



EU Payment Observatory

Enforcement measures combating late payments in commercial transactions

2nd Thematic Report

Written by Centre for European Policy Studies (CEPS) and Ernst and Young (EY).

March 2024



EUROPEAN COMMISSION

European Innovation Council and SMEs Executive Agency (EISMEA)

Sector I-02-2 – Competitiveness and Internationalisation

Unit I-02 – SMP / COSME Pillar

Contact: Iker Ayerbe

E-mail: EISMEA-SMP-COSME-LATE-PAYMENT@ec.europa.eu

European Commission

B-1049 Brussels

DISCLAIMER

This document has been prepared for the European Commission as part of the *EU Payment Observatory*¹, but it solely reflects the views of the authors; the Commission cannot be held responsible for any use which may be made of the information contained therein.

The European Commission is not liable for any consequence stemming from the reuse of this publication.

Luxembourg: Publications Office of the European Union, 2024

© European Union, 2024

Reuse is authorised provided the source is acknowledged. The reuse policy of European Commission documents is regulated by Decision 2011/833/EU (OJ L 330, 14.12.2011, p. 39).

For any use or reproduction of photos or other material that is not under the copyright of the European Union (*), permission must be sought directly from the copyright holders.

BOOK	ISBN 978-92-9469-789-9	DOI: 10.2826/843479	EA-05-24-245-EN-C
PDF	ISBN 978-92-9469-790-5	DOI: 10.2826/560925	EA-05-24-245-EN-N

¹ The EU Observatory of Payments in Commercial Transactions (EU Payment Observatory) is an initiative of the European Commission. Service contract EISMEA/2022/OP/0010.

TABLE OF CONTENTS

Introduction	5
Enforcement measures on late payments in EU legislation	7
Implementation challenges	9
Use of creditors' rights under the Directive	9
Issuance of warnings by the European Commission	11
Recourse to the Court of Justice of the European Union	11
Cross-country differences	12
Use of creditors' rights under the Directive	12
Special regimes	12
Sectoral differences	13
The construction industry	13
The agri-food industry	14
Specific G2B measures	14
Italy	14
Spain	16
Enforcement measures: Empirical evidence	18
Beyond the Late Payment Directive	22
France	22
Spain	25
Poland	30
Conclusions	34
Annex 1 – Stakeholder interviews	36

LIST OF FIGURES

Figure 1: Respondents indicating they make use of the right to claim interest for late payments and compensation for recovery costs stated in the Late Payment Directive (% of respondents).....	18
Figure 2: Respondents indicating mediation/ADR mechanisms would increase use of measures in the Late Payment Directive for late payments (% of respondents).....	20
Figure 3: Respondents indicating improved enforcement would increase claims of interest and compensation for recovery costs (% of respondents).....	21
Figure 4: Administrative sanction amounts based on the cost of transport (in EUR).....	27
Figure 5: Average payment period in the road transport sector in Spain, July 2021-July 2023 (number of days).....	29
Figure 6: Level of compliance with Spanish Law 3/2004 on late payments, July 2021-July 2023 (%).....	30

Introduction

Most efforts to combat late payments in commercial transactions are focused on prevention, with 64 % of measures implemented by governments and industry geared toward this objective. Only 30 % of the measures implemented deal with late payments once they have occurred and aim at enforcing the payment².

Nonetheless, enforcement measures are an important tool to combat late payments. By imposing financial or reputational penalties for non-compliance with agreed-upon payment terms, they help deter bad payment behaviour and promote a culture of financial responsibility and fairness. Additionally, they serve to compensate creditors for the damage caused by the late payment. This aspect is particularly important for small to medium-sized enterprises (SMEs), which bear a disproportionate burden of late payments, as maintaining financial liquidity is of the utmost importance for their business operations and to avoid bankruptcy.

In the EU, within the existing regulatory frameworks, there are two main types of enforcement measures:

- The EU's Late Payment Directive ([Directive 2011/7/EU](#)) allows creditors to claim interest and recovery costs when facing delayed payments. The aim of these measures is not only to penalise the debtor and discourage future bad payment behaviours, but also to remedy the creditor by providing compensation for the damages caused by the delay. However, it is important to note that while the Directive grants the affected creditor the right to claim damages, the enforcement measure is not automatic, since the creditor is not obliged to claim the interest³.
- Administrative sanctions have been developed by Member States on their own initiative, but these do not exist in every country and very often take the form of financial penalties imposed on the debtor.

Alternative dispute resolution (ADR) and mediation are other *ex-post* mechanisms that are sometimes used to address cases of late payments.

Several studies have shown that, in practice, creditors refrain from using the right bestowed by the Late Payment Directive. Many cases involving demands for interest on late payments or compensation escalate to legal proceedings, potentially causing significant harm to the relationship between the creditor and the respective customer. This issue is sensitive for SMEs, particularly when dealing with large companies, as these business relationships are often crucial for their operations. Additionally, given that these procedures are highly time- and resource-consuming, SMEs face a higher risk of depleting their resources before the procedures reach a conclusion. Administrative sanctions exist in only a few countries, although some are adopting these following the example of France.

These limitations result in a low use of enforcement measures across the EU. In most EU Member States, when a company pays late there are no repercussions, and hence there is no incentive to change behaviour. Similarly, creditors, in particular SMEs, find themselves with no option but to accept late payments, unless they are ready to put at risk their business relationships.

² See the EU Payment Observatory's Annual Report 2023, https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive/eu-payment-observatory/observatory-analysis_en

³ Directive 2011/7/EU, Recital (16).

In light of this, analysing the implementation of enforcement measures across the EU and identifying instances of effectiveness, as well as successful practices, could help legislators seeking to enhance the regulatory framework and support companies in improving payment performance.

The European Commission has already taken steps in this direction with a proposal for a revision of the Late Payment Directive. The [proposed regulation](#), includes a provision for the automatic payment of interest and compensation for recovery costs (EUR 50). It also requires Member States to designate enforcement bodies responsible of ensuring enforcement.

This thematic report compares the ways in which Member States have implemented and enforced the Late Payment Directive. In addition, it showcases enforcement regimes in Member States that go beyond what is prescribed in the Late Payment Directive and can potentially serve as best practices.

The report is structured as follows:

- The next section lays the groundwork for the report, by presenting the current legislative framework in the EU for enforcement measures to combat late payments.
- The third section offers a review of the literature examining the implementation challenges as well as specific late payment measures developed at the Member State and sectoral levels.
- The fourth section provides empirical evidence on claims for interest and compensation and explores implementation-related improvements that could increase resort to enforcement measures, such as ADR and mediation.
- The fifth section presents case studies featuring different sanctioning regimes and their implementation and enforcement in various Member States and sectors. These case studies have been selected for a deep dive into regimes that go beyond the prescriptions of the EU Directive or which feature a unique mechanism to enforce the Directive.
- The last section draws conclusions on best practices related to enforcement measures to combat late payments.

Enforcement measures on late payments in EU legislation

Under the Late Payment Directive, payments made in transactions between undertakings or between undertakings and public authorities (where the public authority is the debtor) are subject to specific rules about their payment terms. If an entity does not pay its invoice by the agreed deadline, the creditor is entitled to interest and compensation. Member States are obliged to enforce the rules of the Directive.

The payment term specified by the Directive is 30 days after receipt of the invoice if the contract does not stipulate otherwise. If it does, it cannot exceed 60 days. This rule is exempted only in cases where such a timeframe would not be considered unfair to the creditor (Article 3(5) and Article 4(5)).

The Directive further states that under certain specified circumstances for 'commercial transactions between undertakings, the creditor is entitled to interest for late payment without the necessity of a reminder' (Article 3 and Article 4).

The interest rate is based on the refinancing interest rate of the ECB (or national central banks for non-eurozone Member States), topped up with a minimum of 8 percentage points, giving Member States the option to go beyond it. The ECB reference rate is updated every 6 months, on 1 January and 1 July. The interest rate and compensation fee are applicable starting from the day after the end of the payment period and do not require a reminder from the creditor to the debtor.

Alongside the interest payment is a fixed minimum fee of EUR 40, to compensate for recovery costs. Member States are free to set a bigger amount. The Directive also mentions that creditors receiving a payment after the due date can be exposed to additional costs as the delay could influence their operations. If the delayed payment has negatively impacted its activities, the creditor is entitled to obtain reasonable compensation for any recovery costs exceeding that fixed fee (Article 6).

For the proper application of the measures in place, Member States must ensure that creditors can receive the interest they are entitled to at the end of the payment deadline.

All Member States have transposed Directive 2011/7/EU. Some have decided to remain at the minimum level required under the Directive, while others have decided to go beyond it, imposing stricter measures. Some legislation overlaps, for instance for the agri-food sector, where specific requirements have been imposed on payments for specific goods and services covered by regulatory text. This results in sectoral differences with regard to the legislation covering late payments.

Nonetheless, the use of interest and recovery costs for late payments has been limited. SME United, which represents European SMEs, says that 70 % of European companies do not use their right to interest⁴. It seems that creditors refrain from requesting compensation for late payments from their clients. The limited exercise of creditors' rights provided in the legislation impacts the effectiveness of the measures in the Directive to combat late payments. It is also possible that these problems vary across sectors and Member States.

On 13 September 2023, the European Commission adopted a new proposal to regulate late payments in the EU. The new proposal transforms the European legislation on late payments from a directive into a regulation. This change reduces Member State flexibility,

⁴ SME United (2023), Position paper, <https://www.smeunited.eu/admin/storage/smeunited/20231204-smeunited-position-on-late-payment.pdf>

harmonising the way in which payments that are made after the due date are treated across Europe (Box 1).

Box 1. The 2023 late payment proposal

On 13 September 2023, the European Commission adopted a proposal for the revision of the Late Payment Directive, which includes changes to the fee and interest due by debtors.

It proposes an increase in the fee, from EUR 40 to EUR 50 (Article 8). On top of the EUR 10 increase, the new proposal makes it automatically due. This means that it would not be possible for a creditor to waive the right to obtain compensation for a delayed payment. In this way, the proposal tries to prevent unfair contractual practices that are overtly in favour of the debtor and constitute one of the main challenges in the fight against late payments. The proposal also suggests that the creditor should not have to take any action in order to get compensation, going a step further than the current Directive. Creditors would no longer have to make a claim against their clients, which damages their business relationships. This would also eliminate the costs of the claim procedure.

The provisions on statutory interest would remain the same under the new proposal, but their application would become automatic (Article 5). This right could not be waived by the creditor. Also, the proposed regulation sets out additional clarifications for when interest for late payments would start to accumulate. This is either the date of receipt by the debtor of a request for payment or receipt of the goods or services.

Article 13 of the new proposal states that Member States should specify one authority to be responsible for ensuring that the regulation is enforced. The role of the enforcement authority would go beyond the national level, through cooperation with enforcement bodies in other EU countries. The proposal is pushing for further cooperation to facilitate cross-border investigations and coordination with obligations for cross-border information exchange.

Article 14, which builds on Article 13, lays down the enforcement powers of the authorities. These include launching investigations, on-site inspections and information requests; imposing infringement decisions, including sanctions; and obliging a debtor to terminate an infringement.

Article 15 establishes the rules for complaints to the enforcement authority, so that enforcement can ensure the confidentiality of the complainant if needed.

Article 16 indicates that Member States should promote ADR mechanisms.

Implementation challenges

Implementation of the enforcement measures from the Late Payment Directive has generally been successful across Member States. It has not, however, been achieved without difficulty. First, creditors have rarely used their right to compensation. Second, the Commission has issued several warnings to national public authorities in relation to G2B transactions. And third, interpretational disagreements on the legislation have led to recourse to the Court of Justice of the European Union (CJEU).

Use of creditors' rights under the Directive

As mentioned above, the Directive stipulates that a creditor who is paid late is entitled to a flat fee and interest on the amount due as compensation. Yet, under the Directive, the claim of compensation is not automatic and the creditor has to request it. This additional step has reduced the use of the mechanism. And as further discussed below, it is not just because the process is not automatic that creditors rarely receive compensation for delayed payments.

Intrum's *European Payment Report (2023)*⁵ and the European Commission's *Ex-post evaluation of the Late Payment Directive (2015)* have both identified a series of reasons why creditors do not receive compensation for late payments.

As confirmed by both studies, the most common reason why the compensation fee and interest are not paid is because creditors do not request compensation for payment delays. A variety of explanations for not claiming compensation can be found in the literature. The prevailing one is to avoid damaging a business relationship. As indicated in the Commission's *ex-post* evaluation, '[t]he main reason for failing to exercise their rights under the Directive is the fear, among creditor firms, of damaging good business relationships'⁶. The European Builders Confederation also emphasises this idea, saying that 'creditors often fear to damage the business relations and the latter due to the unbalanced power relation, allowing the debtor to dictate terms. The result is that interest rates do not appear to have any influence on the payment behaviour of the debtor'⁷.

Companies refrain from jeopardising their relationship with customers, over fears of losing business partners. This is particularly the case when the debtor is a large company and the creditor an SME. As explained by SME United, SMEs 'are too afraid of damaging their trade relations'⁸. This unbalanced relationship, where a supplier cannot afford to lose a client, allows fear to drive the company's decision-making, thus ignoring its right to compensation, reducing its income and exposing it to unnecessary risk.

The lack of resources available to follow up late payers is another identified issue that contributes to creditors not claiming what they are rightfully due. Asking for compensation because of a delay in payments can require going to court – a costly and time-consuming procedure. In some cases, the cost of the compensation procedure can be higher than that of being paid late.

⁵ Intrum (2023), *European Payment Report 2023*, https://b2b.intrum.com/l/700283/2023-05-22/tqbp/700283/1684742199Tp3q8hN6/Pan_European_EPR_2023_Final.pdf

⁶ European Commission (2015), *Ex-post evaluation of Late Payment Directive*, <https://data.europa.eu/doi/10.2873/016503>

⁷ European Builders Confederation (2019), *Position Paper*, https://www.ebc-construction.eu/wp-content/uploads/191025-Position-Paper-Late-Payment_EN.pdf

⁸ SME United (2023), *Position paper*, <https://www.smeunited.eu/admin/storage/smeunited/20231204-smeunited-position-on-late-payment.pdf>

Another reason identified for why companies do not request compensation for a payment delay is the amount of the fee and interest that creditors are rightfully due. Fixed at EUR 40, plus an annual interest rate of 8 percentage points added to the refinancing rate of the central bank, the cost of initiating a procedure for a short-term delay can be higher than the amount gained from interest and compensation for recovery costs. This leads the creditor to stand by until the impacts of the delay are noticeable. Simultaneously, as the debtor is aware of the unlikelihood of a claim, it is less motivated to pay on time.

The lack of enforcement authorities has also been mentioned, which are needed to change payment behaviour. The European Builders Confederation⁹ and the French Association of Large Companies¹⁰ recommend following the French example and imposing administrative sanctions. SME United considers that such authorities should be independent, and that their fines, penalties and investigations should be proportionate to the amount of the delayed payment. They should also be supervised by the European Commission.

Some stakeholders have other proposals for enforcement measures. For instance, SME United proposes introducing a demerit criterion in public procurement with the aim of excluding repeated late payers from public tenders¹¹. Something similar has in fact been done in Spain through the Crea y Crece Law¹², which specifies that late payers cannot be the recipients or the collaborating entity in subsidies of more than EUR 30 000.

In addition, the European Builders Confederation calls for legislation to take into account the specificities of sectors. Construction projects have very long supply chains, which can delay payments. Therefore, the organisation calls for a provision that allows subcontractors to claim due payments from the contracting authority in every situation in which there is a payment delay. UETR, the European Road Hauliers Association, also calls for the same measure. In fact, the [Public Procurement Directive](#) already allows subcontractors to claim due payment directly from the contracting authority. However, it is randomly used. Similar legislation already exists in France¹³.

Another measure recommended by several associations, such as the European Builders Confederation, Eurocommerce¹⁴ or the French Association of Large Companies¹⁵, is to enhance ADR mechanisms and mediation. These are low-cost alternatives that many companies prefer to court proceedings as they are softer measures which reduce the risk of damaging business relations. They are also significantly faster than court proceedings. These mechanisms are especially useful for sectors with a high number of disputes such as construction.

⁹ European Builders Confederation (2019), Position paper, https://www.ebc-construction.eu/wp-content/uploads/191025-Position-Paper-Late-Payment_EN.pdf

¹⁰ French Association of Large Enterprises (2023), Position paper, <https://afep.com/wp-content/uploads/2023/03/Late-Payment-Directive-Review-AFEP-position-March-2023.pdf>

¹¹ SME United (2023), Position paper, <https://www.smeunited.eu/admin/storage/smeunited/20231204-smeunited-position-on-late-payment.pdf>

¹² Spain, Ley 18/2022, de 28 de septiembre, de creación y crecimiento de empresas, <https://www.boe.es/buscar/@41.php?id=BOE-A-2022-15818>

¹³ France, Loi n° 75-1334 du 31 décembre 1975 relative à la sous-traitance, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000889241>

¹⁴ Eurocommerce (2023), Position Paper, <https://www.eurocommerce.eu/app/uploads/2023/05/Late-payments-May-2023.pdf>

¹⁵ French Association of Large Enterprises (2023), Position paper, <https://afep.com/wp-content/uploads/2023/03/Late-Payment-Directive-Review-AFEP-position-March-2023.pdf>

Issuance of warnings by the European Commission

While there have not been any significant issues related to the transposition of the Directive into national law, the European Commission has, on multiple occasions, issued warnings to Member States, where public administrations have failed to comply with the legislation.

[In 2017, the Commission](#) urged Greece, Italy, Slovakia and Spain to ensure the correct application of the Directive. The warnings pertained to G2B transactions and were issued for various reasons, such as the introduction of new national legislation that is non-compliant with the Directive, excessively late payments by public authorities and legislation systematically extending statutory payment terms. In some of the cases, the CJEU imposed fines and requested immediate action to ensure compliance¹⁶. Similarly, in November 2023, the Commission decided to refer Belgium, Italy and Greece to the CJEU for [breach of the Late Payment Directive](#). In the cases of Belgium (Wallonia) and Greece, the Commission deemed that since the launch of the infringement procedures in 2019, insufficient progress towards improvement or appropriate action had been made.

Recourse to the Court of Justice of the European Union

On a few occasions, the CJEU has been asked to clarify the interpretation of the Late Payment Directive.

The Italian case of *Federconsorzi*¹⁷ saw the Italian Ministry for Agriculture, Food and Forestry opposing the Federation of Italian Agricultural Cooperatives. The disagreement centred on the calculation of interest for late payments, particularly the increase in interest rates compared with those specified in the legislation. The delay in the payment began at a time when the national legislation included interest rates that were lower than those applicable at the time of the dispute. Still, as the contract was concluded prior to publication of the Late Payment Directive, it was ruled that the new interest rates could not be applied.

The CJEU was also requested to decide on a case in Spain, in 2017, involving IOS Finance EFC SA¹⁸. The delay of a payment by the Health Service of the Autonomous Region of Murcia, prompted its creditor, IOS Finance, to seek compensation for the payment delay. The health service refused to pay the interest rate on late payments and the compensation for recovery costs, asking for an 'extraordinary financing mechanism for payment of suppliers' to be applied – a special Spanish rule put in place in 2012 to deal with delays during the economic crisis¹⁹. Yet, IOS Finance had not subscribed to that mechanism prior to signing the contract. The CJEU ruled that IOS Finance had freely concluded the contract, with its underlying conditions, and therefore would not be eligible to receive compensation. According to the Court, the Directive must be interpreted as not precluding national legislation, which allows a creditor to waive the right to interest for late payment and compensation for recovery costs in exchange for immediate payment of the principal amount of debts owed, on condition that such a waiver is freely agreed to.

¹⁶ For example, Italy in 2020, <https://curia.europa.eu/juris/liste.jsf?num=C-122/18>

¹⁷ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=162534&doclang=EN>

¹⁸ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=187923&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5590791>

¹⁹ Suppliers who join that mechanism agree, in exchange for immediate payment of the principal debt, to waive related sums owed on account of the failure by the public administrations concerned to respect the payment periods, including, inter alia, interest for late payment and compensation for recovery costs.

CROSS-COUNTRY DIFFERENCES

Use of creditors' rights under the Directive

Member States implemented the enforcement measures set out under the Late Payment Directive differently. While some decided to directly transpose what is indicated in the Directive, others decided to go beyond the minimum requirements.

The minimum interest rate conditions are rather homogenous within the eurozone. Most countries have opted for the minimum required level, adding 8 percentage points of interest on top of the ECB refinancing rate. Only Austria, Germany and France have added a higher rate, adding 8.08, 8.12 and 10 percentage points respectively²⁰. In Member States that have not adopted the euro, the applicable interest rate varies more than in the eurozone, since it is based on the refinancing rate set by individual central banks. At the time of writing, Hungarian debtors thus face an interest rate of 18.75 % if their payments are not made in due time²¹, while Danish debtors currently pay 11.25 %²², Swedish 12 %²³ and Bulgarian 13.79 %. Only Bulgaria has gone beyond the official refinancing rate of its central bank, adding 10 percentage points²⁴, rather than the added 8 percentage points for the other Member States.

On the compensation fee for recovery costs, most countries have kept the EUR 40 indicated by the Directive. But a few have increased it in a proportional way depending on the amount of the invoice. An example is Finland: although EUR 40 remains the standard, the creditor can also claim – from a bigger company – collection costs that can go up to EUR 250 for an invoice up to EUR 500; EUR 470 for an invoice ranging between EUR 500 and EUR 2 500; EUR 550 for an invoice of more than EUR 2 500 but less than EUR 10 000; and up to EUR 620 for an invoice of more than EUR 10 000. The creditor maintains the right to request further compensation for the collection of costs if these exceed the initial EUR 40 indicated in the Directive²⁵. Poland applies a similar system as discussed in the case study below.

In line with the proposal for a regulation on late payments, adopted by the European Commission in September 2023, Belgium applies a system of automatic activation of late payment interest and of the EUR 40 compensation fee. This is initiated as soon as the due date of an invoice has passed²⁶. The rule has been in place since February 2022.

Special regimes

Certain countries have developed a late payment regime that goes significantly beyond the European Directive. Some of these are discussed further below in case studies. They cover many aspects linked to late payments, from stricter and more established payment

²⁰ According to the official EU website, https://europa.eu/youreurope/business/finance-funding/making-receiving-payments/late-payment/index_en.htm

²¹ https://www.mnb.hu/en/jegybanki_alapkamat_alakulasa

²² <https://www.nationalbanken.dk/en/what-we-do/stable-prices-monetary-policy-and-the-danish-economy/official-interest-rates>

²³ <https://www.riksbank.se/en-gb/statistics/interest-rates-and-exchange-rates/policy-rate-deposit-and-lending-rate/>

²⁴ <https://www.ceicdata.com/en/indicator/bulgaria/policy-rate>

²⁵ Finnish Ministry of Justice (2023), Debt Collecting Act, https://finlex.fi/en/laki/kaannokset/1999/en19990513_20220299.pdf

²⁶ EY (Law) (2022), Belgian legislator imposes stricter payment terms in commercial transactions as of 1 February 2022, <https://www.eylaw.be/2022/02/04/belgian-legislator-imposes-stricter-payment-terms-in-commercial-transactions-as-of-1-february-2022/>

terms to the appointment of specific enforcement authorities, the application of financial or administrative sanctions and other measures. In Poland for instance, late payers are penalised on their tax declarations. Cyprus recently amended late payment legislation to include a supervisory authority²⁷. In the Netherlands, stricter payment terms entered into force in 2022 for large companies, setting them at 30 days for creditors considered to be SMEs²⁸. Croatia has established additional administrative sanctions in the form of penalties for the breach of late payment rules²⁹.

On top of direct financial sanctions, other enforcement measures have been put in place by some Member States. A quite common one is 'name and shame', a practice which consists of publishing the names of entities that have been sanctioned for paying late. Not only does it make other potential suppliers aware of the payment behaviour of the sanctioned undertakings, but it also causes reputational damage. Depending on the country, the notice can be displayed on the website of the firm, on regional websites or on the website of the national supervisor. In France, for instance, the sanctioned entity pays for this publicity.

Some countries have also tried to encourage ADR and mediation for late payments, which are scarcely used at the moment³⁰, despite offering significant benefits in terms of costs, time and also business relationships. France has a MediatEUR des Entreprises that offers mediation, which is much used by SMEs. A similar entity exists in Slovenia in the food supply chain. Specific ADR and mediation measures have also been developed in the construction sector in Hungary, Ireland and Denmark. Finally, outside the EU, the UK has a Small Business Commissioner for SMEs.

SECTORAL DIFFERENCES

As illustrated in more detail in the case studies, the implementation of enforcement measures differs not only among Member States but also among sectors, as in some countries there are sector-specific enforcement measures.

The construction industry

Some Member States have opted to apply additional measures to encourage compliance with late payment legislation in the construction sector, which is notably affected by late payments and contract disputes. That explains the soft form of many of these measures, which are linked to ADR and mediation tools. In that regard, Hungary has established an [Expert Body for the Certification of Performance](#), which can act in disputes arising from the performance of architectural-technical design and construction contracts. In Ireland, the 2013 Construction Contracts Act³¹ provides that if there is a payment dispute, either party has the right to refer it for adjudication, which means referring it to an independent

²⁷ Cyprus, Ο Περί της Καταπολέμησης των Καθυστερήσεων Πληρωμών στις Εμπορικές Συναλλαγές Νόμος του 2012 (2022), https://www.cylaw.org/nomoi/arith/2022_1_227.pdf

²⁸ The Netherlands, Article 6(119a) Statutory interest for commercial transactions, Dutch Civil Code, <http://www.dutchcivillaw.com/legislation/dcctitle6611bb.htm>

²⁹ Croatia, Act on Financial Operations and Pre-Bankruptcy Settlement (Zakon o financijskom poslovanju i predstečajnoj nagodbi), Official Gazette no. 108/2012, <https://www.zakon.hr/z/543/Zakon-o-financijskom-poslovanju-i-predste-%C4%8Dajnoj-nagodbi>

³⁰ European Commission (2022), Study on building a responsible payment culture in the EU – Improving the effectiveness of the Late Payment Directive (2011/7/EU), Publications Office of the European Union, <https://data.europa.eu/doi/10.2873/34185>

³¹ Ireland, Construction Contracts Act 2013, <https://www.irishstatutebook.ie/eli/2013/act/34/enacted/en/html>

third party. That piece of legislation also sets stricter payment terms for the construction sector. In Denmark, there is a [Building and Construction Arbitration Board](#) that offers dispute resolution.

At the international level there is a [European construction sector observatory](#). One of its mandates is supervision of payment behaviour in the construction sector in the EU and the UK. Recently, the Commission has initiated a pilot project in Belgium to run mediation sessions with the view to solving payment disputes in the construction sector.

The agri-food industry

The agri-food sector is subject to specific regulation on late payments compared with other sectors. These specificities are set out in [Directive \(EU\) 2019/633](#)³² on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. The reason for unique rules in the agri-food sector originates in imbalanced bargaining powers between suppliers and buyers and the uniqueness of agri-food products. The imbalance can create a situation whereby one of the parties uses its position of power unfairly, for instance by paying late. Notably, certain products can only be produced or harvested at certain times of the year, while others remain fresh for a limited time only. This requires product delivery to be completed quickly, so cancellation of an order can heavily impact the producer's finances. It was therefore deemed necessary to set up specific requirements to ensure fair payment conditions for all parties.

As observed in more depth in the case studies, the transport sector in Spain has developed a specific regime on enforcement measures.

SPECIFIC G2B MEASURES

In addition to variations in implementation among Member States and sectors, some countries have introduced specific enforcement measures for government-to-business (G2B) transactions. As illustrated below, these measures are generally crafted in a manner that makes replication for late B2B payments unfeasible.

Italy

In Italy, an enforcement mechanism related to G2B transactions was drafted in 2018 and implemented in 2020³³. Italian authorities had at this stage been warned on multiple occasions by the European Commission about systematic long delays in payments made by public authorities. In response, the Ministry of Economy and Finance set up a system to track all G2B invoices to ensure public authorities comply with national legislation.

Importantly, the reform that was introduced in 2020 set different levels of sanctions for public administrations. The magnitude of the sanctions depends on two variables: the average delay time³⁴ and the sector where the administration is established. With regard to the latter, the sectors identified in the legislation are divided as follows: national healthcare bodies; state administrations that adopt a financial accounting system (local authorities, municipalities, etc.); and those that adopt an economic accounting system (chambers of commerce, universities, etc.).

³² European Commission, Directive (EU) 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0633>

³³ Italy, Law No 145/2018, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2018-12-30;145!vig=>

³⁴ Calculated based on invoices received and expired in previous years.

For public authorities holding financial accountability, the law requires them to establish a guarantee fund (Commercial Debt Guarantee Fund)³⁵ to which they allocate part of their budget. If they fail to pay invoices on time, the sanction involves freezing a portion of the funds in the Guarantee Fund. The portion that will not be available to use until they regularise the payments will depend on the average delay time. More specifically, 1 % of the funds relating to expenditure for the purchase of goods and services will be frozen if the average delay time is between 1 and 10 days; 2 % if the average delay time is between 11 and 30 days; and 3 % if the average delay time is between 31 and 60 days. Moreover, if the average delay time is over 60 days or if the residual debt is not reduced by 10 % on a year-by-year basis, then 5 % of the funds will be frozen³⁶.

In contrast, sanctions for late payments by public bodies using an economic accounting system target their intermediate consumption³⁷. Similar to the previous case, the sanctions applied are linked to the average number of days delayed. This means that these types of public authorities must reduce their costs for intermediate consumption by 1 % in the current year (compared with those recorded in the previous year) if their average delay time is between 1 and 10 days. That proportion increases to 1.5 % if the average delay time is between 11 and 30 days, and to 2 % if it is between 31 and 60 days. Finally, if the residual debt is not reduced at least by 10 % on a year-by-year basis or the average delay time is over 60 days, then the public administration must reduce its costs of intermediate consumption by 3 % compared with consumption for the previous period³⁸.

In addition, national health service entities are also sanctioned for failing to meet payment times. In this case, the measure established in the legislation³⁹ is addressed at general and administrative directors of the public healthcare administrations, companies and bodies and their performance bonus, 30 % of which is tied to payment behaviour. If a health authority fails to pay its creditors within the specified terms, the portion of the director's bonus⁴⁰ tied to good payment performance could be cut. The applicable sanctions depend, as in the previous cases, on the average delay time. If it is between 1 and 10 days, then the bonus is reduced by 10 %; if it is in between 11 and 30 days, it is reduced by 25 %; and if the average delay time is between 31 and 60 days, then the bonus is cut by 50 %. The most severe action involves cutting the full part of the bonus tied to meeting payment deadlines (30 % of the performance bonus). This may happen if the residual debt is not reduced by 10 % on a year-on-year basis or if the average delay time is over 60 days⁴¹. The cut in performance bonuses is currently being discussed for further expansion to all public administrations but the final values remain to be specified.

Moreover, in Italy the payment performance of all public administrations is made public, following the name and shame principle. Therefore, being a bad payer entails reputational damage for public administrations.

³⁵ Article 1(862) of Law No 145/2018.

³⁶ Article 1(862) of Law No 145/2018.

³⁷ Intermediate consumption refers to the value of the goods and services that are used during the production process or service.

³⁸ Article 1(864) of Law No 145/2018.

³⁹ Italy, Law No 145/2018, <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2018-12-30;145!vig=>

⁴⁰ The bonus of the directors is conditioned on meeting a specific objective aimed at respecting payment times, which represents at least 30 % (Article 1(865) of Law No 145/2018).

⁴¹ Article 1(865) of Law No 145/2018.

Spain

Spain is another country with specific measures to curb late payments by public authorities. Successive reforms have been carried out over the last few years related to Spanish G2B transactions with the aim of eliminating late payments in the public sector.

One of the main initiatives promoted by the Ministry of Finance and Public Administration has been the creation of funds for financing payments to suppliers, as a key mechanism to support local authorities and autonomous regions with their payment obligations. These plans have gone through different phases over the years, adding new mechanisms of financing as well as including additional entities and autonomous communities.

The prime purpose of the scheme is to finance, with conditions, the stock of unpaid invoices issued to public administrations and to guarantee their compliance with payment deadlines. In order to achieve this, extraordinary and structural measures have been taken. Among the first was a supplier payment plan established for autonomous regions and local entities to finance the unpaid invoices. It entailed the grant of 10-year loans to public authorities, provided that certain fiscal conditions were met (an adjustment plan⁴²). A Regional Liquidity Fund was also set up for autonomous regions to finance suppliers⁴³. In both cases, payments were made directly to suppliers.

Additional measures were put in place for local authorities facing financial issues⁴⁴. For instance, refundable advances, the refinancing of debt and a reduction of the withholding of governmental taxes were some of the initiatives implemented. However, for local entities to benefit from such financial support, they had to ensure compliance with added fiscal conditions besides the submission of an adjustment plan. For instance, local authorities had to reduce their ordinary expenses by at least 5 %⁴⁵.

Among the structural measures taken, a law to control commercial debt in the public sector introduced the concept of an average payment period (APP), and required all public administrations to publish it. It further required public administrations to have a liquidity plan to ensure compliance in their payments to suppliers. Importantly, the law envisaged corrective and coercive actions for non-compliance with payment obligations. For instance, if the APP exceeds the maximum payment period established in the late payment regulation by 30 days, then the administration has to automatically disclose in its liquidity plan the amount that will be dedicated each month to reducing the APP. Moreover, the debtor has to indicate the measures to reduce expenses or increase its revenue to achieve its APP reduction. If the APP is exceeded by 60 days, then automatic preventive measures are applied (e.g. a warning communication). If this behaviour persists, the final action involves an automatic corrective measure taken by the ministry. This implies the withholding of resources from the funding mechanism while paying the suppliers directly.

⁴² Local entities and autonomous regions are required to submit to the responsible public authority an adjustment plan which includes the measures they intend to adopt to stabilise their budget and reimburse the credit drawn from the fund.

⁴³ Ministerio De Hacienda y Admiinistraciones Publicas (2014), Plan to eliminate late payments in public administrations, [https://www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Presentaciones/31-03-14-%20PLAN%20TO%20ELIMINATE%20LATE%20PAYMENTS%20\(mod.%20SGCAL\).pdf](https://www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Presentaciones/31-03-14-%20PLAN%20TO%20ELIMINATE%20LATE%20PAYMENTS%20(mod.%20SGCAL).pdf)

⁴⁴ Spain, Real Decreto-ley 8/2013, de 28 de junio, de medidas urgentes contra la morosidad de las administraciones públicas y de apoyo a entidades locales con problemas financieros, <https://www.boe.es/eli/es/rdl/2013/06/28/8>

⁴⁵ Spain, Article 26, Real Decreto-ley 8/2013, de 28 de junio, de medidas urgentes contra la morosidad de las administraciones públicas y de apoyo a entidades locales con problemas financieros, <https://www.boe.es/eli/es/rdl/2013/06/28/8>

In quantitative terms, a maximum of EUR 1.35 million was approved in 2023 to be distributed through the fund to finance local authorities for that year⁴⁶, while the needs of the fund for financing autonomous regions was estimated at EUR 34.5 billion⁴⁷.

⁴⁶ Spain (2023), El Fondo de Financiación a Entidades Locales distribuirá en 2023 un máximo de 1.350 millones de euros, <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/hacienda/Paginas/2023/060223-cdgae-fondo-financiacion-entidades-locales.aspx>

⁴⁷ Spain (2023), El Fondo de Financiación a CCAA para el tercer trimestre de 2023 asciende a 7.268,3 millones de euros, <https://www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2023/S.E.HACIENDA/13-06-23-NP-CDGAE-FONDO-FINANCIACION-CCAA-TERCER-TRIMESTRE-2023.pdf>

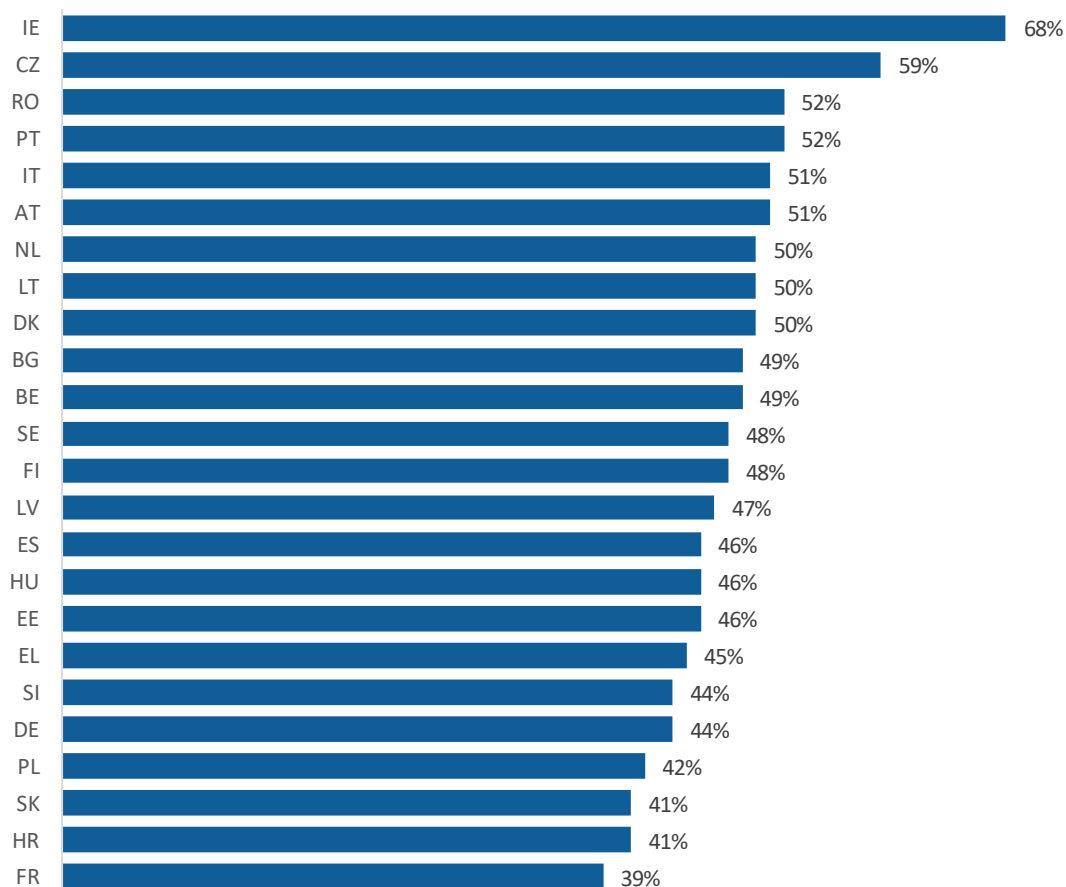
Enforcement measures: Empirical evidence

To better understand the usage patterns of the rights enshrined in the Late Payment Directive and to identify Member State differences, data from [Intrum's European Payment Report 2023](#), as well as additional data provided by the same source was analysed.

The Intrum European Payment Report is based on a yearly business survey, covering most Member States (except Malta, Luxembourg and Cyprus). The survey specifically investigates the causes, impacts and issues that companies encounter when being confronted by late payments. Furthermore, it contains information on the perception of the regulatory framework for late payments, including the enforcement measures laid down in the Late Payment Directive, as well as aspects of use and implementation of the same.

Figure 1 suggests that, for most surveyed Member States, half or fewer respondents indicated that they made at least some use of the interest and compensation rights in the Late Payment Directive. Yet, notable cross-country differences can be observed.

Figure 1: Respondents indicating they make use of the right to claim interest for late payments and compensation for recovery costs stated in the Late Payment Directive (% of respondents)⁴⁸



Source: Additional data provided by Intrum.

Only 6 of the 24 surveyed Member States had the majority of respondents indicate occasional or more frequent use of the right to claim interest for late payments as well as

⁴⁸ Data not available for Cyprus, Malta or Luxembourg.

compensation for recovery costs. Ireland (68 %) and Czechia (59 %) stand out for the highest levels.

The high use of the rights included in the Late Payment Directive in Ireland can be attributed to a shared understanding of the importance of fostering a robust payment culture. This is evidenced by Ireland's Prompt Payment Code⁴⁹, an industry-led voluntary initiative and commitment to ensuring timely payments. Fittingly, data from Intrum shows that Ireland boasts one of the highest percentages (30 %) of respondents engaged in a voluntary payment initiative. This showcases the high level of commitment, in Ireland, to cultivating good payment behaviours, likely influencing companies to opt for claiming interest and compensation on the money owed.

Conversely, Poland (42 %), Slovakia (41 %), Croatia (41 %) and France (39 %) show the lowest number of respondents who indicate that they claim interest and compensation for recovery costs. The percentage in Ireland is twice the one observed in France. At the same time, it is interesting to note that out of these four countries, three (Poland, Croatia and France) have additional national enforcement regimes in place for B2B payments (including administrative penalties) that are far stricter than those laid out in the Directive.

Creditors may have several reasons for choosing not to exercise the rights granted to them by the Directive. The most common one seems to be the fear of damaging the business relationship with their clients. It may also be that, in some countries, they face fewer issues with late payments in general, and therefore have no need to reclaim any owed money and interest. Additionally, the amount of the late payment, and the associated damage, may not be large enough to justify going through the process of reclaiming their owed money and interest, which can involve court proceedings.

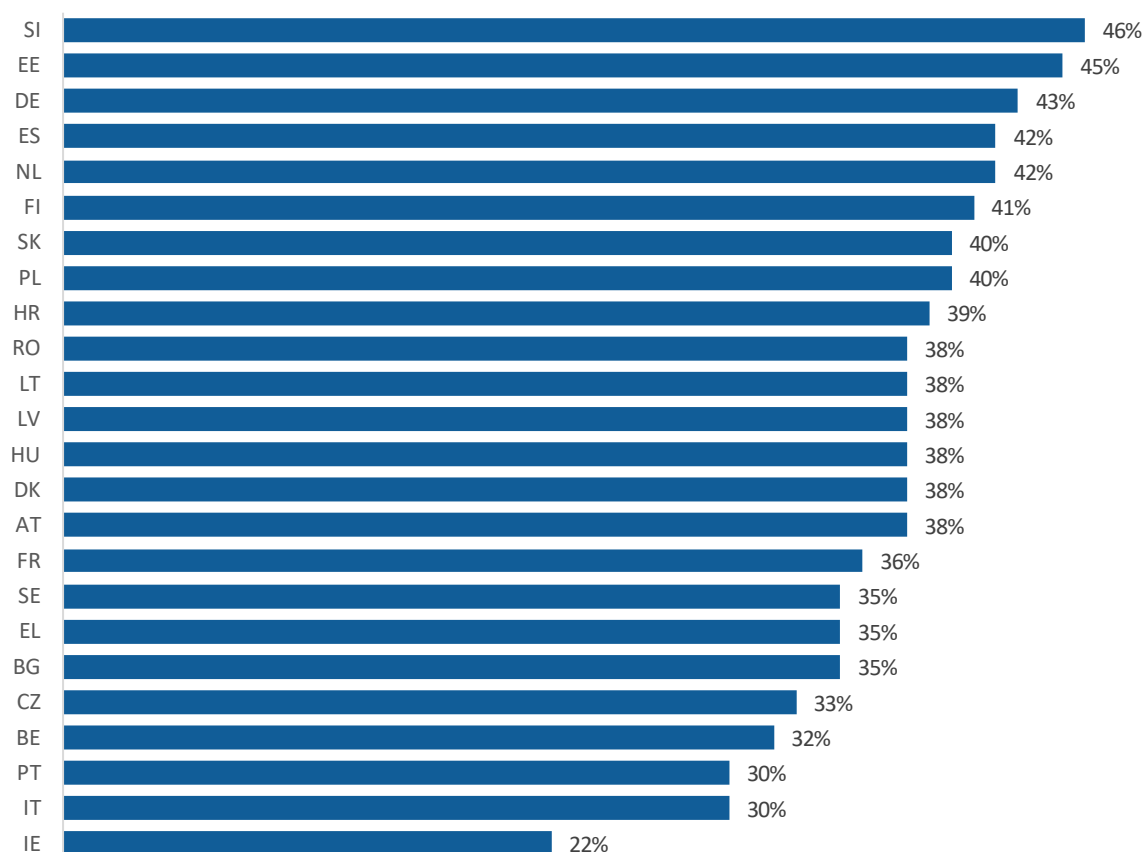
While Ireland emphasises more voluntary initiatives that strengthen the payment culture and increase acceptance of demanding interest on late payments, France, a country where the use of these rights is the lowest, seems to have favoured a different approach. As described in other sections of this report, the focus in France is more on punitive rather collaborative solutions. Significant powers are given to state actors to hand out administrative fines to late payers, and to publicise their negative payment behaviour, for example by listings on public websites. The existence of different types of administrative measures in different countries could decrease the overall will of enterprises to request their money.

Turning to implementation-related aspects which could potentially increase the use of enforcement measures, mediation or ADR mechanisms are worthwhile to consider. Mediation may have the advantage that the creditor does not have to resort to legal means to receive the amount. However, this could potentially damage the business relationship between the creditor and debtor, similar to a court case, and is therefore often avoided.

In the Intrum survey, interviewees were asked what would make them use the rights in the Late Payment Directive more often. One option was the addition of a mediation or ADR mechanism to the Directive. The responses point to considerable support for such mechanisms to increase the use of rights. In 20 of the surveyed countries, at least a third of respondents indicated this to be the case.

⁴⁹ Ireland, Prompt Payment Code, <https://enterprise.gov.ie/en/what-we-do/supports-for-smes/prompt-payment-code/>

Figure 2: Respondents indicating mediation/ADR mechanisms would increase use of measures in the Late Payment Directive for late payments (% of respondents)⁵⁰



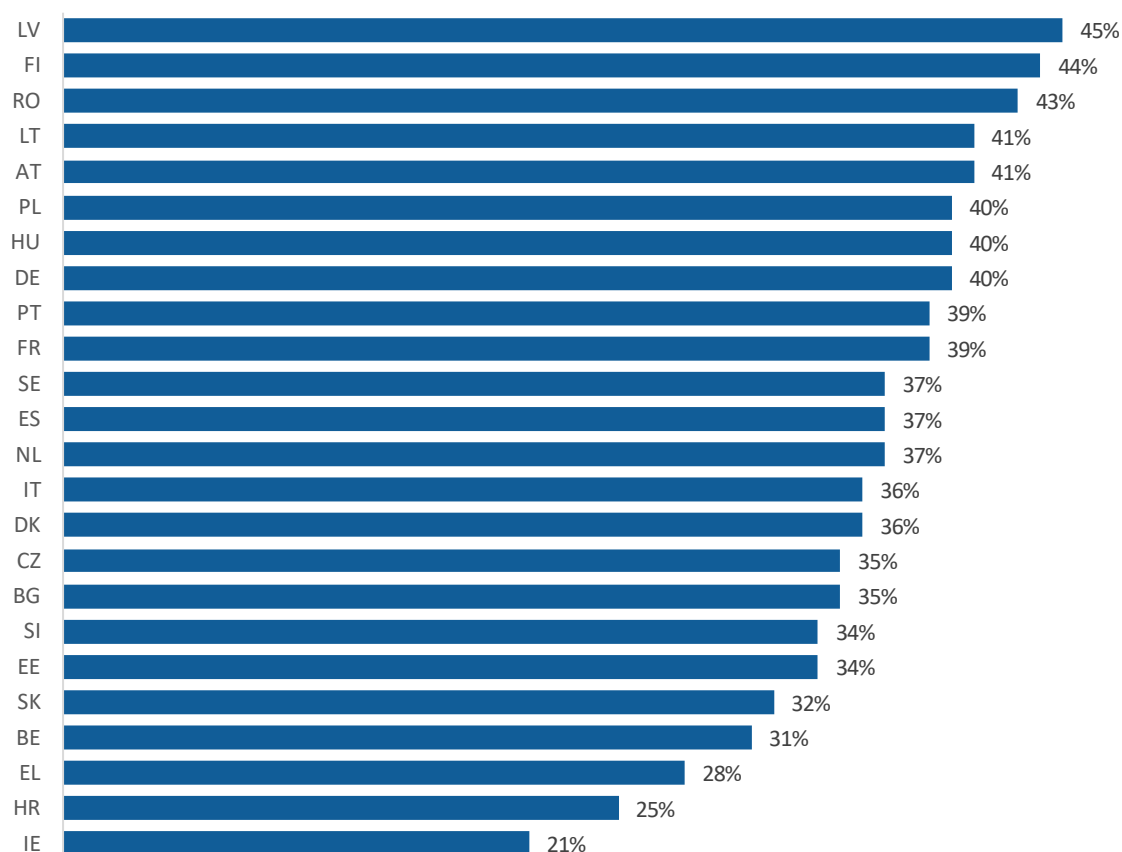
Source: Intrum European Payment Report 2023.

In Slovenia and Estonia in particular, almost half the respondents would support the introduction of mediation mechanisms to boost the use rights granted by the Late Payment Directive (46 % and 45 % respectively). Turning to the bottom of the list, fewer than a third of respondents would do so in Portugal (30 %), Italy (30 %) and Ireland (22 %). Ireland is notable in this sense, as there seems to be overall satisfaction with the rights enshrined in the Directive because they are very widely used. Therefore, it is reasonable to assume that the respondents in the country see no need for additional mediation or ADR measures to be part of the legislation.

Interestingly, improved enforcement of the rights granted by the Directive is considered just as important as the addition of mediation and ADR in increasing the inclination to claim those rights. More than a third of respondents in 20 Member States indicate that improved enforcement in their respective country would motivate them to seek interest and recovery costs on late payments more often.

⁵⁰ Data not available for Cyprus, Malta or Luxembourg.

Figure 3: Respondents indicating improved enforcement would increase claims of interest and compensation for recovery costs (% of respondents)⁵¹



Source: Intrum European Payment Report 2023.

This share exceeds 40 % for respondents in Latvia (45 %), Finland (44 %), Romania (43 %), Lithuania (41 %) and Austria (41 %). Notable among this group is Romania, which already ranks among the top group of countries making use of sanctions, implying that even if the sanctioning procedure is seen as useful overall, improvements can still be made. Conversely, Ireland has by far the lowest share of respondents wishing for better enforcement. This is consistent with Ireland’s low ranking in considering mediation as a potential improvement, highest position as a sanctions’ user across the surveyed countries, and, as stated previously, strong prompt payment culture.

⁵¹ Data not available for Cyprus, Malta or Luxembourg.

Beyond the Late Payment Directive

As mentioned earlier, several countries have gone beyond the provisions outlined in the Late Payment Directive and established their own enforcement systems for late payments, mostly in the form of administrative sanctions. This section, based on interviews, delves into the cases of three countries.

FRANCE

Initially created in 1991 under the Arrêté du 30 octobre 1991, amended in 1996, and replaced in 2006⁵², Banque de France was the first EU national authority to establish an observatory (L'Observatoire des délais de paiement) reviewing late payment developments. The Observatory tracks the average delay in B2B and G2B transactions based on the size of the company, the sectors of activity and the region of activity⁵³. The Observatory's Annual Report informs relevant stakeholders on the scale of late payments in France, cross-sectoral differences and variations in the effectiveness of measures, including those linked to enforcement, to reduce the practice of late payments.

Article L441-10 of the French commercial code sets out all general payment conditions. Payments between professionals are automatically set at 30 days following the receipt of a product or service, a payment term that has to be indicated on both the invoice and the sales contract. Under French legislation, this payment period can be extended but with certain restrictions. If indicated in the contract, the maximum payment term is 60 days following the date of invoicing or the end of the month plus 45 days. In cases where the due dates are not respected penalties will be applicable.

On top of the general rules, there are some specific, stricter payment terms in the legislation (Article 411-11 of the French commercial code) for specific sectors, many related to the food industry. Cattle products involve short payment periods, limited to 20 days. Expiring food products have a payment period limited to 30 days (this excludes seasonal products). Alcoholic beverages similarly have a 30-day payment term. The difference between the two lies in the delivery period. The first day of the payment term is calculated to start at the end of a 10-day delivery period for expiring foods. The delivery period for alcoholic beverages is calculated on a monthly basis. The last sector with specific requirements covers grapes and musts destined for wine production. Payment terms for these products are limited, like those for most other products in France, to 60 days or the end of the month plus 45 days.

Other sectors in France benefit from an extended payment period⁵⁴. Established under Article L441-6 (updated on 30 March 2023) of the French commercial code, the equipment used for the maintenance of green spaces and for agriculture must be paid by the end of month plus 55 days for the former and the end of month plus 110 days for the latter.

Updated on 1 January 2024, [Article L441-11](#) of the French commercial law encompasses payment conditions for specific sectors: agri-food, agricultural equipment, seasonal activities and the distribution of toys.

⁵² French Government, Arrêté du 30 octobre 1991 portant création de l'observatoire des délais de paiement (2006), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000865888>

⁵³ Banque de France (2022), *Rapport de l'Observatoire des délais de paiement*, <https://publications.banque-france.fr/liste-chronologique/rapport-de-lobservatoire-des-delaix-de-paiement>

⁵⁴ French Government, Article L441-6 of the French Commercial Code (2023), https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000047381736/2023-04-01/

The first paragraph defines the special conditions for agricultural products, fresh products, frozen products and products that expire. The payment periods for these products start on the day of delivery, following which is 30 days to make payment. Furthermore, the delivery of fresh products entails special payment conditions for periodic invoicing. The payment period of 30 days starts on the day of the final product delivery. Seasonal fruit and vegetable long-term contracts, *contrats d'intégration*, set up between producers and industry, are exempt from the standard 30-day repayment period. Rather than 30 days following delivery, it is instead counted from the end of the month of delivery. In the meat industry, stricter rules apply to fresh meat than to the agricultural sector, limiting payment to 20 days after delivery.

Agricultural and food products that do not fall under the category of fresh products have an extended payment period of 60 days, starting from the day the invoice was issued. If the invoice was issued by the debtor, the payment period is counted from the delivery date.

Under French legislation, equipment that is used for seasonal sport activities, such as skiing, is allowed an extended payment period of a maximum of 90 days after the invoice is issued. The leather industry is allowed a payment period of the end of the month plus a further 54 days. Other enterprises with exemptions are jewellers, watchmakers and goldsmiths, with the end of the month plus 59 days. The last sector with an extended payment period is the toy production industry, as its sales are highly seasonal. This implies that the sale of toys between producers and distributors have different payment periods depending on the month of the year at which the toys are ordered. Toys purchased in the period January to September have a 95-day payment limit after the invoice is issued. During the period October to December, the payment period is reduced to 75 days.

All extended payment periods related to agricultural equipment, seasonal sport activities, leather products, the production and import of watches and jewellery, and the sale of toys are only applicable if stipulated in the contract. If these have been omitted, the payment terms are those applicable under Article L411-10.

On enforcement mechanisms, in France the fees and statutory interest laid down in Directive 2011/7/EU have been transposed with some changes. Rather than implementing the minimum required by the Directive, French authorities have opted for further measures to discourage late payments.

In a situation where a payment is made after the agreed term, interest and compensation for recovery costs are due. The default annual interest rate referred to in sales contract is the ECB refinancing rate plus an additional 10 percentage points – an additional 2 percentage points compared with the minimum required in the Directive. It is nonetheless possible for the two parties involved in a transaction to settle on a lower interest rate. This lower interest rate cannot be inferior to three times the legal interest rate⁵⁵.

On top of the statutory interest, France has transposed the EUR 40 compensation fee. If a creditor is facing higher recovery costs than EUR 40, more compensation can be requested.

In addition to what is indicated in the Directive, French authorities have implemented administrative sanctions debtors paying after the due date of an invoice. The sanctions

⁵⁵ Service Publique (2023), Délais de paiement entre professionnels et pénalités de retard, <https://entreprendre.service-public.fr/vosdroits/F23211#:~:text=Le%20d%C3%A9lai%20de%20paiement%20est,il%20est%20pr%C3%A9cis%C3%A9%20au%20contrat>

imposed vary depending on whether the creditor is a natural or a legal person. The fine also increases if the late payment is a one-off event or recurring behaviour. While a natural person faces sanctions of up to EUR 75 000, a legal person can be subject to fines of up to EUR 2 million. The fine is paid to the supervisory authorities and is on top of the amount paid to a creditor⁵⁶. Yet the maximum amount can be [doubled](#) if the debtor fails to pay the imposed fine on time, or if the debtor has previously been fined for misconduct.

The French Directorate-General for Competition, Consumption and Fraud prevention (Direction Générale de la Concurrence, de la Consommation, et de la Répression des fraudes, DGCCRF), in its role of verifying payment behaviour, monitors and inspects companies, public authorities and firms benefitting from public guarantees, in order to evaluate their payment behaviour. Larger companies are generally targeted by the review, spread across different regions⁵⁷. The authority is allowed to sanction firms that have paid their invoices excessively late. A fine is handed out depending on multiple criteria.

A firm that pays its invoices late does not automatically face strong repercussions. Depending on the firm's past behaviour, there are different levels of warnings. If a debtor is late with payment and the authority evaluates the breach as 'non-significant', a warning in the form of a compliance request will be sent. The warning includes a request to pay all delayed invoices and informs the debtor of a future inspection. If at the second inspection the delayed payments have not been settled, the debtor could be fined.

If the breach of contract is deemed more significant, the French authorities will consider it an injunction. In this case, the debtor will be required to immediately act in order to halt all illicit behaviour. This acts as a last warning before receiving a fine.

If a severe breach is observed through inspection, authorities will launch a procedure and prepare a report. The process entails an administrative fine to be paid.

Finally, during checks when French authorities verify the good behaviour of targeted firms, they do not limit their checks to invoices that are to be paid by the firm. Authorities will also check the received payments, identifying whether there are invoices that have not been paid to an undertaking or which have been paid late. This also helps in the identification of other late payers for further inspection.

Throughout 2022, the DGCCRF reviewed [1 219 companies](#), split between public authorities, companies benefitting from public guarantees and (the large majority) private companies. The reviews for 2022 revealed a slight increase in the prevalence of late payments, up from 32 % in 2021 to 33.2 %. There was nevertheless a decrease in the number of fines handed out, from 227 in 2021 to 194 in 2022, and a smaller total amount collected, down from EUR 40.7 million to EUR 33.5 million.

On top of distributing fines, French supervisors have also set out soft sanctioning measures to accelerate the payment of outstanding late payments. This includes using a name and shame approach. The debtor is requested, at its own cost, to publish any sanction for which they have been liable on a relevant regional platform where they conduct business. The listing on a regional platform is complemented by a listing on the webpage of the DGCCRF. Still, an exemption applies for the systematic publication of sanctioning. Public entities falling under public procurement law are not required to publish the receipt of fines due to the late payment of invoices.

⁵⁶ Ibid.

⁵⁷ Observatoire des délais de paiement (2022), Rapport Annuel, Le contrôle des délais de paiement reste une des missions prioritaires de la DGCCRF.

French businesses facing overdue payments often turn to an ombudsman in order to solve any contractual difficulties, including those related to late payments. The ombudsman in this case would act as a mediator between the two contractors, ensuring an optimal outcome for creditors. This also helps to resolve multiple customer-to-supplier relationships simultaneously⁵⁸. Going to an ombudsman is less aggressive than making a claim, and maintains better terms between the parties.

The results of these measures by French authorities are yet to be statistically confirmed, as some of them are recent changes that have not yet had time to affect outcomes.

SPAIN

In Spain, the transposition of the Late Payment Directive 2011/7/EU was carried out through the application of Spanish Law 4/2013⁵⁹ (Real Decreto-Ley 4/2013) of 22 February 2013.

The Spanish transport sector had a special regime for fighting late payments because of the structure and main characteristics of the sector, which is composed of a large number of SMEs. These companies are especially vulnerable to late payments, causing them significant financial problems, solvency issues or even bankruptcy.

Even though many rules have been implemented with regard to late payments in Spain, none of them have been sufficient to discourage the continuation late payments in the transport sector. In this context, in October 2021, a special enforcement regime for late payments in the Spanish transport sector was established by Spanish Law 13/2021⁶⁰, amending Law 16/1987⁶¹ to combat late payments in the road transport sector. In particular, the introduction of this law arises from the need to sanction non-compliance with the maximum legal payment term of 60 days, as established by Spanish Law 3/2004⁶², to protect the transport companies.

Importantly, with the implementation of Law 13/2021, the Spanish Ministry of Transport became the designated enforcement agency with the competence to act in matters of late payment related to transport contracts⁶³. This includes, for example, the power to coordinate inspections and apply administrative sanctions. The ministry also coordinates the **transport arbitration boards**, for the resolution of diverse transport conflicts.

These transport arbitration boards constitute an important instrument for the transport sector, which works in parallel to the court to resolve transport disputes, as established in Article 37 and Article 38 of Spanish Law 16/1987. Their main objective is to resolve claims

⁵⁸ Interviews.

⁵⁹ Spanish Ministry of the Presidency, Royal Decree-Law 4/2013 of 22 February, on measures to support entrepreneurs and stimulate growth and job creation. <https://www.boe.es/eli/es/rdl/2013/02/22/4>

⁶⁰ Spanish Ministry of the Presidency, Law 13/2021 of 1 October, amending Law 16/1987, of 30 July, on Land Transport Organisation in terms of offences relating to the rental of vehicles with drivers and to combat late payment in the field of road freight transport, as well as other regulations to improve management in the field of transport and infrastructure, <https://www.boe.es/eli/es/l/2021/10/01/13>

⁶¹ Spanish Ministry of the Presidency, Law 16/1987 of 30 July, on Land Transport Regulation, <https://www.boe.es/eli/es/l/1987/07/30/16/con>

⁶² Ibid.

⁶³ Spanish Ministry of the Presidency, Royal Decree 645/2020 of July 7, which develops the basic organisational structure of the Ministry of Transport, Mobility and Urban Agenda, <https://www.boe.es/buscar/act.php?id=BOE-A-2020-7508>

related to transport contracts⁶⁴, with significant advantages in terms of the time and resources needed compared with those of a judicial court. They empower transport companies, particularly SMEs, to claim interest and compensation for the recovery costs for late payments, without the need to go to court.

The transport arbitration boards depend on regional transport councils and are made up of different parties. For a start, each board has a president who is a lawyer and also part of the public administration. Other members represent transport companies, as well as loading companies (clients of the transport companies). There could also be a consumer association representative in cases where the affected party is a final consumer⁶⁵.

Importantly, these arbitration boards have the competence to directly act when transport conflicts arise for invoices up to EUR 15 000. However, in some cases they may not have the competence to proceed, for instance if the parties agreed in a contract to not submit to a decision by the transport arbitration board before carrying out the transport service. In any case, currently significant volumes of claims are received and processed by the transport arbitration boards given the maximum claim threshold. Furthermore, the board's final decision has the equivalence of a court ruling, although with maximum processing periods of 4 to 6 months, which represent much shorter periods than those of judicial sentences.

It is particularly important at this point to highlight the different types of claims that can be made by an injured party when becoming aware of any infringement related to transport contracts. A claim can be made through *administrative means*. That is, the injured party can make a complaint to the transport authority. If the inspection office verifies that there is an infringement, then the infringing company will receive an administrative sanction to stop it from continuing the illegal action. Yet, under this type of claim, there is no compensation for the affected party.

In contrast, a creditor could also make a *civil or commercial claim*. The main difference with the administrative claim is that the injured party has the right to claim late payment interest, as well as the recovery costs. In addition, if a transport company decides to make a claim via civil or commercial means, its identification will be mandatory, unlike the procedure under the administrative claim, which can be anonymous. In this sense, the injured party must go to court or a transport arbitration board if the transport cost is equal to or less than EUR 15 000.

However, going to court or to an arbitration board does not seem to be a common course of action taken by injured parties. That is because, particularly in asymmetric relationships, it may represent a significant risk of losing a client, while the financial compensation does not represent a significant amount compared with the time and resources needed to carry out the judicial process. In this sense, claiming through these means is usually done after the commercial relationship between the parties has concluded.

Despite that, the establishment of transport arbitration boards has generated good results in the Spanish transport sector, especially due to the associated quick and free procedures, as well as their high degree of specialisation in the sector, as evidenced by their representatives.

⁶⁴ For more information on the transport arbitration boards, see <https://www.mitma.gob.es/transporte-terrestre/servicios-al-transportista/juntas-arbitrales/juntas-arbitrales-del-transporte-funcionamiento>

⁶⁵ Based on a Fenadiser interview that CEPS carried out on 19 September 2023.

With regard to administrative sanctions for late payments, the Spanish law establishing the sanctioning regime previously mentioned⁶⁶ determines different types of infringements, which are divided among very serious and serious cases, depending on the cost of the transport⁶⁷. If the cost exceeds EUR 3 000, then the infringement is qualified as very serious. If the cost is equal to or less than EUR 3 000, then the infringement is determined to be serious, and penalties are established accordingly, as indicated in Article 143.1 of Law 13/2021 (see Figure 4).

Figure 4: Administrative sanction amounts based on the cost of transport (in EUR)

Cost of transport	Sanctions
Less than 1,000	From 401 to 600
Between 1 000 and 1 500	From 601 to 800
Between 1 501 and 3 000	From 801 to 1 000
Between 3 001 and 4 000	From 1 001 to 2 000
Between 4 001 and 6 000	From 2 001 to 4 000
Above 6 000	From 4 001 to 6 000
Repeated infringement above 6 000	From 6 001 to 18 000

Source: Compilation by CEPS based on Fenadismar data.

In addition, Article 144 of Law 13/2021 states that the competent authority will publish, in a periodic manner, the resolution of sanctions that have been confirmed through an administrative or judicial process. The regulation envisages the publication of a **list of sanctioned companies**⁶⁸, which is published every 6 months and is publicly available on the Ministry of Transport’s website. Such a list was published for the first time at the end of June 2023. It includes 64 non-compliant road transport firms. The sanctions applied start from EUR 701, with certain cases reaching up to EUR 16 000 and EUR 25 000. Essentially, the main purpose of publishing this list is to name and shame debtors. The fact that a company appears in such a list affects its reputation as a payer, which directly impacts its public image. In consequence, a transport company (or any other company) will be able to check that list of defaulters and decide whether to start or continue a business relationship with the sanctioned enterprise given its history as a payer.

Besides the sanctions, the Ministry of Transport also provides a tool that allows for better identification of transport infringements, called an **anonymous complaint mailbox**,

⁶⁶ Spain, Spanish Law 13/2021 of 1 October, amending Law 16/1987, of 30 July, on Land Transport Organisation in terms of offences relating to the rental of vehicles with drivers and to combat late payment in the field of road freight transport, as well as other regulations to improve management in the field of transport and infrastructure, <https://www.boe.es/eli/es/l/2021/10/01/13>

⁶⁷ Generally, the transport cost is the amount for which the invoice has been issued.

⁶⁸ Ministerio de Transportes, Movilidad y Agenda Urbana (2023), Publicación de sanciones en vía administrativa y/o judicial en virtud de lo dispuesto en el artículo 144 de la ley 16/1987 de 30 de julio de ordenación de los transportes terrestres, https://www.mitma.gob.es/recursos_mfom/sanciones_firmes_144.1_lott_-_hasta_30_06_2023.pdf

which is available on its website⁶⁹. Its chief purpose is to enable any person or company aware of any infringement of the transport regulations to make a claim. For example, if a transport company has a client that is not paying within the expected terms, this complaint mailbox can be used to inform the transport authority about this irregularity. In the first place, the claimer needs to identify the client and indicate the associated payment period (e.g. 80, 90 or 100 days). Based on this claim, the transport authority will request the debtor to submit all relevant documentation (e.g. invoices from its suppliers, established payment terms and effective payment dates) in order to review it and decide whether any irregularity exists that warrants sanction.

One important aspect of the anonymous complaint mailbox is that claimers are not required to identify themselves. This is especially relevant because many companies are reluctant to do that owing to the risk of losing a client. Moreover, in numerous cases, the debtor of the claiming company could either be its sole client or one that represents a large share of its turnover. This usually happens when there is an asymmetry in the relationship between the companies, for example, an SME whose client is a large company.

In addition, the Ministry of Transport is also competent to carry out **ex officio inspections**, to monitor late payments. The implementation of this action started at the beginning of 2023, and it gives the supervisor the power to request invoices, the payment methods used, etc., from the client of a transport company for verification.

Even though there has been no impact assessment of the mentioned regulations so far, data shows the development of the main late payment indicators in the transport sector. Such data is available through the Observatory of late payments in the transport of goods by road, an initiative of the National Federation of Spanish Transport Associations (Federación Nacional de Asociaciones de Transporte de España (Fenadismer)). Fenadismer represents the interests of European transport companies in Spain and brings together more than 32 000 transport companies, which are all SMEs.

In addition, Fenadismer is a member of [the UETR](#), which represents more than 200 000 road transport undertakings in Europe. Fenadismer⁷⁰ created the Observatory in July 2012. Since then, a monthly analysis has been carried out to assess the trend in payment periods for about 800 transport companies, as well as the different payment methods used and the level of compliance by companies with the late payment regulation. The assessment is based on a monthly survey addressed to transport companies that are owners of the heavy vehicles of national public services.

The Observatory analysis shows that the Spanish transport sector has seen satisfactory and exemplary results over the last two years owing to the implementation of an enforcement regime together with the measures adopted to fight late payments. Indeed, this is evidenced in the decrease of the average payment periods since implementation of the regulation, endorsed by its members (Figure 5).

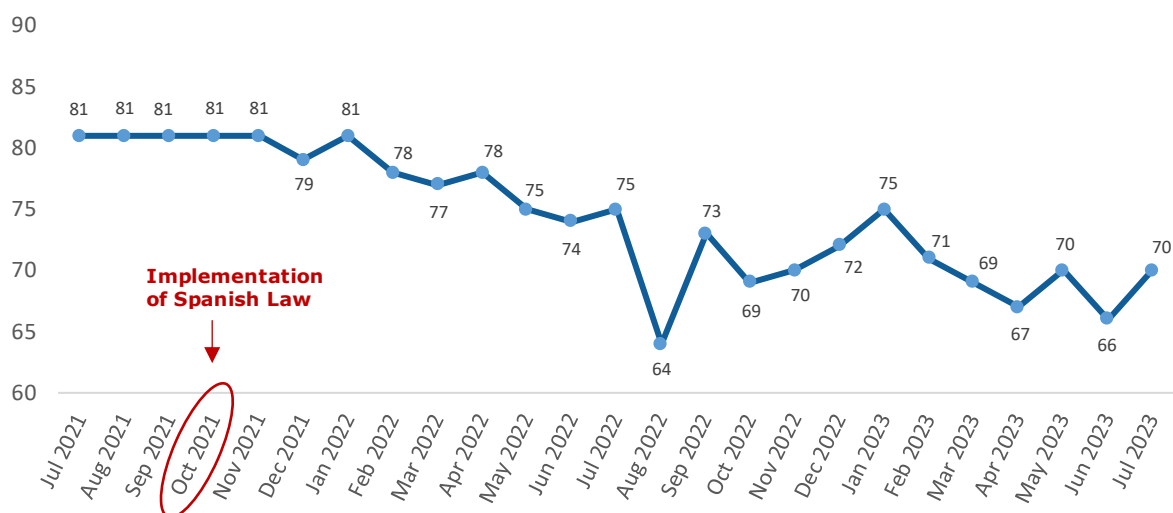
As shown in Figure 5, the APP in the transport sector for the last two quarters of 2021 was over 80 days. This number has fallen, and it currently stands at an average of 70 days.

⁶⁹Ministerio de Transportes, Movilidad y Agenda Urbana, Buzón de Inspección de Transporte por Carretera, https://sede.mitma.gob.es/SEDE_ELECTRONICA/LANG_CASTELLANO/OFICINAS_SECTORIALES/TTE_CTRA/INSPECCION/buzon_inspeccion_tecnica/

⁷⁰ In collaboration with Fundación Quijote para el Transporte.

The lowest APP occurred in August 2022⁷¹, which is very close to the maximum legal payment term of 60 days.

Figure 5: Average payment period in the road transport sector in Spain, July 2021-July 2023 (number of days)



Source: Elaboration by CEPS based on Fenadismer data.

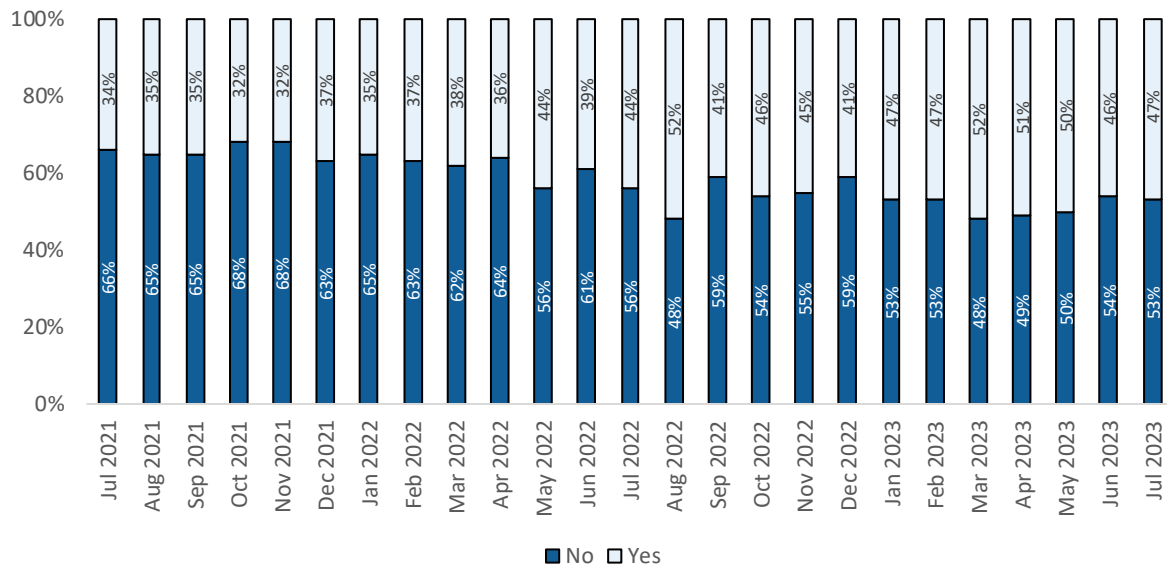
In addition, for the last two years the Observatory has analysed the trend in the level of compliance in Spain with Law 3/2004 on late payments (Figure 6). In this case, the members of Fenadismer have witnessed an increase in the level of compliance of their clients with the Spanish law on late payments, going from 34 % in July 2021 to 47 % in July 2023. Once again, the peak was in August 2022, when the level of compliance reached its maximum over the last two years. Notably, the same level of compliance (52 %) also occurred in March 2023. This result could in part be explained by the transport inspections carried out by the Ministry of Transport, as included in the national plan for transport inspections for 2023⁷². Yet, out of the 48 % that did not comply with the legislation, 43 % of the members indicated that their clients pay after 90 days, and around 13 % continued paying after 120 days⁷³.

⁷¹ As stated by Fenadismer, the average payment period for August 2022 should be taken with caution since it is part of the summer period, <https://www.fenadismer.es/fuerte-reduccion-de-los-plazos-de-pago-en-transporte-en-agosto/>

⁷² Ministerio de Transportes, Movilidad y Agenda Urbana (2023), Plan de inspección de transporte en carretera 2023, https://www.mitma.gob.es/recursos_mfom/plan_inspeccion_transporte_carretera_2023.pdf

⁷³ Fenadismer (2023), Morosidad de transporte en Marzo: Por fin son más los que cumplen que los que no, <https://www.fenadismer.es/morosidad-de-transporte-en-marzo-por-fin-son-mas-los-que-cumplen-que-los-que-no/>

Figure 6: Level of compliance with Spanish Law 3/2004⁷⁴ on late payments, July 2021-July 2023 (%)



Source: Elaboration by CEPS based on Fenadismer data.

POLAND

The Late Payment Directive (Directive 2011/7/EU) was implemented in Poland through an Act on payment terms in commercial transactions of 8 March 2013⁷⁵. This piece of legislation was amended in October 2015. However, the most significant changes took place in an act on 19 November 2019⁷⁶, which amended the original name of the 2013 legislation to 'the Act on counteracting excessive payment delays in commercial transactions'.

The 2019 amendments had the specific aim of improving the legal environment in which the parties to commercial transactions operate in order to reduce payment backlogs. The reason for the amendments, as stated in a Parliamentary opinion, was that 'EU regulations are completely insufficient because they have not prevented the constant practice of entities taking advantage of their market position to actually finance their own activities by forcing the use of deferred payment deadlines or even failure to pay SMEs on time'⁷⁷.

Thus, the 2019 Act introduced new measures that go well beyond what is established by the European Directive. They refer to 30 days as the maximum time for G2B payments and 60 days for B2B ones, without the possibility of extension. Many of these new measures refer to monitoring late payments and guaranteeing enforcement.

⁷⁴ Directive 3/2004 on late payments establishes a maximum payment term of 30 days, which can be extended to 60 days if the parties agree to do so.

⁷⁵ Polish Ministry of Economy, Act of 8 March 2013, on payment terms in commercial transactions, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20130000403>

⁷⁶ Polish Ministry of Economy, Act of 19 July 2019, amending certain acts in order to reduce payment backlogs, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001649>

⁷⁷ Parliament Print (2019), Assessing the consequences of regulations provided for in the government's draft act on amending certain acts to reduce payment bottlenecks. Opinions by the Analytical Office of the Chancellery of the Parliament, form No 3475, 1-14, <https://www.sejm.gov.pl/Sejm8.nsf/opinieBAS.xsp?nr=3475>

Creditors' rights established by the European Directive

The 2019 Act established that the statutory interest should be 2 percentage points higher than the minimum level set by the Directive. That way, choosing to retain money at the expense of a supplier becomes more expensive than obtaining money from, for instance, a commercial loan.

In addition, the compensation for recovery costs is proportional to the amount of the invoice, so it represents a greater financial burden and debtors are deterred from paying late. Three levels of compensation amounts were thus introduced, namely:

- EUR 40 – if the value of the invoice does not exceed PLN 5 000 (around EUR 1 130);
- EUR 70 – if the value of the invoice is higher than PLN 5 000 but lower than PLN 50 000 (around EUR 11 300);
- EUR 100 – if the value of the invoice is equal to or higher than PLN 50 000.

The 2019 Act also adds provisions to protect creditors' rights. For instance, in the past the court procedure required to claim interest and the compensation of recovery costs was considered too burdensome and strict, particularly for SMEs. Therefore, the 2019 Act simplifies court procedures in cases in which an undertaking has not been paid within 3 months after the invoice due date and the value of the transaction does not exceed PLN 75 000 (around EUR 17 000). The creditor will only need to prove lack of payment; it is not necessary to show a legal interest in obtaining protection as before. This requirement, however, remains for transactions above PLN 75 000.

The amendments also consider any unjustified extensions of payment terms as an unfair competition act. This means that the creditor who has suffered such unfair competition can demand a cessation of the unfair activities or removal of their effects, as well as compensation for the damage caused.

Administrative sanctions

All the previously described measures refer to the demands made by an undertaking that has not been paid or has been paid late. Yet, Polish authorities identified that SMEs in general do not use these tools often, as they could put the relationship with their clients at risk. To punish late payers without requiring a complaint by a creditor, and following the example set by the French authorities, the Act introduced administrative sanctions.

It includes penalties imposed when the sum of a given company's late payments totals at least PLN 2 million (around EUR 450 000) during the last 3 months. This means that it effectively only applies to companies of a significant size. Along with these penalties, the names of the companies against which proceedings have been initiated are made public⁷⁸, as well as the full text of each decision to initiate a proceeding, following the name and shame principle. When a penalty is imposed on a company, the decision is made public as well.

Furthermore, the Act introduced provisions to recognise the impact of late payments on income taxes, which can also be considered a sanction for the debtor and a relief measure for the creditor. A creditor can reduce its tax base by the amount that has not been settled within 90 days from the invoice due date. In turn, the debtor has to add to its tax base

⁷⁸ UOKiK maintains a list of companies against which proceedings have been initiated: <https://uokik.gov.pl/bip/zatory-platnicze>

the amount of the unpaid invoice if it has not been settled in the 90 days from the payment deadline.

In addition, a mandatory transparency requirement was introduced for the largest companies, public and private, whose income exceeds EUR 50 million annually, to submit reports on payment times for commercial transactions conducted during the previous year. They need to report the value of the payments received and made, and provide breakdowns of specific periods (payments made within the specified payment term and a delay of up to 5 days, delays from 6 to 30 days, delays from 31 to 60 days, delays from 61 to 120 days and delays of more than 120 days).

This information is reported to the Ministry of Economic Development and Technology, which compiles and publishes it on its website⁷⁹ with the data of every company. Thus, undertakings that are considering doing business with those companies can check their payment performance. This also functions as a kind of name and shame approach, as the payment behaviour of big companies becomes public knowledge.

Enforcement authority

The 2019 Act appointed the [Office of Competition and Consumer Protection \(UOKiK\)](#) as the authority in charge of supervising compliance with the late payment legislation, with the right to impose enforcement measures such as financial penalties. In that regard, special procedures have been established to ensure that enforcement.

These procedures require the involvement of the National Tax Administration. Approximately every 3 months, this authority has to submit a report to the UOKiK on 'the likelihood of delays', which includes information on those entities that are likely to pay late based on data arising from VAT records.

There is also the possibility to anonymously notify the president of the UOKiK if there is a suspicion that an entity is paying late. Anyone can submit this notification. The UOKiK is then obliged to reply and explain whether a proceeding has been initiated. Anonymity was introduced to solve the problem of creditors not reporting debtors because it would damage their relationship with their clients. But this mechanism is seldom used, and the number of notifications is very low.

On the basis of the 'likelihood of delay' reports, notifications and its own research, the UOKiK conducts a probability analysis to identify which undertakings may have excessive delays (defined as involving at least PLN 2 million, or around EUR 450 000, for the last 3 months as explained above). If a high probability of late payment behaviour is detected, there are two actions the UOKiK can take, depending on how serious they think the offence is.

The first one is that the president of the UOKiK sends a summons to an undertaking without starting any formal proceeding. This is a preventive measure aimed at sending a warning to the enterprise to improve their payment behaviour, but also at clarifying some matters without initiating any formal action. This new solution was recently introduced and used in 2023 for the first time.

The second one is to initiate what the UOKiK calls a gridlock proceeding, which is a proceeding against a company for excessive delay in payment. The entity and its creditors will then be required to provide information and evidence linked to the commercial

⁷⁹ Polish Ministry of Economic Development and technology (2023), Sprawozdania o stosowanych terminach zapłaty, <https://www.gov.pl/web/rozwoj-technologie/sprawozdania-o-stosowanych-terminach-zaplaty>

transactions. An inspection may also take place. If an infringement is determined, then there will be an administrative sanction.

The final sanction is calculated via a formula and depends on the value of the late payment and the statutory interest, although other factors come into play such as the seriousness of the infringement, its circumstances, the cooperation of the entity, etc. There is the possibility to obtain a waiver if the reason for the late payment is that either the entity's clients have also paid late or *force majeure*. If it is not the first time that the entity has been sanctioned, then the fine will be higher.

In 2021, the UOKiK issued 21 decisions on excessive delays in payments and imposed penalties for a total amount of over PLN 1.4 million (approximately EUR 310 000). In 2022, the UOKiK issued 33 decisions for a total amount of PLN 11 million (approximately EUR 2.4 million). The highest penalty was over PLN 4 million (approximately EUR 900 000). In total, since June 2020, the UOKiK has initiated 138 proceedings. Among those, 100 have been concluded, with infringement not determined in only 3 of them. As stated above, the UOKiK makes public the name of companies against whom proceedings are initiated as well as the reasoning behind the proceedings.

There is no relevant proof of the effectiveness of the Polish 2019 Act and its sanction regime. An *ex-post* evaluation⁸⁰ was published in June 2022. However, the assessment cannot be considered representative as the data analysed refers to 2020 and 2021, which coincides with the very special circumstances brought forward by the Covid-19 pandemic.

Nonetheless, [a study conducted by the Mands research institute](#) on behalf of the National Debt Register in June 2020 on a representative group of 302 SMEs found that most respondents considered the amendments of the 2019 Act useful. Notably, 66 % found shortening the payment deadline to 60 days in B2B relationships useful, 59 % thought the same of the reporting obligation for large companies and 60 % of the sanction regime. The percentage is higher, 71 %, for the tax relief and similar, 63 % and 59 %, for the rise in interest rates and compensation for recovery costs⁸¹.

⁸⁰ Polish Ministry of Economy (2022), Ex-post evaluation of the Act of July 19, 2019 amending certain acts in order to reduce payment backlogs, <https://legislacja.gov.pl/docs/6/12355253/12846683/dokument543533.doc>

⁸¹ Ibid

Conclusions

The analysis conducted for this report shows that the enforcement mechanisms linked to late payments can be improved.

Examination of the available data, combined with interviews and desk research, shows that creditors' rights to a flat-rate compensation of EUR 40 for recovery costs and a statutory interest rate, as provided in the Directive, are very often not claimed. The main reason is that companies are reluctant to engage in a process that could damage their business relationships with their clients. This reluctance is often more pronounced when there is an imbalance of power in the relationship, notably when the creditor is an SME and the debtor is a significant source of the creditor's income. Moreover, such claims often require considerable resources (money and time), particularly when they involve a legal proceeding. This works as a deterrent for SMEs.

However, it is important to acknowledge that the Directive only establishes the minimum enforcement measures for countries. Member States have the possibility to take additional, and potentially stronger, enforcement measures, at both the national and sectoral levels. Several cases have been described in this report. Even so, at the moment there is little evidence of the effectiveness of these specific regimes, given that most of them have been implemented recently and a comprehensive evaluation has not been conducted.

The experience of Ireland and other EU Member States making greater use of enforcement measures indicates that the measures introduced by the Directive might suffice where a culture of prompt payment exists. As the case of Ireland suggests, a culture of good payment behaviour can be fostered by the promotion of and successful participation in voluntary industry agreements.

Furthermore, during the interviews conducted, stakeholders identified several measures that they considered to be good practice and which are often common to these specific regimes.

The establishment of an enforcement authority responsible for monitoring the payment performance of companies and their compliance with the late payment legislation emerged as a noteworthy example of good practice. Given creditors' reluctance to claim recovery costs and interest, having a specific authority that monitors company practices and can conduct *ex officio* inspections (like the French and Polish authorities and the Spanish transport ministry) is a step forward in combating late payments. This approach could be particularly valuable in Member States with high numbers of delayed payments.

There are different options for the set-up of these authorities and their monitoring methods. In Poland, for example, the enforcement agency is centralised and it accesses data from the tax authority. In contrast, the French system is regional with a focus on monitoring large companies, which are more likely to pay late than smaller ones⁸². Enforcement authorities also act on the basis of anonymous complaints. While this theoretically bypasses the issue of straining relations with a debtor by publicly initiating court proceedings against them, there is mixed evidence as to the effectiveness of this measure. In France and Poland, the stakeholders interviewed indicated that these complaints almost never occur, while the opposite was reported in Spain.

⁸² See the EU Payment Observatory's Annual Report 2023, https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive/eu-payment-observatory/observatory-analysis_en

Administrative sanctions in the form of monetary penalties, as illustrated in the cases of France, Poland and Spain, can also be effective. These penalties are usually proportional to the amount of the invoice. Consequently, the financial penalty for the debtor is significant enough to outweigh any benefit that could be gained from delaying a payment. The fact that the penalty is higher in the event of repetition acts as a further deterrent for systematic late payment behaviour.

In addition to administrative sanctions, introducing a name and shame practice, according to which the names of the sanctioned companies are publicised, emerged as another effective approach. Some companies are more concerned about reputational damage than monetary fines, as this can negatively affect future business relationships. Any other action aimed at increasing transparency and raising awareness about late payments and their adverse impacts can also contribute to a better payment culture.

Beyond the concern of damaging business relationships, the time and resources required to claim interest and recovery costs also constitute an impediment for the creditor. The procedure often results in lengthy court proceedings that can take years, which are often not worth it if the amounts involved are small. Using speedier and less costly procedures, as well as lowering the burden of proof for the creditor, as the transport arbitration boards in Spain have done, appears to be a good enforcement practice.

Softer enforcement measures, like ADR and mediation mechanisms, can offer quicker and more cost-effective solutions, which are also less intrusive than a claim leading to a court proceeding. These mechanisms could thus be preferable, particularly for smaller companies. Encouraging the adoption of these tools should be a priority for Member States.

Greater attention should be given to G2B transactions. While B2B transactions are difficult for authorities to monitor due to their high volume, there are fewer G2B transactions and these involve other government authorities. Furthermore, public authorities should lead by example with regard to late payments. Therefore, implementing systems to track G2B invoices, like the one in Italy, as well as specific enforcement measures targeting the public sector, could serve as a strong incentive for these institutions to comply with payment terms.

The recent European Commission proposal to review the Late Payment Directive incorporates some of the above-mentioned tools for enforcement, such as the establishment of an enforcement authority and the automatic application of interest and recovery costs.

Annex 1 – Stakeholder interviews

Organisation consulted	Country
Fenadismer, National Federation of Spanish Transport Associations (Federación Nacional de Asociaciones de Transporte de España)	Spain
Plataforma Multisectorial contra la Morosidad	Spain
French Ministry of the Economy, Finance, and Industrial and Digital Sovereignty	France
Ministry of Economy and Finance	Italy
Ministry of the Economy and Innovation of the Republic of Lithuania	Lithuania
Government Department of Enterprise, Trade and Employment	Ireland
Ministry of Economic Development and Technology	Poland
UOKiK, Office of Competition and Consumer Protection	Poland

In addition, on 6 October a thematic group meeting took place in the context of the Stakeholder Forum of the EU Payment Observatory to discuss this report. Feedback was provided by 30 stakeholders.

MedTechEurope supplied additional information on G2B payments in Spain. Intrum also provided non-public data on late payments.

