



PRESS RELEASE

Updating EU rules to combat Late Payments

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FIEC is supportive of clear rules aimed at fostering and safeguarding prompt payments in all commercial transactions while also minimising the administrative burden for all parties involved in a commercial transaction. While the current EU rules on combatting late payments have been in place since 2011, construction companies, including those working with the public sector, are still confronted with the problem of late payments.

Ahead of the vote in European Parliament's IMCO¹ Committee, FIEC reiterates its reservations against the introduction of certain provisions related differentiated payment periods according to the size of companies, payments to subcontractors in public procurement, on enforcement authorities, complaints and confidentiality and reporting obligations.

Why is FIEC dealing with this topic?

Late payments have the potential to threaten the very existence of construction companies, as a positive cash flow is essential to their day-to-day operations. Another issue, construction companies usually bear the costs of the construction process (materials, machinery, labour, etc.) before they are paid.

A major concern in many EU countries is that construction companies working with the public sector are often not paid on time, even where payment terms are provided for in existing legislation. Companies in this situation are often reluctant to take legal action against the public sector client. Ensuring that contracting authorities – whether they are public or private – pay on time is not only essential to creating a prompt payment culture, but has an impact on payments down the entire supply chain. Prompt payment should therefore be a legally enforceable principle in all transactions.

State of play

In September 2023, the European Commission proposed to replace Directive 2011/7/EU (Late Payments Directive) with a Regulation. FIEC believes that it is crucial to ensure a careful balance between creating a level playing field in the EU and better protecting construction companies by

¹ Committee on Internal Market and Consumer Protection

providing clear payment terms, while at the same time ensuring that "contractual freedom" in commercial transactions is respected.

The two co-legislators are currently examining the file. Both are divided on some aspects of the Commission's proposal. In the EU Council, many Member States appear to be highly critical of the proposal as a whole. One provision reportedly causing disagreement is the **30-day payment period** applicable to all businesses, which FIEC believes **should be maintained when the debtor is a public authority**. The European Parliament was due to vote on amendments at the end of February, but the vote was postponed to 20-21 March.

Key messages ahead of vote in IMCO Committee

Ahead of that vote, FIEC reiterates reservations against the introduction of the following provisions, namely:

Differentiated treatment depending on the size of companies

The draft report includes a number of amendments that would differentiate payment periods according to the size of the company. FIEC warns that such an approach could make commercial relations more complex and affect SMEs' access to public contracts, if contracting authorities are able to pay large companies over a longer period than SMEs.

Payments to construction companies only after payments to subcontractors in public procurement?

Under the proposal, construction companies will face more red tape, unjustified discrimination and further delays in public procurement payments, if the main contractor will be required to verify the preceding payment of its subcontractors, before being allowed to claim payment from contracting authorities. The goal is to ensure that payments in public works contracts are passed down the supply chain. But FIEC warns that this obligation threatens the financial liquidity of sound construction companies, risks creating legal uncertainty and additional administrative, financial and time burdens for both the contractor and the contracting authority. Moreover, this obligation does not provide a solution for a strict mechanism to ensure that public authorities actually pay on time.

Enforcement authorities, complaints and confidentiality

The proposal also requires Member States to designate national authorities responsible for enforcing the Regulation. But it does not explicitly require them – once designated – to take action against public sector clients who fail to pay companies on time. There are also concerns in the construction sector that setting up a parallel system to the courts would create confusion and bureaucracy. FIEC considers that it should be left to Member States to decide what system to use, as long as it is consistent and applies the same way for public and private contracting authorities.

Reporting obligations

Lastly, FIEC also rejects the introduction of annual reporting obligations only on companies' payment practices as this would only increase the administrative burden for all parties involved.



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