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WK 2304/2024 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations

Subject:	Late Payment Regulation - consolidated comments from AT, BG, DE, DK, FI, IE, LU, PL, SE
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WK 2304/2024 INIT

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Commission proposal	Drafting Suggestions	Comments
023/0323 (COD)		AT (Comments): The comments made and in particular the text amendments suggested are preliminary; there is still a general scrutiny reservation from AT. This is particularly true for the Recitals and Articles for which comments may be submitted until the 4th of March, 2024.
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions (Text with EEA relevance)	AT (Drafting): Proposal for a <u>Directive (EU) 2024/xx</u> OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions <u>and amending Directive (EU) 2019/633 (recast)</u> DE (Drafting): Proposal for a REGULATION <u>DIRECTIVE</u> OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating late payment in commercial transactions (Text with EEA relevance)	AT (Comments): The Proposal needs to remain a Directive, i.e. either a complete recast or an amendment (here it is set up as a recast because an amendment would be much more difficult to read). The reference is not replaced in every Recital and Article in order to avoid making the document harder to read. FI (Comments): <i>As regards this proposal, the formation of FI's position within the government is still ongoing. Therefore, we have a general scrutiny reservation.</i> <i>General</i> <i>In choosing a legislative instrument, we emphasize that a Regulation as a legal</i>

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		instrument alone does not guarantee effective application in MSs unless provisions are clear and unambiguous. In our view, no compelling reasons necessitate using a regulation; hence, as regards this proposal, we prefer a directive as the legislative instrument. DE (Comments): General remark: GER supports measures to avoid unnecessary late payments especially with regard to SMEs. The existing EU instrument has achieved improvements in this regard. GER does not however see a substantial advantage in the Commission's proposal which goes way beyond what is necessary and which refers to situations in some Member States as a justification to introduce a fully harmonized regime for all Member States. Such an approach is disproportionate especially for those Member States where late payment has been identified already before and regulated sufficiently. Potential problems in some Member States and even there not for all businesses is not a justification for a fully harmonised regime across the EU. It could even lead to disadvantages for those SMEs which are often not only creditors, but also debtors.

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		The following remarks are therefore under the presumption that the majority of Member States wants to go for a new instrument. If such support does not exist, GER will not support such a new instrument. The type of the new instrument must remain a directive. Replacing the current minimum harmonizing directive with a fully harmonizing regulation would slow down or completely remove efforts by national governments to improve payment behaviour in their countries which may have very different reasons in different areas of business. Furthermore, rules on payment periods, interest for delays, etc., are core matters of civil law. The current directive has therefore been implemented in many MS by integrating them in their Civil Codes, making it easy for the users of the law to find all rules regarding late payment at one place. By contrast, a regulation would create a second set of rules in a separate legal act. It would be necessary to decide in every single case which set (the Civil Code or the regulation) applies. As there will always remain grey areas in the definition of the scope of application of a regulation a large number of requests for an ECJ preliminary ruling would become necessary. Enforcement of civil claims

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		would be significantly protracted. See also the Joint position paper of Germany and nine other MS of February 2024 (WK 17223/2023 REV 2), the German position of 20 December 2023 and the Request for a coherence exercise by the Working Party on Civil Law (General Questions) of 30 January 2024 (WK 1363/2024).
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee ¹ ,		
Acting in accordance with the ordinary		

¹ OJ C , , p. .

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legislative procedure,		
Whereas:	DE (Drafting): <i>[Whereas:]</i>	DE (Comments): We propose to consider the recitals once we have reached agreement on the articles. For the moment we do not comment on the recitals but we reserve to submit comments later once the operative part is settled.
(1) Most goods and services are supplied within the internal market by economic operators to other economic operators and to public authorities on a deferred payment basis whereby the supplier gives its client time to pay the invoice, as agreed between parties, as set out in the suppliers' invoice, or as laid down by law.	AT (Drafting): (1) Most <u>works</u> , goods and services are supplied within the internal market by <u>undertakings</u> to other <u>undertakings</u> and to <u>contracting</u> authorities on a deferred payment basis whereby the <u>supplying undertaking</u> gives its client time to pay the invoice, as agreed between parties, as set out in the <u>undertakings</u> ' invoice, or as laid down by law.	AT (Comments): The terminology should be harmonised to correspond with the definitions in the legal text. For example, see the interchangeably used terms of "economic operator", "supplier", "company", "undertakings". The drafting suggestions will err on the side of using the term "undertaking" unless there is a specific need to use a different term (e.g. "economic operator" in the context of the procurement Directives). Another term that may have to be corrected (this can be done in a final reworking once the definitions are stable) is that the reference to goods and services should possible be extended to also cover works (see Recital 9 on the scope). Also, since the definition of "public authorities" only covers contracting authorities, it is unnecessary to use a different term.

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		Finally, it would be clearer to consistently refer to works, goods and services or use the alternative text suggested in Article 1(2). IE (Comments): The recital makes provision for “as agreed between parties” which is not given any real effect in the proposed articles.
(2) Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions or by law.	AT (Drafting): (2) Many payments in commercial transactions between <u>undertakings</u> or between <u>undertakings</u> and <u>contracting</u> authorities are made later than agreed in the contract or laid down in the general commercial conditions or by law. IE (Drafting): Many payments in commercial transactions between economic operators or between economic operators and public authorities, where the latter is the debtor, are made later than agreed in the contract or laid down in the general commercial conditions or by law.	AT (Comments): See comment Recital 1. IE (Comments): The proposal covers payments by public authorities to economic operators but not payments by economic operators to public authorities
(3) Late payments directly affect liquidity and predictability of cash flows, thus increasing working capital needs and compromising a	AT (Drafting): (3) Late payments directly affect liquidity	AT (Comments): See comment Recital 1.

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company's access to external financing. This affects competitiveness, reduces productivity, leads to redundancies, increases the likelihood of insolvencies and bankruptcies and is a critical barrier for growth. The damaging effects of late payments spread along supply chains, as the payment delay is often passed onto suppliers. Small and medium sized enterprises (SMEs), who rely on regular and predictable streams of cash, are heavily affected by those negative consequences. Late payment thus represents a problem for the Union economy because of its negative economic and social consequences.	and predictability of cash flows, thus increasing working capital needs and compromising an <u>undertaking's</u> access to external financing. [...]	IE (Comments): This is agreed
(4) Although judicial claims related to late payment are already facilitated by Regulations (EC) No 805/2004 ² , (EC) No 1896/2006 ³ , (EC) No 861/2007 ⁴ and (EU) No 1215/2012 ⁵ of the European Parliament and of the Council, in order to discourage late payment in commercial		IE (Comments): It would be more prudent to strengthen the existing Directive.

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- ² Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.04.2004, p. 15)
- ³ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).
- ⁴ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).
- ⁵ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

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transactions it is necessary to lay down complementary provisions.		
(5) Undertakings should be able to trade throughout the internal market under conditions which ensure that transborder operations do not entail greater risks than domestic sales. Distortions of competition would ensue if substantially different rules applied to domestic and transborder operations.	AT (Drafting): (5) Undertakings should be able to trade throughout the internal market under conditions which ensure that cross-border operations do not entail greater risks than domestic sales. Distortions of competition would ensue if substantially different rules applied to domestic and cross-border operations.	AT (Comments): “Transborder” seems much less used and unusual; “cross-border” is more common (see also Art. 13[3] of the Commission’s proposal). IE (Comments): Forced harmonisation – will this change anything on the ground?
(6) Directive 2011/7/EU of the European Parliament and of the Council ⁶ lays down rules to combat late payment in commercial transactions. In 2019, the European Parliament identified several shortcomings of that Directive. The SME Strategy for a sustainable and digital Europe ⁷ called for ensuring a ‘late-payment-free’ environment for SMEs and strengthening the enforcement of Directive 2011/7/EU. In 2021, the Fit for Future Platform highlighted critical issues in the implementation		AT (Comments): The unspecified references to “the flat fee compensation” and “tools for creditors to take action against their debtors” seem to suggest that the flat fee and the tools themselves were identified as existing issues. This should be corrected. IE (Comments): There is limited data available on B2B

⁶ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

⁷ COM (2020) 103 final.

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of that Directive in its opinion. The main shortcomings identified in these initiatives are related to: the ambiguous provisions on ‘grossly unfair’ regarding the deadlines for payment in business to business transactions (B2B), the unfair payment practices and the deadlines for the procedures of acceptance and verification; the flat fee compensation; the asymmetry of rules for payments terms between G2B and B2B transactions; the lack of a maximum payment term for commercial transactions in B2B transactions; the lack of monitoring of compliance and enforcement; the absence of tools to combat the asymmetries of information; as well as tools for creditors to take action against their debtors, and the lack of synergies with the public procurement framework.		transactions(there is no central B2B repository of data). The percentage of G2B payments in Ireland is consistently high. This is not an issue in Ireland
(7) To address those shortcomings, Directive 2011/7/EU should be replaced.	AT (Drafting): (7) To address those shortcomings, Directive 2011/7/EU should be <u>amended</u> .	AT (Comments): See first comment. IE (Comments): Perhaps it should be strengthened rather than replaced
(8) Provisions should be laid down to prevent late payments in commercial transactions, consisting in the delivery of goods		IE (Comments): Agreed

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or supply of services for remuneration, irrespective of whether they are carried out between undertakings or between undertakings and contracting authorities/entities, where the latter are the debtor, given these contracting authorities/entities handle a considerable volume of payments to undertakings.		
(9) Public work contracts and building and engineering works are very often subject to excessively long payment terms and delays. Therefore, this Regulation should also apply to these activities.	AT (Drafting): (9) <u>The European Court of Justice found in its judgment of 18th of November, 2020, Techbau SpA, C-299/19, that public works contracts are covered by the scope of the preceding late payment Directive since the terms “goods” and “services” clearly also cover the provision of public works. As there is no difference in terms between public works and works in general, and building and engineering works are very often subject to excessively long payment terms and delays. Therefore, it is clarified that this Directive should also applies to these activities.</u>	AT (Comments): According to (e.g.) Art. 2(1)(7) of Directive 2014/24/EU, “a work” means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function. Referring to a “public works contract” (see also Art .2(1)(6) of that Directive) therefore already covers “building and engineering works”. Furthermore, this Recital can have confusing implications with regard to the application of Directive 2011/7/EU; the European Court of Justice already found in case C-299/19 that it already was applicable, the inclusion in the text is only a clarification. Beyond that, as the Court based its decision on provisions of the TFEU more generally to interpret the meaning of “goods” and “services”, works contracts in general are within the scope of the Directive, and not just public works contracts (see in that

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		respect Recital 52 of the mentioned judgement). A clarification of the scope should therefore be more general. Whether all works contracts “are very often subject to excessively long payment terms and delays” would be for COM to deduce from the data collected for the impact assessment and adapt the Recital if this aspect is needed (this seems to be more of a point for Article 4 in any case). BG (Comments): The imposition of "excessively long payment terms" is not an objective condition leading to subsequent potential delays in payments during the execution of activities under contracts concluded after public procurement procedures, which involve the assignment of construction and/or engineering activities.
(10) Transactions with consumers, payments made as compensation for damages, including payments from insurance companies, and obligations to pay that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring	PL (Drafting): This recital shall read as follows: Transactions with consumers, payments made as compensation for damages, including payments	PL (Comments): The arguments for extending the list of transactions and payments resulting from them, that should be excluded from the application of this Regulation, are:

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proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023 ⁸ of the European Parliament and of the Council, should be excluded from the scope of this Regulation.	from insurance companies, contractual penalties, payments resulting from commercial transactions, which exclusive parties are entities belonging to to the same capital group , and obligations to pay that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023 ⁹ of the European Parliament and of the Council, should be excluded from the scope of this Regulation.	- the nature of contractual penalties that do not constitute remuneration for the supply of goods or services, but only an incidental benefit with which a given entity may be charged in connection with the breach of contractual obligations going beyond the subject of the mutual contract (delivery of goods or services in exchange for remuneration), which constitute a sanction for breach of contract, - the nature of transactions that takes place between a specific group of entities, related to each other for the purpose of operation (common economic and financial goal), whose mutual financial relations affect entities from a given group at most, but not other entities operating on the market. These entities have capital and economic connections as well as related sources of financing (entities from the capital group, use for e.x. a tool such as cash pooling). IE (Comments):

⁸ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

⁹ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

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		Agree, already excluded in Directive 2011/7/EU
(11) Late payment constitutes a breach of contract which is financially attractive to debtors, due to low or no interest rates charged on late payment, or slow procedures for redress. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest for late payment is null and void, is necessary to reverse this trend and to discourage late payment. Consequently, contractual payment periods should be limited to 30 calendar days both in B2B transactions and G2B transactions, where the public authority is the debtor.	AT (Drafting): (11) Late payment constitutes a breach of contract which is financially attractive to debtors, due to low or no interest rates charged on late payment, or slow procedures for redress. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest for late payment is null and void, is necessary to reverse this trend and to discourage late payment. Consequently, contractual payment periods should be limited to 30 calendar days both in B2B transactions and G2B transactions, where the <u>contracting</u> authority is the debtor. <u>(11a) Regulation (EEC, EURATOM) NO 1182/71¹⁰ shall continue to apply to the time limits prescribed in this Directive. This means that for the time period of 30 days, the day during which the event which is relevant for the start of the payment period occurs shall not be considered as falling within the period in question. The payment period shall start at the beginning of the first hour of the</u>	AT (Comments): As set out in the non-paper, a waiver of the right to obtain interest must remain possible in order to retain freedom of contract and flexibility for dispute resolution. Recital 11a is added to clarify which rules are applicable to the calculation of the beginning and end of deadlines. BG (Comments): We consider that opportunities for derogations and in general more flexibility should be envisaged with respect to contractual payment periods having in mind the specific characteristics of the concluded contracts (incl. with or without EU financing), the demand and the supply level (especially the supply chain maturity) in the relevant economic sectors that they affect, the administrative and financial capacities of the contractual parties (especially when contracting authorities/entities and SMEs are concerned), etc.

¹⁰ **Regulation (EEC, EURATOM) NO 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).**

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	<u>first day and shall end with the expiry of the last hour of the last day of the period. The period generally also includes public holidays, Saturdays and Sundays; however, where such a payment period ends on a national public holiday, a Saturday or Sunday, the period shall end with the expiry of the last hour of the following working day.</u> LU (Drafting): (11) Late payment constitutes a breach of contract which is financially attractive to debtors, due to low or no interest rates charged on late payment, or slow procedures for redress. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest for late payment is null and void, is necessary to reverse this trend and to discourage late payment. <u>Consequently, contractual payment periods should be limited to 30 calendar days both in B2B transactions and G2B transactions, where the public authority is the debtor.</u>	IE (Comments): Businesses that are debtors are often also creditors. 30 calendar days is too restrictive for many sectors. Those that can pay within 30 days, should, however sectoral difference can and do dictate payment terms. G2B where the Public Authority is the debtor is working well in Ireland. LU (Comments): While we agree that late payment constitutes a breach of contract which is financially attractive to debtors and should be combatted, limiting contractual payment periods to 30 calendar days both in B2B and G2B transactions is not a remedy to late payment as such. It is crucial to distinguish between late payments, which occur after the agreed due date, and longer, contractually defined payment periods, which are the result of mutual economic decisions reflecting the needs of all parties, including SMEs.
(12) The procedures of acceptance or verification for ascertaining the conformity of	AT	AT
	(Drafting):	(Comments):

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the goods or services provided with the requirements of the contract, as well as verification of the correctness and conformity of the invoice, are often used to delay intentionally the payment period. Their inclusion in the contract should therefore be objectively justified by the particular nature of the contract in question or by certain of its characteristics¹¹. It should therefore be possible to provide for such procedure of verification or acceptance in a contract only when provided for in national law where necessary, due to the specific nature of the goods or services. To avoid that the procedure of acceptance or verification is used to extend the payment period, the contract should clearly describe the details of such procedure, including its duration. For the same purpose, the debtor should initiate the verification or acceptance procedure immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction, regardless of whether the creditor has issued an invoice or equivalent request for payment. In order not to	(12) The procedures of acceptance or verification for ascertaining the conformity of the <u>works</u>, goods or services provided with the requirements of the contract, as well as verification of the correctness and conformity of the invoice, are often used to delay intentionally the payment period. Their inclusion in the contract should therefore be objectively justified by the particular nature of the contract in question or by certain of its characteristics¹². It should therefore be possible to provide for such procedure of verification or acceptance in a contract only when provided for in national law where necessary, due to the specific nature of the goods or services. To avoid that the procedure of acceptance or verification is used to extend the payment period, the contract should clearly describe the details of such <u>a</u> procedure, including its duration. For the same purpose, the debtor should initiate the verification or acceptance procedure immediately upon reception from the creditor of the <u>works and/or</u> goods and/or the services that are the object of the commercial transaction,	A maximum time limit is not acceptable (see non-paper and position AT). A specification that national law would have to specify the procedures of acceptance or verification would be confusing for undertakings doing cross-border business. A Recital encouraging the responsible use of verification procedures is welcome. BG (Comments): We agree that it is appropriate to set a maximum duration of a procedure of acceptance or verification but it should take into account the different subjects of the contracts and the different administrative capacity needed for its implementation. IE (Comments): What evidence is there for this claim? Payment period is different from payment terms ie you may have 60 days to produce an invoice according to contract but only 30 days to pay the invoice itself.

¹¹ Judgment of 20 October 2022, BFF Finance Iberia SAU v Gerencia Regional de Salud de la Junta de Castilla y León (OJ C 53, 15.2.2021, p. 19) C585/20, EU:C:2022:806, paragraph 53.

¹² Judgment of 20 October 2022, BFF Finance Iberia SAU v Gerencia Regional de Salud de la Junta de Castilla y León (OJ C 53, 15.2.2021, p. 19) C585/20, EU:C:2022:806, paragraph 53.

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jeopardise the achievement of the objectives of this Regulation, it is appropriate to set a maximum duration of a procedure of acceptance or verification.	regardless of whether the creditor has issued an invoice or equivalent request for payment. In order not to jeopardise the achievement of the objectives of this Regulation, it is appropriate to set a maximum duration of a procedure of acceptance or verification. IE (Drafting): To avoid the procedure of acceptance or verification being used to extend the payment period receipt	It should not be necessary to set out verification procedures in national law. Providing such verification procedures within the contractual framework should be adequate. This is not workable in practice. The length of the verification process is determined by the nature and complexity of the verification process, along with the availability of skills required to undertake any verification and provide certification if required. The receipt of an invoice is the object that initiates the payment procedure. An invoice will only be accepted for payment after completion of the verification process.
(13) This Regulation should be without prejudice to shorter periods which may be provided for in national law, and which are more favourable to the creditor.		IE (Comments): G2B in Ireland is 15 days under the Prompt Payment no-statutory requirements.
(14) Public procurement can play a significant role in improving payment performance. Enhanced synergies should therefore be put in place between public procurement policies and rules and prompt payment objectives. Particularly in public	AT (Drafting): (deleted)	BG (Comments): We agree that public procurement can play a significant role in improving payment performance in G2B transactions but not in B2B transactions as contracting authorities/entities

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construction works, subcontractors are often not paid on time by the main contractor, even when the contracting authorities or contracting entities have made the contractual payments to them, thus potentially creating a damaging domino-effect in the supply chain. It is therefore appropriate that contractors provide evidence to contracting authorities and contracting entities of payments to their direct subcontractors.		are not parties to the contracts between main public procurement contractors and their subcontractors. In addition, it should be noted that the European public procurement directives provide the opportunity for direct payments by contracting authorities/entities to subcontractors under certain conditions. So does the national legislation (Art. 66, para 7-11 of the Public Procurement Law). The applicable rules regarding direct payments to subcontractors shall be specified in the public procurement documentation and in the procurement contract. In the event of a dispute between the contractor and the subcontractor, as well as for unresolved issues regarding the execution of contracts with subcontractors, the rules of the Law on Obligations and Contracts and the Commercial Law, as well as the Civil Procedure Code, shall apply. IE (Comments): In Ireland, the Construction Contracts Act 2013 (CCA) sets out to impose minimum payment provisions in construction contracts. It imposes a process of notification between payers and payees which must be complied with in arriving at the sum due.

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		There is a stratified approach to the periods between payments and when payment is to be made: • client to main contractor – parties may agree those terms • main contractor to sub-contractor or sub-contractor to sub-sub-contractor imposes payment cycles of 30 days and payments to be made within 30 days unless the contract has more favourable terms There is also a statutory adjudication process to address a payment dispute. The CCA is silent on evidence of payments to sub-contractors since the tools are provided to the payee to raise the issue. The requirement for the provision of evidence would create additional administrative burden and would be of minimal benefit unless there is a means to independently verify the payment. LU (Comments): In LU, the law of July 23 1991, regulating subcontracting activities, already provides for the principle of direct payment of subcontractors by the project owner. Could the Commission present more evidence related to the postulate

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		that in public construction works, subcontractors are often not paid on time by the main contractor. Considering that article 4 seems to require the main contractor to pay his subcontractors <u>before</u> presenting his own invoice to the contracting authority, we have doubts on the appropriateness of obliging contractors to provide evidence of payments to their direct subcontractors to contracting authorities and contracting entities. This situation could be problematic, including for SMEs, as it implies that the main contractor must have the necessary funds at his disposal.
(15) In the interest of consistency of Union legislation, the definition of ‘contracting authorities’ and ‘contracting entities’ in Directives 2014/23/EU ¹³ , 2014/24/EU ¹⁴ , 2014/25/EU ¹⁵ and 2009/81/EC ¹⁶ of the		IE (Comments): Agreed

¹³ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1 - 64).

¹⁴ 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 (OJ L 94, 28.3.2014, p. 65-242).

¹⁵ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243–374).

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European Parliament and of the Council should apply for the purposes of this Regulation.		
(16) Interest due for late payment should be calculated on a daily basis as simple interest. Interest for late payment is an accessory to the amount due. The debtor shall then be deemed to have extinguished its obligations only when the creditor will receive the payment of the amount due, including the corresponding interests and flat fee compensation. The amount of the late payment interest should continue accruing until the payment of the amount due to the creditor.	PL (Drafting): We propose to remove the third sentence of this recital as follows: Interest due for late payment should be calculated on a daily basis as simple interest. Interest for late payment is an accessory to the amount due. The debtor shall then be deemed to have extinguished its obligations only when the creditor will receive the payment of the amount due, including the corresponding interests and flat fee compensation. The amount of the late payment interest should continue accruing until the payment of the amount due to the creditor.	PL (Comments): The reasons for removing the third sentence of recital 16 of the Regulation are: - the nature of interest and compensation constituting an incidental benefit ("addition to receivables", as indicated in the second sentence of this recital of the Regulation), and not constituting remuneration equivalent to the goods or services purchased by the debtor, - the debtor fulfills his obligation at the moment of payment to the creditor and until which time interest for delay is charged in accordance with the fourth sentence of this recital of the Regulation, - due to mentioning above these two arguments, the content of recital 16 of the Regulation is internally contradictory and shifts the moment of fulfillment obligation by the debtor to a moment later, than the payment of the remuneration due and potentially obliges law enforcement authorities to examine this moment

¹⁶ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, p. 76-136).

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		(beyond the moment of fulfillment of the receivable itself), which, in practice, may prove is unfeasible considering the large number of transactions carried out by entities covered by the scope of the regulation, especially, if the receivable itself and the incidental benefits were paid by the debtor not at once, but in parts extended over time. IE (Comments): In practice this would be impossible to manage as interest is still accruing even when measures to pay are being put in place as the interest clock does not stop ticking until payment is made. Payment batches may be prepared but the actual payment run may not occur on a daily basis. This would require payment runs to be done on a daily basis, which may not be the case for a lot of businesses, especially SMEs. There may also be timing differences between funds being paid by the debtor and received by the creditor.
(17) It should not be possible for the creditor to waive its right to obtain interests for late payments, as interests for late payments have a double function: to offset part of the damage suffered by the creditor, because of the delay, and to sanction the debtor for the breach of	AT (Drafting): (deleted) PL (Drafting): The second sentence shall read as follows:	AT (Comments): See the position expressed in the non-paper. The concept of the right to obtain interest and compensation “automatically” is entirely unclear.

Commission proposal	Drafting Suggestions	Comments
contract. To facilitate receipt of interest and compensation in case of late payment by the creditor, the right for the creditor to obtain them should be automatic, except when the payment delay is not due to the debtor's fault.	To facilitate receipt of interest and compensation in case of late payment by the creditor, the right for the creditor to obtain them should be automatic, unless the debtor proves the payment delay is not due to his fault. We propose to add the ultimate sentence in this recital as follows: The Regulation should be without prejudice to unconditional right of the creditor to claim interest for late payment from the debtor, provided for in national law which is more favorable to the creditor. IE (Drafting): It should not be possible for the creditor to waive its right to obtain interests for late payments, unless agreed by both parties	PL (Comments): The aim is to shift the burden of proof of the lack of late payment on debtor. This will have general preventive function for the potential debtors and will be justified by the facilitation of the proceedings conducting by the enforcement authorities. The proposed sentence is justified by the fact that according to the polish law – if the payment (amount specified in the invoice) is due, the creditor has an unconditional right to claim interest from the debtor, irrespective of the reasons of the payment delay. BG (Comments): We believe that more flexibility should be provided considering the specific contract subject and the nature of the relationship between the contractual parties. In some cases, it is justified for the creditor to waive his right to obtain interests for late payments for the sake of future benefits specified in the contract clauses. IE (Comments): Feedback from business groups is that their members have difficulty accounting for LPI and LPC receipts/payments on their books. It can also be difficult to pinpoint the point at which LPI becomes due.

Commission proposal	Drafting Suggestions	Comments
(18) Fair compensation of creditors for the recovery costs incurred due to late payment is necessary to discourage late payment. These costs should include the recovery of administrative costs and compensation for internal costs incurred due to the late payment and should be cumulated with interest for the late payment for every single commercial transaction that has been paid late as determined by the Court of Justice ¹⁷ . The fixed minimum sum of compensation for the recovery costs should be determined without prejudice to national provisions according to which a national court may award compensation to the creditor for any additional damage regarding the debtor's late payment.		IE (Comments): Agreed
(19) It should be possible to make payments by instalments or staggered payments. However, each individual instalment or payment should be paid on the agreed terms and should be subject to the rules for late payment set out in this Regulation.		IE (Comments): Agreed

¹⁷ Judgement of 20 October 2022, *BFF Finance Iberia SAU vs Gerencia Regional de Salud de la Junta de Castilla y León*, C-585/20, ECLI:EU:C:2022:806.

Commission proposal	Drafting Suggestions	Comments
(20) In addition to the fixed sum to cover internal recovery costs, creditors should also be entitled to reasonable compensation of other recovery costs they incur because of late payment by a debtor. Such costs should for example include the costs incurred by creditors in instructing a lawyer or employing a debt collection agency.		IE (Comments): See 17
(21) Abuse of freedom of contract to the disadvantage of the creditor should be avoided. As a result, where a clause in a contract or a practice relating to the date or term of payment, the payment or rate of interest for late payment, the compensation for recovery costs, extending the duration the procedure of verification or acceptance or intentionally delaying or preventing the moment of sending the invoice is not in conformity with this Regulation, it should be null and void.	AT (Drafting): (deleted)	AT (Comments): This provision limits freedom of contract in a disproportionate manner. BG (Comments): We think that abuse of freedom of contract to the disadvantage of both the creditors and the debtors should be avoided. We believe that contractual clauses by default should be predominantly subject to negotiations between the contractual parties in accordance with the relevant law. We expect potential implementation, control and monitoring problems to arise in the future. The difference in the judicial and administrative-punitive systems of the EU member states is also a prerequisite for the spread of different administrative practices and case laws.

Commission proposal	Drafting Suggestions	Comments
		We expect the European Commission to develop and disseminate some guidance in this field (especially for public procurement contracts), incl. drafts of standard contract clauses to be discussed and approved among Member states if planned to be compulsory. IE (Comments): It should be possible to extend both the payment period and verification period beyond 30 days within the contract if both parties agree Delays can occur unintentionally, but proving intention would be difficult.
	LU (Drafting): NEW <u>(21) A provision should be made for B2B contractual payment periods to be limited, as a general rule, to 30 calendar days. However, there may be circumstances in which undertakings require more extensive payment periods, for example when undertakings wish to grant trade credit to their customers. It should therefore remain possible for the parties to expressly agree on payment periods longer than 30 calendar days, provided, however, that such extension</u>	LU (Comments): As in the 2011 directive, the freedom of the parties to define payment terms by mutual agreement, according to their respective situations and to their mutual benefit, should be preserved. It should also be preserved that a contractual payment condition that is manifestly unfair to the creditor may be deemed unenforceable or give rise to damages. Indeed, a universal approach to payment terms would not take into account the specific features of each sector. For example, for slow-moving products, flexible payment terms are necessary

Commission proposal	Drafting Suggestions	Comments
	<u>is not grossly unfair to the creditor.</u>	to enable parties to optimize their inventory and cash flow management. Similar examples also exist for seasonal products.
(22) To enhance the efforts to prevent the abuse of freedom of contract to the detriment of creditors, organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings should be able to take action before national courts or administrative bodies in order to prevent late payments.	PL (Drafting): This recital shall read as follows: To enhance the efforts to prevent the abuse of freedom of contract to the detriment of creditors, organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings should be able to take action before national courts or administrative bodies participate in administrative proceedings in order to prevent late payments. The Regulation should be without prejudice to the rules of acting such organisations before national courts or administrative bodies, provided for in national law. In particular, national law may provide that such organisations may participate in court proceedings and in administrative proceedings only with the consent of the creditor, and that these organisations do not participate in the proceedings as a party, and for this reason they do not have access to any secrets of the party protected by the law.	PL (Comments): Comments like to Article 9 (3) of this Regulation. IE (Comments): In practice, such organisation will have members that are creditors and debtors and therefore are unlikely to pursue their own members through the court system o other bodies.

Commission proposal	Drafting Suggestions	Comments
(23) To guarantee full payment of the amount due, it is important to ensure that the seller retains the title to goods until they are fully paid for, if a retention of title has been expressly agreed between the buyer and the seller before the delivery of the goods.		BG (Comments): We consider that it should be clarified what happens to the right in question if the purchased goods, services or works are provided and accepted by the buyer in parts. IE (Comments): Agreed
(24) To ensure correct application of this Regulation, it is important to provide transparency regarding the rights and obligations as laid down by this Regulation. To ensure that the correct rates of interest are applied, it is important that they are made public by the Member States and the Commission.		IE (Comments): Agreed
(25) The sanctions for late payment can be dissuasive only if they are accompanied by procedures for redress which are rapid and effective for the creditor. Expedient recovery procedures for unchallenged claims should therefore be available to all creditors who are established in the Union.		
(26) To facilitate and ensure compliance with this Regulation, Member States should	AT (Drafting):	AT (Comments):

Commission proposal	Drafting Suggestions	Comments
designate authorities responsible for its enforcement, which perform their duties and tasks in an objective and fair manner and ensure equal treatment of private undertakings and public authorities. Those enforcement authorities should carry out investigations on their own initiative, act on complaints, and be empowered, among other things, to impose sanctions and publish their decisions on a regular basis. In addition, for more effective enforcement, Member States should use digital tools to the extent possible.	(deleted) BG (Drafting): (26) — To facilitate and ensure compliance with this Regulation, Member States should designate authorities responsible for its enforcement, which perform their duties and tasks in an objective and fair manner and ensure equal treatment of private undertakings and public authorities. Those enforcement authorities should carry out investigations on their own initiative, act on complaints, and be empowered, among other things, to impose sanctions and publish their decisions on a regular basis. In addition, for more effective enforcement, Member States should use digital tools to the extent possible. LU (Drafting): <u>(26) — To facilitate and ensure compliance with this Regulation, Member States should designate authorities responsible for its enforcement, which perform their duties and tasks in an objective and fair manner and ensure equal treatment of private undertakings and public authorities. Those enforcement authorities should carrying out investigations on their own initiative, act on complaints, and be empowered, among other things, to impose sanctions and publish their</u>	See our non-paper and AT statement, AT rejects the requirement to designate an enforcement authority. BG (Comments): Every year, as reported by the European Commission, approximately 18 billion invoices are issued in the EU, equating to more than 500 invoices per second, with half of the payments on these invoices experiencing delays. Managing such a vast influx of documents poses a significant challenge for any law enforcement authority within the Member States, regardless of its administrative capacity. It underscores the critical importance of appropriate training, guidance, and cooperation at both European and national levels, as the current situation is impractical. The proposal to designate a law enforcement authority would impose an additional administrative and financial burden on enterprises. Furthermore, it introduces the possibility of a parallel sanction regime for delayed commercial payments. On one hand, debtors are liable for the late payment along with accrued interest, while on the other hand, national law enforcement authorities may impose administrative sanctions. Small and medium-sized enterprises (SMEs), acting as creditors, would bear the financial and

Commission proposal	Drafting Suggestions	Comments
	<u>decisions on a regular basis. In addition, for more effective enforcement, Member States should use promote the use digital tools to the extent possible.</u>	administrative costs of participating in both judicial and administrative proceedings, including lawyer's fees and providing evidence. Moreover, as debtors themselves, SMEs would also have to bear the administrative sanctions imposed by the authority, in addition to paying late interest. IE (Comments): We do not agree with this. This is the function of the courts. An enforcement system would place a considerable burden on business. It is also unclear how much will it cost a MS. Introducing additional mandatory measures are unlikely to achieve the desired impact and could instead have unintended consequences. The focus should be on preventative measures such as awareness campaigns and promoting prompt payment rather than remedial action. The proposal should not prevent Member States from also implementing remedial action at national level as suggested in the proposal, if they so wish. LU (Comments):

Commission proposal	Drafting Suggestions	Comments
		We have serious doubts about the proportionality, necessity and added value of a new enforcement authority while setting up such an authority is particularly cumbersome and costly. For this reason, but also because of the risk of overlap of competences, we believe it is better to rely on the jurisdiction of the courts, and to promote the use of alternative dispute resolution tools to help companies with liquidity issues. For instance, the idea of a fast-track procedure before the courts could be analysed in the working party, based on the European Small Claims Procedure (CE/861/2007). Furthermore, and following several requests for clarification at working party level, we are still awaiting evidence by the COM showing that European regulations in this area are not sufficient to facilitate enforcement. More particularly, we refer to Regulation 1215/2002 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Regulation 805/2004 creating a European Enforcement Order for uncontested claims; Regulation 1896/2006 creating a European order for payment procedure; Regulation 861/2007 creating a European Small Claims Procedure.

Commission proposal	Drafting Suggestions	Comments
(27) To ensure easy and accessible means of redress, Member States should promote the voluntary use of effective and independent alternative dispute resolution mechanism to solve payment disputes in commercial transactions.		IE (Comments): Does 27 not contradict 26?
(28) Invoices trigger requests for payment and are important documents in the chain of transactions for the supply of goods and services, inter alia, for determining payment deadlines. It is important to promote systems that give legal certainty as regards the exact date of receipt of invoices by the debtors, including in the field of e-invoicing where the receipt of invoices could generate electronic evidence, and which is partly governed by the provisions on invoicing contained in Council Directive 2006/112/EC ¹⁸ and Directive 2014/55/EC ¹⁹ of the European Parliament and the Council.		IE (Comments): E-invoicing is not referenced in the Regulation. Reference should be removed from the recital.
(29) Effective access of undertakings,		IE

¹⁸ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

¹⁹ Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement (OJ L 133, 6.5.2014, p. 1).

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especially of SMEs, to credit management and financial literacy training can have a significant impact in reducing payment delays, maintaining optimal cash flows, reducing the risk of default and increasing the potential for growth. Nevertheless, SMEs often lack the capacity to invest in such training, while very limited trainings and training material focusing on enhancing SMEs' knowledge of credit and invoice management are currently available. It is therefore appropriate to provide that Member States need to ensure that credit management and financial literacy trainings are available and accessible to SMEs, including on the use of digital tools for timely payments.		(Comments): Aspirational and well meaning but does not belong in a Regulation – How can this be measured?
(30) Certain provisions in this Regulation are linked to the provisions in Directive (EU) 2019/633 of the European Parliament and of the Council²⁰. The relationship between Directives 2011/7/EU and (EU) 2019/633 is explained in recitals (17) and (18) and Article 3(1) of Directive (EU) 2019/633. As this Regulation replaces Directive 2011/7/EU, it should not affect the rules laid down in Directive (EU) 2019/633, including the provisions that are		BG (Comments): We think that the Regulation should provide derogation not only for the agricultural and food sector but for other sectors as well based on further profound analysis of relevant data.

²⁰ Directive (EU) No 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59).

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applicable to payments made in the context of the school scheme²¹, value-sharing agreements²² and certain payments for the sale of grapes, must and wine in bulk in the wine sector²³, except for the deadlines applicable to the maximum payment periods concerning the supply of non-perishable agricultural and food products. However, this Regulation does not prevent the Member States from introducing or maintaining national provisions applicable in the agricultural and food sector which provide for stricter payment terms, or different calculation of payment periods, <i>dies a quo</i> and verification and acceptance procedures for suppliers of agricultural and food products that are more favourable to the creditor.		
(31) The objectives of this Regulation are to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings		IE (Comments): The proposal is not proportionate and does go beyond its remit. LU

²¹ Article 23 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products (OJ L 347, 20.12.2013, p. 671).

²² Article 172a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products (OJ L 347, 20.12.2013, p. 671).

²³ Article 147a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products (OJ L 347, 20.12.2013, p. 671).

Commission proposal	Drafting Suggestions	Comments
and in particular of SMEs. Those objectives cannot be sufficiently achieved by the Member States, as implementing national solutions would likely result in a lack of uniform rules, fragmentation of the single market and higher costs for companies trading across borders. Therefore, those objectives can be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.		(Comments): LU agrees that a regulation offers a clearer, more directly applicable legal framework for companies.
(32) To provide sufficient time for all relevant actors to put in place the arrangements needed to comply with this Regulation, its application should be deferred. However, to ensure better protection of the creditors, commercial transactions that are to be paid after the date of entry into force of this Regulation, shall be subject to its provisions, even if the relevant contract was signed before its date of application.	AT (Drafting): (32) To provide sufficient time for all relevant actors to put in place the arrangements needed to comply with this Directive, its application should be deferred. However, to ensure better protection of the creditors, commercial transactions that are to be paid after the date of entry into force of this Regulation, shall be subject to its provisions, even if the relevant contract was signed before its date of application. PL	AT (Comments): A retroactive application on existing contracts is disproportional and has far-reaching consequences (see further comments in Art. 20[3]). PL (Comments): The provision of Motive 32 of the Preamble is incompatible with Article 20 (3) of the Regulation. Motive 32 of the Preamble states that subject to the provisions of the Regulation shall be commercial transactions „that are to be

Commission proposal	Drafting Suggestions	Comments
	(Drafting): This recital shall read as follows: To provide sufficient time for all relevant actors to put in place the arrangements needed to comply with this Regulation, its application should be deferred. However, to ensure better protection of the creditors, commercial transactions carried out after the date of application of this Regulation, shall be subject to its provisions, even if the relevant contract was signed before its date of application.	paid after the date of entry into force of this Regulation”, while Article 20 (3) of the Regulation says about „date of application of this Regulation”. It should be noted that according to Article 20 (1) and 20 (2) of the Regulation date of entering into force of the Regulation and date of its application (12 months after date of entry into force) are two different terms and for this reason Motive No 32 of the Preamble should be modified in order to have the same meaning as Article 20 (3) of the Regulation.
HAVE ADOPTED THIS REGULATION:		
Article 1 Scope	LU (Drafting): Article 1 <u>Objective and sScope</u>	LU (Comments): Article 1 should lay down both scope but also the objective of the Regulation. DK (Comments): We consider that there is a need to clarify the scope of the regulation in a situation where the debtor is a company located inside the EU and creditor is not.
1. This Regulation shall apply to payments made in transactions between undertakings or	AT (Drafting):	AT (Comments):

Commission proposal	Drafting Suggestions	Comments
between undertakings and public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for remuneration ('commercial transactions').	1. This Directive shall apply to payments made <u>due to contracts for pecuniary interest</u> (a) between undertakings or (b) between undertakings and <u>contracting authorities</u>, where the <u>contracting authority</u> is the debtor, <u>and having as their subject matter the execution of works, the supply</u> of goods or the provision of services ('commercial <u>payments</u>'). PL (Drafting): This paragraph shall read as follows: 1. This Regulation shall apply to payments made in transactions between undertakings or between undertakings and public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for remuneration ('commercial transactions'). The Regulation does not apply to financial transactions covered by the Treaty freedom of movement of capital. DE (Drafting): 1. This Regulation Directive shall apply to payments made <u>as remuneration</u> in <u>commercial</u> transactions. <u>'Commercial transactions' means</u> transactions between undertakings or between undertakings and	The wording was drawn from the definition of a public contract according to Art. 2(1)(5) of Directive 2014/24/EU. Terms should, insofar as possible, be uniform across EU legislation. It should however be clear that "contracts for pecuniary interest" also cover payments that are made by other means than money (e.g. exchange of product for product). This however should not lead to a change of the scope of the Directive. To our understanding, the provision of works was until now already subsumed under the provision of goods and/or services (see also the comments on Recital 9). If it is necessary to include a definition of this term, this should be done in the definitions (Article 2). PL (Comments): The Treaty on the Functioning of the EU distinguishes - in addition to the free movement of goods, services and persons - the free movement of capital within the internal market. A systemic interpretation of the provisions of EU law argues against including financial transactions, which are covered by the free movement of capital, within the concept of commercial transactions. However, in order to avoid possible doubts and the need for the CJEU to resolve this issue, we advocate prejudging in the text of the provision that the Regulation does

Commission proposal	Drafting Suggestions	Comments
	public authorities, where the public authority is the debtor, which lead to the delivery of goods or the provision of services for remuneration ('commercial transactions'). LU (Drafting): NEW <u>1a. The aim of this Regulation is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of SMEs.</u>	not apply to financial transactions covered by the Treaty freedom of movement of capital. This doubt also arises under the current Directive 2011/7/EU and has not been addressed by the CJEU to date. IE (Comments): Agreed DE (Comments): - On "Directive" see above. - Like the current Late Payment Directive 2011/7 (see Article 1 (2)) the new instrument must focus on payments made <i>as remuneration</i>. This is the only claim that can be clearly identified in the civil law of all MS. All other monetary claims (such as damages, reimbursement of expenses, unjust enrichment) probably have different legal backgrounds in the MS and it would be very difficult to determine whether the rules of the new instrument were appropriate to them. - For ease of reading the paragraph should be split into two sentences. The second sentence copies Article 2 (1) of Late Payment Directive. LU (Comments): The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which is used for measures

Commission proposal	Drafting Suggestions	Comments
		aiming at the establishment and functioning of the internal market. In this context, we suggest a technical improvement to better reflect the relation between the content and objectives of the Late Payment Regulation on the one hand, and its internal market legal basis on the other.
2. The delivery of goods or the provision of services referred to in paragraph 1 shall include the design and execution of public works, construction and civil engineering works.	AT (Drafting): (deleted) <u>Alternative:</u> <u>2. For the purpose of this Directive, the execution of works or a work within the meaning of Directives 2009/81/EC, 2014/23/EU, 2014/24/EU and 2014/25/EU shall be considered as the provision of a service.</u> DE (Drafting): 2. — The delivery of goods or the provision of services referred to in paragraph 1 shall include the design and execution of public works, construction and civil engineering works.	AT (Comments): An alternative wording in case a reference to works should not be repeated across the legal text. The wording was taken from Art. 2(2) of Regulation (EU) 2022/1031. AT would however prefer a clear reference to works in each instance. DE (Comments): We propose to make this paragraph a recital. It does not seem appropriate though to name specific goods or services in the operative part just because there is ECJ case law on the issue. The relevant ECJ rulings would also apply to a new instrument.
3. This Regulation shall not apply to any of the following payments:	AT (Drafting): <u>2. [...]</u> PL (Drafting):	PL (Comments): The arguments for extending the list of transactions and payments resulting from them that should be excluded from the application of

Commission proposal	Drafting Suggestions	Comments
	We propose to expand the catalog of transactions as follows: This Regulation does not apply to the following payments: (a) payments for transactions involving consumers; (b) payments constituting compensation, including payments made by insurance companies; (c) payments arising from obligations that may be cancelled, deferred or waived as part of or in connection with insolvency or restructuring proceedings, including preventive restructuring proceedings referred to in Directive (EU) 2019 of the European Parliament and of the Council /102321 d) contractual penalties e) payments resulting from commercial transactions to which the exclusive parties are entities belonging to the same capital group. DE (Drafting): 3. This Regulation <u>Directive</u> shall not apply to any of the following payments:	this Regulation are: - the nature of contractual penalties that do not constitute remuneration for the supply of goods or services, but only an incidental benefit with which a given entity may be charged in connection with the breach of contractual obligations going beyond the subject of the mutual contract (delivery of goods or services in exchange for remuneration), which constitute a sanction for breach of contract, - the nature of transactions that take place between a specific group of entities, related to each other for the purpose of operation (common economic and financial goal), whose mutual financial relations affect at most entities from a given group, but not other entities operating on the market. These entities have capital and economic connections as well as related sources of financing (entities from the capital group, using, for example, a tool such as cash pooling). DE (Comments): - On “Directive” see above. - The list of excluded matters is largely copied from recital 8 of the Late Payment Directive but does not fully fit with an operative article. It should as far as possible remain a recital.

Commission proposal	Drafting Suggestions	Comments
(a) payments for transactions with consumers;	AT (Drafting): (a) payments for <u>contracts</u> with consumers; DE (Drafting): (a) payments for transactions with consumers;	AT (Comments): Adapted to reflect Art. 1(1). IE (Comments): Agreed DE (Comments): Self-evident from paragraph 1 (limitation to undertakings and public authorities).
(b) payments made as compensation for damages, including payments from insurance companies;	DE (Drafting): (b) payments made as compensation for damages, including payments from insurance companies;	IE (Comments): Agreed DE (Comments): A payment for damages is not a payment as remuneration, and so can be deleted here. Likewise, a payment from an insurance company to cover a damage suffered by its client is not a payment as remuneration but is the provision of a service (the coverage of a damage). Both items should therefore be deleted to avoid confusion as to the legal character of these payments.
(c) payments resulting from obligations that can be cancelled, postponed, or waived under or in relation to insolvency proceedings or	DE (Drafting): (c) payments resulting from obligations that	IE (Comments): Agreed

Commission proposal	Drafting Suggestions	Comments
restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023 ²⁴ of the European Parliament and of the Council.	can be cancelled, postponed, or waived under or in relation to insolvency proceedings or restructuring proceedings, including preventive restructuring proceedings under Directive (EU) 2019/1023 ²⁵ of the European Parliament and of the Council <u>where such cancellation, postponement or waiver has taken place.</u>	DE (Comments): We generally endorse to exclude the payments mentioned from the scope of the new instrument. However, the conditions need to be set out more precisely to ensure legal certainty: - The terms “insolvency proceedings” and “restructuring proceedings” should be defined. - Payments should only be excluded where the underlying obligation was in fact modified. This is especially important for proceedings under Directive 2019/1023.
4. With the exception of Article 3(1), this Regulation shall not affect the provisions laid down in Directive (EU) 2019/633.	AT (Drafting): 3. With the exception of Article 3(1), this Directive shall not affect the provisions laid down in Directive (EU) 2019/633. DE (Drafting): 4. With the exception of Article 3(1), this Regulation shall not affect the provisions laid	AT (Comments): Any amendment to Directive (EU) 2019/633 should be set out separately (see the suggestion for a separate Article in the drafting suggestions for Article 3). IE (Comments): No agreement with Article 3.1

²⁴ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

²⁵ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

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	down in Directive (EU) 2019/633.	DE (Comments): In order to avoid confusion, the relationship between the new instrument and Directive 2019/633 (“UTP Directive”) needs to be thoroughly examined and carefully re-written: - Article 3 (1) subpara 1 (a) UTP Directive introduces statutory payment periods for perishable (30 days) and non-perishable (60 days) agricultural and food products. According to subpara 2, these payment periods shall also be relevant for the application of the Late Payment Directive, e. g. as regards the right to late payment interest, the flat fee compensation, etc. - COM proposes in Article 3 (1) sentence 2 of the regulation to shorten the 60 days period for non-perishable products to 30 days, but without modifying the UTP Directive. This would mean that the link between the two directives established in Article 3 (1) subpara 2 of the UTP Directive would effectively no longer exist as regards non-perishable products, and <u>the two provisions would contradict each other</u>. - To remedy the problem, we propose • to regulate the payment periods for perishable and non-perishable agricultural and food products

Commission proposal	Drafting Suggestions	Comments
		exclusively in the UTP Directive, to update the reference for Directive 2011/7 in Article 3 (1) subpara 2 of the UTP Directive to the new instrument, and to adjust the payment periods for agricultural and food products in Article 3 (1) subpara. 1 (a) of the UTP Directive given the payment periods of the new instrument if necessary (see below, comments on Article 3).
Article 2 Definitions		AT (Comments): The aim of the LPD was to achieve minimum harmonisation so that inconsistencies with national law could be reconciled. Full harmonisation is now to be achieved by transferring the provisions into a Regulation. The Regulation does not consider this and can potentially lead to national issues in determining e.g. to whom the Regulation is or is not applicable to in B2B payments. A Directive allows the MS more easily to extend the application of the rules on late payment to all payments where this makes sense and/or is for example constitutionally necessary (due to e.g. considerations of equal treatment), by extending the national definitions. If a Regulation is maintained, clear definitions are therefore

Commission proposal	Drafting Suggestions	Comments
		particularly important.
For the purposes of this Regulation, the following definitions shall apply:	DE (Drafting): For the purposes of this Regulation Directive , the following definitions shall apply:	DE (Comments): See above.
(1) ‘undertaking’ means any organisation, irrespective of its form and way of financing, carrying out an economic or professional activity independently;	AT (Drafting): <i>Alternative (taken from procurement directives):</i> (1) ‘undertaking’ means any <u>natural or legal person which offers the execution of works, the supply of goods or the provision of services on the market;</u> DE (Drafting): (1) ‘undertaking’ means any organisation, irrespective of its form and way of financing, <u>including a single person,</u> carrying out an economic or professional activity independently;	AT (Comments): Question: Why was the text „even where that activity is carried out by a single person” removed from the definition of the undertaking? Individual undertakings should continue to be covered by the rules on late payment. In the transposition of the LPD into national law in AT, the law is applicable to a broader scope of “undertakings” in order to avoid confusion about the applicability of the law and difficulties in the practical application. The law applies to any person acting in a commercial function, but also to persons according to their legal form, and finally to persons due to their seemingly acting as such. As long as a person is an undertaking at the time of the conclusion of a commercial transaction, they are covered by the rules on late payment. The AT national definitions go beyond what is suggested here. Could COM clarify if a

Commission proposal	Drafting Suggestions	Comments
		coverage of other undertakings beyond the definition in the Regulation would be allowed in national law? IE (Comments): Agreed DE (Comments): We wonder why the definition from Article 3 (3) of the Late Payment Directive was redrafted and whether the new text entails any substantive change. In any case, single entrepreneurs should be mentioned explicitly, as in Directive 2011/7. A recital should clarify that the new instrument only applies if the single entrepreneur acted in the course of his business activity.
(2) ‘public authority’ means any contracting authority, as defined in Article 6(1) of Directive 2014/23/EU, Article 2(1), point (1), of Directive 2014/24/EU or in Article 3(1) of Directive 2014/25/EU;	AT (Drafting): (2) ‘contracting authority’ means any contracting authority, as defined in Article 6(1) of Directive 2014/23/EU, Article 2(1), point (1), of Directive 2014/24/EU or in Article 3(1) of Directive 2014/25/EU;	AT (Comments): The provisions referred to cover only contracting authorities; therefore it is unclear why a separate term needs to be used. Question: Are late payment rules supposed to cover contracting authorities according to Article 1(17) of Directive 2009/81/EC? BG (Comments): It is not clear why contracting authorities/entities in the fields of defence and

Commission proposal	Drafting Suggestions	Comments
		security defined in Directive 2009/81/EC are excluded from the definition. IE (Comments): Agreed DE (Comments): Scrutiny reserve.
(3) ‘late payment’ means payment not made within the contractual or statutory payment period as set out in Article 3;	DE (Drafting): (3) ‘late payment’ means payment not made within the contractual or statutory payment period as set out in Article 3 <u>and where the conditions laid down in Article 5 [(1) and] (2) are satisfied;</u>	DE (Comments): The “late payment” definition in Article 2 (4) of the Late Payment Directive is accurate because by referencing its Article 3 (1)/4 (1) it incorporates in the definition the fundamental criteria to distinguish mere non-payment from late payment: a) creditor has fulfilled its obligations b) there was an amount due and that amount was not received by the creditor c) debtor is responsible for the delay. By contrast, according to the COM proposal in Article 2 (3) “late payment” would more or less be equivalent to “non-payment” because the conditions mentioned above are not contained in Article 3 (1) but in Article 5 (1) and (2). We therefore propose to supplement Article 2 (3) accordingly (we also propose to delete Article 5 (1) and to include its relevant element in Article

Commission proposal	Drafting Suggestions	Comments
		5 (2)).
(4) 'amount due' means the sum which should have been paid within the contractual or statutory payment period, as set out in Article 3, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment;		
(5) 'enforceable title' means any decision, judgement, order for payment issued by a court or other competent authority, private deed or any other document issued, including those that are provisionally enforceable, whether for immediate payment or payment by instalments, which permits the creditor to have his or her claim against the debtor collected by means of forced execution;		DE (Comments): Including private deeds in the definition is acceptable to us.
(6) 'retention of title' means the contractual agreement according to which the seller retains title to the goods in question until the price has been paid in full;		IE (Comments): Agreed DE (Comments): The definition has been copied from the Late Payment Directive without any changes. While retention of title has long been recognized by law and is a common trade practice in Germany, we have doubts as to whether it is appropriate to

Commission proposal	Drafting Suggestions	Comments
		regulate this – an aspect of property law – in a <i>regulation</i> (as proposed by COM). For more details see comment below at Article 10.
(7) ‘procedure of acceptance or verification’ means the procedure for ascertaining the conformity of the goods delivered or services provided, with the requirements of the contract;	AT (Drafting): (7) ‘procedure of acceptance or verification’ means the procedure for ascertaining the conformity of the <u>works executed, the</u> goods delivered or services provided, with the requirements of the contract <u>and any obligations provided for by law</u> ;	AT (Comments): It should be considered to not limit the definition to contractual requirements, but to consider that the procedure may also cover the need for verification with requirements set out by law (see also Art. 5(2)(a)).
(8) ‘debtor’ means any natural or legal person or any public authority that owes a payment for a good delivered or a service provided;	AT (Drafting): (8) ‘debtor’ means any <u>undertaking</u> or any <u>contracting</u> authority that owes a payment for a good delivered or a <u>work or a</u> service provided; DE (Drafting): (8) ‘debtor’ means any natural or legal person or any public authority that owes a payment for a good delivered or a service provided;	DE (Comments): The definition does not seem to provide any benefit for the practical application of the new instrument. Under the civil law of all MS, the debtor is the contracting party that owes to pay the remuneration for receiving goods or services.
(9) ‘creditor’ means any natural or legal person or any public authority that delivered goods to a debtor or provided services to a debtor.	AT (Drafting): (9) ‘creditor’ means any <u>undertaking</u> or any <u>contracting</u> authority that delivered goods	IE (Comments): The proposal only covers a public authority where it is a debtor in PA-to-B transactions, not

Commission proposal	Drafting Suggestions	Comments
	to a debtor or provided works or services to a debtor. IE (Drafting): 'creditor' means any natural or legal person that delivered goods to a debtor or provided services to a debtor. DE (Drafting): (9) — 'creditor' means any natural or legal person or any public authority that delivered goods to a debtor or provided services to a debtor.	where it is a creditor. The proposal does not cover PA-to-PA transactions. DE (Comments): The definition does not seem to provide any benefit for the practical application of the new instrument. It would also cause severe conflicts with the civil law of the MS. While the person that sold goods or provided services is usually considered the creditor under the civil law of all MS, civil law allows the initial creditor to assign his claim to another person who then becomes the creditor. That situation would not be covered by the proposed definition.
Article 3 Payment periods	DE (Drafting):	FI (Comments): <i>Under the current Late Payment Directive, when the question is of transactions between undertakings, to deviate upwards from the 60 days, two criteria must be met: the expressly agreed criterion and the so-called grossly unfair criterion ('provided it is not grossly unfair to the creditor within the meaning of Article 7.')</i> <i>Even the shortening of the current 60-day period to 30 days under Article 3(5), but keeping or re-considering the criteria of how and when it is</i>

Commission proposal	Drafting Suggestions	Comments
		possible to deviate upwards from the 30 days, would mean a substantial change at the level of the entire Union. It is evident that the interpretation of the term ‘grossly unfair’ has been challenging. One possible solution could be to lower the threshold (from grossly unfair to unfair) for courts to adjust or shorten the agreed payment period if needed, specifically in cases involving an SME creditor and a larger debtor. Essentially, this would grant more leeway to the courts to determine when an agreed payment period that surpasses 30 days ceases to be reasonable from the viewpoint of the SME creditor.
1. In commercial transactions, the payment period shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. This period shall apply both to the transactions between undertakings and between public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive	AT (Drafting): <u><i>Article 3a</i></u> <u><i>Amendment of Directive (EU) 2019/633</i></u> <u>The Directive (EU) 2019/633 is amended as follows:</u> 1. In commercial payments, the payment period shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. This period shall apply both to the transactions between undertakings and between	AT (Comments): The current proposal constitutes a disproportionate infringement of the freedom of contract. It should be up to the contracting parties to agree upon a payment period, which may also extend beyond 30 days. The provision does not allow for a balancing between the need to ameliorate power asymmetries and the need for autonomy of the parties to agree payment periods. This balance may only be achieved by a – sufficiently determined – option for the parties to agree on longer payment periods.

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(EU) 2019/633, unless Member States provide for a shorter payment period for such products.	public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent. <u>each number “60” is replaced by the number “30” of Directive (EU) 2019/633;</u> <u>2. In Article 3(1)(a), the following third indent is added at the end:</u> <u>“- Member States may set periods shorter than 30 days for the payment periods referred to in point (i), second indent, and point (ii), second indent,</u> unless Member States provide for a shorter payment period for such products. <u>Article 3</u> 1. <u>Member States shall ensure that the period for payment fixed in the contract does not exceed 30 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of Article 8a. Member States may extend these time limits up to a maximum of 60 calendar days for contracting authorities providing healthcare which are duly recognised for that purpose. Between undertakings and contracting authorities, the period of payment shall in</u>	Furthermore, we have a number of additional questions: How are partial deliveries/services to be treated in general? If a work/good/service is provided in parts and there are separate procedures of acceptance/verification, does the verification period run for each verification separately? How are performance disruptions to be treated? How is the payment period to be applied to current account business relationships? Is it still permissible to agree on a coverage and liability escrow/retention? (I.e. retention of a proportional amount in case of faulty delivery, and retention of a proportional amount in case of overpayment.) To what extent is it possible to agree on a deferment of payment, and could this agreement be able to inhibit the expiry or continuation of the payment period? Shall the payment period always start from the date of receipt of the invoice? What happens in case of goods only being delivered later? What happens in case the debtor considers the delivered goods/services to be faulty? Is it still possible to withhold payment? The proposed text is adapted from the current text of Article 3 (1) and (2) of Directive

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	<u>any event not exceed 60 calendar days.</u> PL (Drafting): The first sentence of this paragraph shall read as follows: 1. In commercial transactions, the payment period shall not exceed 30 calendar days, from the date of the last one of the following events: (a) receipt by the debtor of the invoice or an equivalent request for payment; (b) receipt by the debtor of the goods or services. DE (Drafting): 1. In commercial transactions, the payment period <u>fixed in the contract</u> shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. <u>Where the date of the receipt of the invoice or the equivalent request for payment is uncertain or where the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, the payment period shall not exceed 30 calendar days from the date of the receipt of the goods or services. A longer period may only be agreed expressly</u>	2011/7/EU. Paragraph 1 is taken from Article 3 (5) of the Directive and moved up. A payment period of 30 instead of 60 days is suggested. PL (Comments): This provision should be put more precisely, because according to the current wording thereof, considering Art. 5 (6) below, it is not clear how the payment period shall be counted, if the debtor receives the goods or services after receipt of the invoice. The wording of Art. 3 (1) should be consistent with the wording of Art. 5 (6). SE (Comments): The freedom of contract is an essential pillar of commercial transactions. The proposed payment period of maximum 30 days constitutes a too far-reaching encroachment on that freedom and the necessary flexibility that it allows. The possibility to agree on payment periods between undertakings as provided for under Article 3(5) of the current Late Payment Directive, should therefore be kept. However, it is appropriate to change the current “reference” of 60 days to 30 days. In general, we wonder how the proposal is supposed to be applied in practice and welcome clarifications from the Commission on the matter.

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	<u>and provided it is not grossly unfair to the creditor.</u> <i>[This period shall apply both to the transactions between undertakings and between public authorities and undertakings.]</i> The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive (EU) 2019/633, unless Member States provide for a shorter payment period for such products. LU (Drafting): 1. In commercial transactions, the payment period shall not exceed 30 calendar days, <u>unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of Article XX.</u> <u>1a. The payment period shall start</u> from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. This period shall apply both to the transactions between undertakings and between public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products	BG (Comments): Directive 2011/7/EU allows certain flexibility depending on contractual clauses, but the present proposal restricts the freedom to negotiate in commercial transactions. It is necessary to ensure an effective level of flexibility regarding the possibilities for negotiating certain contractual clauses between the parties involved, under clear assumptions, limits, and criteria. Issues with intercompany indebtedness are not solely confined to large enterprises with market power - SMEs are affected as well. In real-life scenarios, SMEs are engaged in continuous business relationships with each other. Many SMEs simultaneously act as creditors and debtors to other SMEs. The lack of flexibility and the restriction of contractual freedom according to the provisions of the proposed regulation could lead to a cascading effect of SME bankruptcies in cases of active application of the Regulation proposal. In cases of complex transactions involving multiple interconnected transactions between economic entities, the Regulation proposal treats each transaction with payable amounts separately. In real business scenarios, enterprises engage in complex transactions with multiple stages and various payment terms that

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	on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive (EU) 2019/633, unless Member States provide for a shorter payment period for such products.	are interrelated, yet the proposed act does not provide for exceptions regarding the envisaged mandatory payment deadlines. There is no provision for counterclaims, offsets of due amounts between enterprises, etc. It is necessary to preserve the freedom to negotiate while taking into account the diversity and complexity of commercial relationships between enterprises. IE (Comments): There are two strands to this: Government-to-Business (G2B) and Business-to-Business (B2B). G2B – under the Late Payments Directive government should be paying within 30 days. This should continue to be the case in the proposal. The B2B payment period should be 30 days where possible but it must remain possible for companies to agree longer payment periods where both parties agree to such longer payment period. DE (Comments): - On sentence 1: We propose to focus paragraph 1 on <i>contractual</i> payment periods. This reflects business realities where B2B contracts usually include payment terms and statutory payment terms are barely

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		relevant. It also improves legal certainty and protection for the creditor as compared with the current situation where Article 3 (5) of the Late Payment Directive leaves many details open regarding the payment period. The new sentence 2 and our amendments to paragraph 3 lay down those details in accordance with Article 3 (3)(b) of the Late Payment Directive. - On sentence 2 (new): The additional sentence addresses the different sequences of reception of the goods/services and the invoice in the same manner as the Late Payment Directive (see Article 3 (3)(b)(ii) and (iii) Late Payment Directive). The legal consequences for each of the different scenarios are not sufficiently clear from the current wording in the first sentence. The clause “provided that the debtor has received the goods or services” does not clarify that the payment period only starts upon receipt of the goods or services. - On sentence 3 (new): The third sentence ensures the possibility for companies to agree longer payment periods where these are not grossly unfair to the creditor, i. e. under the same conditions as under Article 3 (5) of the Late Payment Directive. For a detailed justification, see the Joint position

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		paper of Germany and nine other MS of February 2024 (document WK 17223/2023 REV 2). In some sectors, longer payment periods are common or necessary (e.g. in the agricultural sector, the retail sector, the art trade sector, or the book sector: for example, in Germany, the payment terms between booksellers, distributors and publishers usually are between 30 and 120 days). This amendment also ensures that the contracting parties can subsequently agree on a deferral of a claim. Deferral agreements are often an essential element of in-court and out-of-court settlements. Moreover, deferral agreements are a common and successful practice to avoid bankruptcy of debtors who are in economic difficulties (i. e. negotiations with creditors to extend payment periods). Lastly, in view of case C-677/22 pending before the ECJ we propose to add a recital clarifying that an “express” agreement can also be made in terms and conditions. This is also relevant for agreements on longer acceptance or verification periods and on retention of title. - On sentence 4: We reserve our position on the payment periods for public authorities. We propose to focus primarily on B2B relationships. Once we have reached agreement on that we can discuss which

Commission proposal	Drafting Suggestions	Comments
		adaptations are necessary and appropriate for public authorities. - On sentence 5 (deletion): The last sentence should be deleted. See also above on Article 1 (4). The UTP Directive has introduced a close link between the UTP Directive and the late payment rules. Modifying that link, as proposed by the Commission, would lead to great <u>ambiguity and inconsistencies</u>. For non-perishable agricultural and food products, the new instrument would stipulate a 30 days payment period, but Article 3 (1)(a) of the UTP Directive would still apply to perishable agricultural and food products. Questions arise for example - whether this period applies to non-perishable products in any case or only where the UTP Directive itself is applicable; - with regard to the calculation of the payment periods; - and whether the shorter period would also apply in the context of the UTP Directive (e. g. for the enforcement authorities under the UTP Directive). Furthermore, it should be noted that the evaluation of the UTP Directive is only due in 2025, which could be an argument against amending the payment periods at an earlier

Commission proposal	Drafting Suggestions	Comments
		point. LU (Comments): As in the 2011 directive, the freedom of the parties to define payment terms by mutual agreement, according to their respective situations and to their mutual benefit, should be preserved. It should also be preserved that a contractual payment condition that is manifestly unfair to the creditor may be deemed unenforceable or give rise to damages. Indeed, a universal approach to payment terms would not take into account the specific features of each sector. For example, for slow-moving products, flexible payment terms are necessary to enable parties to optimize their inventory and cash flow management. Similar examples also exist for seasonal products.
2. A procedure of acceptance or verification may be exceptionally provided for in national law only where strictly necessary due to the specific nature of the goods or services. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration.	AT (Drafting): (deleted) SE (Drafting): Delete IE (Drafting): A procedure of acceptance or verification may	AT (Comments): Requiring that the possible procedures of acceptance or verification have to specifically be provided in national law both leads to a fragmentation of the rules across the internal market which is not helpful to undertakings. It is also phrased in such an unclear way that it is leaving Member States under a lot of political

Commission proposal	Drafting Suggestions	Comments
	be included in the contract. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration. DE (Drafting): 2. — A procedure of acceptance or verification may be exceptionally provided for in national law only where strictly necessary due to the specific nature of the goods or services. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration.	pressure from national stakeholders on the one side and exposed to unforeseeable infringement procedures from the EU side. Question: What is the reason for having to include the details of the procedure in the contract? SE (Comments): This proposal, as well as the proposal in the following paragraph, regarding procedures of acceptance or verification also constitutes a too far-reaching encroachment on the freedom of contract. IE (Comments): It should not be necessary to set out specific instances of acceptance or verification procedures in national law. This should be addressed within the terms of the contract. DE (Comments): The proposed restriction of Member States' right to lay down acceptance or verification procedures in national law must be deleted. The Commission's proposal would severely weaken the position of the debtor. Without an

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		acceptance or verification procedure a debtor would run the risk of paying for defective or poor-quality goods. He would be able to assert his rights only afterwards and without the possibility to put economic pressure on the seller by withholding the purchase price. Given that in the supply chain sellers are often large companies and buyers are SMEs, the Commission proposal would be detrimental for SMEs. Moreover, it would be very difficult for both Member States and the contracting parties to find out whether a specific case meets the criteria under which a national acceptance or verification procedure was permitted if the test remains “exceptional cases” only. As a result, a large number of requests to the Court of Justice for preliminary rulings would become necessary, protracting the resolution of disputes for years. It is also unclear from the Commission’s Proposal what the consequence of a violation of the second sentence (description in the contract) would be. Thus, it should be left to Member States to define in which cases a procedure of acceptance or verification is appropriate. Any limitation of such procedures to exceptional cases – especially in the legal instrument of a

Commission proposal	Drafting Suggestions	Comments
		Regulation – would significantly and unduly interfere with the national civil law systems and would cause significant legal uncertainty. For example, procedures of acceptance are a well-established core element of the German law of contracts to produce a work (under German law so-called “Werkvertrag”, e.g. contracts regarding construction works, the repair of machines, or the development of software). If procedures of acceptance were not admissible anymore for some or all of these contracts, the entire system of the German law of contracts to produce a work would have to be revised, as the procedure of acceptance is a prerequisite not only for the payment of the remuneration, but also has numerous other legal consequences, especially with regard to defects of the work (e.g. burden of proof, transfer of risk).
3. Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, the debtor shall initiate the procedure for acceptance or	AT (Drafting): 3. Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the <u>works</u>, goods or services by the debtor, <u>unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the</u>	AT (Comments): The proposed text is taken from the current text of Article 3 (3) of Directive 2011/7/EU. Question: How would it work to commence a procedure of acceptance in different sectors? For example, in the IT sector, there may be a partial implementation, which is separately

Commission proposal	Drafting Suggestions	Comments
verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. The payment period shall not exceed 30 calendar days after such procedure has taken place.	<u>creditor within the meaning of Article 8a.</u> even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. The payment period shall not exceed 30 calendar days after such procedure has taken place. IE (Drafting): To avoid the procedure of acceptance or verification being used to extend the payment period receipt DE (Drafting): 3-2. Where national law or the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2 the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, t. The debtor shall initiate the procedure for acceptance or verification immediately <u>without undue delay</u>	verified, after which the contract implementation continues; other verification procedures may follow (for example when compatibility issues occur). In complex procedures such as works contracts, there may be multiple contractors working on different parts (e.g. in the case of lots) – verifying parts separately may not be possible in the case of technically more complex aspects, and it would increase the costs. How would the procedure work in that case? SE (Comments): The provisions in the current Late Payment Directive should be kept. It must be possible for undertakings and public authorities to agree on a procedure of acceptance or verification. BG (Comments): See the relevant comments above. It is necessary to preserve the freedom to negotiate while taking into account the diversity and complexity of commercial relationships between enterprises. IE (Comments): The length of the verification process is determined by the nature and complexity of the verification process, along with the availability

Commission proposal	Drafting Suggestions	Comments
	upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. <u>A longer period may only be agreed expressly and provided it is not grossly unfair to the creditor.</u> <u>By way of derogation from paragraph 1, the</u> payment period shall not exceed 30 calendar days <u>begin to run</u> after such procedure has taken place. LU (Drafting): 3. Where the contract provides for a procedure of acceptance or verification, in accordance with paragraph 2, the maximum duration of that procedure shall not exceed 30 calendar days <u>unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor within the meaning of Article XX.</u> <u>3a. The duration of that procedure shall start</u> from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment, In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial transaction. The payment period	of skills required to undertake any verification and provide certification if required. It is over-simplistic to say that all such needs can be provided within a 30-day window. It should be possible for this process to be extended beyond 30 days where both parties agree and taking account of the relevant factors mentioned. The receipt of an invoice is the object that initiates the payment procedure. DE (Comments): - On sentence 1 and 2: The wording should be streamlined. - On sentence 3 (new): There must not be a strict capping of the duration of procedures of acceptance or verification. It should be possible for the contracting parties to extend the duration where they deem appropriate, provided that it is not grossly unfair to the creditor. In complex projects, for example in the fields of construction, infrastructure, or software development, a longer duration is often necessary in order to guarantee the quality of the works or goods delivered. For further details, see Position of the German Federal Government of 20 December 2023.

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	shall not exceed 30 calendar days after such procedure has taken place.	- On sentence 4: It should be spelt out more clearly that the last sentence does not set out a separate payment period but lays down the beginning of the payment period in cases where a procedure of acceptance or verification is provided for. See also Article 3 (3)(b)(iv) of the Late Payment Directive. LU (Comments): Limiting the procedures of acceptance or verification for ascertaining the conformity of goods or services to 30 calendar days might not ensure enough flexibility as it does not take into account the circumstances in certain sectors such as, for instance the construction sector, where longer periods may be needed to verify the conformity of products, technologies and services that become increasingly more complex.
4. The payment period set out in paragraph 1 is the maximum payment period and is without prejudice to a shorter period which may be provided for in national law.	AT (Drafting): (deleted) SE (Drafting): Delete DE	AT (Comments): In a Directive, this text is superfluous. FI (Comments): <i>Freedom of contract (comments regarding Art. 3-5)</i>

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	(Drafting): 43. The payment period set out in paragraph 1 is the maximum payment period and is without prejudice to a shorter period which may be provided for in national law. <u>The Member States shall lay down in accordance with national law a statutory period for payment which applies where the period for payment is not fixed in the contract. The period shall not exceed the limit provided for in paragraph 1.</u>	While the Late Payment Directive already restricted contractual freedom, the limitation of contractual freedom at that time was somewhat balanced and it relatively well took into account both parties' interests in light of the established objectives. However, the acceptable balance is missing in the current proposal, and the proposal goes too far in terms of restricting contractual freedom: Firstly, the limitation of contractual freedom can be considered highly far-reaching in scope, as it completely excludes the ability to negotiate and agree on one of the key terms (payment periods, interest, and flat fee compensation). Secondly, it is unlikely that the proposed restriction of contractual freedom will in fact achieve the objectives sought by the proposal. On the contrary, it is likely that the financing costs of shorter payment periods will be reflected in other contract terms, and the proposed Regulation does not prevent this either. In certain business sectors – such as book retailing and in many seasonal retailing – SMEs also benefit from long payment periods. Hence, the proposal may also be counterproductive. Therefore, it is crucial for the parties to have an opportunity to tailor contracts and late payment

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		terms to their individual needs (i.e. companies to enjoy a certain amount of freedom). It is also problematic that the proposed regulation would in no circumstances allow for national derogations to temporarily allow for longer payment periods, even in situations such as the COVID-19 pandemic. While the objectives of the proposal can be considered valid, it must be emphasized that the negative effects of such extensive restriction of contractual freedom have not been adequately assessed and taken into account. It is far from self-evident that the proposed regulation would automatically result in shorter payment periods and hence create positive effects. In summary, it can be said that the proposed measures are too far-reaching, and even if such strict measures are adopted it is unlikely that they will lead to the desired results (i.e. to achieve the laid objectives). DE (Comments): - On sentence 1 (deletion): We propose to add a general clause that permits MS to take stronger action against late payment in line with Article 12 (3) of the Late Payment Directive (Article 18a (2) - see below at Article 18). Consequently, this sentence can be deleted

Commission proposal	Drafting Suggestions	Comments
		here. - On sentence 2 (new): As a complement to the contractual payment period defined in paragraph 1, MS shall lay down a statutory period for payment which would apply in the absence of a contractual agreement. The maximum duration of that period should equal the period permitted in contracts.
Article 4 Payments to subcontractors in public procurement	AT (Drafting): (deleted) SE (Drafting): Delete article LU (Drafting): <u>Article 4</u> <u>Payments to subcontractors in public procurement</u>	AT (Comments): This provision creates an additional administrative burden for undertakings and contracting authorities/entities both. Furthermore, it loses its meaning when the provisions on an enforcement authority is removed. The Impact Assessment assumes additional costs for economic operators of about 2 Mio. Euro per year and does not describe added costs for contracting authorities/entities. It seems to be based on the assumption of one invoice per year coming from the main contractor. This assumption is not confirmed by the feedback AT has received from the national level: for example, one larger contracting

Commission proposal	Drafting Suggestions	Comments
		authority receives around 10.000 invoices per year for public works contracts above the threshold. This is due to a system of partial payments and of a procurement in lots, both of which are designed to support SMEs. Covering just the first level of subcontractors, the declarations may cover 25.000 invoices per year. Furthermore, multiple contracting authorities refer to a contractual standard used for public works contracts, which provides for monthly invoices. These examples show that the administrative burden for both sides is larger than anticipated in the impact assessment, and that the provision also counteracts measures such as frequent partial payments and the division of contracts into multiple lots, all of which are aimed at supporting SMEs. SE (Comments): The proposal will lead to an increased administrative burden and additional costs for the contracting parties which are not proportionate to the objectives of the proposal. Furthermore, it could be questioned whether the proposal will meet the objectives. As we understand the article, the contractors must pay their subcontractors before they themselves have been paid by the contracting authority, and the reasoning behind this is unclear.

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		LU (Comments): Considering that article 4 seems to require the main contractor to pay his subcontractors <u>before</u> presenting his own invoice to the contracting authority, we have doubts on the appropriateness of obliging contractors to provide evidence of payments to their direct subcontractors to contracting authorities and contracting entities. This situation could be problematic, including for SMEs, as it implies that the main contractor must have the necessary funds at his disposal. DK (Comments): Contractual relations between a contractor and their subcontractors should not be policed by contracting authorities, as they are not part in the that contractual relation. It will create administrative burdens on both contracting authorities and contractors, when contractors must hand in documentation to the contracting authority regarding payments of subcontractors. Furthermore, the consequences of any lacking documentation seems unclear.
1. For public works contracts falling within the scope of Directives 2014/23/EU,	AT (Drafting):	AT (Comments):

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2014/24/EU, 2014/25/EU, and 2009/81/EC ²⁶ of the European Parliament and of the Council, contractors shall provide evidence to contracting authorities or contracting entities within the meaning of those Directives that, where applicable, they have paid their direct subcontractors involved in the execution of the contract within the deadlines and under the conditions set out in this Regulation. The evidence may take the form of a written declaration by the contractor and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment.	(deleted) PL (Drafting): A new paragraph 3 shall be added: 3. This Regulation shall be without prejudice to stronger protection of subcontractors as well as further subcontractors in public procurement which may be provided for in national law. DE (Drafting): 1. — For public works contracts falling within the scope of Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC²⁷ of the European Parliament and of the Council, contractors shall provide evidence to contracting authorities or contracting entities within the meaning of those Directives that, where applicable, they have paid their direct subcontractors involved in the execution of the contract within the deadlines and under the conditions set out in this Regulation. The	Questions: What happens if a subcontractor has outstanding debts against the main contractor – is the main contractor allowed to offset payment against debt? Does Art. 4 apply in all links of the subcontracting chain or only in the first link? Does it apply also to subcontractors in non-EU countries? Which definition of a subcontractor is applicable here? Is the simple delivery of goods to a main contractor enough to be considered a subcontractor or does a different definition (see e.g. Art. 2(1)(o) of Dir. 2022/1031) apply? This provision furthermore seems to approach the execution of a works contract as a “linear” process where all subcontractors work concurrently and submit their invoices at the same time. Instead, works contracts are a complex process of interlocking works meaning that while the main contractor might submit an

²⁶ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

²⁷ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

Commission proposal	Drafting Suggestions	Comments
	evidence may take the form of a written declaration by the contractor and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment. LU (Drafting): <u>1. — For public works contracts falling within the scope of Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC²⁸ of the European Parliament and of the Council, contractors shall provide evidence to contracting authorities or contracting entities within the meaning of those Directives that, where applicable, they have paid their direct subcontractors involved in the execution of the contract within the deadlines and under the conditions set out in this Regulation. The evidence may take the form of a written declaration by the contractor and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment.</u>	invoice once a month, some of their subcontractors might not submit any invoices for the first year since they have not started with the execution of their part of the project. Any evidence/declaration submitted is of little value as it only reflects a random portion of the scope depending on the execution of the project and the contractual agreements between the main contractor and the subcontractors (of the first level). PL (Comments): Polish Public Procurement Law (Journal of Laws of 2023, item 1605 as amended) contains provisions establishing stronger protection of subcontractors than provided for in this Regulation. Moreover, it protects not only subcontractors but also further subcontractors. For these reasons, we suggest that Member States have the possibility to ensure stronger protection for subcontractors and further subcontractors than provided for in this Regulation. BG (Comments):

²⁸ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

Commission proposal	Drafting Suggestions	Comments
		It is not clear why this provision refers only to public works contracts but not to all public contracts, incl. public service and supply contracts. The provision introduces a new obligation for the contractor, which is not required by the national public procurement legislation. The contracting authorities/entities are not also required to verify that payments are made to subcontractors. In this regard, legislative changes will be needed to introduce this new obligation. See relevant comments above. What other evidence will be considered suitable besides the written declaration? IE (Comments): shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment. It is unclear whether this text requires: • the contractor to provide evidence that previous payments were made within the required timeframe or • the contractor to first pay subcontractors and provide such evidence before

Commission proposal	Drafting Suggestions	Comments
		claiming payment from the contracting entity The requirement for the provision of evidence would create additional administrative burden and would be of minimal benefit unless there is a means to independently verify the payment. DE (Comments): The German Government strictly rejects additional bureaucratic burden for contractors, as well as for contracting authorities, who would have to verify whether payments have been made on time. Public procurement, especially in the construction sector, is already heavily burdened by bureaucracy. It should be carefully assessed whether any potential benefits of the evidence requirements proposed by the Commission actually outweigh the negative impact of additional bureaucratic burden on companies. In particular, there is a risk that the Commission's proposal could in fact lead to later payments, as it would create an additional requirement which the main contractor would have to fulfil, and which the contracting authority would have to monitor before making a payment. Verifying whether a subcontractor has been paid in time can be difficult, for example in cases where a main

Commission proposal	Drafting Suggestions	Comments
		contractor has not paid the subcontractor because the latter has fulfilled his own contractual obligations late, or poorly. Moreover, alternative means exist to ensure that subcontractors are paid in time: According to Article 71 (3) of Directive 2014/24/EU Member States can provide for payments to be made directly from the contracting authority to the subcontractor. The decision which measures are appropriate in this regard should be left to Member States, taking into consideration the specific circumstances in each Member State.
2. Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by the main contractor to its direct subcontractors, the contracting authority or contracting entity shall notify the enforcement authority of its Member State thereof without delay.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 2. Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by the main contractor to its direct subcontractors, payments will be withheld until payment evidence for subcontractors is provided. Simultaneously, the contracting authority or contracting entity	PL (Comments): Article 4 of the Regulation contains a provision requiring contractors of public works contracts to provide evidence to the contracting authorities and contracting entities of payments to their direct subcontractors in the form of a declaration. However, according to Article 4(2), the absence of a statement or the finding of delays does not have any effect on the performance of the contracts or the situation of the contractor in future contracts, as the provision only provides for notification to the relevant authority in the country of the contracting authority. The purpose of such an

Commission proposal	Drafting Suggestions	Comments
	shall notify the enforcement authority of its Member State thereof without delay. DE (Drafting): 2. — Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by the main contractor to its direct subcontractors, the contracting authority or contracting entity shall notify the enforcement authority of its Member State thereof without delay. LU (Drafting): <u>2. — Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by the main contractor to its direct subcontractors, the contracting authority or contracting entity shall notify the enforcement authority of its Member State thereof without delay.</u>	arrangement and the expected effects are not clear. In the case of delays in public works contract transactions, action may be taken by the direct subcontractor, who is entitled to exercise civil law rights or to notify an authority empowered, for example, to impose an administrative penalty. It is not clear what the function of the notification by the contracting authority or notifying entity is to be. BG (Comments): The administrative capacity of the contracting authorities/entities needs to be strengthened in order to perform the new duties under this Regulation. Which sources of information will be considered reliable? DE (Comments): See above.
Article 5 Interest for late payment		AT (Comments): Art. 5 massively interferes with private autonomy in some areas and unnecessarily

Commission proposal	Drafting Suggestions	Comments
		restricts companies in their room for manoeuvre and their ability to react to changing conditions. Business dealings between undertakings in particular require flexibility in order to be able to react effectively and efficiently to market conditions. It should also be noted that undertakings are not only on the creditor side, but are also debtors. The needs of companies with regard to their payment terms are as varied as their business models. The ban on waiving interest on delayed payments removes important structuring options. This, combined with the rules on payment deadlines (apparently without the possibility of deferral), eliminates essential business management elements. Important instruments for out-of-court reorganisation measures are therefore no longer available, on which the success and existence of companies can ultimately depend. SE (Comments): As a starting point, the provisions regarding interest for late payment in the current Late Payment Directive should be kept. The proposal regarding interest for late payment also encroaches on the freedom of contract. We welcome explanations from the Commission as to the reasons for the changes made in relation to the current Directive and how the proposed

Commission proposal	Drafting Suggestions	Comments
		article is supposed to be applied in practice.
1. In case of late payment, the debtor shall be liable to pay interest for late payment, except where the debtor is not responsible for the payment delay.	PL (Drafting): This paragraph shall read as follows: 1. In case of late payment, the debtor shall be liable to pay interest for late payment, except where the debtor is not responsible for the payment delay unless the debtor proves the payment delay is not due to his fault. The provisions of this Article shall be without prejudice to unconditional right of the creditor to claim interest for late payment from the debtor, provided for in national law, which is more favourable to the creditor. DE (Drafting): 1. In case of late payment, the debtor shall be liable to pay interest for late payment, except where the debtor is not responsible for the payment delay.	AT (Comments): Questions: What does the term „liable“ cover in this case? In particular, does it cover slight negligence? This would need to be specified, in particular within the framework of a Regulation, keeping again in mind different treatment in national jurisdictions which would be affected (e.g. in Austria slight negligence is sufficient, in some MS it may have to be gross negligence or intent). Regarding considerations of a responsibility of the creditor, AT points out that in AT, there is no legal obligation for the creditor to accept the payment from the debtor. It is necessary to consider other possible cases where the creditor might be responsible for a delay of payment by the debtor and the effects thereof. Question: Could COM explain when a debtor is responsible or not responsible for the delay? Could you define the term more precisely? PL (Comments): The aim is to shift the burden of proof of the lack of late payment on debtor. This will have

Commission proposal	Drafting Suggestions	Comments
		general preventive function for the potential debtors and will be justified by the facilitation of the proceedings conducting by enforcement authorities. The second sentence of the paragraph is justified by the fact that according to polish law – if the payment (amount specified in the invoice) is due, the creditor has the unconditional right to claim interest from the debtor, irrespective of the reasons of the payment delay. DE (Comments): We propose to streamline the wording by deleting paragraph 1 and adding the relevant parts to paragraph 2 instead. This would be in line with Article 3 (1) of the Late Payment Directive. DK (Comments): We consider that it needs to be clarified what is to understood by the fact that interest for late payment shall be automatically due by the debtor to the creditor.
2. Interest for late payment shall be	AT	AT

Commission proposal	Drafting Suggestions	Comments
automatically due by the debtor to the creditor, without the creditor needing to send a reminder, where the following conditions are satisfied:	(Drafting): 2. Interest for late payment shall be automatically due by the debtor to the creditor, without the creditor needing to send a reminder, where the following conditions are satisfied: PL (Drafting): Interest for late payment shall be automatically due by the debtor to the creditor, without the creditor needing to send a reminder, where the following conditions are satisfied: DE (Drafting): 2. Interest for late payment shall be automatically due by the debtor to the creditor, without the creditor needing to send a reminder, where the following conditions are satisfied:	(Comments): Question: What does “automatically” mean? The phrase “without needing to send a reminder” is clearer. PL (Comments): The use of the phrase "automatically" in relation to the payment of interest does not provide any normative meaning; what is normative is the phrase that the debtor is obliged to pay interest without a reminder from the creditor. Therefore, we propose to remove this wording so that it does not raise any doubts in interpretation. There are doubts as to how the enforcement of interest and compensation is to be an obligation and not a right of the creditor as it has been so far, this raises the question of legal remedies that could 'force' the creditor to assert his rights, which are not provided for in the draft. In doing so, it should be noted that a system of administrative penalties for the debtor can only support the effective enforcement of interest and compensation, but does not in itself determine the automatic nature of interest and compensation from the creditor's perspective. The possibility of forcing the creditor to enforce his rights against the debtor, including through judicial and/or administrative proceedings, raises practical doubts. FI

Commission proposal	Drafting Suggestions	Comments
		(Comments): Automatically due The concept of ‘automatically due’, which is used in Articles 5 and 8, is unclear to us. Does it mean that if the payment is late, the debtor should, on his own initiative and without an express request, reminder, or demand by the creditor, pay the interest and the standard compensation? And if the debtor does not understand to do this, would the debtor infringe on the provisions of the Regulation? DE (Comments): The meaning of the word “automatically” is unclear. We reject an elimination of the “entitlement concept” (see p. 6 of the Commission Proposal). The civil law of obligations is a system which is based on claims which have to be asserted by the creditor. The Commission proposed to introduce the term “automatically” already for the recast of Directive 2000/35 but the Union legislator did not include it in Directive 2011/7.
(a) the creditor has fulfilled its contractual obligations and obligations provided for by law;	PL (Drafting): (a) the creditor has fulfilled its contractual obligations and obligations provided for by law,	PL (Comments): According to the current wording it may not be obvious, when the creditor obtains the right to

Commission proposal	Drafting Suggestions	Comments
	which determine the possibility of payment	the interest, because it depends on the fulfilment of each and every contractual obligation and those required by law. Even if the creditor dully performed the contract, the debtor received and accepted the delivery and the payment has already become due under the contract, the debtor could insist that not all prerequisites for payment had been fulfilled.
(b) the debtor has received the invoice or equivalent request for payment;	DE (Drafting): (b) — the debtor has received the invoice or equivalent request for payment;	AT (Comments): Question: What happens when the invoice received does not comply with the requirements set out by law for invoices (e.g. e-invoicing, VAT rules)? DE (Comments): Receipt of an invoice must not be a precondition for the right to late payment interest. This would impair the rights of the creditor. For example, parties may agree in a long-running contract on the dates of regular payments, and in that case the creditor will not issue separate invoices for each of these payments. Nevertheless, the creditor should be entitled to late payment interest if the payment is not made in accordance with the contract.

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(c) the creditor has not received the amount due specified in the invoice or the equivalent request for payment, within the contractual or statutory payment period as set out in Article 3.	AT (Drafting): (c) the creditor has not received the amount due specified in the invoice or the equivalent request for payment, within the contractual or statutory payment period as set out in Article 3. DE (Drafting): (eh) the creditor has not received the amount due specified in the invoice or the equivalent request for payment, within the contractual or statutory payment period as set out in Article 3 <u>unless the debtor is not responsible for the delay.</u>	AT (Comments): Adaptation to cover the adapted Article 3, which allows for agreements between debtor and creditor (unless grossly negligent). DE (Comments): The addition is taken from paragraph 1 which we propose to delete.
3. It shall not be possible for the creditor to waive its right to obtain interest for late payment.	AT (Drafting): (deleted) SE (Drafting): Delete DE (Drafting): 3. It shall not be possible for the creditor to waive its right to obtain interest for late payment.	AT (Comments): Paragraph 3 disproportionately limits freedom of contract and should be deleted. It would be nonsensical if the creditor could waive its right to the principal claim, but not to the interest for late payment (which however would be the current result). At the very least, waiving the right to interest for late payment should be possible after the contract conclusion; for example, it could be foreseen that, for example, general conditions of contract may not exclude the right to interest.

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		Question: What are the legal consequences of a creditor waiving its right to obtain interest for late payment (same for the flat fee)? Could a waiver lead to an administrative penalty for creditors or even to accusations of breach of trust against the managing directors in the case of legal entities? PL (Comments): In addition, the drafters in Article 5(3) and Article 8(3) provide for the prohibition of a creditor from waiving, respectively, the right to obtain interest for late payment in commercial transactions and the right to obtain flat-rate compensation. In addition, Article 9(1)(b) provides for the nullity of agreements and practices that exclude or limit the creditor's right to obtain interest for late payment or the right to obtain compensation for recovery costs. While we have no objection to the prohibition of waiving the rights in question in the future, it would be questionable to understand the above-mentioned provisions in such a way that they limit the possibility of concluding a settlement of disputed claims (in terms of interest and compensation). This is particularly true in cases involving public entities, to which the proposed regulation is also intended to apply. This may unduly limit the possibility of amicable settlement of disputes involving public entities.

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		SE (Comments): The freedom of contract and the flexibility deriving from it should be maintained. A waiver of interest is often part of amicable settlements or agreements to regulate outstanding payments with debtors who are in economic difficulties. BG (Comments): See the relevant comments above. IE (Comments): Unless where agreed between two parties DE (Comments): This paragraph must be deleted. It must remain possible for companies to waive their right to obtain interest for late payment. Agreements on payment schedules, the postponement of payment deadlines (deferral) and the waiver of the right to obtain interest for late payment are typical elements of court and out-of-court settlements and mediation agreements. Companies therefore need flexibility in order to be able to settle disputes through mutually agreed solutions. In particular, it must be possible for companies in economic difficulty to negotiate flexible payment agreements with their creditors so as to avoid insolvency. Moreover, an exclusion of waivers as proposed

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		by the Commission would lead to significant problems with regard to court resources, as a court decision would be mandatory in each case if the creditor is not permitted to settle the dispute with regard to his interest claim. DK (Comments): We believe that it needs to be clarified what is to be understood by the fact that it is not possible for the creditor to waive its right to receive interest for late payment. Does this mean that it is not possible for two undertakings to agree on a higher or lower interest rate than the one in article 6?
4. The date of receipt of the invoice, or equivalent request for payment, shall not be subject to a contractual agreement between the debtor and the creditor.	AT (Drafting): 4. The date of receipt of the invoice, or equivalent request for payment, shall not be subject to a contractual agreement between the <u>contracting authority</u> and the creditor. DE (Drafting): 4. The date of receipt of the invoice, or equivalent request for payment, shall not be subject to a contractual agreement between the debtor and the creditor.	AT (Comments): The provision is disproportional since it seems to assume an asymmetry in power in the business relations between creditor and debtor in all cases. The provision should remain limited to the B2G relationship (as in the current Directive). There may be good reasons for both parties to the contract to have such agreements, their freedom of contract should not be limited. DE (Comments): As a means of circumvention of the new instrument such a practice would probably be

Commission proposal	Drafting Suggestions	Comments
		illegal anyway. Thus, we would recommend to delete paragraph 4 in order to streamline the new instrument.
5. The debtor shall provide all relevant information to the creditor to ensure that the creditor's invoice or equivalent request for payment is accepted and processed by the debtor as soon as it is received.	SE (Drafting): Delete DE (Drafting): 5. The debtor shall provide all relevant information to the creditor to ensure that the creditor's invoice or equivalent request for payment is accepted and processed by the debtor as soon as it is received.	AT (Comments): Question: Could COM specify what is meant by "all relevant information"? Could COM specify what an "equivalent request for payment" is? The terms are very imprecise; it has been understood to mean very different things at national level, and the terms are overly broad. They should naturally not have to cover requirements for invoices that are already set out by law, as it is the responsibility of each contractual partner to know the law. FI (Comments): We would need clarification on the said point. What is the problem this point tries to solve? What kind of relevant information does the debtor have – that the creditor does not have – that the creditor needs in order to draft and send the invoice? SE (Comments): We question the added value of this proposal, which will lead to an increased administrative

Commission proposal	Drafting Suggestions	Comments
		burden and additional costs. DE (Comments): There is no need for this provision. Member States have solutions in their national laws for cases where a party refuses to accept a notification from the other party. Moreover, it is unclear from the proposed provision what the consequences would be in case of a violation.
6. Where the conditions set out in paragraph 2 are satisfied, interest for late payment shall start accruing from the last one of the following events:	AT (Drafting): 6. (a) Where the conditions set out in paragraph 2 are satisfied, interest for late payment shall start accruing from the last one of the following events <u>day or the end of the period for payment fixed in the contract</u> <u>(b) where the date or period for payment is not fixed in the contract, interest for late payment shall start accruing from</u> the last one of the following events; PL (Drafting): 6. Where the conditions set out in paragraph 2 are satisfied, interest for late payment shall start accruing from the last one of the following events:	PL (Comments): The provision specifies when interest for late payment should start. If, for example, the parties agree that the payment period is 14 days from receipt of the invoice, it seems that interest for late payment should start from the day following this date (i.e. after 14 days from receipt of the invoice). However, according to the proposed wording, interest for late payment would start from the date of receipt of the invoice. SE (Comments): The proposal would suggest that the interest for late payment starts accruing before the agreed payment period has ended. Furthermore, it will lead to difficulties at the enforcement stage as the applicant (the creditor) would in general not

Commission proposal	Drafting Suggestions	Comments
	IE (Drafting): Where the conditions set out in paragraph 2 are satisfied, interest for late payment shall start accruing from the date after which payment is due. DE (Drafting): 6. — Where the conditions set out in paragraph 2 are satisfied, interest for late payment shall start accruing from the last one of the following events:	know when the interest started to accrue. Therefore, we are of the opinion that the provisions on the matter in the current Late Payment Directive are more appropriate and should be kept. IE (Comments): Interest should start accruing after the payment becomes due. It should not be retrospectively applied to when the invoice or goods were received DE (Comments): The paragraph must be deleted. The moment on which interest for late payment begins to accrue is already defined in paragraph (1 and) 2. In particular, the payment period must have expired (paragraph 2 (c)). The calculation of the payment period in Article 3 already addresses the different scenarios of the sequence in which the goods and the invoice are received. The moments listed under letters a and b contradict the calculation method in Article 3 and would award the creditor a financial benefit for the time before the payment is late.
(a) receipt by the debtor of the invoice or an equivalent request for payment;	AT (Drafting): (i) receipt by the debtor of the invoice or an	PL (Comments): as above

Commission proposal	Drafting Suggestions	Comments
	equivalent request for payment; PL (Drafting): (a) the day following the date or the end of the period for payment fixed in the contract; DE (Drafting): (a) — receipt by the debtor of the invoice or an equivalent request for payment;	IE (Comments): Remove DE (Comments): See above.
(b) receipt by the debtor of the goods or services.	AT (Drafting): (ii) receipt by the debtor of the <u>works,</u> goods or services; <u>(iii) conclusion of a procedure of acceptance or verification provided for by statute or in the contract, by which the conformity of the works, goods or services with the contract is to be ascertained.</u> PL (Drafting): b) where the date or period for payment is not fixed in the contract, 30 calendar days following the date of the last one of the following events: (i) receipt by the debtor of the invoice or an equivalent request for payment;	PL (Comments): as above IE (Comments): Remove DE (Comments): See above.

Commission proposal	Drafting Suggestions	Comments
	(ii) receipt by the debtor of the goods or services - except that in the case referred to in Article 3(2), the expiry of 30 days is counted from the date of completion of the procedure of acceptance or verification. DE (Drafting): (b) — receipt by the debtor of the goods or services.	
7. The interest for late payment shall accrue until payment of the amount due.	SE (Drafting): Delete DE (Drafting): 7. — The interest for late payment shall accrue until payment of the amount due.	AT (Comments): Question: How is the interest calculated when partial payments are made? SE (Comments): The proposed changed definition of ‘amount due’ makes the scope of the article unclear as it can be interpreted to include a right to interest on interest (cf. Article 2(4) with the definition of the term in Article 2(8) of the Late Payment Directive). IE (Comments): Unworkable, Remove In practice this would be impossible to manage

Commission proposal	Drafting Suggestions	Comments
		as interest is still accruing even when measures to pay are being put in place as the interest clock does not stop ticking until payment is made. Payment batches may be prepared but the actual payment run may not occur on a daily basis. This would require payment runs to be done on a daily basis, which may not be the case for a lot of businesses, especially SMEs. There may also be timing differences between funds being paid by the debtor and received by the creditor. DE (Comments): As this is inherent in the concept of late payment, the paragraph should be deleted.
Article 6 Rate of the interest for late payment		
1. The interest for late payment shall be equal to the reference rate plus 8 percentage points.	DE (Drafting): 1. The interest for late payment shall be equal to the <i>[reference rate plus 8 percentage points]</i>.	AT (Comments): In AT, the interest for late payment is calculated from the more commonly known base interest rate plus 9,2 %, i.e. higher than according to the LPD. This is possible with a Directive; the Regulation now does not allow for diverging rules; and due to the choices left open in paragraph 2, there is also no harmonisation of the applicable interest rate achieved.

Commission proposal	Drafting Suggestions	Comments
		DE (Comments): We reserve our position on the level of the interest rate. We need more information what the reference rates described in paragraph 2 mean in practice, in particular which levels of interest they would result in. In Germany, the current interest rate for late payment is 12.62 %. While interest for late payment should be a deterrent it must not be, on the other hand, a disproportionate sanction.
2. Member States whose currency is the euro, shall ensure that the reference rate corresponds to either of the following:		
(a) the interest rate applied by the European Central Bank to its main refinancing operations;		
(b) the marginal interest rate resulting from variable-rate tender procedures for the most recent main refinancing operations of the European Central Bank.		
3. In Member States whose currency is not the euro the reference rate shall be the rate set by its national central bank.		
4. The reference rate for the first semester		

Commission proposal	Drafting Suggestions	Comments
of the year concerned shall be the rate as determinable on 1 January of that year. The reference rate for the second semester of the year concerned shall be the rate as determinable on 1 July of that year.		
Article 7 Payment schedules		
Where payment is done on the basis of schedules providing for instalments, and any of the instalments is not paid by the agreed date, interest for late payment referred to in Article 5, shall be calculated on the basis of any overdue amount. Compensation shall also be paid in accordance with Article 8.	DE (Drafting): Where payment is done on the basis of <u>This Directive shall be without prejudice to the ability of parties to agree, subject to the relevant provisions of applicable national law, on payment</u> schedules providing for instalments, and. <u>In such cases, where</u> any of the instalments is not paid by the agreed date, interest for late payment referred to in Article 5 shall be calculated solely on the basis of overdue amounts. Compensation shall also be paid in accordance with Article 8.	DE (Comments): We consider the wording of the corresponding provision in the Late Payment Directive (Article 5) more clear and, so, suggest to align Article 7 of the new instrument more closely with it. Moreover, sentence 1 is essential as it clarifies the relationship with statutory periods for payment. Lastly, we propose to address the issue of the flat fee compensation in the context of Article 8.
Article 8 Compensation for recovery costs		
1. Where interest for late payment becomes payable in accordance with Article 5, a flat fee compensation for recovery costs shall be	AT (Drafting): 1. Where interest for late payment becomes	AT (Comments): In particular in the case of very small amounts,

Commission proposal	Drafting Suggestions	Comments
automatically due by the debtor to the creditor and shall amount to a fixed sum of EUR 50, per every single commercial transaction.	payable in accordance with Article 5, a flat fee compensation for recovery costs shall be automatically due by the debtor to the creditor and shall amount to a fixed sum of EUR 50, per every single commercial <u>payment above an amount of at least 200 EUR net of VAT. The flat fee compensation may additionally be subject to a proportional reduction by a court.</u> PL (Drafting): 1. Where interest for late payment becomes payable in accordance with Article 5, a flat fee compensation for recovery costs shall be automatically due by the debtor to the creditor and shall amount to a fixed sum of EUR 50, per every single commercial transaction. DE (Drafting): 1. Where interest for late payment becomes payable in accordance with Article 5, a flat fee compensation for recovery costs shall be automatically due by the debtor to the creditor <u>without the necessity of a reminder</u> and shall amount to a fixed sum of <u>/ EUR 50 /</u>, per every single commercial transaction.	an imbalance between fee on the one hand and amount due on the other hand may very quickly be evident. The flat fee may in this case start to resemble a contractual penalty. Adding an option for a reduction of the fee by a judge may help to restore proportionality. Furthermore, a debtor who agrees to pay smaller bills more often (instead of one agreeing on one big invoice), in order to provide more regular liquidity (in particular to SMEs), would run the risk of incurring the flat fee more often. In order to avoid this (and the administrative burden incurred by Article 4), creditors might opt for paying bigger amounts more rarely, to the detriment of SMEs which have smaller liquidity cushions. Furthermore, this provision may be misused by splitting bills into smaller invoices in order to possibly increase the amount possibly gained from a flat fee. PL (Comments): The use of the phrase "automatically" in relation to the payment of a flat fee compensation for recovery costs does not provide any normative meaning. Therefore, we propose to remove this wording so that it does not raise any doubts in interpretation. DE (Comments): - On "automatically" see above. In order to

Commission proposal	Drafting Suggestions	Comments
		highlight that the debtor must not wait for a request from the creditor we propose to move that requirement from paragraph 2 to paragraph 1. - While we endorse the motivation for adding the expression “per every single commercial transaction” we consider it too vague in a legal provision. Instead, we propose to add a recital that could draw on from Article 3 (1)(a)(i) of the UTP Directive: <u>“Where the contracting parties agreed on the delivery of goods or services on a regular basis the flat fee compensation should be payable for every remuneration owed for an agreed delivery period which is not paid in time.”</u> - We reserve our position on the amount of the flat fee compensation. While it seems logical at first glance to adapt the current EUR 40 to the inflation of the past years the following factors should also be taken into account: -- The amount of EUR 40 is already rather high as compared to the costs that are actually caused by late payment for the creditor. Thus, the flat fee compensation appears to be a specific case of punitive damages. Punitive damages are considered a violation of <i>ordre public</i> in the context of determining applicable law and recognizing judgments from third countries. -- The costs of handling late payment may have decreased due to technical developments,

Commission proposal	Drafting Suggestions	Comments
		digitalisation, etc.
2. The flat fee compensation referred to in paragraph 1 shall be payable by the debtor to the creditor as a compensation for the creditor's own recovery costs, without the necessity of a reminder.	DE (Drafting): 2. The flat fee compensation referred to in paragraph 1 shall be payable by the debtor to the creditor as a compensation for the creditor's own recovery costs, without the necessity of a reminder .	DE (Comments): - Deletion of "by the debtor to the creditor": wording streamlined. - Deletion of "without the necessity of a reminder": see above at paragraph 1.
3. It shall not be possible for the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1.	AT (Drafting): (deleted) DE (Drafting): 3. It shall not be possible for the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1.	AT (Comments): See above the comments on Article 5 – this provision constitutes a disproportional infringement of the freedom of contract. BG (Comments): It is necessary to preserve the freedom to negotiate while taking into account the diversity and complexity of commercial relationships between enterprises. We support the adoption of more flexible rules. IE (Comments): Unless where agreed between two parties DE (Comments): The provision must be deleted. Like for late payment interest (see above on Article 5 (3)) the

Commission proposal	Drafting Suggestions	Comments
		parties need the flexibility to waive the right to obtain the flat fee compensation. Such waivers are typical elements of court and out-of-court settlements and mediation agreements.
4. In addition to the flat fee compensation referred to in paragraph 1, the creditor shall be entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that flat fee compensation and incurred due to the debtor's late payment.	DE (Drafting): 4. In addition to the flat fee compensation referred to in paragraph 1, the creditor shall be entitled to obtain reasonable compensation from the debtor for any recovery costs <u>other than the creditor's own recovery costs</u> exceeding that flat fee compensation and incurred due to the debtor's late payment.	DE (Comments): The ECJ judgment in case C-287/17 points out uncertainties regarding the relationship between the flat fee compensation and the "reasonable compensation". The addition intends to allow for a clear distinction between the two as already suggested by some language versions of the Late Payment Directive: A debtor paying late will have to pay the flat fee compensation in any case. In addition, he will have to pay costs for e.g. a lawyer as far as they exceed the flat fee compensation and are reasonable. Moreover, we suggest to include the examples given in Article 6 (3) sentence 2 of the Late Payment Directive in the recitals.
5. This Article shall apply without prejudice to the creditor's rights to receive any other compensation.		
	AT (Drafting): <u>Article 8a</u> <u>Unfair contractual terms and practices</u>	AT (Comments): Reintroduction of the concept of unfair contractual terms and practices. AT is flexible

Commission proposal	Drafting Suggestions	Comments
	<u>1. Member States shall provide that a contractual term or a practice relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs is either unenforceable or gives rise to a claim for damages if it is grossly unfair to the creditor.</u> <u>In determining whether a contractual term or a practice is grossly unfair to the creditor, within the meaning of the first subparagraph, all circumstances of the case shall be considered, including:</u> <u>(a) any gross deviation from good commercial practice, contrary to good faith and fair dealing;</u> <u>(b) the nature of the work, good or service; and</u> <u>(c) whether the debtor has any objective reason to deviate from the statutory rate of interest for late payment, from the payment period as referred to in Article xx or from the fixed sum as referred to in Article xx.</u> <u>2. For the purpose of paragraph 1, a contractual term or a practice which excludes interest for late payment shall be considered as grossly unfair.</u> <u>3. For the purpose of paragraph 1, a contractual term or a practice which excludes compensation for recovery costs as referred</u>	with regard to some of the amendments proposed by other MS in terms of adaptations to make the provision clearer and more stringent.

Commission proposal	Drafting Suggestions	Comments
	<u>to in Article xx shall be presumed to be grossly unfair.</u> <u>4. Member States shall ensure that, in the interests of creditors and competitors, adequate and effective means exist to prevent the continued use of contractual terms and practices which are grossly unfair within the meaning of paragraph 1.</u> <u>5. The means referred to in paragraph 4 shall include provisions whereby organisations officially recognised as representing undertakings, or organisations with a legitimate interest in representing undertakings may take action according to the applicable national law before the courts or before competent administrative bodies on the grounds that contractual terms or practices are grossly unfair within the meaning of paragraph 1, so that they can apply appropriate and effective means to prevent their continued use.</u>	
Article 9 Null and void contractual terms and practices	AT (Drafting): (deleted)	AT (Comments): See again comments on Art. 5 – such a restriction of the freedom of contract is unacceptable. Where undertakings have issues with liquidity, their options for out-of-court reorganisation are restricted by this Article. This could result in an

Commission proposal	Drafting Suggestions	Comments
		increase in restructuring and insolvency proceedings. BG (Comments): See the relevant comments above. It is necessary to preserve the freedom to negotiate while taking into account the diversity and complexity of commercial relationships between enterprises.
1. The following contractual terms and practices shall be null and void:	AT (Drafting): (deleted) DE (Drafting): 1. The following contractual terms and practices shall be null and void:	AT (Comments): All of the clauses listed in para. 1 letters a to c should remain accessible to the parties to the contract to deviate from them in an autonomous manner - at most under certain conditions (in concreto exceptions, possibly supplemented by a legal definition of the concept of "grossly disadvantageous"). For this reason alone, the threat of a sanction of nullity appears to be misguided. Questions: What is meant by “null and void”? What should the consequences be in case a clause is “null and void? How can a practice be “null and void”? Since - at least according to the original problem outlined in the proposal - it is a matter of protecting a (weaker) contracting party against

Commission proposal	Drafting Suggestions	Comments
		an economically superior contracting party, it would be obvious to assume relative nullity, in which the weaker contracting party would first have to invoke the invalidity. In the case of an ongoing asymmetrical business relationship, within which the (weaker) creditor is economically dependent on further orders from the larger debtor, this will probably rarely occur in practice. IE (Comments): Remove DE (Comments): A practice cannot be null and void.
(a) setting the payment period in breach of Article 3;	AT (Drafting): (deleted) PL (Drafting): (a) setting the payment period in breach of Article 3 – in that case the maximum payment period, as set out in Article 3, is applied to the contract; DE (Drafting): (a) setting the payment period in breach of	PL (Comments): The legal consequence should be put more precisely. This could be of a significant importance, especially while applying the Regulation by administrative enforcement authorities in proceedings for the impositions of fines. IE (Comments): Remove - It should be possible to extend the payment period beyond 30 days within the contract if both parties agree

Commission proposal	Drafting Suggestions	Comments
	Article 3; LU (Drafting): <u>(a) — setting the payment period in breach of Article 3;</u>	DE (Comments): The item should be deleted. It follows from the principle of civil law that contracts are null and void insofar as they violate the law. LU (Comments): In line with our comments on Article 3, this paragraph becomes unnecessary.
(b) excluding or limiting the right of the creditor to obtain interest for late payment provided for in Article 5 or the right to obtain compensation for recovery costs provided for in Article 8;	AT (Drafting): (deleted) DE (Drafting): (b) — excluding or limiting the right of the creditor to obtain interest for late payment provided for in Article 5 or the right to obtain compensation for recovery costs provided for in Article 8;	IE (Comments): Remove - It should be possible for both parties to agree to waive DE (Comments): As above.
(c) extending the duration of the procedure of verification or acceptance beyond the term set in Article 3(3);	AT (Drafting): (deleted) PL (Drafting): (c) extending the duration of the procedure of verification or acceptance beyond the term set in Article 3(3) - in that case the maximum	PL (Comments): The legal consequence should be put more precisely. This could be of a significant importance, especially while applying the Regulation by administrative enforcement authorities in proceedings for the impositions of fines.

Commission proposal	Drafting Suggestions	Comments
	duration of that procedure, set out in Article 3(3), is applied to the contract; DE (Drafting): (c) — extending the duration of the procedure of verification or acceptance beyond the term set in Article 3(3);	IE (Comments): Remove - It should be possible to extend the period and verification period beyond 30 days within the contract if both parties agree DE (Comments): As above.
(d) intentionally delaying or preventing the moment of sending the invoice.	AT (Drafting): (deleted) DE (Drafting): (d) — intentionally delaying or preventing the moment of sending the invoice.	AT (Comments): Question: What are/should be the legal consequences of this provision? How shall this practice be verified? PL (Comments): The consequences of declaring invalid the practice of delaying the sending of an invoice, which is not provided for in the contract, are not clear. IE (Comments): Remove Delays can occur unintentionally, but proving intention could be difficult. DE (Comments): It is not clear which practice it is intended to

Commission proposal	Drafting Suggestions	Comments
		address. If the creditor sends an invoice with a delay it is detrimental to himself according to the calculation method in Article 3.
2. Member States shall ensure that adequate and effective means exist to end the contractual terms and practices referred to in paragraph 1.	AT (Drafting): (deleted) DE (Drafting): [2. Member States shall ensure that adequate and effective means exist to end the contractual terms and practices referred to in paragraph 1.]	AT (Comments): Question: What are the “means” envisioned by COM? What should MS do, specifically, in order to end the contractual terms and/or practices referred to in paragraph 1? IE (Comments): Remove based on removal of 1 above DE (Comments): Paragraph 2 resembles Article 7 (4) of the Late Payment Directive. However, as the meaning of paragraph 1 of the present proposal is unclear we need to reserve our position on paragraph 2.
3. The means referred to in paragraph 2 shall include the possibility for an organisation officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings to take action before the courts or before competent administrative bodies.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 3. The means referred to in paragraph 2 shall include the possibility for an organisation officially recognised as representing creditors or	PL (Comments): The enforcement authority is not in a position to react on every and each request of the organisation to initiate an administrative proceeding or taking any other actions, as required in this paragraph. It could lead to overloading of national authorities and could decrease their effectiveness in enforcement of

Commission proposal	Drafting Suggestions	Comments
	organisations with a legitimate interest in representing undertakings to take action before the courts or to participate in administrative proceedings or before competent administrative bodies, according to the rules provided for in national law. The Regulation should be without prejudice to the rules of acting such organisations before national courts or administrative bodies, provided for in national law. In particular, national law may provide that such organisations may participate in court proceedings and in administrative proceedings only with the consent of the creditor, and that these organisations do not participate in the proceedings as a party, and for this reason they do not have access to secrets of the party protected by the law. DE (Drafting): [3. The means referred to in paragraph 2 shall include the possibility for an organisation officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings to take action before the courts or before competent administrative bodies.]	this Regulation. Moreover, it should be taken into account that administrative proceedings are conducted exclusively in the public interest and not in an interest of a single creditor. The proceeding should be conducted against a debtor who is responsible for infringement resulting in late payments. So, a debtor should be the sole party to this proceeding. In it's course the party provides the authority for numerous evidences being protected by the confidentiality: trade, banking, or fiscal and financial, such as invoices, contracts, bank statements, SAF-T for VAT and SAF_Bank Statement Reports. Even if such organisations took part in this proceedings as parties, the wouldn't be able to handle with evidences. Therefore their participation would be illusory. IE (Comments): Remove based on removal of 1 above DE (Comments): As above. The corresponding provision seems to be Article 7 (5) of the Late Payment Directive.

Commission proposal	Drafting Suggestions	Comments
Article 10 Retention of title		
A creditor shall retain title to goods until they are fully paid for if a retention of title has been expressly agreed between the debtor and the creditor before the delivery of the goods.	DE (Drafting): <u>[1.]</u> A creditor shall retain title to goods until they are fully paid for if a retention of title has been expressly agreed between the debtor and the creditor before the delivery of the goods. 2. Paragraph 1 is without prejudice to national law governing retention of title.]	AT (Comments): This provision corresponds to Art. 9 of the LPD and permits the agreement of a retention of title between the parties. This must be agreed "before delivery" of the goods. The start of the payment period according to Art. 3 is linked to the "receipt" of the goods. Question: Could COM explain how to resolve the practical problems which may arise from the potential divergence between the different points in time listed above? For example, this may happen in the case of a sending/dispatch of goods. BG (Comments): See the relevant comment above. DE (Comments): We have doubts whether it is appropriate to include this provision in the new instrument if it is to be in the form of a regulation (as proposed by the Commission). In that case Union law would contain a provision on property law which would be directly applicable and would interfere with national law. For example,

Commission proposal	Drafting Suggestions	Comments
		German law allows to agree on a retention of title also “non-expressly” and also “upon” delivery. Therefore, as a minimum, the provision on retention of title must not affect national law.
Article 11 Transparency		
1. Member States shall ensure transparency regarding the rights and obligations laid down in this Regulation, including by making publicly available the applicable rate of interest for late payment.	DE (Drafting): 1. Member States shall ensure transparency regarding the rights and obligations laid down in this Regulation Directive , including by making publicly available the applicable rate of interest for late payment.	DE (Comments): See above.
2. The Commission shall make publicly available on the internet the current rates of interest for late payment which apply in the Member States.		
Article 12 Recovery procedures for unchallenged claims		
1. Creditors shall obtain an enforceable title, including through an expedited procedure and irrespective of the amount of debt, within 90 calendar days of the lodging of the action or	DE (Drafting): 1. <u>Member States shall ensure that</u> C reditors shall can obtain an enforceable title,	DE (Comments): Clarify that MS can offer existing procedures as long as they are quick enough. Given that MS

Commission proposal	Drafting Suggestions	Comments
application at the court or other competent authority, provided that the debt and the procedure are not disputed.	including through an expedited procedure and irrespective of the amount of debt, within <u>normally</u> 90 calendar days of the lodging of the action or application at the court or other competent authority, provided that the debt and the procedure are not disputed. <u>Member States shall carry out this duty in accordance with their respective national laws, regulations and administrative provisions.</u>	need a broad margin of discretion here we also propose to use “Member States shall ensure that” like in a number of other provisions of the new instrument.
2. When calculating the period referred to in paragraph 1, the following period shall not be taken into account:		
(a) periods for service of documents;		
(b) any delays caused by the creditor.		IE (Comments): Not agreed
3. This Article shall be without prejudice to the provisions of Regulation (EC) 1896/2006.		
Article 13 Enforcement authorities	AT (Drafting): (deleted) SE (Drafting): Delete article	AT (Comments): The establishment/designation of an enforcement authority is to be rejected in its entirety. The right to a fair trial is a fundamental right

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	DE (Drafting): Article 13 Enforcement authorities LU (Drafting): <u>Article 13</u> <u>Enforcement authorities</u>	and enshrined in Art. 6 of the ECHR and Art. 47 of the EU Charter of Fundamental Rights. According to this right, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. The right to be heard in cases concerning late payment – which is very clearly a case concerning civil rights according to Art. 6 ECHR – is well-established in AT by the provision that such cases can be brought before the civil courts, which already effectively hear these cases. An enforcement body – as set out in Art. 13 to 15 – does not seem to be a tribunal, so a case would either way have to be reviewed by a tribunal. Furthermore, the provision sets up a parallel structure to the civil courts. The imposition of fines is to be rejected in particular. Fines do not bring any benefit to the creditor, but they do reduce the liquidity of the debtor, making it potentially harder for the debtor to fulfil its future payment obligations in time. The enforcement body is also granted powers that are too far-reaching, while the procedural rules are barely set out; this is problematic when considering the rule of law. In particular, the power to “carry out unannounced on-site

Commission proposal	Drafting Suggestions	Comments
		inspections within the framework of their investigations” is vastly disproportionate within the scope of the issue of late payment. The provisions are problematic also from the point of view of the creditor: it should be up to the creditor to decide autonomously if and when they bring a claim (covering also the claim for interest). When an enforcement body instead decides on such claims – which implicitly also contains a decision on the validity of the principal claim and all that comes with it! – this unduly infringes on the autonomy of the creditor and further confuses the differentiation of the role of the enforcement body on the one hand and of the civil courts on the other hand. SE (Comments): The enforcement system proposed would place a considerable administrative and financial burden on the Member States and would lead to additional bureaucracy as well. It would also create legal uncertainty, as it is unclear how this system relates to court proceedings and other simplified procedures that exist in the Member States. Furthermore, the scope of the proposed system and how the work of the enforcement authority will be carried out in practice is unclear. We fail to see how the proposed system would be more efficient and cost-saving than

Commission proposal	Drafting Suggestions	Comments
		the existing procedures. Any provisions on the matter, if needed, should only be formulated along the lines that Member States shall ensure adequate and effective enforcement of the EU-instrument. IE (Comments): Remove An enforcement system would place a considerable burden on business. Introducing additional mandatory measures are unlikely to achieve the desired impact and could instead have unintended consequences. The focus should be on preventative measures such as awareness campaigns and promoting prompt payment rather than remedial action. The proposal should not prevent Member States from also implementing remedial action at national level as suggested in the proposal, if they so wish. DE (Comments): Article 13 to 15 must be deleted. For a detailed justification see the Joint position paper of Germany and nine other MS of February 2024 (WK 17223/2023 REV 2), the German position

Commission proposal	Drafting Suggestions	Comments
		of 20 December 2023 and the Request for a coherence exercise by the Working Party on Civil Law (General Questions) of 30 January 2024 (WK 1363/2024). According to the COM proposal, administrative authorities would assume the responsibilities of courts. This would cause severe problems, in particular: • significant burden on MS who would need to maintain a double structure (courts and authorities) • significant burden on businesses as they would need to respond to information requests from authorities and be available for on-site checks • no efficient handling of cross-border cases, unlike court cases where extensive Union legislation on judicial cooperation applies • no additional value for the creditor as debtor can challenge orders of an authority before the courts • fairness issues where the authority hides the identity of a creditor. Therefore, enforcement of civil claims must remain with the courts exclusively. LU (Comments): We have serious doubts about the

Commission proposal	Drafting Suggestions	Comments
		proportionality, necessity and added value of a new enforcement authority while setting up such an authority is particularly cumbersome and costly. For this reason, but also because of the risk of overlap of competences, we believe it is better to rely on the jurisdiction of the courts, and to promote the use of alternative dispute resolution tools to help companies with liquidity issues. For instance, the idea of a fast-track procedure before the courts could be analysed in the working party, based on the European Small Claims Procedure (CE/861/2007). Furthermore, and following several requests for clarification at working party level, we are still awaiting evidence by the COM showing that European regulations in this area are not sufficient to facilitate enforcement. More particularly, we refer to Regulation 1215/2002 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Regulation 805/2004 creating a European Enforcement Order for uncontested claims; Regulation 1896/2006 creating a European order for payment procedure; Regulation 861/2007 creating a European Small Claims Procedure. DK

Commission proposal	Drafting Suggestions	Comments
		(Comments): Denmark finds it necessary to make a reservation for further investigation regarding the proposals on enforcement.
1. Each Member State shall designate one or more authorities responsible for the enforcement of this Regulation ('enforcement authority').	AT (Drafting): (deleted) BG (Drafting): 1. — Each Member State shall designate one or more authorities responsible for the enforcement of this Regulation ('enforcement authority'). DE (Drafting): 1. — Each Member State shall designate one or more authorities responsible for the enforcement of this Regulation ('enforcement authority'). LU (Drafting): <u>1. — Each Member State shall designate one or more competent authorities responsible for the enforcement of this Regulation ('enforcement authority').</u>	FI (Comments): During the negotiations, it is crucial to thoroughly discuss and assess both the benefits and disadvantages of establishing an enforcement authority. BG (Comments): Substantial resources and administrative capacity will be required, regardless of the national decision taken - whether to establish a new national body or to assign the new obligations to an existing national body. Simultaneously, the effect is negative both for the Member States and for businesses. SMEs, in their capacity as creditors, will have to bear the financial and administrative burden of participating simultaneously in both judicial and administrative proceedings (legal expenses, providing evidence, etc.). SMEs, as debtors, will have to bear not only the payment of late interest but also the administrative sanction imposed by the administrative authority. This may lead to reluctance from SMEs to defend

Commission proposal	Drafting Suggestions	Comments
		their rights, i.e., inefficiency of the new legal framework, or, in the case of mass lawsuits from SMEs under the proposed Regulation, to chain bankruptcies of SMEs acting as debtors. In parallel proceedings before a court and an administrative body, the sanction imposed by the administrative authority is a public enforcement. Depending on which decision is made earlier, a number of SME debtors may not be able to pay either the public enforcement or the due payment with interest to their counterparts. In this regard, Bulgaria considers that the proposal to establish an enforcement authority is disproportionate, creating an additional financial burden for enterprises, and should be discarded.
2. Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 2. Where appropriate, Member States enforcement authorities shall take measures necessary to ensure that the deadlines for	AT (Comments): Question: Which measures would that be, specifically? Could COM describe examples? PL (Comments): Article 13(2) provides for the competence of enforcement authorities (designated pursuant to Article 13(1)) to put in place the measures necessary to ensure compliance with payment

Commission proposal	Drafting Suggestions	Comments
	payments are complied with. BG (Drafting): 2. — Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with. DE (Drafting): 2. — Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with. LU (Drafting): <u>2. — Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with.</u>	deadlines. It appears that the Regulation should rather refer to Member States in this respect. Poland has doubts as to the origin of this formulation and the transfer of competence directly to enforcement bodies and what purpose it is intended to serve. BG (Comments): See the relevant comment above. The text is general and unclear. It is not clarified what measures could be taken, for example, in cases of delayed payment by another party under the relevant or another transaction, or in the absence of quick liquidity or objective impossibility to pay in servant terms.
3. Enforcement authorities shall cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations that have a cross-border dimension.	AT (Drafting): (deleted) BG (Drafting): 3. — Enforcement authorities shall cooperate effectively with each other and with the Commission and shall provide each other with	BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	mutual assistance in investigations that have a cross-border dimension. DE (Drafting): 3. — Enforcement authorities shall cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations that have a cross-border dimension. LU (Drafting): <u>3. — Enforcement shall cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations that have a cross-border dimension.</u>	
4. Enforcement authorities shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations.	AT (Drafting): (deleted) BG (Drafting): 4. — Enforcement authorities shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations. DE (Drafting):	AT (Comments): Question: Which authorities would this concern? What would be the content and effect of such coordination? The provision does not specify this at all, referring generally to “other Union or national legislation” generally. BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	4. Enforcement authorities shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations. LU (Drafting): <u>4. Enforcement shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations.</u>	
5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food sector to the competent enforcement authorities under Directive (EU) 2019/633	AT (Drafting): (deleted) DE (Drafting): 5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food sector to the competent enforcement authorities under Directive (EU) 2019/633 LU (Drafting): <u>5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food sector to the competent enforcement authorities</u>	

Commission proposal	Drafting Suggestions	Comments
	<u>under Directive (EU) 2019/633:</u>	
Article 14 Powers of enforcement authorities	AT (Drafting): (deleted) SE (Drafting): Delete article BG (Drafting): Article 14 Powers of enforcement authorities DE (Drafting): Article 14 Powers of enforcement authorities LU (Drafting): <u>Article 14</u> <u>Powers of enforcement authorities</u> <u>Penalties</u>	FI (Comments): Before discussing the scope of the powers conferred on enforcement authorities, it should be resolved whether or not there even is enough support amongst the Member States for setting up enforcement authorities. SE (Comments): See comment above. IE (Comments): Remove An enforcement system would place a considerable burden on business. Introducing additional mandatory measures are unlikely to achieve the desired impact and could instead have unintended consequences. The focus should be on preventative measures such as awareness campaigns and promoting prompt payment rather than remedial action. The proposal should not prevent Member States from also implementing remedial action at

Commission proposal	Drafting Suggestions	Comments
		national level as suggested in the proposal, if they so wish. DE (Comments): See above on Article 13.
1. Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers:	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 1. Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers however respecting the division of powers between the common courts and administrative bodies as provided for in national law: BG (Drafting): 1. Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers: DE (Drafting):	PL (Comments): The aim is to respect the traditional division of powers among authorities in national legal systems, especially between courts (conducting civil and commercial proceedings) and administrative bodies (conducting administrative proceedings). BG (Comments): Substantial resources and administrative capacity will be required, regardless of the national decision taken - whether to establish a new national body or to assign the new obligations to an existing national body. Simultaneously, the effect is negative both for the Member States and for businesses. SMEs, in their capacity as creditors, will have to bear the financial and administrative burden of participating simultaneously in both judicial and administrative proceedings (legal expenses, providing evidence, etc.). SMEs, as debtors, will have to bear not only the payment of late

Commission proposal	Drafting Suggestions	Comments
	1. — Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers: LU (Drafting): <u>1. — Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers:</u>	interest but also the administrative sanction imposed by the administrative authority. This may lead to reluctance from SMEs to defend their rights, i.e., inefficiency of the new legal framework, or, in the case of mass lawsuits from SMEs under the proposed Regulation, to chain bankruptcies of SMEs acting as debtors. In parallel proceedings before a court and an administrative body, the sanction imposed by the administrative authority is a public enforcement. Depending on which decision is made earlier, a number of SME debtors may not be able to pay either the public enforcement or the due payment with interest to their counterparts.
(a) the power to initiate and conduct investigations on their own initiative or based on a complaint;	AT (Drafting): (deleted) PL (Drafting): BG (Drafting): (a) — the power to initiate and conduct investigations on their own initiative or based on a complaint	BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	DE (Drafting): (a) — the power to initiate and conduct investigations on their own initiative or based on a complaint; LU (Drafting): <u>(a) — the power to initiate and conduct investigations on their own initiative or based on a complaint;</u>	
(b) the power to require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions;	AT (Drafting): (deleted) BG (Drafting): (b) — the power to require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions; DE (Drafting): (b) — the power to require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions; LU (Drafting): <u>(b) — the power to require creditors and</u>	BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	<u>debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions;</u>	
(c) the power to carry out unannounced on-site inspections within the framework of their investigations;	AT (Drafting): (deleted) BG (Drafting): (e) — the power to carry out unannounced on-site inspections within the framework of their investigations; DE (Drafting): (e) — the power to carry out unannounced on-site inspections within the framework of their investigations; LU (Drafting): <u>(e) — the power to carry out unannounced on-site inspections within the framework of their investigations;</u>	BG (Comments): See the relevant comment above.
(d) the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8;	AT (Drafting): (deleted) PL (Drafting): This point shall read as follows:	PL (Comments): The proposed wording is the result of the distinction between civil and administrative matters.

Commission proposal	Drafting Suggestions	Comments
	(d) the power to take decisions finding an infringement of this Regulation to render judgements requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8; BG (Drafting): (d) — the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8; DE (Drafting): (d) — the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8; LU (Drafting): <u>(d) — the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or</u>	The requiring the debtor to pay interest for late payment (Art. 5) and to compensate the creditor (Art. 8) – are civil matters and according to the polish legal system cannot be settled by the administrative bodies in the way of administrative decision. As a result, the administrative bodies are only empowered to act in public interest and not in the interest of a single creditor. To avoid confusion, civil matters and administrative matters should be separated in the Regulation. The issuing of interest and compensation orders cannot be done in administrative proceedings, and the appropriate one should be civil proceedings, in which the participation of two parties to the civil law relationship is ensured and guarantees of a fair civil trial are provided. In accordance with Article 6(1) of the Council of Europe Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms and with Article 45(1) of the Polish Constitution, this means the right to have the case decided by an independent, independent court, with the assurance of an adversarial process and respect for the equal rights of the parties to the proceedings). FI (Comments): Should an enforcement authority eventually have to be designated, our main concern is that

Commission proposal	Drafting Suggestions	Comments
	requiring the debtor to compensate the creditor as provided for in Article 8;	it would be able to oblige a debtor to pay interest for late payment (Art. 5) and flat fee compensation (Art. 8) regardless of whether the creditor claims payment. BG (Comments): See the relevant comment above.
(e) the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement;	AT (Drafting): (deleted) BG (Drafting): (e) — the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement; DE (Drafting): (e) — the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement; LU (Drafting): (e) — the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement;	PL (Comments): The type of other penalties and interim measures should be specified. Alternatively, the provision could be limited only to fines. BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
(f) the power to require the debtor to bring the infringement to an end;	AT (Drafting): (deleted) BG (Drafting): (f) — the power to require the debtor to bring the infringement to an end; DE (Drafting): (f) — the power to require the debtor to bring the infringement to an end; LU (Drafting): <u>(f) — the power to require the debtor to bring the infringement to an end;</u>	PL (Comments): It is not clear how the envisaged mechanism for the issuance of a cease and desist decision by the enforcement authority is to be applied and what it is to concern. It should be specified what infringements this power regards and how it may be applied. BG (Comments): See the relevant comment above.
(g) the power to publish its decisions referred to in paragraphs (d), (e) and (f).	AT (Drafting): (deleted) BG (Drafting): (g) — the power to publish its decisions referred to in paragraphs (d), (e) and (f). DE (Drafting): (g) — the power to publish its decisions referred to in paragraphs (d), (e) and (f). LU	BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	(Drafting): (g) — the power to publish its decisions referred to in paragraphs (d), (e) and (f).	
2. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 2. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States are free to decide on the list of penalties and the principles of imposition thereof. Member States may decide that the finding of the infringement in administrative proceeding and the imposition of fine on the subjects responsible for the infringement shall depend on the gravity of the infringement, such as its duration or the total amount of the late payment in the given period of time. BG (Drafting): 2. — Member States shall lay down the rules	PL (Comments): The aim is to determine the level of responsibility in administrative proceedings to ensure effectiveness of these proceedings. Otherwise the administrative authorities might be overloaded. BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. DE (Drafting): 2. — Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.	
3. Member States shall, [by .../without delay], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.	AT (Drafting): (deleted) BG (Drafting): 3. — Member States shall, [by .../without delay], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them. DE (Drafting): 3. — Member States shall, [by .../without delay], notify the Commission of those rules and of those measures and shall notify it, without	BG (Comments): See the relevant comment above.

Commission proposal	Drafting Suggestions	Comments
	delay, of any subsequent amendment affecting them. LU (Drafting): <u>3. — Member States shall, [by .../without delay], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</u>	
Article 15 Complaints and confidentiality	AT (Drafting): (deleted) SE (Drafting): Delete article DE (Drafting): Article 15 Complaints and confidentiality	SE (Comments): See comment above. IE (Comments): Remove An enforcement system would place a considerable burden on business. Introducing additional mandatory measures are unlikely to achieve the desired impact and could instead have unintended consequences. The focus should be on preventative measures such as awareness campaigns and promoting prompt payment rather than remedial action. The proposal should not prevent Member States

Commission proposal	Drafting Suggestions	Comments
		from also implementing remedial action at national level as suggested in the proposal, if they so wish. DE (Comments): See above on Article 13. DK (Comments): Is it still the expectation that costs for the enforcement and mediation bodies will amount to EUR 70-105 million per year for the EU-27? Is this the primary cost driver in the proposal?
1. Creditors may address complaints either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member States in which the debtor is established. The enforcement authority to which the complaint is addressed shall be competent to enforce this Regulation.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 1.Creditors may address complaints related to late payments either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member States in which the debtor is established. The enforcement authority to which the complaint related to late payments is addressed shall be competent to enforce this Regulation. Member States may decide that	AT (Comments): Question: How does this provision relate to other legal and/or contractual agreement or to international agreements on the competence in matters of late payment? PL (Comments): The enforcement authority is not in a position to take action in case of every and each creditors complaint. It could lead to overloading of national authorities and could decrease their effectiveness in enforcement of this Regulation. The current meaning of this paragraph appears to allow the creditors to overuse their right to address complaints. Therefore, their complaints

Commission proposal	Drafting Suggestions	Comments
	taking action following a complaint shall depend on the gravity of the infringement, such as its duration or the total amount of the late payment in the given period of time. DE (Drafting): 1. Creditors may address complaints either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member States in which the debtor is established. The enforcement authority to which the complaint is addressed shall be competent to enforce this Regulation.	should be related only to such infringement of this Regulation, which is the most relevant, as far as the purposes thereof are concern.
2. Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint to the enforcement authorities referred to in Article 13 at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by an infringement of this Regulation.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows: 2. Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint relating to late payments in commercial transactions to the enforcement authorities referred to in Article 13 at the request of one or	PL (Comments): As a result, the second paragraph should reflect the idea mentioned above. Whereas, the aim to add the second sentence in this paragraph is to avoid confusion and to respect the rules of national laws in this matters. The organisations mentioned in this paragraph should be treated in the same way as any other social organisations in civil and administrative proceedings. BG

Commission proposal	Drafting Suggestions	Comments
	more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by late payments. This provision shall be without prejudice to the rules of acting of such organisations before national courts or administrative bodies, provided for in national law. BG (Drafting): 2. — Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint to the enforcement authorities referred to in Article 13 at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by an infringement of this Regulation. DE (Drafting): 2. — Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint to the enforcement authorities referred to in Article 13 at the request of one or more of their members	(Comments): The proposal envisages the filing of claims by associations of enterprises on behalf of their members. A similar hypothesis is provided for collective actions by consumers. However, in this case, the association of enterprises would act more as a representative of the affected entities (enterprises), without having a direct legal interest in the judicial or administrative process. Particularly in cases where an association of enterprises files a claim for the annulment of clauses according to Article 9(3) of the proposed Regulation. It is not specified which entity (the affected enterprises or the association of enterprises) will receive the due payment and interest. The provision of Article 15, paragraph 2 constitutes an intervention that goes beyond the sovereign discretion of the parties to the transaction to file a complaint. Associations, as a collective body, not only lack direct legal interest but also lack procedural legitimacy to file claims, thus, they lack the capacity to represent a plaintiff in judicial proceedings - an enterprise that has its personal claim against another enterprise.

Commission proposal	Drafting Suggestions	Comments
	or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by an infringement of this Regulation.	
3. Where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant. The complainant shall identify any information for which it requests confidentiality.	AT (Drafting): (deleted) DE (Drafting): 3. — Where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant. The complainant shall identify any information for which it requests confidentiality.	
4. The enforcement authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.	AT (Drafting): (deleted) DE (Drafting): 4. — The enforcement authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.	

Commission proposal	Drafting Suggestions	Comments
5. Where an enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons of its decision within a reasonable period of time after the receipt of the complaint.	AT (Drafting): (deleted) DE (Drafting): 5. — Where an enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons of its decision within a reasonable period of time after the receipt of the complaint.	
6. Where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.	AT (Drafting): (deleted) DE (Drafting): 6. — Where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.	
7. Where an enforcement authority finds that a debtor has infringed this Regulation, it shall require the debtor to bring the illegal practice to an end.	AT (Drafting): (deleted) PL (Drafting): This paragraph shall read as follows:	PL (Comments): See justification to the first paragraph above.

Commission proposal	Drafting Suggestions	Comments
	7. Where an enforcement authority finds that a debtor has infringed this Regulation by paying late, it may initiate proceedings for the imposition of fines specified in the national law depending on the gravity of the infringement, such as its duration or the total amount of the late payment in the given period of time. DE (Drafting): 7. — Where an enforcement authority finds that a debtor has infringed this Regulation, it shall require the debtor to bring the illegal practice to an end.	
Article 16 Alternative dispute resolution		
1. Without prejudice to the right of creditors to submit complaints under Article 15, and to the obligations and powers of enforcement authorities laid down in Articles 13, 14, and 15, Member States shall promote the voluntary use of effective and independent alternative dispute resolution mechanisms for the settlement of disputes between debtors and creditors.	AT (Drafting): 1. Without prejudice to the right of creditors to submit complaints under Article 15, and to the obligations and powers of enforcement authorities laid down in Articles 13, 14, and 15, Member States <u>may</u> promote the voluntary use of effective and independent alternative dispute resolution mechanisms for the settlement of disputes between debtors and	AT (Comments): This provision is less invasive (the appeal is to be voluntary) than the proposed enforcement authority. However, it also creates (or at least "promotes") a cost-intensive parallel structure to the civil courts, the necessity of which is highly questionable. DE (Comments):

Commission proposal	Drafting Suggestions	Comments
	creditors. DE (Drafting): 1. Without prejudice to the right of creditors to submit complaints under Article 15, and to the obligations and powers of enforcement authorities laid down in Articles 13, 14, and 15, Member States shall promote the voluntary use of effective and independent alternative dispute resolution mechanisms for the settlement of disputes between debtors and creditors.	We do not see a sufficient need for this provision. A broad range of ADR services of different kinds are available on the market and can be used by businesses. Moreover, it is not clear what the expression “Member States shall promote” means. It could mean providing easily accessible information but it could also mean an obligation for the MS to subsidise providers of ADR services.
2. Alternative dispute resolution mechanisms for late payment disputes shall encourage the parties to a dispute to find the solution by themselves and shall be fast, efficient, and cost-effective, while maintaining confidence and trust between the parties.	DE (Drafting): 2. Alternative dispute resolution mechanisms for late payment disputes shall encourage the parties to a dispute to find the solution by themselves and shall be fast, efficient, and cost-effective, while maintaining confidence and trust between the parties.	DE (Comments): This paragraph should also be deleted. ADR comprises a wide range of methods and not all of them are described precisely here; in particular, the expression “find a solution by themselves” could be understood as excluding certain forms of ADR. Moreover, the MS cannot ensure that ADR services are fast, efficient and cost-effective.
Article 17 Digital tools, credit management and financial literacy training		PL (Comments): The Regulation envisages, where possible for Member States, the use of digital tools for effective enforcement of the Regulation. At the

Commission proposal	Drafting Suggestions	Comments
		same time, it is not clear what the legislator means by this wording, nor is it explained in recital 29 of the preamble and the explanatory memorandum. However, while the first paragraph of this provision provides flexibility for Member States, Article 17(2) seems to oblige Member States to ensure that SMEs have access to and can use credit management tools and financial literacy training, including on the use of digital tools to make timely payments. It should therefore be noted that clarification is required as to how and to what extent the implementation of the new obligations of the Member States under Article 17(2) will be financed. This regulation should take into account the national solutions already in place, the degree of digitisation of each country and the financial implications associated with it). IE (Comments): Agree, but this is aspirational and not measurable and does not belong in a Regulation
1. To the extent possible, Member States shall use digital tools for effective enforcement of this Regulation.	DE (Drafting): 1. To the extent possible, Member States shall use digital tools for effective enforcement of this Regulation.	BG (Comments): The initiatives are good, but they require administrative capacity and resources, and it is not clear how they will be provided by all EU Member States. Expectations are for the

Commission proposal	Drafting Suggestions	Comments
		Commission to ensure equal access to such resources, including financial, educational, institutional, IT, and others. DE (Comments): While we endorse digital technology and its potential to make enforcement more efficient the new instrument cannot prescribe MS to use it. Under Article 291 (1) TFEU it is the competence of the MS to adopt the measures necessary to implement legally binding Union acts.
2. Member States shall ensure that credit management tools and financial literacy trainings are available and accessible to small and medium sized enterprises, including on the use of digital tools for timely payments.	DE (Drafting): 2. Member States shall ensure that credit management tools and financial literacy trainings are available and accessible to small and medium sized enterprises, including on the use of digital tools for timely payments.	AT (Comments): Question: Could COM elaborate how the proposal COM(2022) 701 final, VAT in the Digital Age, interacts with this proposal, in particular regarding real-time reporting on cross-border payments, structured e-invoicing etc.? Will the proposal support a culture of timely payments? BG (Comments): The provision is unclear regarding what determines the availability of the respective instruments. DE (Comments):

Commission proposal	Drafting Suggestions	Comments
		We do not see a sufficient justification for this provision. MS cannot ensure that certain “tools” (software?) are available on the market and affordable for SMEs. Similarly, in a market economy like the EU it is the responsibility of each undertaking to acquire the knowledge it needs to run its business successfully. DK (Comments): We believe that it needs to be clarified if Member States have to create educational programmes or if guidance is sufficient.
Article 18 Report		
By [OP: please insert the date = 4years after the entry into force of this Regulation], the Commission shall submit a report on the implementation of this Regulation to the European Parliament and the Council.	DE (Drafting): By [OP: please insert the date = 4years after the entry into force of this RegulationDirective], the Commission shall submit a report on the implementation of this RegulationDirective to the European Parliament and the Council. <u>Article 18a</u> <u>Transposition</u> <u>1. Member States shall bring into force</u>	DE (Comments): We propose to insert an additional Article 18a that reflects the type of the new instrument (directive instead of regulation). The wording is aligned to Article 12 (1) and (3) of the Late Payment Directive as far as possible.

Commission proposal	Drafting Suggestions	Comments
	<u>the laws, regulations and administrative provisions necessary to comply with Articles 1 to 18 by the date referred to in Article 20 (2). They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the repealed Directive shall be construed as references to this Directive. The methods of making such reference and the formulation of such statement shall be laid down by Member States.</u> <u>2. Member States may maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.</u>	
	AT (Drafting): <u>Article 18a</u> <u>Transposition</u> <u>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles</u>	AT (Comments): A transposition Article should be added.

Commission proposal	Drafting Suggestions	Comments
	<u>... by They shall forthwith communicate to the Commission the text of those provisions.</u> <u>When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the repealed Directive shall be construed as references to this Directive. The methods of making such reference and the formulation of such statement shall be laid down by Member States</u> <u>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</u> <u>3. Member States may maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.</u>	
Article 19 Repeal		
Directive 2011/7/EU is repealed.	AT (Drafting): Directive 2011/7/EU is repealed <u>with effect</u>	DE (Comments): - Sentence 1:

Commission proposal	Drafting Suggestions	Comments
	from ... DE (Drafting): <u>1. Directive 2011/7/EU is repealed with effect from the date referred to in Article 20 paragraph 2. However, it shall remain applicable to contracts concluded before that date. The consequences of late payment shall be subject to the present Directive from the date of its application.</u>	Directive 2011/7 should only be repealed upon the application – not the entry into force – of the new instrument. Otherwise there would be a gap where no Union rules on late payment apply. - Sentence 2: The rules of the present Late Payment Directive should continue to apply to contracts concluded before the new instrument is applied. Otherwise, the new instrument would have a retroactive effect and contractual relationships would be disrupted. These concerns do not apply though with regard to individual late payments under such a contract which should therefore fall under the new instrument from its date of application.
References to the repealed Directive shall be construed as references to this Regulation.	AT (Drafting): <u>References to the repealed Directive shall be construed as references to this Directive and be read in accordance with the correlation table set out in the Annex.</u> DE (Drafting): <u>2. References to the repealed Directive shall be construed as references to this Regulation</u> <u>Directive and be read in accordance with the correlation table set out</u>	DE (Comments): For legal certainty, a correlation table is required that maps every provision of the repealed Directive 2011/7 to the corresponding provision of the new instrument. At the moment, a correlation table is missing. The alternative option would be to amend all Union acts that make references to Directive 2011/7.

Commission proposal	Drafting Suggestions	Comments
	in the Annex.	
Article 20 Entry into force and application		
1. This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i> .	DE (Drafting): 1. This Regulation Directive shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i> .	
2. It shall apply from [OP: please insert the date = 12 months after the date of entry into force of this Regulation].	PL (Drafting): This paragraph shall read as follows: It shall apply from [OP: please insert the date = 24 months after the date of entry into force of this Regulation]. DE (Drafting): 2. It shall apply from [OP: please insert the date = 12 24 months after the date of entry into force of this Regulation Directive].	AT (Comments): In order to adapt to any changes – in particular such for contracting authorities which currently have a payment period of 60 days – a longer period timeframe for the adjustment is necessary. If an enforcement body is to be designated – which AT strongly rejects – there needs to be a longer timeframe for the implementation by the MS. As AT advocates for continuing to keep the late payment rules in a Directive, the transposition period also needs to be added to the total period of adaptation. PL

Commission proposal	Drafting Suggestions	Comments
		(Comments): The date of application of this Regulation seems too short, considering the scale of obligation imposed on Member States. Therefore, we propose to extend this term from 12 to 24 months after the date of entry into force of the Regulation. BG (Comments): It is necessary to assess to what extent the deadline for implementing the Regulation would be sufficient for constructing all the necessary structures outlined in the Regulation, ensuring their provision with professionally trained personnel, as well as for adopting the necessary changes in the regulatory framework of the Member States related to the implementation of the Regulation. In this regard, serious attention should also be paid to the fact that the potential is associated with securing additional budgetary resources, which entails preparing analyses, calculations, assessments, and evaluations regarding the projected size and objectively necessary time for preparation, coordination, and adoption of the relevant changes, in compliance with budgetary legislation. It may be possible to discuss a comprehensive

Commission proposal	Drafting Suggestions	Comments
		restructuring of the draft Regulation, shaping it into several independent sections to be introduced into the annexes gradually by the Member States. DE (Comments): MS need more time to adapt their law to the new instrument. One year would not be sufficient.
3. Commercial transactions carried out after the date of application of this Regulation shall be subject to the provisions of the present Regulation, including when the underlying contract has been concluded before that date.	AT (Drafting): 3. <u>Member States may foresee that commercial payments</u> carried out after the date of application of this <u>Directive may</u> be subject to the provisions of the present <u>Directive</u>, including when the underlying contract has been concluded before that date. DE (Drafting): 3. Commercial transactions carried out after the date of application of this Regulation shall be subject to the provisions of the present Regulation, including when the underlying contract has been concluded before that date.	AT (Comments): The effect paragraph 3 has on existing contracts is too extensive; instead, it must be up to Member States to determine the application of the rules to existing contracts, as was provided for in the current Directive (see Art. 12[4]). A retroactive application also may contravene the principle of legal certainty (see for example C-348/10, <i>Norma-A Sia</i>, Recital 66). Furthermore, it needs to be considered that any narrowing of the freedom of contract would have larger consequences on existing contracts. Questions: What effect does this provision have on existing contracts? Do they need to be amended or are they understood to be amended automatically by this Regulation?

Commission proposal	Drafting Suggestions	Comments
		What effects does this have in the case of contracts concluded according to the Procurement Directives, considering the provisions on changes on changes of existing contracts (see e.g. Art. 72 of Directive 2014/24/EU) and the relevant jurisprudence of the European Court of Justice? Would this constitute a change that would require a reopening of competition (i.e. a new procurement procedure)? DE (Comments): We propose to include this provision with improved wording under Article 19 (1), see above.
This Regulation shall be binding in its entirety and directly applicable in all Member States.	AT (Drafting): (deleted) DE (Drafting): This Regulation shall be binding in its entirety and directly applicable in all Member States. <u>This Directive is addressed to the Member States.</u>	DE (Comments): The final clause needs to reflect the type of instrument (directive instead of a regulation).
Done at Strasbourg,		
For the European Parliament For the Council		

Member States : AT, BG, DE, DK, FI, IE, LU, PL, SE

Deadline: 09 February 2024

Commission proposal	Drafting Suggestions	Comments
The President The President		
	End	End