Late payments – SMEs still bear the burden

Two studies have formed the basis of discussions about the ongoing problem of late payment, but opinions still remain divided

The never-ending story of late payments to businesses was once again on the table at a meeting organised by the European Parliament's SME Intergroup, right after the Christmas break.

The idea was to take stock of the situation based on two different studies. One was from the credit management services company Intrum Justitia – the European Payment Report 2017; and one from the British Federation of Small Businesses (FSB) – Time to Act, the economic impact of poor payment practice, from November 2016.

These facts were then put up against the European legislation in this field, namely the European Late Payment Directive from 2011.

According to the Intrum Justitia report, the situation remains critical – in particular for SMEs (small and medium-sized enterprises). The rate of SMEs accepting longer payment terms from their clients is accelerating – 58% in 2017.

A total of 23% of them said that they could hire more people if they were getting paid earlier, and 19% of them said that they were even at risk of firing people because of late payment.

FIEC
Avenue Louise 225,
B - 1050 Brussels, Belgium.
Tel: +32 2 514 55 35;
e-mail: info@fiec.eu
www.fiec.eu

@FIEC_Brussels

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Also, 42% of SMEs complained of liquidity squeeze as a result of late payment, and 27% said that they were at risk of bankruptcy.

In business-to-business (B2B), it seems that larger companies tend to play a dangerous game, pushing smaller companies to accept longer payment terms. Late payment certainly remains a big problem, but long payment terms – which are, legally speaking, acceptable – are becoming a key issue too.

Moreover, the same report states that public administrations continue to be the worst payers, all over Europe, while consumers are generally the best payers.

When it comes to knowing their rights, the Intrum Justitia report shows that only 31% of SMEs knew about the 2011 European Late Payment Directive or their corresponding national legislation.

And only 22% were using the options offered by this Directive – for example, claim for late payment interest.

The 2016 FSB report focuses on the situation of SMEs in the UK, but its findings were simmilar to the Intrum Justitia report.

In particular, 61% of SMEs reported that they were paid late by big businesses. This, of course, has a big impact on productivity, growth, the job market and economic development in general. Only 20% of SMEs said that the 2011 European Directive has had a positive effect.

As usual, the debate that followed put the supporters of legislative measures against those who called for more non-legislative measures.

According to the supporters, the current European Late Payment Directive is not satisfactory as it has loopholes and hidden delays.

In particular, there can be no real freedom of contract between big and small companies. Consequently, the European Commission should propose to revise it as quickly as possible in order to strengthen it.

On the other side, late payment is said to be an area where legislation does not work, as the powerful clients – public administrations or large companies – always find ways to circumvent it.

For instance, as long as the purchase order is not officially sent, their suppliers can't send their invoices, even if the job has been done in the meantime. It is the same thing with the options offered in the legislation – SMEs won't use their right to claim for late payment interests if it puts their future commercial collaborations at risk.

SOFT MEASURES

According to them, soft measures like naming and shaming, voluntary prompt payment codes or increased transparency in big businesses' annual reports over internal payment policy would be more efficient.

The increased use of e-invoicing in the public sector is also expected to help.

It is positive to see that the Late Payment Directive has been closely followed up since the beginning. Right after its adoption in 2011, the Commission, with Italian Commissioner Antonio Tajani in charge of enterprises at that time, launched an information campaign across the EU to ensure that public administrations and businesses knew and understood their new rights.

The Commission services then followed-up the transposition of the Directive. Member States had until 2014 to transpose the Directive into their national law. Since then, the Commission has been checking whether the rules transposed are indeed properly enforced at national level.

This follow-up led to a number of infringement procedures against Member States, starting with Italy, as Commissioner Tajani obviously wanted to make it as a good example.

Still, in a first implementation report, from 2016, the European Commission acknowledged that the figures remained depressing, and that it still received many complaints, in particular against public administrations, although a slight positive trend was already observed in business-to-public-administrations' relations.

In B2B, very little change was observed, mostly because of the principle of contractual freedom, which tends to be exploited and abused by large businesses.

They are not paying late, but imposing potentially very long payment terms to their suppliers, without it being illegal. And the safeguard of a so-called "grossly unfair" payment term is clearly not dissuasive enough.

The European Commission also believes that the best protection for SMEs would be to remain well aware of their rights. But even in this case, SMEs are not obliged to use the various remedies offered by the Directive – and for obvious reasons, they prefer not to.

Should these possibilities become automatic and mandatory?

The European Commission would like to go in this direction, but it should first prove that it is a realistic solution.

For the time being, the 2016 report concluded that a revision of the Directive would be premature, but the Commission services are preparing for the next Commission's mandate (2019 to 2024).

In particular, they are currently assessing B2B practices and the concrete impact of soft measures. We will certainly have late payment again on the menu of the next Commission – hopefully for the better. **ce**