payment control and encourage the digital transition of SMEs. National authorities should support SMEs by ensuring adequate infrastructure and support. (AM 82 The Left)

Recital 29

Effective access of undertakings, especially of *micro-enterprises and SMEs*, to credit management, *including financing services*, and financial literacy training can have a significant impact in reducing payment delays, maintaining optimal cash flows, reducing the risk of default and increasing the potential for growth. Nevertheless, *micro-enterprises and SMEs* often lack the capacity to invest in such training, while very limited trainings and training material focusing on enhancing *micro-enterprises and SMEs'* knowledge of credit and invoice management are currently available. It is therefore appropriate to provide that Member States need to ensure that *invoice management*, credit management *tools, including factoring* and financial literacy trainings are available and accessible to *micro-enterprises and SMEs*, including on the use of digital tools for timely payments *and financing services*. (AM 85 S&D, 86, 88 EPP, 87 ECR)

Recital 29a

Recognizing the critical impact of late payment practices on the European Union's economic environment and to enhance transparency, compliance, and best practices, the Commission should establish the European Observatory of Late Payments (The Observatory). The Observatory should be a key element in monitoring, analyzing, and sharing insights on payment behaviors across the Union with a primary function to monitor both timely and delayed payment practices, gathering and disseminating expertise, identifying best and potentially harmful practices, and evaluating the effectiveness of enforcement authorities in their regulatory roles. The Observatory's focus should be to provide the Commission with ongoing advice and expertise crucial for understanding and shaping the evolution of payment and late payment practices within the Union. To facilitate comprehensive monitoring and effective functioning, Member States should communicate essential information to the Observatory, including lists of goods and services subject to specific payment procedures, aggregated data from relevant articles, and details regarding enforcement actions and outcomes. The Observatory, chaired by the Commission and composed of a balanced representation of experts and stakeholders, should issue annual reports, opinions, and contributions pertinent to implementing and enforcing this Regulation. The outputs should reflect the state of payment practices and offer guidelines and recommendations for enhancing the effectiveness and fairness of the regulatory framework governing late payments.

Recital 29b

To assess and ensure the effectiveness of this Regulation, the Commission should comprehensively evaluate its implementation and impact through a comprehensive report. Given the dynamic nature of commercial transactions and the evolving market conditions, the report should be a crucial tool in understanding the Regulation's effectiveness and identifying areas for improvement. The Commission, based on the findings of the report, should be prepared to accompany it with a legislative proposal if deemed necessary and appropriate, ensuring that the Regulation remains relevant, effective, and aligned to promote fair and efficient payment practices within the Union. Therefore, four years after the entry of this Regulation into force, and subsequently every three years, the Commission should submit a report to the European Parliament and the Council, which will maintain transparency, evaluate the progress, and make necessary adjustments to the Regulation. The report should examine the impact of the Regulation's scope as defined in Article 1, focusing on its effects across specific sectors and business models, and provide insights into how the Regulation influences diverse commercial landscapes. The report should

evaluate the impact of measures implemented, especially those related to payment periods as outlined in Article 3, on enhancing cash flow and liquidity in the market to shed light on the practical effectiveness of these measures in improving financial dynamics. The report should also assess the effectiveness of the enforcement authorities, as detailed in Articles 13, 14, and 15, in ensuring compliance and addressing payment issues. An additional aspect of the report should explore the potential benefits of introducing EU-wide e-invoicing and its role in shortening payment periods. To facilitate this comprehensive evaluation, Member States should provide the necessary information to the Commission, including details of enforcement actions and outcomes. The report should also include an assessment of the overall impact of this Regulation on commercial transactions and the effectiveness of the European Observatory of Late Payments in monitoring payment practices within the EU.

Recital 31

The objectives of this Regulation are to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of **micro-enterprises and SMEs**. Those objectives cannot be sufficiently achieved by the Member States, as implementing national solutions would likely result in a lack of uniform rules, fragmentation of the single market and higher costs for companies trading across borders. Therefore, those objectives can be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives. **(AM 93 S&D)**

Recital 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. (AM 6 Rapp)***

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