

## Proposal for a Regulation on Combating Late Payment

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### POSITION PAPER November 2023

#### Key messages

AFEP, the French Association of Large Companies, considers that the review of the 2011 Late Payment Directive and the Commission's proposal for a Regulation is an opportunity to improve payment terms.

In this regard, **AFEP supports the following measures:**

- **Base the calculation of payment terms on the date of receipt of invoices and not on the issuance date.**
- **Making more widespread use of mediation schemes in each Member State to deal with payment disputes faster.**
- **Designate a national authority to deal with complaints and initiate official enforcement action against late payments.**

On the contrary, AFEP does not support **the limitation of the payment period to a maximum of 30 days. This measure does not address the causes of late payment and would have significant negative impacts on companies and customers in many economic sectors.**

In September 2023, the European Commission published its SME Relief Package including a proposal for a Regulation on combating late payment in commercial transactions. This proposal would repeal the 2011 Directive and enhance harmonisation.

#### **AFEP supports the following proposals:**

- **Base the calculation of payment terms on the date of receipt of invoices and not on the issuance date.** The notion of receipt of invoices and the scope of calculation need however to be more clearly defined, to exclude in particular intragroup transactions and transactions conducted outside the EU.
- **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.**

#### **AFEP does not support the limitation of the payment period to a maximum of 30 days.**

Removing the ability to agree freely on payment terms within the 60-day limit would **significantly impact companies in certain economic sectors and hence tens of millions of**

**European consumers** in all Member States.

This could lead in particular in certain activities to:

- **a reduction in stock, causing price increases and a lack of product choice and availability on shelves,**
- **a shift towards choosing non-European suppliers,** who would be able to legally offer longer payment terms,
- **potentially further distorting a changing retail sector towards international online marketplaces,** undermining the Digital Services Act's goal to foster a level playing field on competitiveness.

Any move away from the approach related to the maximum payment term as set out in the 2011 Directive would be detrimental to the European economy and consumers and would not address the causes of late payment. We therefore **advocate for maintaining the current regime as provided for by the 2011 Directive.**

**Furthermore, AFEP does not support new disclosure requirements regarding payment terms.** Starting from 2025, large companies and then smaller companies will have to publish a sustainability report in accordance with the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464 of 14 December 2022) and with the European Sustainability Reporting Standards (ESRS). These standards already require disclosures regarding payment practices (ESRS G1).

**Finally, AFEP supports the establishment of a European Observatory of Payments** bringing together private and public stakeholders. Such an observatory, already in place in France, would allow a more in-depth analysis of the problems, practices, and trends regarding payment terms in the European Union. A EU Observatory would be most instrumental in **identifying and promoting best practices and other non-regulatory measures.** As a matter of fact, there are many **frequent and widespread issues that, combined with the huge number of invoices that large companies manage,** can significantly increase payment terms. The following factors, in particular, contribute to generating late payments **without deliberate intent from companies:**

- **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.

In this regard, AFEP considers that **digitisation of payments** can also contribute to **accelerating the processing of invoices and payments and reducing late payments.**

## **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 over 110 members. More than 8 million people are employed by AFEP companies and their annual combined turnover amounts to €2,600 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, digital and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

### **Contacts:**

**Jocelyn Goubet**, Director for Economic Law / [j.goubet@afep.com](mailto:j.goubet@afep.com)

**Le Quang Tran Van**, Director for Financial Affairs / [lq.tranvan@afep.com](mailto:lq.tranvan@afep.com)

**Alix Fontaine**, European Affairs Advisor / [a.fontaine@afep.com](mailto:a.fontaine@afep.com)

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