



EU Payment Observatory

Preventive Measures for Tackling Late Payments in B2B and G2B Transactions

1st Thematic Report

Written by Centre for European Policy Studies (CEPS) and VVA
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Abbreviations

B2B	business-to-business
BEIS	UK Department for Business, Energy and Industrial Strategy
CSR	Corporate social responsibility
DG GROW	The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
EEA	European Economic Area
EFTA	European Free Trade Association
EISMEA	European Innovation Council and SMEs Executive Agency
FECMA	Federation of Credit Management Associations (FECMA)
G2B	government-to-business
KBvG	Dutch Royal Association of Bailiffs (<i>Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders</i>)
LPD	Late Payments Directive
OSBC	UK Office of the Small Business Commissioner
PBAs	Project Bank Accounts
PPC	Commercial credits platform (<i>Piattaforma crediti commerciali</i>)
RGS	Italian State General Accounting Office (<i>Ragioneria Generale dello Stato</i>)
SME	Small to medium-sized enterprise

1. INTRODUCTION

This is the first thematic report prepared as part of the *EU Payment Observatory*¹.

The report covers preventive measures for late payments implemented in EU/EEA countries, as well as the UK. It is mostly based on country research carried out by VVA in early 2023. The topic of the report was also discussed at a thematic group meeting of the Stakeholder Forum on 9 June 2023.

In the rest of this section, we provide definitions of the preventive measures, as well as their typology, used in this study. Afterwards, we outline the methodology used for the analysis. Section 2 presents a quantitative overview of initiatives implemented at the country level. It is followed by more in-depth analysis of specific measures implemented by category of measure. Section 3 provides overarching conclusions.

1.1. Background

Late payments have a significant impact on businesses, creating liquidity problems and income loss, which in turn can impact companies' growth and employment. On 16 February 2011, Directive 2011/7/EU on combating late payment in commercial transactions (hereafter, the 'LPD') was adopted, replacing the earlier Directive 2000/35/EC. The LPD was considered necessary to address the disparities between Member States and improve the payment culture. It also became part of the EEA agreement, obliging EEA countries (Iceland, Liechtenstein and Norway) to adopt it.

Acknowledging the harmful practice of late payments and the need to tackle it, the LPD aims to reverse such practices and endeavours to contribute to a considerable improvement towards a culture of prompt payment. This includes, inter alia, the introduction of specific provisions on payment periods. In addition, recognising that prolonged payment periods and late payments by public authorities can lead to additional unnecessary costs for businesses, the LPD introduces specific rules on commercial transactions where companies supply goods or services to public authorities. These goals are acknowledged and set out in the preamble of the LPR.² Some of the specific provisions of the LPD cover preventive measures, which are the focus of this report. These include, particularly, the following:

- harmonisation of the period for payment by public authorities to businesses (within 30 days or 60 days in very exceptional circumstances); and
- contractual freedom in business commercial transactions (60 days unless expressly agreed otherwise and provided it is not grossly unfair).

Similarly, these terms can help businesses (particularly small to medium-sized enterprises, (SMEs)) decrease the financial strain which can occur as a result of late payments. In addition, this can contribute to the efficient functioning of supply chains down the line, as late payments by one customer can result in late payments by another, causing a domino effect. Late payment terms can contribute to disputes, resulting in costly processes of administration or dispute resolution, whereas with the mandate of stricter and clearer terms the possibility of ambiguity is alleviated, and potential disputes are avoided in advance. Finally, stricter and clearer payment terms can significantly improve the relationships between businesses (buyers and suppliers), helping to build stronger, more transparent and long-term partnerships.

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

² Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (2011) OJ L 48. See, e.g. Recitals 12 and 23.

By 6 August 2014, all Member States (at the time, including the UK) had codified the LPD provisions in national legislation. Nevertheless, the Member States have traditionally had different paying cultures and have also applied different legislative and non-legislative measures and tools to deal with late payments.

Setting strict payment terms is important, but there is also a need to implement other measures to effectively influence the payment practices. A 2018 study found that several preventive measures help to deter or avoid late payments, while also pointing out that, for instance, countries with stricter payment terms are generally 'characterised by a strong prompt payment culture'.³ It found that the effectiveness of these types of measures depends also on several factors, such as the level of enforcement, 'the national payment culture, the structure of the market and the persistence of imbalances of power'.⁴

In December 2021, the Fit for Future Platform, a high-level expert group supporting the Commission's work, issued an Opinion on further improving the effectiveness of the LPD and gave suggestions related to preventive measures as well.⁵ The Opinion advises, among other actions, increasing the transparency of payment terms through a mandatory or voluntary pledge from large companies to provide information on payment terms. This would help in achieving a shift in business culture and ensuring more transparency of payment terms. Other long-term recommendations included, for example, tightening up contractual payment terms to a maximum of 30 days for payments from a large company to SMEs.

In September 2023, the European Commission adopted a proposal⁶ for a regulation of the European Parliament and of the Council to revise the current LPD. The proposal lays down a maximum payment term of 30 days for all commercial transactions (both government-to-business, or G2B, and business-to-business, or B2B, transactions), and eliminates the current extension of the payment term to 60 days for some public authorities (e.g. hospitals). These stricter payment terms are accompanied by flanking measures such as enforcement and sanctions (e.g. automatic payment of interest and flat fee compensation), along with credit management and financial training for SMEs.

1.2. Definition of preventive measures and their types

A definition of preventive measures is presented below:

Preventive measures are initiatives targeting issues related to late payments that arise before the transaction takes place and which are designed to reduce or eliminate the occurrence of late payments in order to minimise the potential adverse effects on cash flow, relationships and overall financial stability.

Preventive initiatives addressing the issue of unfair payment practices can include many different elements, such as legislative measures, i.e. setting maximum payment terms (with appropriate enforcement of such legislation), and non-legislative measures. Non-legislative measures can be taken by the government, for instance, initiatives facilitating access to information on the payment practices of business partners, which can help in choosing more reliable ones. But they can also come from industry, for instance voluntary payment codes and

³ VVA and Milieu for the European Commission, *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, June – 2018, 29.

⁴ *Ibid.*, 30.

⁵ https://commission.europa.eu/system/files/2023-04/Final%20opinion%202021_SBGR2_06%20Late%20payments_fup.pdf.

⁶ https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4409

corporate social responsibility (CSR) activities. Another key element is education, as some businesses, especially SMEs, may lack knowledge of effective credit management.

There are many different types of preventive measures. A typology of them is presented in the table below.

Table 1. Typology of preventive measures addressing the issue of late payments

Group of measures	Description
Stricter payment terms	Provisions fixing stricter payment terms or shorter maximum payment terms
Transparency of payment practices	Mandatory rules on disclosure of payment behaviour or payment performance information, or rules on the introduction of databases and registries where information on payment practices is stored or published and can be consulted by companies to check the business practices and solvency of their potential business partners
Invoice management measures	Initiatives to improve cash flow such as e-invoicing or factoring ⁷
e-Procurement	Using e-procurement to particularly encourage SME participation
Financial mechanisms	The possibility of direct payments to subcontractors/suppliers in public procurement
Measures creating rights for suppliers	Requirements for the transparency of payment terms, including mandatory rules on disclosure of payment behaviour, introduction of databases and registries, etc.
	The right of suppliers to an advance payment, under certain conditions
Stricter payment terms in contracts between larger companies and SMEs	Provisions fixing stricter payment terms or shorter maximum payment terms particularly in B2B contracts involving larger companies and SMEs as parties
Obligations for larger companies and public authorities	Obligation for larger companies (possibly defined based on a minimum number of employees) and for public authorities to report their payment practices
Restriction of access to public funds	Subjecting access to public subsidies (including aid granted by a given Member State, by regional authorities and from EU funds) to the requirement of meeting payment deadlines
Introduction of specific criteria in public tender assessment	Establishing good payment performance as a criterion for assessing financial standing in public tenders
Obligations for larger companies when conducting business with SMEs	Obligation for companies with more than a certain number of employees to report information on payment periods, when purchasing goods or services from SMEs
Provisions applicable to contracts where one party is a third country	Obligations aimed at preventing late payments set out in international private law or in bilateral agreements between a Member State and a given third country
Credit management education and financial literacy training	Educational and training initiatives, particularly for SMEs, focused on promoting a better understanding of the impact of late payments and a general culture of responsible payment behaviour among businesses
Prompt payment codes	Codes or charters whereby signatories commit to respecting requirements such as payment terms

Source: study team.

1.3. Methodology

This report was drafted as part of the study team's work on the development of a repository of initiatives and documents addressing late payments in the Member States for the EU Payment Observatory (the observatory will be created within this project). With a support of a team of country researchers, we carried out desk research in 31 countries, i.e. the EU Member States

⁷ Factoring is a transaction in which a business sells its invoices, or receivables, to a third-party financial company, which then collects payment on those invoices from the business's customers. Factoring is known in some industries as 'accounts receivable financing'. For more information, see <http://www.rtsfinancial.com/guides/what-factoring>.

and EEA countries as well as the UK. The country researchers identified relevant initiatives and documents implemented in their respective countries. We also organised a thematic group online meeting of the Stakeholder Forum (9 June 2023) on the preventive measures. The outcomes of the discussion were further used to validate and develop the list of initiatives and the analysis.

Throughout the report, we have used the following terms:

- 'Documents' covers legal acts and regulations (i.e. legislative measures), as well as reports, studies and guidelines, instructions or advice from public authorities published in the form of a document (instead of other dissemination forms, such as websites or campaigns).
- 'Initiative' covers a set of measures which include, for example, but are not limited to policy actions, campaigns, payment observatories, other registers, prompt payment codes and other voluntary codes.

2. PREVENTIVE MEASURES FOR TACKLING LATE PAYMENTS AT THE NATIONAL LEVEL

2.1. Overview of measures implemented at the country level

This section provides an overview of the number of documents and initiatives that include preventive measures implemented in the EU Member States, as well as EEA countries and the UK.

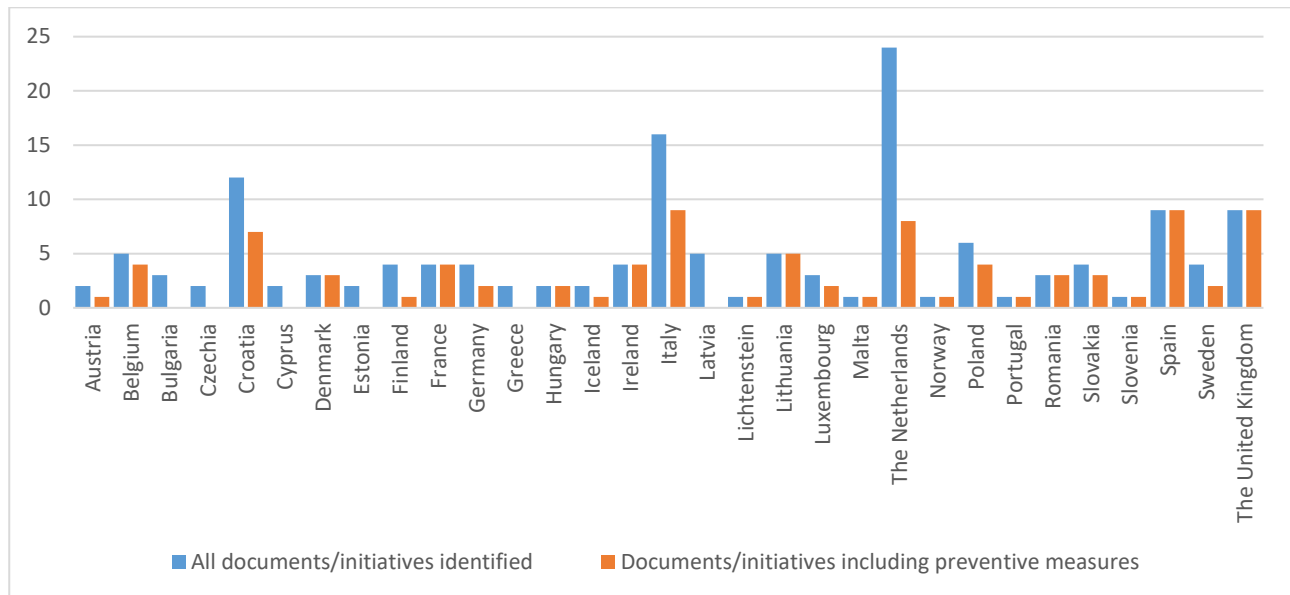
Overall, we identified 147 initiatives and documents addressing late payments at the country level⁸ – both legislative⁹ and non-legislative ones.

In terms of the specific types of measures, the majority (76 %) were documents, while 24 % were initiatives. Figure 1 below provides a country-by-country overview of the number of measures and the number of preventive measures implemented.

⁸ Details regarding all the measures are in the repository being developed as part of this study, which can provisionally be found at https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive/eu-payment-observatory/observatory-documentation_en. NB: At the time of writing, this repository is still being developed.

⁹ The legal acts in the table include both those that transpose the Late Payments Directive and those that form additional legislation.

Figure 1: All identified measures and preventive measures

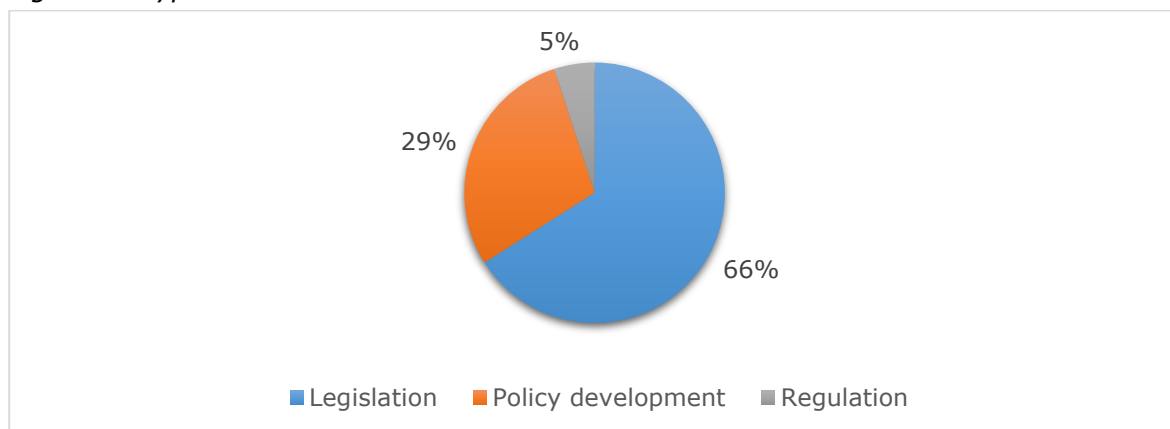


Source: Country research within this study

In many countries, most of the identified documents and initiatives include preventive measures. For instance, over half of them identified in Italy and Poland include preventive measures, while in Hungary, Ireland and Spain all of them cover preventive measures. **Almost all documents and initiatives were put forward by a public authority** (i.e. only 9 % were developed by the industry). Moreover, the number of industry-specific documents and initiatives is very low, which indicates that most documents and initiatives were meant to cover all sectors.

More than half of the measures identified (66 %) take the form of legislation. The EU Member States have developed legislative acts amending their national legislation (e.g. civil codes and commercial codes) to adjust them to the Directive. Furthermore, almost a third of the measures identified (29 %) took the form of policy developments (e.g. reports and policy papers). The remaining 5 % of the types of initiatives could be regarded as regulations (e.g. a regulation for calculating the credit rating of entrepreneurs by the Financial Agency in Croatia). The figure below shows a breakdown of the types of documents and initiatives.

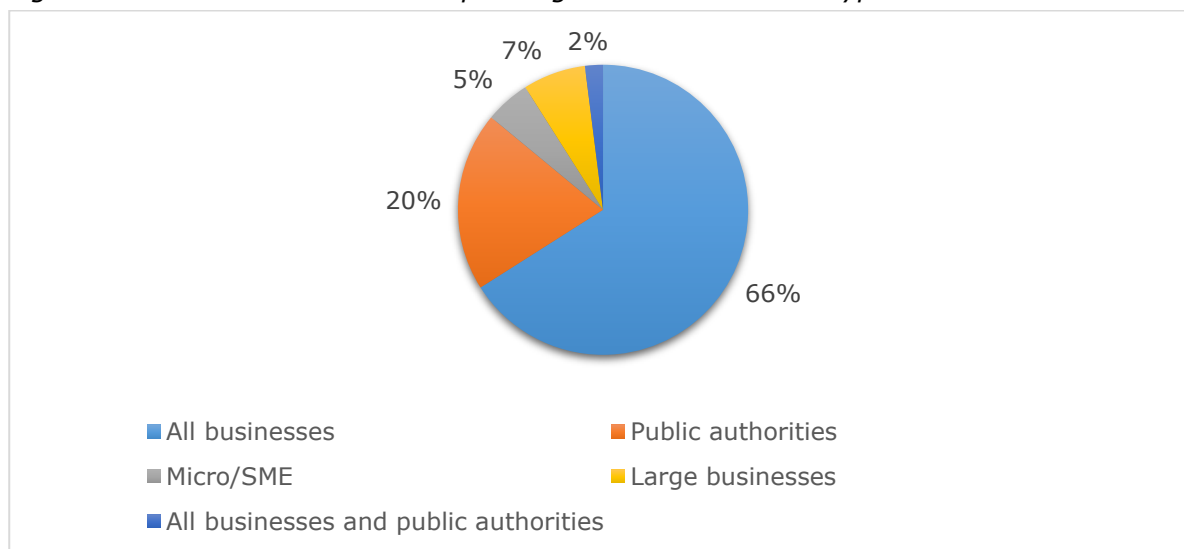
Figure 2: Types of documents and initiatives



Source: Country research within this study

Among the identified preventive measures, 66 % target all businesses, while 20 % of them target public authorities. Only 5 % of the measures identified target SMEs or micro enterprises, and 7 % target large businesses.

Figure 3: Preventive measures depending on the transaction type



Source: Country research within this study

In terms of transaction types, **41 % of the measures cover both G2B and B2B transactions**. Half of them are either G2B-specific (25 %) or B2B-specific (25 %). In some cases (9 %), the document or initiative does not specify the transaction type.

2.2 Good practice examples and assessment

This section presents the different types of preventive measures, with examples of specific initiatives or documents implemented at the country level.

2.2.1. Stricter payment terms

One of the main goals of the Late Payments Directive is the introduction of strict payment terms in order to help prevent late payments. Payment terms were introduced because they are crucial for tackling the issue, as they establish a level playing field, potentially reducing inequalities between larger and smaller businesses and unfair practices.

According to the Directive, the period for payment by public authorities to businesses is a maximum of 30 days, or 60 days in very exceptional circumstances. In business transactions, the parties can agree a payment term longer than 60 days on the condition that it is expressly agreed upon in the contract and it is not grossly unfair. If the payment term is not fixed in the contract, it is 30 days. However, the Directive also states that the Member States may impose provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive (Article 12), i.e. also payment terms, which would be stricter than in the Directive.

Many Member States have used this possibility. Country research carried out within this study identified several such examples of stricter payment terms going beyond the implementation of the Late Payments Directive. Several Member States have set out shorter payment terms than those established in the Directive. In **Denmark, Finland** and **Sweden**, the maximum payment term for B2B invoices is 30 days, instead of 60. The purpose of such legislative intervention is to prevent the period of 60 days from becoming the de facto standard payment period. The

parties, however, can agree upon a maximum payment term longer than 30 days, where they both expressly give their consent.¹⁰

Some other Member States have even defined a maximum payment term that cannot be derogated by the parties (**Croatia, France, the Netherlands** and **Spain**). For instance, in **Spain**, the payment terms of a business transaction cannot exceed 60 days. In addition, three Member States have introduced shorter payment terms applicable in the absence of an agreement between the parties. In the LPD, in such situations the payment term is 30 days, whereas in **Bulgaria** it is 14 days, and in **Germany** and **Austria** payments should be made without undue delay.¹¹ In the two latter countries, while longer payment terms than 30 days are legally possible, they are 'likely to be considered unreasonable in case of a dispute'.¹² In **Ireland**, a government initiative on prompt payment returns was introduced, requiring public authorities (government departments and public sector bodies, with few exceptions) to pay suppliers within 15 days and to publish on their respective websites their quarterly payment performance reports.¹³ **The Netherlands** and **the UK** do not allow the extension of the payment term of 30 days in G2B transactions to 60 days.

Box 1: Survey in the Netherlands

In the Netherlands, a survey was carried out as part of the development of advice by the Dutch Council of State, on the possibility of reducing the payment term from 60 to 30 days.¹⁴ In the context of this survey and at the request of the State Secretary for Economic Affairs and Climate Change, a hotline was set up at the Dutch Authority for Consumers and Markets between 26 January 2021 and 26 January 2023, where, for a period of 2 years, SMEs could anonymously report large companies that failed to comply with the statutory or agreed payment terms. This survey contributed to the adoption of national legislation which stipulates that large enterprises may not agree with SMEs (including small self-employed ones) on payment terms longer than 30 days (discussed above).

It is not fully clear if applying stricter payment terms can influence payment behaviour. A study published by the European Commission in 2018¹⁵ indicated that 'the establishment of stricter or maximum payment terms does not necessarily translate into shorter payment duration'.¹⁶ For instance, several countries applying stricter legislation (Denmark, Finland and Sweden) traditionally have a robust, prompt payment culture. Stakeholders consulted as part of previous studies have noted that these countries 'had only minor effects on payment behaviour and late payment practice'.¹⁷ Thus, various factors should be taken into account as contributing to late payments in both G2B and B2B transactions.

As concluded at the thematic group meeting carried out as part of our study, while stricter payment terms can potentially contribute to combating late payments, it is also necessary to set out effective sanctions for breaches of payment obligations. Strong sanctions themselves

¹⁰ VVA and Milieu for the European Commission, *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, June – 2018, , p. 28.

¹¹ Ibid., pp. 28-29.

¹² Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/7/EU on combating late payment in commercial transactions, COM (2016) 534 final, <https://ec.europa.eu/docsroom/documents/18543>, 14.

¹³ Prompt payment returns, <https://enterprise.gov.ie/en/what-we-do/supports-for-smes/late-payments/prompt-payment-returns/>.

¹⁴ Details of this document are discussed under the section on credit management education.

¹⁵ *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, http://publications.europa.eu/resource/celellar/c8b7391b-9b80-11e8-a408-01aa75ed71a1.0001.01/DOC_1.

¹⁶ Ibid., 29-30.

¹⁷ VVA, Technopolis Group, EY for European Commission (2015), *Ex-Post Evaluation of Late Payment Directive*, European Publications Office, <https://op.europa.eu/en/publication-detail/-/publication/400ecc74-9a54-11e5-b3b7-01aa75ed71a1>, 40.

are not necessarily useful in deterring large companies, so their forceful application is crucial.¹⁸ For instance, the **French** Public Procurement Code¹⁹ sets high fines for breaches of the provisions on payment terms, with sanctions ranging from EUR 27 000 for a natural person to EUR 75 000 for a legal person.

Nonetheless, during the thematic group meeting held with stakeholders across the selected countries, it was noted that the high fines are not necessarily helpful deterrents to non-compliance with payment terms, particularly when imposed on large businesses, which are not necessarily affected by sanctions of such scale. It was mentioned that taking into consideration the proportionality of the sanction to the size of the targeted company can be crucial in ensuring the efficiency of such sanctions. Therefore, in order to contribute to the forceful use of the sanctions for breaches of payment terms, there are ongoing discussions aimed at evaluating the applicable sanctions based on a percentage of the activity of the given enterprise, rather than being imposed at a flat rate. In other words, it should be borne in mind that ensuring compliance with stricter payment terms set out in the legislation also requires effective enforcement mechanisms.

¹⁸ For further points in this regard, see Section 2.2.11.

¹⁹ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037729711.

Box 2: Stricter payment terms in contracts between larger companies and SMEs

In addition to stricter payment terms overall, some Member States are implementing such terms in contracts between larger companies and SMEs. Their objective is to reduce SMEs' reliance on debt and financing options. By receiving payments on time, SMEs can avoid borrowing money or seeking external financing to bridge the gap in their cash flow, preserving their financial health and reducing associated costs and risks. They aim to contribute to balancing the power between larger companies and SMEs by establishing clearer expectations and fair treatment.

We identified several examples of measures (including voluntary ones) introducing stricter payment terms in contracts between larger companies and SMEs specifically.

In **the Netherlands**, large enterprises may not agree with SMEs (including small self-employed ones) on payment terms longer than 30 days.²⁰ This refers to the situation where the large enterprise acts as a buyer and the SME acts as a supplier and creditor of the large enterprise. If these parties agree on a term longer than 30 days, that agreed payment term is void and a 30-day payment term applies by operation of law. Large companies are defined as companies with, among other things, an annual turnover of more than EUR 40 million and at least 250 employees. This new law, adopted in 2022, halves the current allowable payment period and puts it on par with that of the government.

In **Poland**, specific rules have been set that when the payer is a large company and the payee is an SME, the maximum payment term is 60 days.

Additionally, voluntary codes exist in **Sweden** and **the UK**. The Swedish code focuses on larger companies, whereby companies making purchases undertake to shorten payment terms to SMEs. In the UK, the code signatories are expected to pay '95 % of invoices from all suppliers within 60 days and 95 % of invoices from small businesses (with less than 50 employees) within 30 days'.²¹ Further details on these codes are provided in Section 2.2.11 on voluntary codes.

While it is certainly useful to set out strict payment terms in legislative form, it should be acknowledged that such measures are only part of a broader system aimed at tackling late payments. The effectiveness of legislative measures, including rules on stricter payment terms, is tightly interconnected with the practical implementation of such rules. For instance, research from 2018 argues that there is not necessarily a 'strong link between stricter implementation of the LPD and payment behaviour', as a generally strong, prompt payment culture is already in place in the countries where stricter legislation on payment terms was identified.²² In other countries, where payment terms going beyond the limits set by the legislation are not allowed, payment terms are not necessarily shorter, not least since 'differences in bargaining power still have an impact and lead to unfair practices'.²³

Furthermore, what should also be taken into account is the impact of reducing payment delays on the whole economy. The European Commission estimates that a reduction of 1 day in payment delays would increase EU companies' aggregated cash flow by 0.9 % and could save

²⁰ Wet van 30 maart 2022 tot wijziging van Boek 6 van het Burgerlijk Wetboek in verband met het verkorten van de wettelijke betaaltermijn tot 30 dagen [Act of 30 March 2022 amending Book 6 of the Civil Code in connection with shortening the statutory payment term to 30 days], <https://zoek.officielebekendmakingen.nl/stb-2022-146.html>. For more background on the legislative trajectory of this new law, see also https://www.eerstekamer.nl/wetsvoorstel/35769_verkorten_wettelijke.

²¹ Prompt Payment Code, <https://www.smallbusinesscommissioner.gov.uk/ppc/faqs/>.

²² VVA and Milieu for the European Commission (2018), Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour, June – 2018, 29.

²³ Ibid.

EUR 158 million in financing costs.²⁴ Therefore, maintaining stricter payment terms is a useful step, but a comprehensive approach involving other measures is necessary to contribute to prompt payments across the spectrum.

2.2.2. Transparency and the monitoring of payment practices

The transparency of payment practices as part of measures aimed at combating late payments promotes accountability and allows for the sharing of clear expectations by outlining payment terms and payment deadlines, as well as any applicable fees or penalties. A common understanding of the crucial terms reduces the likelihood of disputes in the future.

The transparency of payment practices, as presented by examples below, also covers publication of monitoring reports, the availability of information on patterns in payment practices, etc. Transparency in that sense enables businesses to benchmark their payment practices against industry standards, to identify areas for improvement and to adopt successful strategies used by other businesses in their or other industries in order to reduce the occurrence of late payments.

The transparency of information on payment practices of a given company also allows other businesses and potential partners to assess the payment track record of a given company before entering into a contract or even a business relationship with it. This particularly enables suppliers (especially SMEs) to choose customers that have a demonstrated commitment to prompt payment, thereby resulting in reduced late payments. Finally, transparency in payment practices incentivises businesses to improve their payment processes, as companies are more likely to maintain a good payment reputation when payment reports about their performance are published.

The study identified several examples where measures ensuring the transparency of payment practices and monitoring of payment terms had been taken.

Payment observatories

Two Member States have established late payment observatories. They serve to monitor and analyse payment practices and behaviour in a given country or sector. Their objective is to help gain insight into the extent and impact of late payments in both G2B and B2B transactions. Such observatories are useful mechanisms for preventing late payments, as they provide a comprehensive overview of late payment practices and help to gauge the effectiveness of the measures adopted to combat late payments.

The **French** Observatory of Payment Periods²⁵ was established in 1991 and has been in active operation since 2006. It publishes annual reports which present the main statistics on both G2B and B2B payment delays. This allows for an annual follow-up on the progress regarding delays in payments and compliance by parties with the relevant legislation. It also facilitates identification of which sectors are more problematic and analysis of the main reasons for late payments for businesses (complicated or unnecessarily burdensome invoicing procedures, late invoices, lack of e-invoices, etc.). The annual reviews consist of four main parts:

- an analysis of payment trends in the private sector developed in-house;
- a summary of the results of studies and surveys on payment behaviour, carried out by various stakeholders;

²⁴ European Commission, *Impact Assessment accompanying the proposal for the revision of the Late Payment Directive* (SWD (2023) 314 final),

https://single-market-economy.ec.europa.eu/system/files/2023-09/SWD_2023_314_1_EN_impact_assessment_part1_v2.pdf

²⁵ https://publications.banque-france.fr/sites/default/files/medias/documents/odp2021_web-2.pdf

- a detailed analysis of payment performance in the public sector, performed by the Direction générale des Finances publiques; and
- a review of the legal and regulatory framework and its implementation.²⁶

The annual report issued in 2021, for instance, notes that the delays have not returned to their pre-pandemic value and that the average delay at the end of 2021 was 12.4 days (1 day more day than in 2019). The publication of data on late payments and the controls exercised by the French authorities could be considered good practices, as they raise awareness of the issues and provide comparative data for further analysis.

A similar observatory is being set up in **Spain**²⁷ (*Observatorio Estatal de la Morosidad Privada* – State Observatory of Private Late Payments). This body will complete the publication of data concerning payment performance, by adding to the information already available on all public authorities (currently on the website of the Ministry of Finance) details on the payment performance in the private sector.²⁸ The Ministry of Industry, Commerce and Tourism is charged with monitoring the evolution of payment terms and late payments in commercial transactions as well as the results of the practice and effectiveness of the legislation setting out stricter payment terms (as discussed above),²⁹ with the participation of national and regional multisectoral associations, as well as the Multisectoral Platform Against Late Payment. A public consultation was launched last year for setting up this observatory.³⁰ The platform is a confederation of employer associations created in 2008 with the aim of combating late payments in Spain and promoting an ethical culture regarding compliance with payment terms.³¹ According to its website, the platform ‘brings together a group of sectoral and territorial institutions throughout Spain’; supporting the practical application of the Late Payments Directive is one of its objectives.³²

The Spanish observatory on payment delays in B2B transactions will work to provide the information outlined below.

- Monitor the evolution of average payment periods and late payments in commercial operations, in application of European and national regulations.
- Prepare and disseminate codes of good commercial practices, awareness campaigns, training and information, in order to contribute to generating a responsible payment culture.
- Monitor and apply the EU guidelines on this matter and, where appropriate, those of the European Payment Observatory.
- Annually publish a list of companies that have failed to comply with payment deadlines in accordance with Law 3/2004 of 29 December, which establishes measures to combat late payments in commercial operations or other applicable sector regulations, and in which, at least, the following circumstances have occurred:

²⁶ Economisti Associati et al. for European Commission, DG GROW (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://op.europa.eu/en/publication-detail/-/publication/cb4bc1bd-1467-11ed-8fa0-01aa75ed71a1/language-en/format-PDF/source-search>, 42.

²⁷ <https://ipyme.org/es-es/comportamientopago/Paginas/observatorio-estatal-morosidad-privada.aspx>

²⁸ <https://www.hacienda.gob.es/es-ES/CDI/Paginas/PeriodoMedioPago/InformacionAAPPs/PMPdelasAAPP.aspx>

²⁹ Ley 15/2010, de 5 de julio, de modificación de la Ley 3/2004, de 29 de diciembre, por la que se establecen medidas de lucha contra la morosidad en las operaciones comerciales [Law 15/2010, of 5 July, amending Law 3/2004, of 29 December, establishing measures to combat late payments in commercial transactions], available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-10708>. This law provides legal instruments to monitor the compliance of public administrations and private entities with late payment rules, which implies a control system led by public authorities that materialises in reports to the Spanish parliament for assessment and possible legislative measures.

³⁰ https://industria.gob.es/es-es/participacion_publica/paginas/detalleparticipacionpublica.aspx?k=558

³¹ <https://pmcm.es/quienes-somos/>.

³² Ibid.

- ✓ that as of 31 December of the previous year, the total amount of unpaid invoices within the period established by Law 3/2004 exceeds the amount of EUR 600 000;
- ✓ that the percentage of invoices paid by the company during the previous year in a period less than the maximum established in the late payment regulations of the total payments to suppliers is less than 90 %.

Transparency and the monitoring of payment practices of public authorities

Several countries have implemented measures to ensure the transparency of payment practices in the G2B and B2B transactions of public authorities and bodies.

In **Croatia**, public authorities are obliged to publish information on their payment practices. In this regard, the Commissioner for Information has published instructions on the application of this measure.³³

The **Estonian** Chamber of Commerce and Industry highlights some of the data coming from the Single Market Scoreboard, including the average default of the Estonian authorities (time exceeding the law or the payment terms agreed in the contract) and the average number of days it took for a company to pay its invoices by other companies (intercompany payments).³⁴

In **Ireland**, where a relevant purchaser that is a public body³⁵ is required by statute to publish an annual report, this report should include details of the purchaser's payment practice in the period covered by the report or submit an annual review of its payment practice to a ministry. The reports are then presented to both Houses of Parliament.³⁶

Italy has implemented several measures to ensure the transparency of payment practices in G2B transactions. One such example is an obligation to publish information on G2B payment practices on an annual basis starting from 2015.³⁷ There is legislation providing a standardised method for a calculation of payment delays which is used throughout all administrations, at all levels (national, regional and local). It is a good example of a measure tackling late payments to the extent that it guarantees a certain degree of accountability, transparency and standardisation, thereby increasing the accountability of the public authorities towards the private sector.

Furthermore, the legislation³⁸ in Italy requires public administration to publish, on a quarterly basis, the 'payment timeliness indicator', i.e. an indicator of average payment times for the purchase of goods, services and supplies in G2B transactions, on an online portal. It is argued that this measure has succeeded in increasing awareness of the issue of late payments in Italy and paved the way for all the subsequent measures adopted.³⁹

In addition, regions and local authorities are required to certify, within 60 days from the date of receipt of the application, whether the relevant receivable is 'certain, liquid, and collectable'.⁴⁰

³³ Instructions from the Commissioner for Information of the Republic of Croatia, <https://www.pristupinfo.hr/wp-content/uploads/2018/10/Uputa-za-proaktivnu-objavu-informacija-Povjerenika-za-informiranje-2-1.pdf?x57830>.

³⁴ Mida Euroopa Komisjon ütleb Eesti kohta [What the European Commission says about Estonia], <https://www.koda.ee/et/uudised/mida-euroopa-komisjon-utleb-eesti-kohta>.

³⁵ The list of such public bodies is provided in the Schedule of the Prompt Payment of Accounts Act 1997 <https://www.irishstatutebook.ie/eli/1997/act/31/enacted/en/index.html>.

³⁶ Prompt Payment of Accounts Act 1997, Section 12(2).

³⁷ <https://www.gazzettaufficiale.it/eli/id/2014/11/14/14A08772/sg>.

³⁸ Article 33 of Legislative Decree No. 33/2013, as amended by Article 8(1) of Decree-Law No. 66/2014, ITA: DECRETO LEGISLATIVO 14 marzo 2013, n. 33 [LEGISLATIVE DECREE No 33 of 14 March 2013], <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2013-03-14:33!vig>.

³⁹ <https://www.funzionarioamministrativo.it/2022/05/02/il-pnrr-e-la-tempestivita-dei-pagamenti/>.

⁴⁰ Legislative Decree 185/2008.

A receivable can consist of one or more invoices and indicates the credit that is owed. For this obligation to certify, the Commercial Credits Platform (*Piattaforma crediti commerciali*)⁴¹ was introduced in 2012. Since 2014, the platform has also been used for monitoring public administration payments. Through this platform, holders of credits (i.e. businesses) can request the debtor administration to 'certify' the debt, indicating the expected date of payment. The public authority in debt has to provide this certificate (i.e. a document) within 30 days from the request. The certification contains the date by which the public authority must make the payment. With this certification, businesses can access the platform to check what monies the public administration owes them.

The certification process is free of charge and is done online; therefore, it is time-efficient for enterprises. The platform also helps public authorities, as it automatically acquires, directly from the Revenue Agency's Interchange System, all electronic invoices that are issued to public authorities. It also records payments made and communicated by individual administrations. Public authorities are obliged to register in this system all electronic invoices that they receive. The State General Accounting Office (*Ragioneria Generale dello Stato* (RGS))⁴² monitors that public administrations are correctly updating the commercial credits platform. If they do not, progressively increased sanctions are used.⁴³

Also, a system in Italy called the Register of Protests,⁴⁴ established in 1995, provides a register indicating all debtors that are unable to pay their suppliers. A 'protest' is the act whereby an authorised public official, also known as a levying officer (e.g. a notary, a bailiff or a municipal secretary), ascertains a non-payment. The debtor against whom any protest is levied must be identified by indicating the name, domicile, place and date of birth (if a natural person) or name and address (if a legal person). The Chambers of Commerce take care of the publication of protests by means of the protests register.⁴⁵ The register, which is exclusively computerised, is accessible to the public for consultation, at the Chambers of Commerce and online. The creation of a publicly available register that exposes all debtors unable to pay their suppliers can be a strong deterrent to such behaviour.

Finally, the procedure for reporting the debt stock was amended in 2018⁴⁶ and can now be done on a new platform called 'Area RGS'.⁴⁷ The aim of this new platform is to gradually incorporate all the platforms described above and to become a single point of access for all monitoring by State Accounting.⁴⁸

In **Spain**, the legislation sets out specific treasury and financial plans according to which the management of public administrations should operate. In addition, the law also contains strict rules with regard to budget executions to ensure budgetary stability. Specifically, the internal bodies of public administrations and the Ministry of Taxation have the competence to carry out controls and monitor the performance of public administrations in line with their budgetary stability and treasury management. However, this measure focused on solving the high volume

⁴¹ <https://crediticommerciali.rgs.mef.gov.it/CreditiCommerciali/home.xhtml>.

⁴² According to Circular No. 15/2015 adopted by the State General Accounting Office (RGS) itself.

⁴³ These range from the negative assessment of the manager responsible in terms of individual performance, up to the revocation of the manager's position with the impossibility of renewing the contract.

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<https://www.registroimprese.it/protesti#:~:text=COS%27%C3%88%20UN%20PROTESTO%20I%20protesto%20%C3%A8%20l%E2%80%99atto%20con,vaglia%20cambiariorio%2C%20di%20un%20assegno%20bancario%20o%20postal e..>

⁴⁵ Established by Law No. 480 of 15/11/1995.

⁴⁶ ITA: LEGGE 30 dicembre 2018, n. 145 [LAW No. 145 of 30 December 2018], <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2018;145>.

⁴⁷ <https://area.rgs.mef.gov.it/>.

⁴⁸ Currently, only the stock communication is in place; however, it is set to grow and incorporate various other portals. The purpose of stock reporting, in the meantime, remains the same – which is to report the amount of public institutions' debts. This platform paves the way for a more coordinated and centralised approach to late payment monitoring.

of late payments which occur between regional and other public administrations with private suppliers, i.e. in G2B transactions.

Spain has also established a control system⁴⁹ to monitor the compliance of public authorities and private entities with the late payment rules. It is led by public authorities and is a basis for the preparation of reports to the Spanish parliament, enabling assessment and possible legislative measures. The law also includes relevant monitoring mechanisms to follow up compliance by obliged entities with this law.

Public administrations are further obliged to report, on a quarterly basis, their compliance with the rule on payment terms,⁵⁰ as well as to publish an annual report on their compliance with the rules to combat late payments. Private entities, too, must report in their annual accounts the meeting of payment deadlines by their providers. If the legal entity is subject to audit, auditors have to verify this information.

Finally, Law 18/2022 on the creation and growing of companies (also known as *Crea y crece*) strengthens the rules on late payments. One of its main provisions sets out that private entities which do not comply with the payment terms set out in the legislation will not be able to receive public grants of more than EUR 30 000.

Several countries have adopted other types of measures to ensure the transparency of payment practices.

Transparency and monitoring in B2B transactions

In **Poland**, there has been a research initiative related to financial flows between entrepreneurs. The National Debt Register of the Economic Information Bureau and the factoring company, NFG, commissioned a nationwide survey on 'Financial Impulses and Barriers to SME Growth', in December 2021, of a group of 512 companies consisting of micro, small and medium-sized enterprises.⁵¹ One of the research areas addressed in the report was related to the most common payment terms used by businesses in practice. The issue of payment delays was assessed as the key barrier to a company's development by the respondents to the survey.

In addition, in 2019 and 2022 legislation was adopted in Poland which introduced amendments to the Act on counteracting excessive delays in commercial transactions and the Act on public finances.⁵² The most important ones introduced by the Act of 19 July 2019 are

- changes in interest rates for delays in commercial transactions;
- introduction of maximum payment terms for large companies when the creditor is an SME;
- shortened payment deadlines in cases when the debtor is a medical entity;

⁴⁹ Ley 15/2010, de 5 de julio, de modificación de la Ley 3/2004, de 29 de diciembre, por la que se establecen medidas de lucha contra la morosidad en las operaciones comerciales [Law 15/2010, of 5 July, amending Law 3/2004, of 29 December, establishing measures to combat late payments in commercial transactions], available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-10708>.

⁵⁰ Ley 25/2013, de 27 de diciembre, de impulso de la factura electrónica y creación del registro contable de facturas en el Sector Público (Law 25/2013, of 27 December, on promotion of the electronic invoice and invoice accounting register in the public sector), <https://www.boe.es/buscar/act.php?id=BOE-A-2013-13722>.

⁵¹ <https://krd.pl/centrum-prasowe/raporty/2022/impulsy-i-bariery-finansowe-w-rozwoju-msp>.

⁵² *Ustawa z dnia 4 listopada 2022 r. o zmianie ustawy o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych oraz ustawy o finansach publicznych*, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220002414>.

- the grant of power to the President of the Office of Competition and Consumer Protection (UOKiK) to impose fines for excessive delays in payments;
- the monitoring of the payment terms used by the largest debtors;
- differentiation of compensation for debt recovery costs;
- support for creditors in pursuing claims;
- recognition of the unjustified extension of payment deadlines as an act of unfair competition; and
- introduction of tax relief for 'bad debts'.

The 2022 amendments introduced the necessary improvements to make the legislation more effective. The changes brought by the amendments focus on improving the powers of the UOKiK and simplifying the reporting procedure for larger companies. Large businesses are obliged to submit annual reports containing information on their payment terms in commercial transactions. The reports are submitted electronically and free of charge. Notably, a summary of these reports is to be made publicly available, by the responsible ministry (Ministry of Development and Technology), in the Public Information Bulletin on the website of the ministry.⁵³ To qualify as a large business, the revenue in the preceding tax year should have exceeded the equivalent of EUR 50 million.

A useful example in the **UK** is the Reporting on Payment Practices and Performance Regulations 2017,⁵⁴ particularly targeting large businesses and B2B transactions. These regulations impose a requirement on large businesses to publish information on payment practices, policies and performance in relation to paying suppliers twice per financial year. This includes a company's standard payment terms, details of the variation where the company altered the standard payment terms and a description of the maximum payment period specified. It also entails an explanation of the qualifying company's process for resolving a dispute with a supplier in relation to payment under a qualifying contract, the average number of days taken to make payments, the percentage of invoices paid beyond the agreed terms, etc. A statutory review of the measure found that the regulations have improved the transparency of the payment practices and performance of large businesses, although it also highlighted that further action would be beneficial.⁵⁵

In **Austria**, the Credit Protection Association of 1870 (which is a private company) publishes annual reports on late payments.⁵⁶ The **German** Central Bank, as well as private market research companies, publish reports on payment behaviour in the country with statistics on late payments.⁵⁷ Finally, the **Hungarian** National Bank⁵⁸ and the Hungarian Chamber of Commerce⁵⁹ publish reports on payment practices in the country.

Other measures on transparency

The Code of Good Behaviour developed in **Denmark** and adopted in 2022 is a public authority-led initiative to ensure 'openness and transparency are key elements in a healthy payment

⁵³ Ibid., Article 1(5)(g).

⁵⁴ The Reporting on Payment Practices and Performance Regulations 2017, <https://www.legislation.gov.uk/uksi/2017/395/contents>.

⁵⁵ The statutory review can be found here: <https://www.gov.uk/government/consultations/statutory-review-of-the-reporting-on-payment-practices-and-performance-regulations-2017-call-for-evidence>.

⁵⁶ Credit Protection Association of 1870 (KSV1870), <https://www.ksv.at/en/ueber/unternehmen>.

⁵⁷ Bundesbank, *Payment behaviour in Germany*, <https://www.bundesbank.de/en/publications/reports/studies/payment-behaviour-in-germany-738024>.

⁵⁸ Hungarian National Bank, Publications related to payment behaviour and cash flow, <https://www.mnb.hu/bankjegyes-erme/publikaciok/fizetesi-szokasokkal-keszpenzforgalommal-kapcsolatos-publikaciok>.

⁵⁹ Institute for Economic and Enterprise Research (under the Hungarian Chamber of Commerce), <https://gvi.hu/>.

culture'. This is a voluntary code that promotes good payment practices in business transactions. It encourages companies to commit to fair and timely payments. In terms of transparency measures, companies which sign up to the code undertake to disclose their payment practices. They are encouraged to do this through various measures, which can be an annual report, a CSR report or other means that can reveal their payment practices.

Transparency and the monitoring of payment practices is the category of preventive measures with the highest number of examples of actions implemented at the country level. The types of these measures vary significantly, from fully-fledged observatories existing within state administrations to smaller industry-led initiatives. While some of the analysed countries have more developed, regular monitoring systems, others only conduct ad hoc research or have not established any initiative in this area. The examples presented can serve as a reference point, as well as sources of inspiration for taking similar measures aimed at tackling late payments and promoting prompt payment practices.

It is difficult to assess the extent to which ensuring the transparency of payment practices has contributed to reducing payment delays in each country. There are clear benefits of transparency and the monitoring of payment practices. At the company level it allows businesses to verify in advance the payment practices of their partners and to assess the risk of not being paid on time. Research has shown that access to this kind of information can improve the cash balances of companies.⁶⁰ At the country level, comprehensive monitoring enables the issue to be addressed with relevant initiatives and their effectiveness to be assessed in the long term.

However, the research suggests that initiatives related to transparency and the monitoring of payment practices are fragmented and do not provide a comprehensive picture of payment practices throughout EU/EEA countries. As concluded by the 2022 Commission study,⁶¹ comprehensive data on the payment times of the public sector is only published in a few Member States. In other countries, information is reportedly collected but only used internally or is published only selectively.

Moreover, a 2022 study published by the Commission found that, for instance, the introduction of obligations related to the transparency of payment terms was effective in Belgium but not necessarily so in the UK.⁶² Notably, in Belgium there is legislation requiring the contractor, when it is a public body, to be transparent about the payment terms.⁶³ In the UK, the legislation requires that the main contractors include in any subcontract provisions that impose the same payment terms included in the contract with the contracting authority, which in turn requires the settlement of invoices within 30 days.⁶⁴ The similar rules leading to different results in two different countries indicates that the effectiveness of such measures depends on various factors, for instance the business practices and cultural norms already existing in the given country.

Research carried out in 2018 on legal measures and soft-law instruments for improving payment behaviour in B2B transactions⁶⁵ found that in order to avoid being recorded in the database,

⁶⁰ ACCA (2015), *Ending Late Payment – Part 2, What works?*, <http://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-tp-elp2whatworks.pdf>, p. 23.

⁶¹ 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://op.europa.eu/en/publication-detail/-/publication/cb4bc1bd-1467-11ed-8fa0-01aa75ed71a1/language-en/format-PDF/source-search>, p. 98.

⁶² *Ibid.*, 99.

⁶³ Article 15 of the Royal Decree of 14 January 2013 establishing the general rules for the execution of public procurement contracts and public work concessions.

⁶⁴ Public Contracts Regulations 2015, Section 113(6)(i).

⁶⁵ VVA and Milieu for the European Commission (2018), *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, , 33.

companies will make sure to pay their suppliers on time and prevent late payment from occurring. However, being on the record is not always sufficient, and a next step – an incentive for the recorded companies to make the payments – is also necessary.

2.2.3. Invoice management measures

Invoice management measures are beneficial for tackling late payments due to their structured approach in managing the invoicing process. Implementing these measures ensures that invoices are issued in a timely manner after the provision of relevant goods or services. In addition, invoice management measures streamline processes by employing efficient tools for dealing with invoices, including generating, sending and tracking them. This can help to reduce errors in the invoices and improve their accuracy. Overall, invoice management measures can contribute to prompt payment processes and better cash flow management.

Irish legislation offers an example of legal provisions addressing specific aspects related to invoices. The Irish Prompt Payment of Accounts Act of 1997,⁶⁶ albeit mostly focusing on timely payments and providing remedies for late payments, also contains provisions related to invoice management. It sets out rules for the return of invoices for correction. In particular, if a purchaser receives an invoice for goods or services and finds it inadequate or insufficiently accurate to make payment, they have 10 working days to return the invoice to the supplier. Along with the returned invoice, the purchaser must provide a written statement that identifies the defects preventing payment. In this case, interest penalty related to the goods or services will not accrue until either 10 working days after the purchaser receives a proper corrected or replacement invoice, or until the prescribed payment date, whichever is later. If a purchaser returns an invoice to the supplier but does so later than 10 working days after receiving it, the interest penalty in relation to the goods or services will not accrue until 10 working days after the purchaser receives a proper corrected or replacement invoice. However, the number of working days the purchaser was late in returning the invoice will be deducted from the 10-day period. The interest penalty will not accrue beyond the prescribed payment date, whichever is later.

E-invoicing can accelerate the payment process and help to prevent invoices from being forgotten. The Fit for Future Platform Opinion mentioned above noted that 'it can help with automatically charging interest when payments are late'.⁶⁷ Yet, there is also research indicating that a significant relationship between e-invoicing and reduced payment times may not necessarily exist.⁶⁸ Therefore, while e-invoicing is another important measure among those listed, its use in combination with several other measures is likely to be more effective in tackling late payments.

2.2.4. E-Procurement

E-procurement, which is the electronic management and automation of procurement processes, can be used as an effective tool for addressing late payments of the public sector. E-procurement can streamline the procurement process by digitising several stages, including invoicing and payments. Importantly, this can help to eliminate cumbersome paperwork and contribute to the timely completion of the procurement process, thereby resulting in a reduction of late payments at various stages of the procurement process. E-procurement systems can also offer automated payment processing when integrated with electronic payment platforms. Finally, e-procurement allows for greater visibility and analysis of the process, whereby businesses can access the necessary documents in one place or on one platform.

⁶⁶ Prompt Payment of Accounts Act, 1997, <https://www.irishstatutebook.ie/eli/1997/act/31/enacted/en/html>.

⁶⁷ Fit for Future Platform Opinion, https://commission.europa.eu/system/files/2023-04/Final%20opinion%202021_SBGR2_06%20Late%20payments_fup.pdf.

⁶⁸ A Flynn, Q Li, *Determinants of supplier payment times before and during the pandemic: Empirical evidence from UK firms* (2023) *Journal of Purchasing and Supply Management*.

At the EU level, Directive 2014/24⁶⁹ establishes the rules for public procurement in the EU, including e-procurement. It promotes the use of electronic communication and tools throughout the procurement process. In addition to the possibility of electronic submission and communication, the Directive particularly encourages the use of electronic procurement platforms and promotes the use of electronic catalogues for commonly purchased goods and services, as well as the use of dynamic purchasing systems.

While not many countries in the sample of this study had information available about e-procurement, the countries which have employed e-procurement systems seem to have rather positive and advanced experience with its adoption. Further details on two such countries can be found below.

The **Danish** Public Procurement Act establishes an e-procurement system, called the 'dynamic purchasing system' (*dynamiske indkøbssystemer*). According to the Act, any service provider that meets the minimum eligibility requirements and is not covered by the grounds for exclusion, must be included in the dynamic purchasing system. The dynamic purchasing system is an example of good practice, as it is a useful tool in facilitating the public procurement procedure and reducing the delays in payments in G2B transactions.

The **UK** has legislation in place aimed at, inter alia, facilitating e-procurement. The Public Contracts Regulations 2015⁷⁰ include a separate section entitled 'Techniques and Instruments for Electronic and Aggregated Procurement' (Section 4). The e-procurement platforms available across the different parts of the UK are put together on a UK government website for facilitating access.⁷¹

These two examples can be used for other countries aiming to adopt e-procurement systems. The Danish dynamic purchasing system, as an alternative to the traditional framework agreement, is argued to be expeditious with space for flexibility.⁷² In addition, research suggests that implementation of the e-procurement system in the UK has led to positive results, with the expected benefits of the system successfully being realised.

Still, there is no evidence to confirm that the e-procurement system can contribute to addressing the issue of payment delays.⁷³

2.2.5. Financial mechanisms

Financial mechanisms can contribute to preventing late payments by providing incentives encouraging prompt payment behaviour by both public authorities and businesses. Financial mechanisms can vary, ranging from early payment discounts to offering buyers a reduced invoice amount if they pay within a specified period. These discounts can significantly incentivise buyers to expedite their payment process, resulting in a positive experience for both the buyers

⁶⁹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0024>.

⁷⁰ Public Contracts Regulations 2015, <https://www.legislation.gov.uk/uksi/2015/102/contents>.

⁷¹ See, for instance, <https://www.gov.uk/contracts-finder>. The e-procurement website for Scotland is available at https://www.publiccontractsscotland.gov.uk/search/search_mainpage.aspx. The e-procurement website for Wales is available at <https://www.sell2wales.gov.wales/>. The e-procurement website for Northern Ireland can be accessed at <https://e-sourcingni.bravosolution.co.uk/web/login.shtml> or at <https://etendersni.gov.uk/epps/home.do>.

⁷² See, e.g. <https://www.ski.dk/emne/dynamiske-indkobssystemer/>.

⁷³ For other sources discussing e-procurement in detail, see, e.g. P Evans, TS Wurster (2000), *Blown to Bits. How the New Economics of Information Transforms Strategy*, Harvard Business School Press; S Croom (2000), *The Impact of Web-Based Procurement on the Management of Operating Resources Supply*, 36 *The Journal of Supply Chain Management* 4; SR Croom, A Brandon-Jones (2005), *Key issues in e-procurement: Procurement implementation and operation in the public sector*, 5 *Journal of Public Procurement* 367; OECD, *Developing public procurement capacity in Europe*, <https://www.oecd.org/gov/public-procurement/publications/public-procurement-capacity-europe.pdf>; OECD, 'OECD Recommendation of the Council on Public Procurement', <https://www.oecd.org/gov/public-procurement/recommendation/>.

and the suppliers. In the study, we identified two examples of financial mechanisms being used to prevent late payments.

In the **UK**, in 2012 the government introduced the Supply Chain Finance scheme⁷⁴ to provide a financial mechanism addressing late payments. Within the scheme, a bank is notified by a large company that it has approved an invoice for payment, so the bank is then able to offer a 100 % immediate advance to the supplier at lower interest rates, knowing the invoice will ultimately be paid by the large company. This scheme provides cheap funding to suppliers based on the credit quality of their customers, enables suppliers to receive 100 % of the invoice value, helps supply chains to become more efficient as the overall cost of finance is reduced and encourages banks to provide finance to SMEs in a significantly more capital-efficient manner.⁷⁵

In addition, Project Bank Accounts (PBAs) were introduced in the UK in 2012.⁷⁶ These are financial arrangements used in construction and public procurement projects to ensure prompt and fair payment to subcontractors and suppliers. PBAs provide a mechanism for distributing payments to various participants involved in a construction project, such as contractors, subcontractors and suppliers, while safeguarding against delayed payments and disputes. According to the British government, PBAs contribute to certainty and security of payment and ensure that payments are made promptly. 'It is estimated that if fully implemented PBAs can deliver almost 1 % savings in the cost.'⁷⁷ A PBA 'is a ring-fenced bank account from which payments are made directly and simultaneously by a client to members of his supply chain'.⁷⁸ PBAs secure the funds and the payment can only be transferred to the beneficiaries – the supply chain members named in the account. 'The account is held in the names of trustees; likely to be the client and lead contractor (but could also be members of the supply chain).'⁷⁹ This tool can be particularly useful in cases of insolvencies, as the amounts in the account due for payment to the supply chain are stored securely and can only be paid to the members of the supply chain.

While there are various financial mechanisms that can effectively tackle late payments, the examples provided above indicate that such mechanisms are not widely used among the countries. However, the examples identified above can offer frameworks which can be modified as necessary and adopted by other countries when aiming to address the issue of late payments by similar measures.

2.2.6. Measures creating rights for suppliers

Measures that create rights for suppliers can be beneficial in combating late payments. Such measures establish safeguards in legal clauses that protect the interests and the rights of suppliers in the event of late payments. In combination with other measures, such as stricter payment terms and obligations for larger companies or public authorities, these measures can ensure that suppliers (especially SMEs) are able to hold a stronger position in asserting their rights and encourage such providers to seek redress for late payments (especially by larger businesses and public authorities).

Measures establishing rights for suppliers include mechanisms for enforcing those rights and seeking remedies for late payments. Based on the rights developed through such measures, suppliers can access dispute resolution processes or courts to seek the required compensation and any interest on overdue payments or to even take legal action against buyers that delay

⁷⁴ *Supply Chain Finance Scheme*, <https://www.gov.uk/government/news/prime-minister-announces-supply-chain-finance-scheme>.

⁷⁵ <https://www.gov.uk/government/news/prime-minister-announces-supply-chain-finance-scheme>.

⁷⁶ 'Guidance: Project Bank Accounts', <https://www.gov.uk/government/publications/project-bank-accounts>.

⁷⁷ *Government Construction: Project Bank Accounts – Briefing document*, 10 February 2012, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62117/Project-Bank-Accounts-briefing.pdf.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

payments consistently. In this way, the availability of effective remedies and enforcement mechanisms acts as a deterrent and encourages buyers to prioritise timely payments.

While not many notable examples were identified in the selected sample of countries, the UK model presented below can serve as a good example. It indicates that robust and professional representation of SMEs can help these companies to navigate the circumstances of late payments.

In the **UK**, the Office of the Small Business Commissioner⁸⁰ is an independent public body established to tackle late payment and unfavourable payment practices in the private sector, specifically in relation to small businesses. It considers complaints from small businesses (that is, businesses with fewer than 50 staff) about payment problems they have with their larger business customers (with 50 or more employees). It can make non-binding recommendations on how the parties should resolve their disputes.⁸¹

Having a targeted entity representing the interests of small businesses is useful in combating late payments, particularly those by large businesses. The latter often have a plethora of resources to help duly represent their interests, which SMEs do not necessarily possess. The possibility of representation through the Office of the Small Business Commissioner can ensure that SME voices are heard and taken into consideration, providing further weight to small and medium-sized companies in the private sector.

2.2.7. Other obligations for larger companies (including when conducting business with SMEs) and public authorities

The imposition of other obligations on larger companies and public authorities to address late payments offers several benefits in tackling this issue. It promotes accountability on the part of larger companies and public authorities, ensuring that these entities prioritise prompt payment behaviour. It also levels the playing field, particularly for SMEs (as discussed in previous sections), by preventing larger entities from exploiting their significant market power. Moreover, timely payments improve cash flow for suppliers that are SMEs, reducing financial risks as well as fostering stronger relationships.

The research so far indicates that most of the obligations imposed on public authorities relate to the publication of annual or other reports and are generally aimed at ensuring the transparency of G2B payment practices. Therefore, the obligations of public authorities are discussed in detail in Subsection 2.2.2 above. Nevertheless, two notable examples with specific obligations set out for public authorities or for large businesses are discussed below.

In **Sweden**, on 1 March 2022 a new law on the reporting of payment times entered into force.⁸² According to this legislative piece, Swedish companies with more than 249 employees must report to the Swedish Companies Registration Office (*Bolagsverket*) the payment terms/times they apply to companies qualifying as SMEs. The purpose of the law is to curtail the trend towards longer payment times in business relations and to create a good business environment for smaller companies. The companies in question must provide information on (i) the average contractual payment terms, (ii) the real average payment time, and (iii) the share of invoices that are paid past the due date. Moreover, the payment information should be reported separately for invoices from companies with 0-9 employees, 10-49 employees or 50-249

⁸⁰ OSBC, <https://www.smallbusinesscommissioner.gov.uk/>.

⁸¹ Ibid.

⁸² Lag (2022:70) om rapportering av betalningstider [Law (2022:70) on reporting of payment times], https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-202270-om-rapportering-av-betalningstider_sfs-2022-70/.

employees. The Swedish Companies Registration Office may oblige a company to report its payment times and at the same time decide whether the company will be issued a fine.

This reporting occurs once per year and must include invoices paid between 1 July to 30 June the following year, with companies having 3 months to submit the information. All information submitted will be publicly available. In addition, in the future data should also be made available with regard to several additional aspects. More specifically, information should be available for (i) how payment times have developed year on year for a particular company and (ii) how payment times have developed yearly for the respective supplier/business categories, as well as (iii) all payments yearly.

The first reporting period started in July-September 2023. Even so, according to the Invoice Payment Index referenced below, the impact of the law has already become visible in the index as larger companies have started to pay more promptly.⁸³

It is estimated that approximately 1 500-1 800 Swedish companies fall into the scope of this legislation.

Spanish legislation (Law 25/2013⁸⁴), inter alia, added an obligation in Law 3/2004 for public administrations to promote the creation of good commercial practice codes and dispute resolution schemes through mediation and arbitration, with which economic agents could voluntarily comply.

The above-mentioned examples suggest that specific obligations for large businesses, as well as for public authorities, are not widely used. Nonetheless, the examples presented above can be viewed as potential models for other countries to adopt in order to address the issue of late payments. This is crucial given that large companies are particularly likely to ask for extensions in their payments to suppliers.⁸⁵ Moreover, the percentage of extension requests from large companies has been steadily on the rise since 2021, from 54 % in 2021 to 66 % in 2023.⁸⁶ Therefore, to ensure better cash flow through the supply chain, it can be helpful to establish obligations aimed specifically at larger companies. In addition, effective enforcement mechanisms should be in place for such obligations, as large companies tend to feel less threatened if the relevant enforcement mechanisms are too weak.⁸⁷

2.2.8. Restriction of access to public funds

Restricting the access of businesses (both large companies and SMEs) to public funds as a measure to address late payments serves multiple purposes. It can incentivise timely payment behaviour by creating an understanding that public contracts or funding could be lost due to late payments. Also, such restrictions indirectly protect the interests of suppliers, notably those of SMEs, when late payments are legally and officially deemed unacceptable by public authorities and the regulators. Finally, such restrictions strengthen the role of public authorities in enforcing fair business practices benefiting various actors in the given sector.

Almost no rules introducing restrictions of access to public funds were identified in the selected countries based on the desk research carried out thus far, except for one in Spain.

⁸³ <https://invoier.com/betaltidsindex-visar-stor-forbattring-mot-snabbare-betaltider/>.

⁸⁴ Ley 25/2013, de 27 de diciembre, de impulso de la factura electrónica y creación del registro contable de facturas en el Sector Público [Law 25/2013, of 27 December, on promotion of the electronic invoice and invoice accounting register in the public sector], <https://www.boe.es/buscar/act.php?id=BOE-A-2013-13722>.

⁸⁵ Intrum, *European Payment Report 2023*, 26th annual edition, https://b2b.intrum.com/l/700283/2023-05-22/tqbp/700283/1684742199Tp3q8hN6/Pan_European_EPR_2023_Final.pdf.

⁸⁶ Ibid. This percentage refers to the respondents of the survey conducted by Intrum.

⁸⁷ VVA and Milieu for the European Commission (2018), *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, 76.

This measure was introduced in **Spain** in 2022,⁸⁸ when the legislation prohibited public grants exceeding EUR 30 000 to those private entities that do not comply with the payment terms of Law 3/2004. While being the sole (and a rather recent) example in relation to this issue, the Spanish one indicates that limitations on public funding depending on payment behaviour and practices can be introduced at the legislative level, contributing to the reduction of late payments in G2B transactions but also, indirectly, in B2B relationships.

2.2.9. Introduction of specific criteria in public tender assessment

The inclusion of payment-related criteria in public tender assessment can serve as a benchmark set by the regulators/public authorities, directly encouraging businesses to follow prompt payment practices. This measure can help to strengthen the supplier selection process by assessing financial stability and reliability, and in the meantime enhance accountability and transparency in the procurement process. Lastly, incorporating these criteria can contribute to improving payment behaviour throughout the supply chain by clearly encouraging prompt payment practices.

Based on the desk research conducted in the selected countries, only one rule falling under this category of measures was identified. The **UK** has legislation in place aimed at, inter alia, setting out criteria for access to public procurement. The Public Contracts Regulations 2015,⁸⁹ discussed earlier, laid down the requirements for public sector procurement. The regulations contain a selection criterion for public procurement, according to which 'contracting authorities may require that economic operators ... provide information on their annual accounts showing the ratios, for example, between assets and liabilities'.⁹⁰ This rule arguably indicates that the introduction of specific criteria related to payment practices in public tender assessment can be helpful in combating late payments.

2.2.10. Credit management education

Credit management education is valuable in combating late payments, as it provides businesses with the knowledge and the skills necessary to effectively manage credit relationships. Such education helps businesses to gauge the importance of establishing clear and enforceable credit terms with customers. Credit management education is particularly crucial for small and medium-sized businesses, which do not always possess the knowledge or the tools to pursue their rights against the experience and knowledge of large companies.

Moreover, credit management education can help businesses (especially SMEs) by explaining and providing strategies and techniques to implement prudent credit controls. Effective credit control measures, as well as invoicing practices can allow businesses to identify potential payment issues in advance and take the necessary actions early in order to prevent late payments by buyers. Finally, the communication and relationship management skills that can be learned through credit management education should not be underestimated, as these can significantly help businesses (once again, especially SMEs) to build strong relationships with their customers.

Overall, credit management education empowers businesses to establish solid credit practices, make informed credit decisions, implement helpful controls and navigate challenges associated with late payments. By equipping themselves with the necessary knowledge and skills,

⁸⁸ Ley 18/2022, de 28 de septiembre, de creación y crecimiento de empresas [Law 18/2022, of 28 September, on the creation and growing of companies], <https://www.boe.es/buscar/act.php?id=BOE-A-2022-15818>.

⁸⁹ Public Contracts Regulations 2015, <https://www.legislation.gov.uk/ukxi/2015/102/contents>.

⁹⁰ Ibid., Section 58(8)(b).

businesses can proactively manage credit risks, improve cash flow and maintain financial stability.

In the context of the thematic group meeting (mentioned earlier), a discussion on the educational aspects of credit management took place. Some participants noted that the involvement of SMEs in programmes organised with the aim of educating businesses on late payments is minimal. Larger businesses, on the other hand, are more actively involved in participating in such educational programmes. The need to have wider and deeper engagement by SMEs in such programmes was highlighted. Overall, the participants emphasised the role of educational and training programmes in promoting a better understanding of the impact of late payments and a general culture of responsible payment behaviour among businesses.

In light of the public consultation launched by the European Commission on updating EU rules on late payments,⁹¹ the feedback provided by relevant stakeholders indicated that 'improving the provision of training on credit management and financial literacy' is expected to have a markedly positive impact on tackling late payments, as 73.5 % of the stakeholders considered it particularly useful.⁹²

The above-mentioned contributions point to credit management education as a crucial way to combat late payments. It can help to alleviate issues encountered by SMEs, which, unlike large businesses, may lack the knowledge and tools necessary for effective credit management.

In **Belgium**, an industry-led document was adopted in 2014, entitled 'Control all facts of customer credit and prevent or recover non-payments'.⁹³ Addressed to all businesses and covering both G2B and B2B transactions, this document serves as an industry paper and legal study. Additionally, it can be utilised by businesses and institutions to address the issue of late payments and non-payment, as well as gain a deeper understanding of the prevailing legal landscape. In this sense, this document can be useful educational material for understanding the issue of late payments and, consequently, developing strategies to avoid them.

France adopted an industry-led initiative in 2022 in the form of a website with guidance, targeting micro businesses and SMEs.⁹⁴ The initiative was adopted by the software company AGICAP.⁹⁵ The initiative includes a brief description of the notion of late payment in commercial transactions. A short video is also provided (5 minutes), entitled 'Know everything about late payments'. The text on the webpage breaks down the different types of late payments (delay at reception, delay with default and negotiated delay). It gives advice to businesses in cases of late payment and for maintaining a good supplier/client relationship, fostering confidence.⁹⁶ It suggests several steps to avoid late payments, as follows:

- verify the solvability of clients;
- have clear payment conditions;
- have a qualified lawyer validate all the contract terms; and
- rely on the tools to fight against late payments (credit insurance and so on).

AGICAP (the entity launching the initiative) offers a 'cash management tool' for management of the purchasing cycle from start to end. The tool enables the centralisation of invoices and the

⁹¹ Further details can be found at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13665-Late-payments-update-of-EU-rules_en.

⁹² 'Late payments – update of EU rules: factual summary report of the contributions received to the public consultation', available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13665-Late-payments-update-of-EU-rules/public-consultation_en, p. 5.

⁹³ Control all facts of customer credit and prevent or recover non-payments, https://www.buylelegal.be/doc_publications/479.pdf.

⁹⁴ 'What is late payment and how do you manage it?' ('Qu'est-ce qu'un retard de paiement et comment le gérer?'), <https://agicap.com/fr/article/retard-de-paiement-et-comment-les-eviter/>.

⁹⁵ <https://agicap.com/>.

⁹⁶ For example, it advises sending a letter to the client with the invoice in a 'friendly'/formal tone.

instant dematerialisation of invoices via a validation process. There is also a link to a page providing tips and sample letters for persuasive customer reminders and debt collection. The advantage of this initiative is that it is written in rather clear and intelligible language and contains useful guidance and suggestions for effective debt collection. The plurality of materials and the simple language ensure the accessibility of the information, especially for micro businesses and SMEs, which are the target audience of this initiative.

In **the Netherlands**, the Dutch Council of State has developed a document with advice on possibly reducing the payment term from 60 to 30 days. This document also discusses the possibility of using alternative measures in relation to late payments in B2B transactions.⁹⁷ It offers helpful advice and guidance, which can be used both by public authorities and by businesses to develop their understanding of the issue of late payments.

Several other measures have been adopted in the Netherlands aimed at providing educational materials to businesses. One such initiative is the publication of a 'Step-by-step plan when the customer does not pay an invoice'.⁹⁸ This initiative, as the title suggests, sets out a detailed roadmap on what to do in case a customer does not pay an invoice. Notably, this includes cases where businesses are involved as well as consumers. This information is published on the Dutch 'Entrepreneur Square' website, which is a collaboration between the Dutch Chamber of Commerce, the Netherlands Enterprise Agency, the Dutch Road Service Authority, the Dutch Tax authorities and the Central Bureau of Statistics – so any of these stakeholders could give information on this initiative. Arguably, this initiative enables businesses (particularly SMEs) to understand their rights and educates them on their possibilities. It can be a useful tool helping SMEs to navigate the rules around late payments.

In addition, the Royal Association of Bailiffs, which is a public law professional organisation, initiated a campaign at the height of the Covid-19 pandemic. During that time, the bailiffs noticed that various actors were falling into financial trouble due to issues caused by the pandemic. Many SME entrepreneurs suddenly saw their turnover disappear, freelancers had an empty work schedule and individuals out of work may have needed the assistance of a bailiff, which they may not have had experience with before. With the 'calling is resolving' campaign, the public was encouraged them to call bailiffs as soon as possible, in order to ensure that the situation could be discussed and resolved, which would prevent their debts from increasing.

Finally, as mentioned earlier, the **UK** has an industry-led code aimed at tackling late payments, the Prompt Payment Code.⁹⁹ This code is administered by the Office of the Small Business Commissioner (OSBC) on behalf of the Department for Business, Energy and Industrial Strategy (BEIS). In addition to the functions mentioned earlier, the code also contains provisions for awareness raising activities by the OSBC, as well as the endorsement of soft-law measures.

In addition to the above-mentioned country examples, the non-country specific example of the Federation of Credit Management Associations (FECMA) is noteworthy. FECMA is 'a not-for-profit organisation to promote best practice in credit management across Europe and beyond'.¹⁰⁰ It is made up of 'national credit management associations, who share the vision of promoting best practice by sharing their knowledge and expertise across national borders'.¹⁰¹ The Federation, inter alia, exchanges credit-management knowledge, best practice and ethical standards

⁹⁷ <https://zoek.officielebekendmakingen.nl/stcrt-2021-14573.html#:~:text=Het%20wetsvoorstel%20regelt%20dat%20grote,schuldeiser%20van%20de%20grote%20onderneming.>

⁹⁸ [https://ondernemersplein.kvk.nl/stappenplan-klant-betaalt-factuur-niet/.](https://ondernemersplein.kvk.nl/stappenplan-klant-betaalt-factuur-niet/)

⁹⁹ Prompt Payment Code, [https://www.smallbusinesscommissioner.gov.uk/ppc/.](https://www.smallbusinesscommissioner.gov.uk/ppc/)

¹⁰⁰ <https://www.fecma.eu/home.>

¹⁰¹ Ibid.

between associations; shares and promotes research and pools the knowledge gained with each associations' members; and provides support and guidance for members of all associations. The website of FECMA contains useful information, presented in an easily accessible format, on credit management and can serve as a focal point of consultation for questions related to credit management for businesses. Most notably, the Federation has adopted a European Credit Management Guide, with each of its chapters focusing on various aspects of credit management. This guide can serve as a useful tool for businesses (especially SMEs).

Successful credit management helps to reduce the average payment period and to maintain an optimal cash flow, which, in turn, reduces the risk of default and increases the potential for growth.¹⁰² Therefore, it is crucial that companies are equipped with the necessary credit management education. This will also assist them in making use of the rights and remedies set out in the Late Payments Directive. As noted in the Opinion of the Fit for Future Platform, 'providing information and advice on payment terms plays a fundamental role to assure full compliance with the Directive'.¹⁰³

This holds true even more for SMEs, as a clear understanding of their rights is of utmost importance for SMEs to be able to exercise their rights. Research has found that 'SMEs often lack capacities to invest in training', and that often this training will 'incur high entry costs'.¹⁰⁴ In terms of training courses on credit management, while such courses may be available through different platforms, it is also critical that they are suitable for SMEs, not least in terms of their cost and duration.¹⁰⁵ Therefore, careful attention should be paid to providing accessible credit management education to SMEs.

2.2.11. Prompt payment codes and codes of conduct

In a study published by the European Commission in 2022,¹⁰⁶ 22 codes of conduct or payment codes were identified in 14 countries.¹⁰⁷ The majority of the identified codes referred to late payments only indirectly or partially.

Several examples from the selected countries for this study are provided below.

The Code of Good Behaviour developed in **Denmark** in 2022 (as discussed in Section 2.2.2) focuses on 'openness and transparency' as vital elements 'in a healthy payment culture'. Companies which sign up to the code are encouraged to disclose this through, inter alia, an annual report, a CSR report and other means.

The **Irish** Prompt Payment Code was developed by the industry 'with the aim of improving cash flow between business and moving towards a culture of prompt payment in Ireland'.¹⁰⁸ The code is supported by the Department of Enterprise, Trade and Employment. When launched in 2015, all government departments and public authorities signed up to the code. The sign-up by businesses was slow, leading to the introduction of the Prompt Payment Code Awareness Campaign in 2017 by the Department of Enterprise, Trade and Employment. As of August 2023,

¹⁰² VVA and Milieu for the European Commission (2018), Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour.

¹⁰³ *Fit for Future Platform Opinion*, https://commission.europa.eu/system/files/2023-04/Final%20opinion%202021_SBGR2_06%20Late%20payments_fup.pdf, 8.

¹⁰⁴ VVA and Milieu for the European Commission (2018), Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour, 45.

¹⁰⁵ Economisti Associati et al for European Commission, DG GROW (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://op.europa.eu/en/publication-detail/-/publication/cb4bc1bd-1467-11ed-8fa0-01aa75ed71a1/language-en/format-PDF/source-search>.

¹⁰⁶ *Ibid.*.

¹⁰⁷ *Ibid.*, 64. The countries covered in the 2022 study largely overlap with the countries covered by the present project, with the exception of Liechtenstein and Norway, which the earlier study did not cover.

¹⁰⁸ *Prompt Payment Code*, <https://enterprise.gov.ie/en/what-we-do/supports-for-smes/prompt-payment-code/>.

the code had 233 signatories, with 129 of them categorised as governmental and/or public bodies. By signing the code, the signatories pledge and agree to the following:

- Pay suppliers on time within the agreed terms, without attempting to change them retrospectively and 'without changing practice on length of payment for smaller companies on unreasonable grounds'.
- Give clear guidance to suppliers on payment procedures, particularly by advising them promptly if there are reasons for an invoice not to be paid according to the agreed terms and to 'ensure there is a system for dealing with complaints and disputes which is communicated to suppliers'.
- Promote good practice 'by requesting that lead suppliers encourage adoption of the code throughout their own supply chains'.

In **Italy**, the Code of Responsible Payments¹⁰⁹ was introduced across the country in 2015.¹¹⁰ This is the first code in Italy specifically dedicated to the issue of regularity in payments, developed by the regional trade association Assolombarda in 2014, and adopted by the national trade association Confindustria in 2015. By voluntarily adhering to the code, companies undertake to comply with the payment terms agreed with their suppliers, encouraging the adoption of the code throughout the supply chain. The objective of the code is to spread ethical and responsible behaviour and to stimulate a proactive management of commercial and financial relations between companies, starting with efficient administrative and IT procedures. The Responsible Payment Code Committee acts as the managing body of the code. Among other tasks, the committee verifies on an annual basis that adherents still meet the necessary conditions for adherence to the code; manages any withdrawals; receives, examines and manages reports of non-compliance with the code by suppliers of adherents; and decides on exclusion from the list of adherents to the code.

In **the Netherlands**, the initiative of Betaalme.nu (albeit now discontinued) was launched in November 2015 as an industry initiative with support from the Ministry of Economic Affairs, and had been supported by MKB-Nederland since 2018. The Betaalme.nu initiative can be considered a prompt payment code in the sense that it was voluntary – organisations could join the initiative – and it intended to encourage faster payments (namely, a 30-day maximum instead of a 60-day maximum). However, it ended after the Dutch legislation established the 30-day maximum payment time through amendments made in 2022.¹¹¹ Betaalme.nu was created to shorten payment terms to SME entrepreneurs to a maximum of 30 days. The reasoning behind this initiative was that helping SMEs to be paid faster would assist them to become less vulnerable, giving them more financial room to invest. In addition, it actively supported SMEs by providing knowledge about contracting, digital invoicing, accounts receivable management and chain financing. This helped SMEs in optimising the order-to-cash process for getting paid promptly.

A voluntary code of conduct on payment terms for SMEs exists in **Sweden**.¹¹² It is directed at larger companies, whereby companies purchasing from SMEs undertake to shorten payment terms/times to SMEs. The code was developed by industry in response to the requirements of the Swedish Ministry of Enterprise and Innovation for Swedish companies to voluntarily shorten payment terms for suppliers that are SMEs. The code of conduct refers to purchases by Swedish companies from suppliers in Sweden and excludes public procurement. The code of conduct

¹⁰⁹ Italian Code of Responsible Payments (Codice Italiano dei Pagamenti Responsabili (CPR)), <https://www.p-a.it/images/pdf/II-Codice.pdf>.

¹¹⁰ The code was in force in one of the regions of the country, in Lombardy, in 2014.

¹¹¹ In particular, the Act of 30 March 2022 amending Book 6 of the Civil Code in connection with shortening the statutory payment term to 30 days was adopted (see Box 2, For more background on the legislative trajectory of this new law, see https://www.eerstekamer.nl/wetsvoorstel/35769_verkorten_wettelijke).

¹¹² Uppförandekod avseende svenska SME-bolag [Code of Conduct on payment terms for SME companies operating in Sweden], <https://www.betaltider.se/>.

states that when companies make purchases, and renegotiate the terms of the agreements within a maximum of 18 months after their signature, such companies should use shorter payment terms. This rule applies in the following categories:

- for small firms, the companies should pay a maximum of 30 days after receiving the invoice; and
- for medium-sized firms the purchaser should offer to pay the supplier, if requested, within 30 days from the time the correct invoice is received.

However, for medium-sized companies, longer contractual payment terms can be negotiated for special reasons, such as in procurement with suppliers of different size classes or procurement involving suppliers from different countries. The code mentions that an evaluation should be carried out 2 years after its implementation. Yet, there is no publicly available information in this regard, nor further practical information on how the code was implemented or its impact. Nonetheless, the code of conduct was not considered sufficiently effective to change payment behaviour among large companies, and therefore the government decided to implement a law on the reporting of payment terms. In the proposal/impact assessment of the law on reporting requirements, several large companies stated that there was not enough time to allow the voluntary code to take effect.

The **UK** has introduced a useful tool for combating late payments in the form of an industry-led code aimed at tackling late payments – the Prompt Payment Code.¹¹³ It is a voluntary code, which is open to all businesses and is administered by the Office of the Small Business Commissioner on behalf of BEIS. Businesses that sign up to the Prompt Payment Code undertake a commitment, inter alia, to pay suppliers on time, to give clear guidance to suppliers on payment terms, to provide a fair process for dispute resolution, and to adopt and encourage good payment practices. In addition, the Prompt Payment Code expects its signatories to pay '95 % of invoices from all suppliers within 60 days and 95 % of invoices from small businesses (with less than 50 employees) within 30 days'.¹¹⁴

While there do not seem to be sanctions in the code, businesses that fail to adhere to the code may face removal. In fact, five major companies were formally removed from the code 'after failing to honour their commitments'.¹¹⁵ Following removal, these companies 'pro-actively engaged with the Prompt Payment Code Compliance Board by submitting action plans outlining how they plan to achieve compliance and meet the commitments of the Code'.¹¹⁶ While before their removal these companies were paying a lower number of invoices within 60 days as prescribed (the percentages varied from 18 to 79 %), after removal and following their proactive engagement with the code, the same companies paid over 90 % of their invoices within 60 days (with the percentages varying between 90-98 %).¹¹⁷

The Prompt Payment Code can certainly be considered good practice in promoting prompt and timely payments and fair payment practices. Arguably, the voluntary nature of the code can encourage businesses to sign up and adhere to it and, thereby, promote a prompt payment culture. Moreover, the possibility of removal from the code for companies that do not live up to their commitments can come with a reputational cost, leading the signatories to duly fulfil their commitments. In addition, it can be observed that active engagement with the code following the removal of the companies can contribute to significantly reducing late payments.

¹¹³ Prompt Payment Code, <https://www.smallbusinesscommissioner.gov.uk/ppc/>.

¹¹⁴ Prompt Payment Code, <https://www.smallbusinesscommissioner.gov.uk/ppc/faqs/>.

¹¹⁵ See https://www.smallbusinesscommissioner.gov.uk/ppc/press_releases/major-companies-are-permanently-removed-from-the-prompt-payment-code-for-failing-to-pay-their-bills-on-time/.

¹¹⁶ https://www.smallbusinesscommissioner.gov.uk/ppc/press_releases/5-companies-previously-suspended-from-the-prompt-payment-code-have-been-reinstated-following-improvements-in-payment-practices-to-their-supply-chain/.

¹¹⁷ Ibid.

Stricter payment terms set up through legislation, including those set out by the Late Payments Directive, are certainly helpful and crucial for combating late payments. However, in combination with legislation, voluntary codes can also contribute to the reduction of late payments and to the creation of a responsible payment culture. The fact that such codes are voluntary by definition at times can be more incentivising for companies than state-mandated legislation/regulations. In addition, by signing up to such codes companies can gain non-financial 'dividends', such as a more reliable, positive reputation in the market, leading to an increase in the number of those cooperating with them and to more stable and long-lasting relations with partners. This can serve as an incentive for businesses to sign up to the codes.

Furthermore, if the voluntary codes contain provisions resulting in sanctions for companies which do not adhere to it (such as removal from the Prompt Payment Code in the UK), the influence of such codes can be enhanced even further. The inclusion of other measures in prompt payment codes has been suggested previously, 'such as a confidential "whistle-blowing" process, a record of successful challenges of payment terms, a register of payment complaints, an audit scheme for code signatories and transparency requirements, including the publication of standard contracts'.¹¹⁸ Finally, for an increased impact of such voluntary codes, a high number of signatories is crucial, particularly the signatures of larger companies.¹¹⁹

Nonetheless, the effectiveness of voluntary codes should be taken with a caveat. In particular, some research findings illustrate that such codes may not necessarily be helpful in specific industries, indicating that the process of tackling late payments in some industries may benefit from legislative intervention. For instance, as of 2023 the construction sector in the UK seems to be especially vulnerable to late payments, amounting to a 'late payment epidemic' according to some scholars.¹²⁰ In addition, the effectiveness of such self-regulation 'relies on tight monitoring of signatories' compliance with the obligations that they have committed to observe, and on sanctioning lack of compliance'.¹²¹

Finally, the adoption of internal policies or codes of conduct within companies may be another useful way to promote prompt payments. In this light, a majority of the businesses surveyed by Intrum as part of an annual European Payments Report (78 %) reported either having a code of ethics in place to encourage a prompt payment culture or having plans to implement one.¹²² Connecting this with examples from other sections, it can be observed that the facilitated availability of advice and guidance on issues related to late payments can be helpful in combating late payments.

Research has found that 'institutional pressure in the form of payment codes was associated with shorter payment times' in recent years, including during the Covid-19 pandemic, as well as with generally 'higher compliance with agreed payment terms'.¹²³

Prompt payment codes are not only important preventive measures but can also contribute to changing the overall payment culture. However, for such codes to be effective, it is crucial to have a high number of signatories, which usually requires active dissemination of information

¹¹⁸ VVA and Milieu for the European Commission (2018), *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, , 42.

¹¹⁹ Ibid., 81.

¹²⁰ A Stewardson, D J Edwards, E Asamoah, C Ohis Aigbayboa, J H K Lai, H El-Gohary (2023), *The late payment epidemic in UK construction*, Journal of Financial Management of Property and Construction, forthcoming.

¹²¹ *Fit for Future Platform Opinion*, https://commission.europa.eu/system/files/2023-04/Final%20opinion%202021_SBGR2_06%20Late%20payments_fup.pdf, 9.

¹²² Intrum, *European Payment Report 2022*, 24th annual edition, <https://www.intrum.com/media/50bjgmow/epr-2022-mainreport.pdf>, 19.

¹²³ A Flynn, Q Li (2023), *Determinants of supplier payment times before and during the pandemic: Empirical evidence from UK firms*, Journal of Purchasing and Supply Management, pp. 1-5.

on the availability of the code. Research carried out in 2018 indicates that it is crucial that 'large companies, often considered bad payers, also sign up to it and commit to improving their payment behaviour'.¹²⁴ In addition, similar to the other measures discussed in this report, it should be acknowledged that a 'direct link between the adoption of the codes and the reduction of late payment cannot always be established',¹²⁵ meaning that a combination of measures is necessary to tackle late payment practices.

3. CONCLUSIONS

Analysis shows a mix of preventive measures implemented by the selected countries to address late payments. Countries such as France, Italy or Spain have launched several significant initiatives addressing the issue from different perspectives. But there are also countries where only a limited number of initiatives have been identified. The analysis of initiatives by category further suggests that most of the ones taken at the country level focus on ensuring the transparency of payment practices and monitoring of payments. There have been a significant number of such initiatives, from payment observatories in France and Spain to more specific legislative and non-legislative measures. Other types of measures, such as financial mechanisms (incentives), the restriction of access to public funding or invoice management have been taken rarely and only in selected countries. This suggests that there is scope for sharing best practices and mutual learning. That is one of the objectives of the EU Payment Observatory, which is being developed as part of this project, and in particular the repository of documents and initiatives addressing late payments that will form part of it. Moreover, it would be challenging to attribute a change in payment behaviour to only one type of measure. Rather, a combination of various measures is likely to be most effective in improving payment practices, encouraging prompt payment practices and reducing late payments in the longer term.

¹²⁴ VVA and Milieu for the European Commission (2018), *Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*, 42.

¹²⁵ Ibid.

