Commercial transactions: combating late payment. Recast

2009/0054(COD) - 26/08/2016 - Follow-up document

The Commission presented a report on the implementation of Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions.

This report assesses whether the Directive is on track to achieve its intended objectives and includes recommendations on how to improve its implementation.

Evaluation of the Directive: there are three key factors that rendered a definitive ex-post evaluation a challenge: (i) the recent entry into force of the Directive; (ii) the difficulty to isolate the role of the Directive in changes seen on the ground; (iii) external conjuncture such as the financial crisis and the economic situation of certain Member States.

The evaluation of the Directive was conducted against five criteria: effectiveness, efficiency, coherence, relevance and EU added value. It reveals that:

- the Directive has **raised awareness** of the problem of late payment and has placed the issue high on the political agenda. In response, governing authorities in a number of Member States are adopting structural and voluntary measures to support the provisions of the Directive;
- although public entities in more than half of all Member States are not yet respecting the 30-day limit imposed by law, supplementary efforts are being undertaken and the overall trend is already showing signs of improvement. In the private sector, with the exception of a handful of Member States that record poor figures in this area, the periods established in the Directive appear to be broadly respected;
- **many SMEs continue to accept long payment terms imposed by larger companies** and approximately half of all creditors do not exercise their rights to claim late payment interest, compensation and recovery costs as provided for by the Directive for fear of damaging their commercial relationships;
- there is little evidence to date that the Directive has had a measureable impact on businesses' liquidity and facilitated cross-border trades;
- several factors have contributed to an effective application of the Directive. These include measures adopted at national level (i.e. **prompt payment codes**) that have successfully supported the objectives of the Directive. Additionally, forums that enable the exchange of best practices between Member States on how to tackle late payment. Finally, continued awareness raising and expertise-sharing by the Commission and by national experts was found to be useful.

Overall conclusions: the report concluded that:

- the Directive is at an early stage of its lifecycle. The improvements in average payment periods remain **modest to date**;
- although companies are highly aware of their rights stemming from the Directive, **usage of them is not yet widespread**;
- several factors appear to prevent an effective application of the Directive such as the lack of a common monitoring system, lack of clarity on some key concepts of the Directive and the market imbalance between bigger and smaller companies.

However, the Directive is found to be coherent with other EU legislations and policies, is **still relevant and has achieved EU added value**.

Recommendations: on this basis of this evaluation, it is recommended that the Directive is **maintained in its current form and that more time is needed** to allow all its effects to bear fruit.

The following actions are being suggested to Member States:

- set up a system/procedure to **monitor progress**, report and publish information on average payment periods in both the public and private sectors;
- maintain the issue of late payment high on the **political agenda** by continuing to raise awareness of the topic at national level;
- encourage the development and implementation of **supporting initiatives** such as prompt payment codes, mediation, incentives for timely payment (positive naming and shaming), etc.

For the Commission:

- run targeted studies in Member States to identify best practices in different sectors that contribute to a more effective implementation of the Directive, take stock of the results and disseminate the information via various channels;
- continue to provide **guidance** to stakeholders and **exchange good practices** in different forms (expert group meetings, interpretative notes);
- explore the possibility to **collect comparable information** on how national justice systems function when implementing the expedited recovery procedure for unchallenged claims and present the results in the EU Justice Scoreboard;
- **assess at a regular basis the Directive's impact** and its success in reaching its objectives, bearing in mind that some effects are likely to take a longer time to materalisise fully.