

**Comitato Esecutivo del 16 gennaio 2024**

**Punto 4 all' ODG**

**Stato di avanzamento delle attività associative sulla regolamentazione relativa al factoring**

**ALLEGATO 4.3**

**Emendamenti Late Payment Regulation e contributo ABI a posizione EBF**



# Emendamenti Late Payment Regulation

Prima analisi

Organo associativo

Staff Assifact

Stato del documento

Nota di approfondimento

Data

11/01/2024

## Emendamenti Late Payment Regulation

### Prima analisi

#### Gli emendamenti

Tra l'8 e il 9 gennaio u.s. sono stati pubblicati gli emendamenti presentati dai Parlamentari Europei sulla proposta legislativa formulata dalla Commissione per un Regolamento a contrasto dei ritardi di pagamento nelle transazioni commerciali ("Late Payment Regulation" – in breve LPR).

Di seguito si allegano:

- Il testo originale della proposta: *Proposal for a Regulation of the European Parliament and of the Council on combating late payment in commercial transactions* [COM\(2023\)0533\\_EN.pdf \(europa.eu\)](#)
- Il rapporto della relatrice Róza Thun und Hohenstein: *Draft report on the proposal for a regulation of the European Parliament and of the Council on combating late payment in commercial transactions (COM(2023)0533 – C9-0338/2023 – 2023/0323(COD))* [PR COD 1amCom \(europa.eu\)](#)
- I documenti recanti gli emendamenti:
  - Emendamenti da 1 a 223: [AM Com LegReport \(europa.eu\)](#)
  - Emendamenti da 224 a 405: [AM Com LegReport \(europa.eu\)](#)

Alcuni degli emendamenti proposti risultano in linea con quelli proposti dall'EUF:

1. **Ban of assignments** : l'emendamento all'art. 9 per proibire leggi e pratiche che limitano la cedibilità del credito è stato presentato, con diverse sfumature, da:
  1. Róza Thun und Hohenstein (Renew, PL), rapporteur, nell'ambito del rapporto
  2. Antonius MANDERS (EPP, NL), EPP shadow rapporteur (AM 276).
  3. Adam BIELAN (ECR, PL) (AM 274),
  4. Un gruppo di parlamentari italiani afferenti all'ID (AM 275).
2. **Article 16:** Lara COMI (EPP, IT) propone (AM 375) di introdurre un nuovo paragrafo nell'articolo 16: *"Member States shall consider mandatory forms of adequate compensation, such as offsetting, and other supporting measures, such as, for example, guarantee funds for SMEs and factoring for companies owed money by a public authority, so that they are not forced to go bankrupt because of it"*.
3. **Article 17:** l'inclusione del factoring fra i servizi da promuovere è stata presentata da
  1. Laurence SAILLET (EPP, FR), Geoffroy DIDIER (EPP, FR) (AM 381)
  2. Tsevetelina PENKOVA (S&D, BG) S&D shadow rapporteur, Rene REPASI (S&D, DE), Laura BALLARIN CEREZA (S&D, ES) (AM 385)
  3. Antonius MANDERS (EPP, NL) EPP shadow rapporteur, seppure riferendosi in generale a "financing services" (AM 383).

Inoltre, sono stati presentati numerosi emendamenti finalizzati a introdurre forme di flessibilità nei termini di pagamento (art. 3).

Gli emendamenti propongono un numero assai elevato di approcci differenti che presuppongono peraltro dei "percorsi" di emendamento che interessano anche altri punti del LPR, in particolare con riferimento ai recital e all'introduzione di nuovi articoli a completamento della posizione.

Ad una prima analisi, sembrano potersi configurare i seguenti approcci:

#### Estensione dei termini di pagamento

- i. Fino a 60 giorni :
  1. Antonius MANDERS (EPP, NL), EPP shadow rapporteur, propone (AM 49, 161) di consentire termini di pagamento fino a 60 giorni per transazioni B2B in cui il debitore non è un'impresa di grandi dimensioni.
  2. Andreas SCHWAB (EPP, DE), Christian DOLESCHAL (EPP, DE), Lara COMI (EPP, IT) (AM 33) e ancora Laurence SAILLET (EPP, FR), Geoffroy DIDIER (EPP, FR) (AM 150) propongono di mantenere 30 giorni massimi per la PA ma consentire termini più lunghi, fino a 60 giorni, nel caso di transazioni B2B.
- ii. Fino a 120 days: Alcuni EPP MEPs (AM 33, 157) propongono che in assenza di situazioni di significative iniquità i termini di pagamento possono essere estesi sino a 120 giorni. Essi considerano (AM 174) che *"gross unfairness exists if the deviation from the standard period of 60 days occurs without an objective reason and violates the principles of good faith and honesty"*.
- iii. Libertà contrattuale:
  1. Eugen JURZYCA (ECR, SK) ECR shadow rapporteur, propone (AM 40) di mantenere 30 giorni massimi per la PA e 60 giorni per le transazioni B2B, qualora non diversamente contrattualizzato dalle imprese.
  2. Alcuni MEPs di Renew propongono (AM 148) che *"a longer period may only be agreed expressly and provided it is not grossly unfair to the creditor"*.

Termini di pagamento specifici: sono stati introdotti diversi emendamenti che introducono previsioni differenziate per dimensione (PMI, Grandi imprese), natura privata o pubblica o ancora il settore del debitore e/o del creditore, ad esempio:

- i. termine di pagamento di 30 giorni per le autorità pubbliche e/o le grandi imprese:
  1. Geoffroy DIDIER (EPP, FR), Anne SANDER (EPP, FR) (AM 41)
  2. Stéphanie YON-COURTIN (Renew, FR), Dita CHARANZOVA (Renew, CZ) (AM 45, 142)
  3. Cristel SCHALDEMOSE (S&D, DK) proposes (AM 139) limita l'art. 3 alle transazioni B2PA e introduce un nuovo articolo per le transazioni B2B (vedi sotto)
- ii. Esenzioni settoriali :
  1. Deirdre CLUNE (EPP, IE) (AM 30).
  2. Maria GRAPINI (S&D, IT) (AM 35).
  3. Sandro GOZI (Renew, FR) propone (AM 164) che le PMI possano estendere al debitore diverso da PA o grande impresa termini di pagamento più lunghi da definire, per specifici settori, a livello nazionale.
- iii. Esenzioni in base alle dimensioni:
  1. Antonius MANDERS (EPP, NL) (AM 34, 98), EPP shadow rapporteur, propone di escludere dall'ambito di applicazione le transazioni fra grandi imprese
  2. Alcuni MEPs S&D (AM 159) propongono che per le PMI il termine di pagamento sia 60 giorni per il primo anno di applicazione.

Nuovo articolo 3a sui termini di pagamento fra imprese: Martina DLABAJOVÁ (Renew, CZ), Dita CHARANZOVA (Renew, CZ), Tom VANDENKENDELAERE (EPP, BE), e Cristel SCHALDEMOSE (S&D, DK) introducono un nuovo articolo (AM 203, 204, 205) prevedendo che *"In commercial transactions between undertakings, the payment period shall not exceed 30 days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. If objectively justified and agreed*

*between the parties in the contract in clear and unambiguous terms the payment periods may exceed 30 days. This extension may not represent an unfair practice*". Questi emendamenti riprendono la posizione espressa da BusinessEurope.

Flessibilità rimandata a Leggi nazionali:

- i. MEPs da EPP, Renew e ID (AM 56, 57, 58) propongono che *"this Regulation should be without prejudice to shorter or longer periods which may be provided for in national law"*.
- ii. Anne SANDER (EPP, FR), Geoffroy DIDIER (EPP, FR), Stéphanie YON-COURTIN (Renew, FR) propongono (AM 190, 192) che la legge nazionale possa prevedere termini più lunghi in specifici settori *"by industry agreement"*.

**Prossimi passi**

Le scadenze in Parlamento sono le seguenti:

1. Nei giorni 24-25 gennaio ci sarà un primo scambio di vedute sugli emendamenti;
2. Il **voto nel Comitato IMCO è fissato per il 22 Febbraio 2024** ;
3. Il voto in plenaria è attualmente previsto per il 10 Aprile 2024.

## **Request for Input**

**by 12<sup>th</sup> January 2024**

## **Late Payments Regulation**

**7<sup>th</sup> December 2023**

### **Introduction**

As part of the SME Relief Package, the European Commission adopted a proposal to replace the existing Late Payments Directive 2011/7/EU (itself an update of 2000/35/EC) with a Regulation.

The EBF (or the banking sector in general) was not involved in the consultation process that preceded the proposal; however, the proposal was in the making for a long time, coming after many years of complaints from the SME sector and being the subject of many studies that established a link between the financial health of companies and the lack of a prompt payment culture in some sectors and parts of Europe.

Key features are:

- The proposal limits payment terms to 30 days for business-to-business transactions, as well as those where public authorities are the debtors, with no exceptions. (The current Directive set the limit at 60 days (30 for fresh food) and, importantly, included exceptions (“unless expressly agreed and no grossly unfair” to the creditor).
- There will be mandatory interest rates for late payments that are 8 percentage points above the reference rate of the ECB.
- A national authority will be appointed to oversee and enforce compliance.
- There are reporting requirements for larger companies.
- The Directive is converted into a Regulation.

Some of the criticisms from the corporate/factoring sectors include:

- *The proposal will not lead to improvements in the payment culture.*
- *The proposal disregards financing solutions that currently exist (factoring and reverse factoring) that provide benefits to both sellers and buyers.*
- *Trade credit is generally disregarded in the proposal. The obstacles that currently exist that prevent factoring/reverse factoring in some cases will not be removed, whereas new ones will be added.*
- *The financing needs will rise to a level that may not be covered by banks/factors.*
- *The choice of Regulation, together with the lack of detail, will lead to confusion over many definitions and concepts (eg how will it work for payments with installments?)*
- *Freedom of contract will be violated.*
- *National public law and civil law will clash.*
- *There will be unexpected negative consequences for buyers who will need to keep more inventory on their balance sheets.*
- *There will be more conflicts due to constrained verification processes to check quality.*
- *EU sellers will not be able to access asset-based financing and/or promote their products/services.*

- *There will be advantages for non-EU sellers.*
- *Some sectors (clothing, furniture, etc) will be especially negatively affected.*

Despite these concerns, the impact on banks needs to be analyzed by considering broader questions:

- How will the proposal affect the financial health of our customers?
- How will it affect customers' new need for financing?
- How will it affect existing business lines?

We also need to take into account the positions taken by the SME community (SMEUnited has just taken a position that reflects the role of SMEs as both buyers and sellers, and is promoting a deadline of 30-60 days. We will be meeting with them to discuss their position in detail during the week of 11<sup>th</sup> December).

#### **Process:**

##### **Council:**

Has not yet adopted a position.

##### **Parliament:**

Committee on the Internal Market and Consumer Protection (IMCO) in charge; draft report published mid-November; deadline for amendments 12<sup>th</sup> December; exchange of views & consideration of amendments January 2024, possible vote February 2024.

#### **Key questions on which input from banks is needed:**

- 1) **How might the current proposal impact banks' general working capital credit lines to corporates (esp SMEs)?**

Limiting payment periods to a maximum of 30 days means that many SME debtors may encounter significant liquidity and working capital deficiencies. They may see themselves obliged to incur additional credit financing.

- 2) **How might the current proposal impact banks' factoring and reverse factoring services to corporates (esp SMEs)?**

The proposed limit will impact not only the payment terms of SMEs' trade receivables but also the payment terms of their respective debts. If, in practice, business payment behaviors do not effectively conform, and compliance with the limits remains purely formal, banks and financial intermediaries will be discouraged from intervening in the financing of trade receivables due to the impact that payment delays have on the definition of default (the DoD considers also past due purchased receivables as past due exposures, with impacts on the other exposures to that debtor within the banking group). By the way, there might be an increase of defaults at the level of the banking group, in the presence of purchased and overdue trade receivables, as a result of the impossibility of establishing negotiated payment terms of more than 30 days.

Small businesses might face a significant increase in working capital financing needs and at the same time might have to turn to financial instruments not backed by trade credit and characterized by higher costs and increased difficulties in accessing credit.

If payment behaviors actually end up complying to the limit, the average duration of receivables finance exposures will be significantly reduced.

Moreover, as stated in various studies, analyses and other preparatory documents leading up to the review of the current Late Payment Directive, combating late payments effectively also means including supportive measures for factoring, supply chain financing and similar innovative types of financing as well as payment and technological solutions which allow the creditor to be paid faster or on time.

The LPR proposal (e.g. in art. 9) is silent on such support for factoring and also lacks concrete and detailed provisions to support and improve both financial knowledge and technological skills.

Factoring and similar forms of trade and supply chain finance which provide access to liquidity should be promoted or facilitated further through targeted measures such as introducing limitations to or prohibitions of bans on assignment and clauses with similar hampering effects on factoring (e.g. clauses used by suppliers which require their clients to inform them of any assignments or even ask for their previous permission, or credit institutions unduly refusing negative pledges to clarify rights to and ownership of receivables). This could be achieved through a suitable addition to art. 9 of the LPR proposal to include prohibiting or limiting the transfer of receivables in the list contractual terms that shall be “null and void” or however prohibited.

It is important to highlight that factoring is a very useful tool for companies, particularly small and medium-sized ones, as it offers support solutions to facilitate the growth of turnover, including by exploiting commercial leverage, as well as to support working capital needs.

**How should we position ourselves vis-à-vis the following elements of the proposal:**

**a) 30-day limit with no exceptions and contract freedom?**

The introduction, in the context of business-to-business transactions, of a 30-day maximum limit to payment terms, without exceptions or options to suit particular sectors, categories of businesses or needs of contractual partners, seems aimed more at compressing nominal payment times (i.e., the days between the origination of the credit and the maturity date) rather than reducing late payments (i.e., the days between the maturity date and payment date).

It is emphasized that the timing of payments within a supply chain is not only the outcomes of a commercial negotiation between the parties, but is also, and above all, an expression and consequence of the business that make up the supply chain. They, in turn, depend on non-negotiated factors such as, for example, the length of the product cycle and inventory turnover, and varies from sector to sector and company to company within the same sector. Consequently, it is plausible that an introduction of a 30-day limit on payment terms will create additional liquidity problems for firms, especially SMEs, which will have to find additional financial resources to be able to pay their suppliers within this reduced period.

**b) Appointment of a national authority for enforcement?**



- c) **Reporting requirements for larger corporates?**
- d) **The choice of a Regulation as opposed to a Directive?**

In pursuing the objectives of European action, the Regulation should allow member state to take into account the nature of its peculiar production system and the actual conditions under which the relevant commercial transactions take place.

- e) **Other elements that you consider important?**

It is also pointed out that in the practice, the use of trade credit also implicitly represents a guarantee of product quality, allowing the buyer to verify the goodness of the supply before making payment. Limiting verification procedures, pursuant to art. 3. would unfairly harm the buyer and expose the supplier to an uncontrolled increase in disputes, thus creating new and undesirable negative consequences for buyers and supplier.

Furthermore, the public Health Entities which banks are treasurers of, could activate cash advances in view of the planned abolition of the exceptions for a maximum payment period of 60 days provided for health and public authorities carrying out economic activities, referred to in Article 4, paragraph 4, letters a) and b) of Directive 2011/7/EU,

#### **Contacts within the EBF:**

The topic will be dealt with by:

The Business Lending Expert Group (reporting to the Strategy Group for Financing Sustainable growth)

Legal Affairs Committee

Hence the contacts persons are:

- Marta Morellato & Burcak Inel
- Blazej Blasikiewicz

#### **Useful links:**

Legislative proposal – September 2023

[https://single-market-economy.ec.europa.eu/publications/proposal-regulation-combating-late-payment-commercial-transactions\\_en](https://single-market-economy.ec.europa.eu/publications/proposal-regulation-combating-late-payment-commercial-transactions_en)

European Parliament's draft report – November 2023

[https://www.europarl.europa.eu/doceo/document/IMCO-PR-756002\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/IMCO-PR-756002_EN.pdf)

#### **Examples of positions taken by critics of the proposal:**

<https://www.mayerbrown.com/en/perspectives-events/publications/2023/10/the-european-commission-proposes-an-updated-late-payment-regime-for-the-eu>

<https://www.eurocommerce.eu/app/uploads/2023/11/2023-11-09-proposal-for-a-late-payment-regulation.pdf>

<https://www.eurochambres.eu/publication/eurochambres-position-on-the-late-payment-regulation/>

<https://www.tradefinanceglobal.com/posts/the-eus-new-tightrope-walk-on-the-late-payments-regulation/>

[https://fci.nl/en/news/euf-launch-autumn-2023-newsletter?language\\_content\\_entity=en](https://fci.nl/en/news/euf-launch-autumn-2023-newsletter?language_content_entity=en)

**Examples of positions taken by proponents of the proposal:**

<https://www.smeunited.eu/policies/policies/single-market/late-payment>

<https://www.ebc-construction.eu/2023/11/16/sme-assembly-2023-construction-smes-show-support-to-regulation-proposal-to-tackle-late-payment/>