

Cabinet newsletter

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Dear Reader,

I would like to keep you up to date with the latest steps towards the adoption of the Late Payment Directive. Vice-President Tajani believes that it is paramount for European institutions to respond immediately to such an important concern for enterprises, especially SMEs, which are currently suffering from a serious lack of liquidity. There has been a stimulating and valuable debate in the European Parliament, where several points were raised and I would like to draw your attention to the main issues related to this debate.



Antonio Preto
Head of Cabinet

Public administration is not among the most punctual debtors in the EU, with an average payment duration spanning from 48 days in the UK to 144 days in Spain, passing through 135 days in Italy. This causes a serious lack of liquidity to the firms working with the public sector. This is particularly worrying given that more than half of the public contracts in the European Union are contracted to SMEs.

The Late Payments Directive proposal is part of the integrated approach that Vice-President Tajani wants to launch to boost competitiveness of enterprises in Europe, and to create a better economic environment based on fair competition. This directive aims at helping reduce the lack of liquidity facing enterprises across the continent: enterprises, which has already been worsened by the crisis. Being paid on time is crucial for every enterprise, as it means certainty of cash flow and a capability to plan ahead. It is a crucial point in particular for SMEs, which are often the weak contractual party when bargaining with large enterprises or with public administrations.

The directive focuses on measures aimed at preventing late payments in transactions between enterprises and public administration. The size of the consequences of late payments in this sector are clear once we consider that public procurement currently accounts for around 16% of the EU's GDP. With the implementation of this directive, should it be adopted in a similar form, Public Administrations should be obliged to pay the goods and services that they require within 30 days of delivery. In addition, in case of late payments,

public authorities have to pay a lump-sum compensation of 5%.

Timely payment by public authorities is mainly a question of good management. When public authorities acquire goods, or services, they have already scheduled the credits for that expenditure in their budget. For enterprises, being paid on time is an additional source of credit, which will provide them with a stronger bargaining position vis-à-vis their bank.

Among the points raised during the debate in the Parliament, we find a proposal to include payment periods for Business to Business transactions within the scope of this directive. The idea behind this particular proposal is that, unfortunately, larger companies often use their greater contractual power to pressure their smaller suppliers into accepting unreasonably long payment times. This proposal was not welcome by all, as it caused concerns among certain stakeholders, who worry about extending these rules to the private sector. Such harmonisation could be a risk, given that payment periods are usually one of the negotiable terms of a contract. It is clear that finding one payment period that would fit all businesses in all Member States would be very difficult. Moreover, in certain cases longer payment periods could even constitute an advantage for SMEs. The French measures to combat late payment, for instance, take into consideration these differences among sectors by allowing a general agreement on payment periods to be concluded by a representative organisation for a specific sector.

Furthermore in some cases SMEs are forced to accept contractual clauses which expressly exclude the payment of interest in case of late payment or allow the counterpart to extend arbitrarily payment periods. The Directive takes into account this problem by stating that such a clause has to be considered unfair and therefore "*shall either be unenforceable or shall give rise to a claim for damages*".

Another point of discussion was the amount of the lump-sum compensation in case of late payments by public administration. The aim of this compensation is to serve as a deterrent and a clear criterion to quantify this compensation should be put in place, so as to guarantee legal certainty for both enterprises and public administrations.

Finally there have been some concerns about the definition of public administration in the Directive. According to some, the directive should not apply to public health sector, which however awards a large part of public contracts.

In any case, given the importance of public procurement in the EU, the definition of Public Administration should be extended as much as possible in order to fall within the scope of the directive.

Vice-President Tajani would like to finalise an SMEs' friendly compromise so as to approve the directive as soon as possible.