

Proposal for a Directive of the EP and the Council on combating late payment in commercial transactions

- The Czech Republic is fully aware of the fact that late payments are nowadays a very topical issue for discussion.
- We agree that it is absolutely essential to seek the effective means to challenge this negative phenomenon as satisfactory cash-flow is crucial for businesses, particularly in this period of economic difficulty.
- There is also no doubt that the current Directive is not sufficiently clear, as highlighted by the large number of recent ECJ – European Court of Justice cases. Even though the Directive has already been implemented in all Member States, we can say that late payments in commercial transactions are still widespread practise. They are not only present in commercial transactions between undertakings, but also between undertakings and public authorities.
- For the aforementioned reasons, we very much appreciate the EC's effort to find a solution to this situation and revise the current Directive. However, this revision has to be carried out in a way that guarantees effective access to finance for SMEs. This must also be carried out in a way that demonstrably improves the position of SMEs as creditors and generally enhances their competitiveness.
- In order to achieve enhanced competitiveness for SMEs, we need to produce and adopt effective instruments. These should (based on the complete evaluation of the current Directive) partly eliminate the shortcomings of the already adopted version, and partly propose new, well-balanced measures.

- In general, the Czech Republic supports the steps taken by the EC. We especially welcome the technical changes clarifying and simplifying future implementation of the proposed provisions of the Directive into the Czech law. However, we have certain concerns as regards the practical impact of the proposed measures on undertakings and public authorities.
- In particular, we have doubts about Article 5 and the stipulation of stricter conditions on public authorities. The basic principal of non-discrimination states that we should have the same conditions for all market players. The public authority as a participant in private law relations is equal to other participants or competitors. On the basis of the arguments given by the EC we are not persuaded that the proposed measures justify such derogation from the abovementioned principle.
- In addition, we also have a concern about Article 5 para 5 relating to sanctions for late payments by public authorities. A lump sum compensation equal to 5% is set as an extra sanction only for the cases where the public authority is a debtor. Conversely, this not the case when the same public authority is a creditor. From our point of view, the level of the sanction and the sanction itself have not been sufficiently explained and, in addition, their impact on national economies has not been sufficiently analyzed. We do not feel that 5% is sustainable even when taking into account the current economic difficulties.
- We hold further concerns regarding Article 4 and compensation for recovery costs. In this matter, we would welcome a more detailed reasoning of this provision from the EC. The current wording states that the creditor should be entitled to obtain not only the interest for the late payment and the compensation for recovery costs depending on the level of the debt regardless of the real costs but are also entitled to claim

compensation for other remaining costs. This means that a creditor could obtain compensation without any real costs being incurred.

- Although we have certain concerns about the level of fixed sums for recovery costs, we would strongly support to change of the sanction to 1% of the amount for which interest for late payment becomes payable in cases of debts of 10 000 EUR or more to the fixed sum. This sum should be determined appropriately and impartially with respect to sanctions in paras 1 a and b. Additionally, the sanction should act as compensation for the internal costs concerning the late payment's enforcement. The fixed sum should cover the creditor's costs without being unreasonably high.
- Finally I would like to note that we are not fully satisfied with the definition of public authorities in Article 2 paragraph 2. Its current wording means that the provisions of the Directive will be applicable to public authorities in any situation – not only when the public authority is acting in the public law relations but also when acting in private law relations. The current definition is too broad, as public authorities would cover also non-profit organizations (e.g. hospitals, schools) formed by public authorities. Consequently, the sanctions defined in art. 5 would also apply to them. The draft could have an excessively negative impact on them with respect to their limited financial sources.
- In spite of our above-mentioned reservations, we can support the improvement of on-time payment in commercial transactions. We are open to the new proposals. For the EC proposal to be agreed upon, we feel the further steps need to be taken:
 - all new proposals to improve the current draft should be examined carefully;
 - detailed discussion should be held;

- further analysis should be carried out as to the question of different treatment of late payments between B2B and public authorities and private undertakings;
 - agreement should be reached on a clear mechanism to set sanctions for late payment.
- A number of MS raised the same concerns as the CR during the discussions at the last working party for competitiveness and growth. Together, we are trying to find an acceptable compromise which would solve all the doubts and be satisfactory to all interested parties. In addition, on Monday September 28, the Internal Market Committee in the EP had a first exchange of views concerning this Directive. On the basis of this I am convinced that the Council and the EP will be able to find a useful and balanced wording for this Directive.

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