



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES
SME Policy
SME Strategy

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Dear Mr Turner,

Commissioner Breton thanks you for your letter of 12 October. He has asked me to reply to you on his behalf.

Your letter confirms that late payment is still a persistent practice in the EU business environment, especially in B2B transactions. In 2018, the Commission published a study¹ on how the Late Payment Directive is implemented in B2B relations in the Member States. The study concluded that less than 40% of businesses are paid within the agreed payment term. In some sectors, such as retail or construction, payment delays are systemic in at least 65% of transactions.

More recently, a Flash Eurobarometer² has confirmed that late payment is the most important concern for SMEs and start-ups, after administrative burden.

Your letter also raises the key issue of unfair payment practices, such as imposing unfairly long payment terms, or unilaterally extending payment terms agreed in the contract. As you described in your letter, these practices have grown at an “alarming rate” under COVID 19.

These issues were also highlighted in the study referred to above. This is why, in its 2019 Resolution³, the European Parliament asked the Member States and the Commission to take action and combat the “fear factor” that occurs whenever there is an asymmetry in the negotiating positions of a business relation. It is mostly out of fear of jeopardizing

¹ <https://op.europa.eu/en/publication-detail/-/publication/c8b7391b-9b80-11e8-a408-01aa75ed71a1>

² https://ec.europa.eu/newsroom/growth/item-detail.cfm?item_id=688053

³ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0042_EN.html

existing or future business relations, that SMEs do not request payments of interests or compensations when they are paid late, and are reluctant to challenge unfair payment terms or even to renegotiate them.

In addition it has also been highlighted that the enforcement of the Directive is hampered by the lack of clear-cut provisions (for example on unfair practices, and on maximum payment terms in B2B transactions), lack of enforcement tools, such as reporting requirements, transparency obligations, complaint handling systems, and alternative dispute resolution tools for fast resolution of payment-related disputes

Against this background, the Commission adopted this year a comprehensive SME Strategy⁴, which includes specific actions for a more effective enforcement of the Late Payment Directive.

One of these actions is the setting up of the Observatory of payment delays. The purpose of this Observatory is to provide information on payment delays, and payment terms but also on the unfair practices that are behind late payments.

On 6 November, a webinar with all relevant stakeholders will discuss on how to design the Observatory. I hope we can count with your experience and participation.

A second action concerns alternative dispute resolution (ADR) and mediation. A vast majority of commercial disputes involving SMEs concern payments. Yet, SMEs are reluctant to initiate legal proceedings to protect themselves against late payments, since these procedures are costly and time consuming. Yet unresolved disputes can have extensive impacts on the life of a business.

This is why we are developing pilot ADR and mediation schemes based on existing best practices in the Member States. These schemes will be tested next year. The ultimate objective is to provide affordable payment dispute resolution tools, allowing SMEs to get paid quickly, without disrupting their commercial relations.

I wish to reassure you that the fight against late payment remains at the heart of the Commission's actions in support of businesses and SMEs. Actually, the current COVID crisis had added a new impetus to this fight.

Yours sincerely,

(e-signed)

Birgit Weidel
Head of Unit

⁴ COM (2020) 103 - An SME Strategy for a sustainable and digital Europe
https://ec.europa.eu/info/sites/info/files/communication-sme-strategy-march-2020_en.pdf