

Proposal for a

**~~REGULATION~~DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

on combating late payment in commercial transactions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Most goods and services are supplied within the internal market by economic operators to other economic operators and to public authorities on a deferred payment basis whereby the supplier gives its client time to pay the invoice, as agreed between parties, as set out in the suppliers' invoice, or as laid down by law.

¹ OJ C , , p. .

- (2) Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions or by law.
- (3) Late payments directly affect liquidity and predictability of cash flows, thus increasing working capital needs and compromising a company's access to external financing. This affects competitiveness, reduces productivity, leads to redundancies, increases the likelihood of insolvencies and bankruptcies and is a critical barrier for growth. The damaging effects of late payments spread along supply chains, as the payment delay is often passed onto suppliers. Small and medium sized enterprises (SMEs), who rely on regular and predictable streams of cash, are heavily affected by those negative consequences. Late payment thus represents a problem for the Union economy because of its negative economic and social consequences.
- (4) Although judicial claims related to late payment are already facilitated by Regulations (EC) No 805/2004², (EC) No 1896/2006³, (EC) No 861/2007⁴ and (EU) No 1215/2012⁵ of the European Parliament and of the Council, in order to discourage late payment in commercial transactions it is necessary to lay down complementary provisions.

² Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.04.2004, p. 15)

³ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).

⁴ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

⁵ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (5) Undertakings should be able to trade throughout the internal market under conditions which ensure that transborder operations do not entail greater risks than domestic sales. Distortions of competition would ensue if substantially different rules applied to domestic and transborder operations.
- (6) Directive 2011/7/EU of the European Parliament and of the Council⁶ lays down rules to combat late payment in commercial transactions. In 2019, the European Parliament identified several shortcomings of that Directive. The SME Strategy for a sustainable and digital Europe⁷ called for ensuring a ‘late-payment-free’ environment for SMEs and strengthening the enforcement of Directive 2011/7/EU. In 2021, the Fit for Future Platform highlighted critical issues in the implementation of that Directive in its opinion. The main shortcomings identified in these initiatives are related to: the ambiguous provisions on ‘grossly unfair’ regarding the deadlines for payment in business to business transactions (B2B), the unfair payment practices and the deadlines for the procedures of acceptance and verification; the flat fee compensation; the asymmetry of rules for payments terms between G2B and B2B transactions; the lack of a maximum payment term for commercial transactions in B2B transactions; the lack of monitoring of compliance and enforcement; the absence of tools to combat the asymmetries of information; as well as tools for creditors to take action against their debtors, and the lack of synergies with the public procurement framework.
- (7) To address those shortcomings, Directive 2011/7/EU should be replaced.

⁶ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

⁷ COM (2020) 103 final.

- (8) Provisions should be laid down to prevent late payments in commercial transactions, consisting in the delivery of goods or supply of services for remuneration, irrespective of whether they are carried out between undertakings or between undertakings and contracting authorities/entities, where the latter are the debtor, given these contracting authorities/entities handle a considerable volume of payments to undertakings.
- (9) Public work contracts and building and engineering works are very often subject to excessively long payment terms and delays. Therefore, this Regulation should also apply to these activities.
- (10) Transactions with consumers, payments made as compensation for damages, including payments from insurance companies, and obligations to pay that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023⁸ of the European Parliament and of the Council, should be excluded from the scope of this Regulation.
- (11) Late payment constitutes a breach of contract which is financially attractive to debtors, due to low or no interest rates charged on late payment, or slow procedures for redress. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest for late payment is null and void, is necessary to reverse this trend and to discourage late payment. Consequently, contractual payment periods should be limited to 30 calendar days both in B2B transactions and G2B transactions, where the public authority is the debtor.

⁸ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

- (12) The procedures of acceptance or verification for ascertaining the conformity of the goods or services provided with the requirements of the contract, as well as verification of the correctness and conformity of the invoice, are often used to delay intentionally the payment period. Their inclusion in the contract should therefore be objectively justified by the particular nature of the contract in question or by certain of its characteristics⁹. It should therefore be possible to provide for such procedure of verification or acceptance in a contract only when provided for in national law where necessary, due to the specific nature of the goods or services. To avoid that the procedure of acceptance or verification is used to extend the payment period, the contract should clearly describe the details of such procedure, including its duration. For the same purpose, the debtor should initiate the verification or acceptance procedure immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction, regardless of whether the creditor has issued an invoice or equivalent request for payment. In order not to jeopardise the achievement of the objectives of this Regulation, it is appropriate to set a maximum duration of a procedure of acceptance or verification.
- (13) This Regulation should be without prejudice to shorter periods which may be provided for in national law, and which are more favourable to the creditor.
- (14) Public procurement can play a significant role in improving payment performance. Enhanced synergies should therefore be put in place between public procurement policies and rules and prompt payment objectives. Particularly in public construction works, subcontractors are often not paid on time by the main contractor, even when the contracting authorities or contracting entities have made the contractual payments to them, thus potentially creating a damaging domino-effect in the supply chain. It is therefore appropriate that contractors provide evidence to contracting authorities and contracting entities of payments to their direct subcontractors.

⁹ Judgment of 20 October 2022, BFF Finance Iberia SAU v Gerencia Regional de Salud de la Junta de Castilla y León (OJ C 53, 15.2.2021, p. 19) C585/20, EU:C:2022:806, paragraph 53.

- (15) In the interest of consistency of Union legislation, the definition of ‘contracting authorities’ and ‘contracting entities’ in Directives 2014/23/EU¹⁰, 2014/24/EU¹¹, 2014/25/EU¹² and 2009/81/EC¹³ of the European Parliament and of the Council should apply for the purposes of this Regulation.
- (16) Interest due for late payment should be calculated on a daily basis as simple interest. Interest for late payment is an accessory to the amount due. The debtor shall then be deemed to have extinguished its obligations only when the creditor will receive the payment of the amount due, including the corresponding interests and flat fee compensation. The amount of the late payment interest should continue accruing until the payment of the amount due to the creditor.
- (17) It should not be possible for the creditor to waive its right to obtain interests for late payments, as interests for late payments have a double function: to offset part of the damage suffered by the creditor, because of the delay, and to sanction the debtor for the breach of contract. To facilitate receipt of interest and compensation in case of late payment by the creditor, the right for the creditor to obtain them should be automatic, except when the payment delay is not due to the debtor’s fault.

¹⁰ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1 - 64).

¹¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65-242).

¹² Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243–374).

¹³ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, p. 76-136).

- (18) Fair compensation of creditors for the recovery costs incurred due to late payment is necessary to discourage late payment. These costs should include the recovery of administrative costs and compensation for internal costs incurred due to the late payment and should be cumulated with interest for the late payment for every single commercial transaction that has been paid late as determined by the Court of Justice¹⁴. The fixed minimum sum of compensation for the recovery costs should be determined without prejudice to national provisions according to which a national court may award compensation to the creditor for any additional damage regarding the debtor's late payment.
- (19) It should be possible to make payments by instalments or staggered payments. However, each individual instalment or payment should be paid on the agreed terms and should be subject to the rules for late payment set out in this Regulation.
- (20) In addition to the fixed sum to cover internal recovery costs, creditors should also be entitled to reasonable compensation of other recovery costs they incur because of late payment by a debtor. Such costs should for example include the costs incurred by creditors in instructing a lawyer or employing a debt collection agency.
- (21) Abuse of freedom of contract to the disadvantage of the creditor should be avoided. As a result, where a clause in a contract or a practice relating to the date or term of payment, the payment or rate of interest for late payment, the compensation for recovery costs, extending the duration the procedure of verification or acceptance or intentionally delaying or preventing the moment of sending the invoice is not in conformity with this Regulation, it should be null and void.
- (22) To enhance the efforts to prevent the abuse of freedom of contract to the detriment of creditors, organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings should be able to take action before national courts or administrative bodies in order to prevent late payments.

¹⁴ Judgement of 20 October 2022, *BFF Finance Iberia SAU vs Gerencia Regional de Salud de la Junta de Castilla y León*, C-585/20, ECLI:EU:C:2022:806.

- (23) To guarantee full payment of the amount due, it is important to ensure that the seller retains the title to goods until they are fully paid for, if a retention of title has been expressly agreed between the buyer and the seller before the delivery of the goods.
- (24) To ensure correct application of this Regulation, it is important to provide transparency regarding the rights and obligations as laid down by this Regulation. To ensure that the correct rates of interest are applied, it is important that they are made public by the Member States and the Commission.
- (25) The sanctions for late payment can be dissuasive only if they are accompanied by procedures for redress which are rapid and effective for the creditor. Expedient recovery procedures for unchallenged claims should therefore be available to all creditors who are established in the Union.
- (26) To facilitate and ensure compliance with this Regulation, Member States should designate authorities responsible for its enforcement, which perform their duties and tasks in an objective and fair manner and ensure equal treatment of private undertakings and public authorities. Those enforcement authorities should carry out investigations on their own initiative, act on complaints, and be empowered, among other things, to impose sanctions and publish their decisions on a regular basis. In addition, for more effective enforcement, Member States should use digital tools to the extent possible.
- (27) To ensure easy and accessible means of redress, Member States should promote the voluntary use of effective and independent alternative dispute resolution mechanism to solve payment disputes in commercial transactions.
- (28) Invoices trigger requests for payment and are important documents in the chain of transactions for the supply of goods and services, inter alia, for determining payment deadlines. It is important to promote systems that give legal certainty as regards the exact date of receipt of invoices by the debtors, including in the field of e-invoicing where the receipt of invoices could generate electronic evidence, and which is partly governed by the

provisions on invoicing contained in Council Directive 2006/112/EC¹⁵ and Directive 2014/55/EC¹⁶ of the European Parliament and the Council.

- (29) Effective access of undertakings, especially of SMEs, to credit management and financial literacy training can have a significant impact in reducing payment delays, maintaining optimal cash flows, reducing the risk of default and increasing the potential for growth. Nevertheless, SMEs often lack the capacity to invest in such training, while very limited trainings and training material focusing on enhancing SMEs' knowledge of credit and invoice management are currently available. It is therefore appropriate to provide that Member States need to ensure that credit management and financial literacy trainings are available and accessible to SMEs, including on the use of digital tools for timely payments.

¹⁵ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

¹⁶ Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement (OJ L 133, 6.5.2014, p. 1).

- (30) Certain provisions in this Regulation are linked to the provisions in Directive (EU) 2019/633 of the European Parliament and of the Council¹⁷. The relationship between Directives 2011/7/EU and (EU) 2019/633 is explained in recitals (17) and (18) and Article 3(1) of Directive (EU) 2019/633. As this Regulation replaces Directive 2011/7/EU, it should not affect the rules laid down in Directive (EU) 2019/633, including the provisions that are applicable to payments made in the context of the school scheme¹⁸, value-sharing agreements¹⁹ and certain payments for the sale of grapes, must and wine in bulk in the wine sector²⁰, except for the deadlines applicable to the maximum payment periods concerning the supply of non-perishable agricultural and food products. However, this Regulation does not prevent the Member States from introducing or maintaining national provisions applicable in the agricultural and food sector which provide for stricter payment terms, or different calculation of payment periods, *dies a quo* and verification and acceptance procedures for suppliers of agricultural and food products that are more favourable to the creditor.

¹⁷ Directive (EU) No 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59).

¹⁸ Article 23 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products (OJ L 347, 20.12.2013, p. 671).

¹⁹ Article 172a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products (OJ L 347, 20.12.2013, p. 671).

²⁰ Article 147a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products (OJ L 347, 20.12.2013, p. 671).

- (31) The objectives of this Regulation are to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of SMEs. Those objectives cannot be sufficiently achieved by the Member States, as implementing national solutions would likely result in a lack of uniform rules, fragmentation of the single market and higher costs for companies trading across borders. Therefore, those objectives can be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (32) To provide sufficient time for all relevant actors to put in place the arrangements needed to comply with this Regulation, its application should be deferred. However, to ensure better protection of the creditors, commercial transactions that are to be paid after the date of entry into force of this Regulation, shall be subject to its provisions, even if the relevant contract was signed before its date of application.

HAVE ADOPTED THIS ~~REGULATION~~DIRECTIVE:

Article 1

ScopeSubject matter and scope

- 1. The aim of this Directive is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of small and medium sized enterprises (SMEs).**

1. This ~~Regulation~~**Directive** shall apply to payments made in transactions between undertakings or between undertakings and public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for~~as~~ remuneration (~~“for~~ commercial transactions²¹).
2. The delivery of goods or the provision of services referred to in ~~paragraph 1~~**Article 2(-1)** shall include the design and execution of public works, construction and civil engineering works.
3. This ~~Regulation~~**Directive** shall not apply to any of the following payments:
 - (a) payments for transactions with consumers;
 - (b) payments made as compensation for damages, including payments from insurance companies;
 - (c) payments resulting from obligations that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023²¹ of the European Parliament and of the Council.
4. ~~With the exception of Article 3(1),~~**This RegulationDirective** shall not affect the provisions laid down in Directive (EU) 2019/633.

²¹ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

Article 2

Definitions

For the purposes of this ~~Regulation~~**Directive**, the following definitions shall apply:

- (-1) ‘commercial transactions’ means transactions between undertakings or between undertakings and public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for remuneration;**
- (1) ‘undertaking’ means any organisation, irrespective of its form and way of financing, carrying out an economic or professional activity independently;
- (2) ‘public authority’ means any contracting authority, as defined in Article 6(1) of Directive 2014/23/EU, Article 2(1), point (1), of Directive 2014/24/EU or in Article 3(1) of Directive 2014/25/EU;
- (3) ‘late payment’ means payment not made within the contractual or statutory payment period as set out in Article 3;
- (4) ‘amount due’ means the sum which should have been paid within the contractual or statutory payment period, as set out in Article 3, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment;
- (5) ‘enforceable title’ means any decision, judgement, order for payment issued by a court or other competent authority, ~~private deed or any other document issued~~, including those that are provisionally enforceable, whether for immediate payment or payment by instalments, which permits the creditor to have his or her claim against the debtor collected by means of forced execution;
- (6) ‘retention of title’ means the contractual agreement according to which the seller retains title to the goods in question until the price has been paid in full;

- (7) ‘procedure of acceptance or verification’ means the procedure for ascertaining the conformity of the goods delivered or services provided, with the requirements of the contract;
- ~~(8) ‘debtor’ means any natural or legal person or any public authority that owes a payment for a good delivered or a service provided;~~
- ~~(9) ‘creditor’ means any natural or legal person or any public authority that delivered goods to a debtor or provided services to a debtor.~~

Article 3

Payment periods

1. **Member States shall ensure that, in** commercial transactions, the payment period ~~shall~~**does** not exceed 30 calendar 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. This period shall apply both to the transactions between undertakings and between public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive (EU) 2019/633, unless Member States provide for a shorter payment period for such products.~~

Member States shall ensure that, in commercial transactions between undertakings, the parties are allowed to fix a longer payment period up to a maximum of 60 calendar days if this is expressly agreed in the contract.

In commercial transactions where the debtor is a public authority, Member States may provide that the payment period can be extended to a maximum of 60 calendar days if it is expressly agreed in the contract and provided it is objectively justified in the light of the particular nature or features of the contract.

2. ~~A procedure of acceptance or verification may be exceptionally provided for in national law only where strictly necessary due to the specific nature of the goods or services. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration.~~**In commercial transactions between undertakings, Member States may determine sectors for which longer payment terms than the terms set in paragraph 1 are necessary due to the specific nature of the goods or services, and shall, in that event, determine the maximum payment term.**
3. ~~Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. The payment period shall not exceed 30 calendar days after such procedure has taken place.~~**Member States may extend the time limits referred to in paragraph 1, first subparagraph, up to a maximum of 60 calendar days where the debtor is:**
 - (a) **any public authority which carries out economic activities of an industrial or commercial nature by offering goods or services on the market and which is subject, as a public undertaking, to the transparency requirements laid down in Commission Directive 2006/111/EC²²;**

²² **Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).**

(b) any public entity providing healthcare which is duly recognised for that purpose.

If a Member State decides to extend the time limits in accordance with this paragraph, it shall send a report on such extension to the Commission by [xxx]. On that basis, the Commission shall submit a report to the European Parliament and the Council indicating which Member States have extended the time limits in accordance with this paragraph and taking into account the impact on the functioning of the internal market, in particular on SMEs. That report shall be accompanied by any appropriate proposals.

4. ~~The payment period set out in paragraph 1 is the maximum payment period and is without prejudice to~~**Member States may provide for** a shorter **payment** period ~~which may be provided for in national law~~**than the period set out in paragraph 1.**

Article 3a

Procedure of acceptance or verification

1. **A procedure of acceptance or verification may be provided for in national law or in the contract. In that case, the contract or the national law shall describe the details and the duration of the procedure of acceptance or verification.**
2. **Where a procedure of acceptance or verification is provided for in their national law or in the contract, Member States shall ensure that the maximum duration of that procedure does not exceed 30 calendar days from the day following the date of receipt of the goods or services.**

Member States may, only where strictly necessary due to the specific nature of the goods or services, provide for an extension of the maximum duration of the procedure of acceptance or verification and shall, in that event, determine the maximum duration of the procedure.

Article 3b

Starting point of the payment period

The payment period shall begin from the day following the date on which the latest of the following events took place:

- (a) receipt by the debtor of the invoice or an equivalent request for payment;
- (b) receipt by the debtor of the goods or services;
- (c) if applicable, the end of the procedure of acceptance or verification.

Article 3c

Information to the creditor

Member States shall ensure that the debtor has the obligation to provide, at the latest at the time of the receipt of the goods or services, all necessary information to the creditor to ensure that the creditor is able to issue the invoice or equivalent request for payment.

Article 4

Payments to subcontractors in public procurement

1. For public works contracts falling within the scope of Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC²³ of the European Parliament and of the Council, contractors shall provide evidence to contracting authorities or contracting entities within the meaning of those Directives that, where applicable, they have paid their direct subcontractors involved in the execution of the contract within the deadlines and under the conditions set out in this Regulation. The evidence may take the form of a written declaration by the contractor and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment.
2. ~~Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by the main contractor to its direct subcontractors, the contracting authority or contracting entity shall notify the enforcement authority of its Member State thereof without delay.~~ **The obligation set out in paragraph 1 is without prejudice to the obligation of payment within the payment period, that rests on the public authority.**

Article 5

Interest for late payment

1. In case of late payment, **Member States shall ensure that** the debtor ~~shall be~~**is** liable to pay interest for late payment, except where the debtor is not responsible for the payment delay.

²³ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

2. **Member States shall ensure that i**nterest for late payment ~~shall be~~ **is** automatically due by the debtor to the creditor, without the creditor needing to send a reminder, where the following conditions are satisfied:
- (a) the creditor has fulfilled its contractual obligations and obligations provided for by law;
 - (b) the debtor has received the invoice or equivalent request for payment;
 - (c) the creditor has not received the amount due specified in the invoice or the equivalent request for payment, within the contractual or statutory payment period as set out in Article 3.
3. ~~It shall not be possible for~~ **Member States shall ensure that the right of** the creditor to ~~waive its right to obtain interest for late payment~~ **cannot be excluded or limited**.
4. ~~The date of receipt of the invoice, or equivalent request for payment, shall not be subject to a contractual agreement between the debtor and the creditor.~~
5. ~~The debtor shall provide all relevant information to the creditor to ensure that the creditor's invoice or equivalent request for payment is accepted and processed by the debtor as soon as it is received.~~
6. **Member States shall ensure that, w**here the conditions set out in paragraph 2 are satisfied, interest for late payment ~~shall start~~ **s** accruing from **the day following** the last one of the following events:
- (a) **the date of** receipt by the debtor of the invoice or an equivalent request for payment;
 - (b) **the date of** receipt by the debtor of the goods or services.
7. **Member States shall ensure that t**he interest for late payment shall accrue until payment of the amount due.

Article 6

Rate of the interest for late payment

1. **Member States shall ensure that t**The interest for late payment ~~shall be~~**is** equal to the reference rate plus **at least** 8 percentage points.
2. Member States whose currency is the euro, shall ensure that the reference rate corresponds to either of the following:
 - (a) the interest rate applied by the European Central Bank to its main refinancing operations;
 - (b) the marginal interest rate resulting from variable-rate tender procedures for the most recent main refinancing operations of the European Central Bank.
3. In Member States whose currency is not the euro the reference rate shall be the rate set by its national central bank.
4. The reference rate for the first semester of the year concerned shall be the rate as determinable on 1 January of that year. The reference rate for the second semester of the year concerned shall be the rate as determinable on 1 July of that year.

Article 7

Payment schedules

1. **This Directive shall be without prejudice to the ability of parties to agree, subject to the relevant provisions of applicable national law, on payment schedules providing for instalments.**

2. Where payment is done on the basis of schedules providing for instalments, and any of the instalments is not paid by the agreed date, interest for late payment referred to in Article 5, shall be calculated on the basis of any overdue amount. Compensation shall also be paid in accordance with Article 8.

Article 8

Compensation for recovery costs

1. **Member States shall ensure that, w**Where interest for late payment becomes payable in accordance with Article 5, a flat fee compensation for recovery costs shall be ~~automatically~~ due by the debtor to the creditor and shall amount to a ~~fixed~~ **minimum** sum of EUR 50, per every single commercial transaction.
2. The flat fee compensation referred to in paragraph 1 shall be payable by the debtor to the creditor as a compensation for the creditor's own recovery costs, without the necessity of a reminder.
3. ~~It shall not be possible for~~ **Member States shall ensure that the right of** the creditor to ~~waive its right to obtain the flat fee compensation laid down in paragraph 1~~ **cannot be excluded or limited.**
4. In addition to the flat fee compensation referred to in paragraph 1, **Member States shall ensure that** the creditor ~~shall be~~ **is** entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that flat fee compensation and incurred due to the debtor's late payment.
5. This Article shall apply without prejudice to the creditor's rights to receive any other compensation.

Article 9

Null and void and grossly unfair contractual terms and practices

1. **Member States shall ensure that t**~~The following contractual terms and practices shall~~
~~be~~**are** null and void:
- (a) ~~the~~ setting the payment period in breach of Article 3;
 - (aa) setting the date of receipt of the invoice, or equivalent request for payment;**
 - (b) excluding or limiting the right of the creditor to obtain interest for late payment provided for in Article 5 ~~or~~**2**;
 - (bb) excluding or limiting** the right to obtain compensation for recovery costs provided for in Article 8;
 - (c) extending the duration of the procedure of verification or acceptance beyond the term set in Article 3 ~~a~~**(3)**;
 - (d) intentionally delaying or preventing the moment of sending the invoice.

- 1a. Member States shall ensure that a contractual term or practice, other than those listed in paragraph 1 and which is grossly unfair to the creditor, is forbidden.**

An unfair contractual term or practice is a contractual term or practice relating to the provisions of the present Directive, the use of which grossly deviates from good commercial practice, and which creates, alone or in combination with other terms or practices, a significant imbalance between the rights and obligations of the parties to the detriment of the creditor, contrary to the requirements of good faith and fair dealing.

In determining whether a contractual term or a practice is grossly unfair to the creditor, all circumstances of the case shall be considered, including:

- (a) any gross deviation from good commercial practice of a specific sector;**
- (b) any imbalance of bargaining power;**
- (c) the nature of the good or service; and**
- (d) whether the debtor has any objective reason to deviate from the provisions of this Directive.**

1b. Member States shall provide that a contractual term which is grossly unfair to the creditor within the meaning of paragraph 1a is unenforceable.

1c. Member States shall provide that a contractual term or practice listed in paragraph 1, or which is grossly unfair to the creditor within the meaning of paragraph 1a, can give rise to a claim for damages.

- 2. Member States shall ensure that adequate and effective means exist to end the contractual terms and practices referred to in paragraphs 1 and 1a.
- 3. The means referred to in paragraph 2 shall include the possibility for an organisation officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings to take action before the courts or before competent administrative bodies.

Article 10

Retention of title

1. ~~A creditor~~ **Member States** shall **provide in conformity with the applicable national provisions designated by private international law that the seller** retains title to goods until they are fully paid for if a retention of title **clause** has been expressly agreed between the ~~debtor~~ **buyer** and the ~~creditor~~ **seller** before the delivery of the goods.
2. **Member States may adopt or retain provisions dealing with down payments already made by the debtor.**

Article 11

Transparency

1. Member States shall ensure transparency regarding the rights and obligations ~~laid down in~~ **stemming from** this Regulation **Directive**, including by making publicly available the applicable rate of interest for late payment.
2. The Commission shall make publicly available on the internet the current rates of interest for late payment which apply in ~~the~~ **each** Member States.

Article 12

Recovery procedures for unchallenged claims

1. ~~Creditors~~ **Member States** shall ~~obtain~~ **ensure that** an enforceable title **can be obtained**, including through an expedited procedure and irrespective of the amount of debt, **normally** within 90 calendar days of the lodging of the action or application at the court or other competent authority, provided that the debt and the procedure are not disputed. **Member States shall carry out this duty in accordance with their respective national laws, regulations and administrative provisions.**

2. When calculating the period referred to in paragraph 1, the following period shall not be taken into account:
 - (a) periods for service of documents;
 - (b) any delays caused by the creditor.
3. This Article shall be without prejudice to the provisions of Regulation (EC) 1896/2006.

Article 13

Enforcement authorities

- ~~1. Each Member State shall designate one or more authorities responsible for the enforcement of this Regulation ('enforcement authority').~~
- ~~2. Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with.~~
- ~~3. Enforcement authorities shall cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations that have a cross-border dimension.~~
- ~~4. Enforcement authorities shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations.~~
- ~~5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food sector to the competent enforcement authorities under Directive (EU) 2019/633.~~

Article 14

Powers of enforcement authorities

- ~~1. Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers:~~
 - ~~(a) the power to initiate and conduct investigations on their own initiative or based on a complaint;~~
 - ~~(b) the power to require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions;~~
 - ~~(c) the power to carry out unannounced on-site inspections within the framework of their investigations;~~
 - ~~(d) the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8;~~
 - ~~(e) the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement;~~
 - ~~(f) the power to require the debtor to bring the infringement to an end;~~
 - ~~(g) the power to publish its decisions referred to in paragraphs (d), (e) and (f).~~
- ~~2. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.~~
- ~~3. Member States shall, [by .../without delay], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.~~

Article 15

Complaints and confidentiality

- ~~1. Creditors may address complaints either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member States in which the debtor is established. The enforcement authority to which the complaint is addressed shall be competent to enforce this Regulation.~~
- ~~2. Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint to the enforcement authorities referred to in Article 13 at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by an infringement of this Regulation.~~
- ~~3. Where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant. The complainant shall identify any information for which it requests confidentiality.~~
- ~~4. The enforcement authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.~~
- ~~5. Where an enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons of its decision within a reasonable period of time after the receipt of the complaint.~~

- ~~6. Where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.~~
- ~~7. Where an enforcement authority finds that a debtor has infringed this Regulation, it shall require the debtor to bring the illegal practice to an end.~~

Article 16

Alternative dispute resolution

1. ~~Without prejudice to the right of creditors to submit complaints under Article 15, and to the obligations and powers of enforcement authorities laid down in Articles 13, 14, and 15,~~
Member States shall ensure that the parties to a commercial transaction as referred to in this Directive have access to independent mechanisms for the amicable settlement of disputes concerning late payment in commercial transactions whereby parties attempt, on a voluntary basis, to reach an agreement on the settlement of their dispute. This Article is without prejudice to Directive 2008/52/EC²⁴ of the European Parliament and of the Council.
- 1a.** ~~Member States shall promote~~**encourage** the voluntary use of ~~effective and independent~~ alternative dispute resolution mechanisms for the settlement of disputes between debtors and creditors, **that are fast, efficient, and cost-effective.**
- ~~2. Alternative dispute resolution mechanisms for late payment disputes shall encourage the parties to a dispute to find the solution by themselves and shall be fast, efficient, and cost-effective, while maintaining confidence and trust between the parties.~~

²⁴ **Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3).**

Article 17

Digital tools, credit management and, financial literacy training, and awareness raising initiatives

1. To the extent possible, Member States shall use digital tools for effective enforcement of this ~~Regulation~~**Directive**.
2. Member States shall ensure that credit management tools and financial literacy trainings are available and accessible to ~~small and medium-sized enterprises~~**SMEs**, including on the use of digital tools for timely payments.
3. **Member States shall, where appropriate, use professional publications, promotion campaigns or any other functional means to increase awareness on the issue and the remedies for late payment among undertakings.**
4. **Member States shall encourage the establishment of [sectoral] prompt payment codes which set out clearly defined payment time limits and a proper process for dealing with any payments that are in dispute, or any other initiatives that tackle the crucial issue of late payment and contribute to developing a culture of prompt payment which supports the objective of this Directive.**

Article 18

Report

By [OP: please insert the date = 4 years after the entry into force of this ~~Regulation~~**Directive**], the Commission shall submit a report on the implementation of this ~~Regulation~~**Directive** to the European Parliament and the Council.

Article 18a
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP: please insert the date = 2 years after the publication of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the repealed Directive shall be construed as references to this Directive. The methods of making such reference and the formulation of such statement shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Member States may maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.

4. In transposing the Directive, Member States shall decide whether to exclude contracts concluded before [OP: please insert the date = 2 years after the publication of this Directive]. [Wording under consideration by the Council Legal Service]

Article 19

Repeal

Directive 2011/7/EU is repealed.

References to the repealed Directive shall be construed as references to this ~~Regulation~~ **Directive**.

Article 20

Entry into force and application

1. — This ~~Regulation~~**Directive** shall enter into force on the **twentieth** day following that of its publication in the *Official Journal of the European Union*.
2. — It shall apply from [OP: please insert the date = 12 months after the date of entry into force of this Regulation].
3. — Commercial transactions carried out after the date of application of this Regulation shall be subject to the provisions of the present Regulation, including when the underlying contract has been concluded before that date.

Article 20a

Addressees

This Directive is addressed to the Member States.

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

Done at Strasbourg,

For the European Parliament

For the Council

The President

The President
