



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Public consultation on the proposal for an EU Regulation on combating late payment in commercial transactions

Public consultation on the proposal for an EU Regulation on combating late payment in commercial transactions.

1. Overview

1.1 Introduction

The Department of Enterprise, Trade and Employment (the Department) invites submissions to a public consultation on a [proposal for an EU Regulation on combating late payment in commercial transactions](#). The Department will represent Ireland at negotiations on the Commission's proposals over the coming months, and responses to the consultation will help inform our position at these negotiations.

1.2 Objective of the proposed Regulation

The objective of this proposal is to replace Directive 2011/7/EC on combating late payment in commercial transactions (Late Payment Directive) with an EU Regulation.

The Late Payment Directive is implemented in Ireland by the statutory instrument, European Communities (Late Payment in Commercial Transactions) Regulations 2012 as amended.

The scope of the proposed Regulation will apply to commercial transactions for goods and services between public bodies and business, and business-to-business commercial transactions.

The proposal is aimed at addressing shortcomings in the Directive that have been identified through studies and stakeholder consultations in the review of the current regulatory framework, such as:

- Lack of a maximum payment term in business-to-business commercial transactions
- Different rules applying to business-to-business commercial transactions and commercial transactions between public bodies and business.
- Ambiguous provisions in the Directive relating to the term “grossly unfair” which can cause difficulty in proving in the context of contractual arrangements.
- Lack of monitoring and enforcement
- Lack of synergies with public procurement
- The absence of tools available to assist businesses remedy issues relating to late payment.

The Commission is proposing this new Regulation with the ultimate aim of improving the payment discipline of public authorities, large companies and SMEs and protecting businesses from the negative effects of payment delays in commercial transactions through:

- Preventing late payment from occurring
- Facilitating timely payments
- Promoting fairness in commercial transactions
- Strengthening redress systems

1.3 Key aspects of the proposed Regulation

The proposed Regulation will make significant changes to the current rules with a view to addressing shortcomings identified in the Directive:

- A maximum payment term cap at 30 days for both business-to-business transactions and transactions between public bodies and business will be enforced (Article 3)
- There will be no right of waiver to payment of interest and compensation for late payments (Article 5)
- Late payment interest will remain at the reference rate plus 8 percentage points (Article 6) and a flat fee compensation for recovery costs of €50 per commercial transaction (Article 8)
- A dedicated enforcement authority will be required to be established, which will have powers to impose sanctions and penalties (Article 13), mediation options (Article 16)
- Contractual terms impinging on rules set out in the Regulation will be null and void (Article 9)
- The main contractor for all public works contracts falling within the scope of the public procurement Directives, will be required to verify timely payment to subcontractors (Article 4)
- The proposal requires all Member States to facilitate and promote availability and access of SMEs to credit management tools, financial literacy training and foster the use by SMEs of digital tools for timely payments (Article 17).

The proposed Regulation will not apply to payments for transactions with consumers, payments made as compensation for damages or payments resulting from obligations that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings.

2. Submissions

The Department of invites submissions on any aspect of this proposed Regulation, in particular, on the key aspects set out in paragraph 1.3.

Respondents are requested to note that it is the Department's policy to treat all submissions received as being in the public domain unless confidentiality is specifically requested. Respondents are, therefore, requested to clearly identify material they consider to be confidential and to place same in a separate annex to their response, labelled "confidential".

Where responses are submitted by email, and those emails include automatically generated notices stating that the content of same should be treated as confidential, contributors should clarify in the body of their emails as to whether their comments are, in fact, to be treated as confidential.

Respondents are requested to make their submissions by email. Submissions or questions regarding the consultation should be marked 'Proposal for EU Regulation on combating Late Payments' and be sent by email to accesstofinance@enterprise.gov.ie

The deadline for receipt of submissions is **5pm on Tuesday, 14 November 2023**.

Freedom of Information

Respondents' attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Acts. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with any potentially affected respondent regarding information identified as sensitive before making a decision on any Freedom of Information request.