Implementation of the Directive 2011/7/EU on combating late payment in commercial transactions

2018/2056(INI) - 17/01/2019 - Text adopted by Parliament, single reading

The European Parliament adopted by 570 votes to 23, with 26 abstentions, a resolution on the implementation of Directive 2011/7/EU on combating late payment in commercial transactions.

Making late payments is a persistent harmful practice that has a negative effect on the development of European companies, in particular SMEs, negatively influencing their liquidity, complicating their financial management and affecting their competitiveness and profitability. Late payment still accounts for 1 in 4 bankruptcies in the EU.

According to the Atradius Payment Practices Barometer, 95 % of SMEs report being paid late in Europe, which is a higher proportion than large companies. Late payment is particularly pervasive in those with a prevalence of SMEs in the relevant value chain (e.g. construction, utilities and transport, professional services, manufacturing, food and drink, and IT/telecommunications).

Improving payment behaviour in the EU

Under Directive 2011//7/EU (Late Payment Directive), public authorities bear a ‘special responsibility in fostering a business environment supportive of timely payments. Both the Late Payment Directive and national legislation on late payment should be better enforced, promptly and effectively, through compliance with the maximum time limits established for the payment of invoices and measures aimed at improving rules on payment terms and discouraging unfair practices.

Preventive measures

Members considered that legislation setting out stricter payment terms would be effective in reducing the length of delays to some extent and, provided that this is enforced, would create a level playing field between large and small companies. They noted that some Member States have limited the standard payment term to 30 days, while only a few Member States have introduced maximum payment terms that the parties cannot deviate from.

With a view to **enhancing transparency**, Parliament encouraged Member States to i) consider different possible forms of mandatory publication of information on payment behaviour, such as databases or registers, for both the private and public sectors (ii) consider the setting up of mandatory systems providing information on good payment behaviour (‘name and fame’); (iii) foster a culture of prompt payment in business relations, (iii) encourage a culture of prompt payment in business relationships; and (iv) improve their training provision for SMEs in credit management.

Members asked the Commission to carry out a study on existing national systems providing information on good payment behaviour (‘name and fame’) of both businesses and public authorities, and explore the feasibility of establishing common criteria for these systems at EU level.

Remedial measures

Member States were called upon to:

- consider the setting up of national and regional free and confidential mediation services accessible to all companies, as an alternative to court proceedings, to resolve payment disputes and maintain business relations, but also to educate the companies about their rights and remedies against late payment;

- ensure effective access to justice in matters relating to the recovery of debts in cross-border transactions;

- enforce national legislation and to encourage and improve stricter controls, for example among large companies, and the use of administrative sanctions that are effective, proportionate and dissuasive, thereby contributing to the improvement of payment behaviour;

- take the necessary steps to ensure that public authorities pay their suppliers on time and that creditors receive the automatic payment of statutory interest on late payments and compensation when payments are late without the need for overdue payment proceedings;

- **set up guarantee funds for SMEs** that guarantee the bank debts of SMEs that are owed outstanding amounts by the public authorities.

Parliament called for consideration of enhanced synergies between the Late Payment Directive and public procurement rules, in particular the possibility for contracting authorities to take action to enable the exclusion of non-performing contractors from future procurements if the main contractor does not pay subcontractors in time when it is required to do so.

Conclusions and recommendations

Members reminded Member States and the Commission that prompt payment is an overarching requirement for viable business environments and that, as such, it should be mainstreamed into all policy and legislative initiatives affecting businesses (e.g. CSR, start-ups and platform-to-businesses relationships).

Member States and the Commission were called upon to:

- take full responsibility in the exercise of payment on the part of the public administration and to improve their legislation ensuring proper implementation of the Late Payment Directive in all its parts. In parallel, the Commission should do its utmost to try to ensure the full and adequate implementation of existing obligations;

- foster ‘a decisive shift towards a culture of prompt payment’ by taking the most suitable measures, including issuing guidelines on best practices and, where necessary and appropriate, legislative initiatives, with the aim of creating a reliable business environment for companies;

- make payment procedures more efficient, underlining in particular that verification procedures for checking invoices or the conformity of goods and services with the contractual specifications should not be used to extend payment periods artificially beyond the limits imposed by the Directive;

- use professional publications, promotion campaigns and any other instruments to increase awareness of the remedies against late payment among undertakings.