

Review of the Late Payment Directive

POSITION PAPER

March 2023

Key messages

AFEP, the French Association of Large Companies, welcomes the review of the 2011 Late Payment Directive. This review should be the opportunity to improve payment terms and, to achieve this objective, the European Commission's assessment regarding payment terms and late payments **should be complemented and take into account challenges and problems companies are faced with** and that can explain late payments. **All late payments do not result from intentional conduct of companies and cannot be considered deliberate.** As a matter of fact, multiple factors can impact payment terms.

To improve payment terms, **AFEP supports the following measures :**

- **Setting up a European Observatory of Payments;**
- **Making more widespread use of mediation schemes in each Member State** to deal with payments disputes faster;
- **Designate a national authority to deal with complaints and initiate official enforcement action against late payments;**
- **Digitise invoices** as envisaged by the Commission in its proposal for a Council Directive as regards VAT rules for the digital age, provided that this would be consistent with the e-invoicing systems already implemented in some Member States, notably in France.
- Furthermore, AFEP member companies consider that **the calculation of payment terms should be based on the date of receipt of invoices and not on the issuance date.**

The European Commission intends to review Directive 2011/7/EU¹ (the Directive) which lays down a common set of rules aimed at combating late payments in commercial transactions between businesses (B2B) and between public authorities and businesses (G2B). In this context, AFEP, the French Association of Large Companies, which brings together 115 of the largest companies operating in France, wishes to comment on the Commission's analysis and proposals and **provide complementary insights on the challenges** large companies are confronted with. AFEP also takes this opportunity to **put forward additional proposals** to contribute to the improvement of payment terms.

1. The Commission's analysis should be complemented

In its call for evidence², the Commission explains that **three major issues** have been identified when assessing the implementation of the Directive that call for its review: **regulatory gaps and ambiguous rules, asymmetry of bargaining power between large and smaller operators and a pervasive culture of "bad" payment** because prompt payment is not incentivised or rewarded. **AFEP does not fully support the analysis made by the Commission.** Beyond the issues identified by the Commission, AFEP considers that the assessment of the Directive **does not reflect the many circumstances companies are confronted with in B2B and G2B commercial transactions.** The Commission, in particular, does not take into account the difficulties that large companies can meet nor the efforts they make to improve payment terms.

1.1. Contrasted situations in the European Union

France has set up an **Observatory of Payments** in which AFEP is involved (the Observatory). This Observatory publishes every year a report on trends regarding payment terms³. According to the Observatory, **suppliers' payment terms have, generally speaking, decreased in France from 54 days, in 2011, to 49 days in 2020.** Although payment terms of large companies have increased over the same period, **neither the Observatory nor the Directorate General for Competition Consumption and Fraud Enforcement (DGCCRF), in charge of enforcing national provisions regarding payment terms, consider that such an increase is the result of companies' policies** but instead point out to other factors (see below point 1.2). The evolution described above **conceals major differences between business sectors:** suppliers' payment terms are usually longer in the information and communication and consulting services sectors than in the retail, transportation and catering sectors. As regards **late payments, they have been impacted by the COVID pandemic crisis.** According to the Observatory, **late payments in Europe were below 13 days on average in 2018** and progressively increased as the crisis unfolded. **As of 2021, late payments represented 25,9 days in Portugal, 15,2 days in Spain, 12,4 days in France, 6,4 days in Germany and 4,5 days in the Netherlands.**

¹ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combatting late payments in commercial transactions

² [EU Call for evidence for an impact assessment](#)

³ [Rapport de l'Observatoire des délais de paiement](#)

1.2. Factors impacting payment terms

The Commission has identified several reasons for late payments such as “paying late is a form of financing at no cost” or “paying on time is not incentivised”. AFEP member companies disagree with **this approach and consider that the Commission’s analysis needs to be nuanced and complemented**. As a matter of fact, there are many **other frequent and widespread issues which, combined with the huge number of invoices that large companies manage**, can significantly increase payment terms **without deliberate intent from companies**. The following factors, in particular, should be acknowledged:

- **Delivery errors;**
- **Services not performed;**
- **Invoices sent several days after their issuance** and sometimes even after their due date;
- **Errors in invoices** resulting in rejection of said invoices and preventing their settlement;
- **Internal control requirements of the sourcing company** e.g. time necessary to verify and accept invoices received from suppliers and to subsequently integrate them into accounting and IT systems.

Taking into account these elements, which in practice can contribute to generating late payments, will provide stakeholders and, in particular, policymakers with a more precise and fairer view: **all late payments do not result from the intentional conduct of companies and cannot be considered deliberate**.

As regards large companies, it is estimated that **one-third of the late payments** these companies can be considered responsible for **are caused, in fact, by the delay between the date of issuance of invoices and their mailing or receipt date**. **The time necessary to verify and accept invoices received** from suppliers and to subsequently integrate them into accounting and IT systems can also impact payment terms and are **related to the complexity of the organisation of large groups and internal control requirements**. To have a precise and complete view, it is also necessary to **take into account late payments related to transactions between companies and public authorities (G2B)**.

2. AFEP’s proposals to improve payment practices

Large companies **manage, on a daily basis, substantial volumes of invoices** (e.g.: 1 million per year for certain large companies) and have implemented digital tools for many years. **Digitisation of payments** as well as other existing tools already implemented by companies – such as **factoring arrangements** – can contribute to **accelerating the processing of invoices and payments and reducing late payments**.

The acceleration of digitisation in the Union by mandating electronic invoicing is also provided by the proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age (ViDA proposal). In this regard, AFEP supports the ViDA proposal, notably to streamline the format and statements of invoices, providing that this would be consistent with the e-invoicing systems already implemented in Member States, notably in France. In this regard, following recent legislative evolutions in France, electronic invoicing will be applicable

as of 1 July 2024 (all companies will have to be able to receive electronic invoices and large companies will have to issue electronically their invoices).

Electronic invoicing could significantly contribute to facilitating the processing and payment of invoices. It could also prevent litigation regarding their date of receipt.

Digitisation cannot however solve all the problems companies and their business partners are confronted with. The review of the Directive is the opportunity to address these problems and to identify measures aimed at improving payment terms.

AFEP member companies support the following proposals:

- **Setting up a European Observatory of Payments** bringing together private and public stakeholders. Such an observatory, already in place in France⁴, would allow a more in-depth analysis of the problems, practices and trends regarding payment terms in the European Union. Based on data collected in each Member State, the observatory could provide input to the Commission in order to allow the latter to publish on a regular basis a report on payment terms.
- **Making more widespread use of mediation schemes** to deal with payments disputes faster. In France, such a scheme (Credit Ombudsman) was established in 2008 and is now in the remit of the French Central Bank (Banque de France). Similar schemes should be implemented in each Member State.
- **Designate a national authority to deal with complaints and initiate official enforcement action against late payments** in each Member State.
- Furthermore, AFEP member companies consider that **the calculation of payment terms should be based on the date of receipt of invoices and not on the issuance date.**

Finally, companies **do not support strengthened reporting requirements** regarding payment terms. Reporting in this field is indeed addressed by the Corporate Sustainability Reporting Directive⁵ (CSRD) and the draft European Sustainability Reporting Standards (ESRS) elaborated by the European Financial Reporting Advisory Group which will be adopted by the Commission in June 2023. These reporting standards **include disclosures regarding payment terms** and will be implemented in 2024 (first publication in 2025). Therefore, **additional reporting requirements should not be envisaged before the implementation of the ESRS and *ex-post* analysis of the data that will be made available by companies subject to the CSRD.**

⁴ <https://publications.banque-france.fr/liste-chronologique/rapport-de-lobservatoire-des-delaix-de-paiement>

⁵ Directive (UE) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

ABOUT AFEP

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is AFEP's core priority. AFEP has 117 members. More than 7,5 million people are employed by AFEP companies and their annual combined turnover amounts to €2,200 billion. AFEP is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

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Transparency Register identification number: 953933297-85