European Commission

EX-POST EVALUATION OF LATE PAYMENT DIRECTIVE

ENTR/172/PP/2012/FC – LOT 4

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Directorate H — COSME Programme
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TABLE OF CONTENTS

List of abbreviations

ADR – Alternative Dispute Resolution
ATA - Spanish National Federation of Self-Employed Workers' Associations
NCE - National Association of Property Developers (Italy)
AT – Austria
BE - Belgium
BG – Bulgaria
BGN – Bulgarian Lev
B2B – Business to business
HR - Croatia
CEPYME - Spanish Federation of Small and Medium Enterprises
CIAA - Confederation of the food and drink industries of the EU
CY - Cyprus
CZ - Czech Republic
CZK - Czech Republic Koruna
D – Deliverable
DGPYME - Department for enterprise and SMEs (Spain)
DK – Denmark
DKK - Danish Krone
DSO – Days Sales Outstanding
GDP – Gross Domestic Product
ECB – European Central Bank
EE - Estonia
EEN - Enterprise Europe Network
EUR – Euro
EP – European Parliament
EPI – European Payment Index
FI - Finland
FR - France
DE - Germany
EL - Greece
EU - European Union
ES - Spain
ESCP - European Small Claim Procedure
FIEC – European Construction Industry Federation
FDII – Food and Drink Industry Ireland
HU - Hungary
ICM - Institute of Credit Management (UK)
IE - Ireland
ISME – Irish Small and Medium Enterprises Association
ISME - Indicator for Late Payments
IT - Italy
LEI - Romanian Leu
LME - Loi de modernisation de l'économie
LV - Latvia
LPD – Late Payment Directive
LT - Lithuania
LU - Luxembourg
MCMA - Maltese Credit Management Association
MAR - Missing At Random
MICE - Multivariate imputation by chained equations

MS –	Member State(s)
MT -	Malta
NL –	Netherlands
NSCC -	National Specialist Contractors' Council
PA2B –	Public authority to business
PL -	Poland
PLN –	Polish Zloty
PT -	Portugal
RO -	Romania
REFIT -	Regulatory Fitness and Performance Programme
SBA -	Small Business Act
SCI –	Supply chain Initiative
SEK –	Swedish Krona
SI -	Slovenia
SK -	Slovakia
SME(s) -	Small and Medium Enterprise(s)
SE -	Sweden
UEAPME -	European Association of Craft, Small and Medium-sized Enterprises
ToR –	Terms of Reference
Q –	Question (in the survey)
VAT –	Value Added Tax
UK -	United Kingdom

1. ABSTRACT

This is the final report of the evaluation of the Late Payment Directive 2011/7/EU. The study considers the following evaluation dimensions: relevance, effectiveness, efficiency, coherence and complementarity, and EU added value.

The Directive continues to be relevant and it is generally considered efficient with significant value added for industry stakeholders. Indeed, almost 80% of companies have experienced late payments in the last three years. The Directive does not impose any significant costs to businesses or public authorities.

However, there is little evidence that the Directive has had an impact on payment behaviour and the practice of late payment to date. Furthermore, exercise of the rights conferred by the Directive is not widespread due to fear of damaging good business relationships. Rather than legislation, business culture, economic conditions and power imbalances in the market are the driving factors of payment behaviour.

Nevertheless, the Directive has been successful in bringing the issue of late payments to the forefront of the political agenda in Europe. Several Member States have implemented soft measures, which have been effective in supporting the objectives of the Directive.

Facilitating an exchange of best practices among Member States could enhance diffusion of such practices across the EU. In addition, further guidance on a number of provisions of the Directive would provide clarity, which would facilitate application and enforcement. Finally, harmonised measurement of the incidence and length of late payments across MS would permit monitoring of progress in achieving the goals of the Directive.

2. EXECUTIVE SUMMARY

This document contains the final report of the Evaluation of Late Payment Directive 2011/7/EU. The study evaluates whether the main aim of the Directive to combat late payment in commercial transactions (in order to ensure the proper functioning of the Internal Market, thereby fostering the competitiveness of undertakings) has been achieved, or whether there are still obstacles that cause problems with cross-border transactions and barriers that impede the development and improving of the Single Market.

The study needs to take into account the fact that the Directive has only recently come into force, which means that some effects and impacts have not yet materialised. Thus, it focuses on the first results of the implementation of the Directive and it assesses whether it is achieving, or is on the right track to achieve, its objectives.

The study considers the following evaluation dimensions: relevance, effectiveness, efficiency, coherence and complementarity and EU added value. The study focuses on all sectors of the economy, but special attention is paid to the construction, public health and food sectors.

Context

Almost three out of four (78%) companies in Europe have experienced late payments in the last three years with SMEs likely to be disproportionately affected by this phenomenon. Indeed, late payment can lead to insolvency and job losses, and it can negatively affect public procurement and cross-border trade.

The drivers of late payment behaviour are multi-faceted with the most significant aspects being business culture/norms, external economic conditions (e.g. the crisis) and power imbalances in the market.

State of Play

In addition to the LPD, which sets out minimum EU-level measures, a number of MS have introduced stricter provisions and promoted complementary initiatives at national level to combat late payment. Among these, prompt payment codes and specific sector initiatives are seen as particularly promising.

At the same time, thirteen infringement procedures were launched so far by the Commission against MS in the context of the LPD.

Effectiveness

Almost two thirds of companies are aware of the (general) rules regulating late payments and 86% of companies know about their right to claim compensation and/or interest. SMEs and younger firms are less likely to be aware of the rules regulating late payment.

Awareness of the rules, on its own, does not prevent companies from experiencing late payments. Indeed, four out of five companies that experienced a late payment in the last three years were aware of the possibility to claim compensation and/or interest. However, firms that are aware of the rules related to late payment are less likely to have experienced a deterioration of average payment delays over the last three years compared to companies that are not aware of the rules.

Despite relatively high awareness levels, usage of the provisions of the Directive is not widespread. 60% of respondents indicated that they never exercise their rights to claim interest and/or compensation fees for recovery costs. SMEs are much less likely to exercise their rights under the Directive than larger companies.

At the same time, in countries with a shorter average payment duration, companies are more likely to always exercise their rights. Thus, in this sense, the Directive seems to be a more effective instrument for companies in countries where the problem of late payment is less severe.

The main reason for failing to exercise their rights under the Directive is the fear, among creditor firms, of damaging good business relationships. Lack of efficient remedy procedures is another barrier preventing companies from exercising their rights to compensation and interest.

Payment duration has decreased by a small extent in recent years in both PA2B and B2B transactions but very significant differences remain across countries. MS with above average payment duration in PA2B transactions also tend to have above average payment durations in B2B transactions.

While it is difficult to isolate the reasons for this progress, there is little evidence that the Directive has had an impact on payment behaviour and the practice of late payment.

For B2B transactions, average payment duration in the European Union has indeed decreased from 56 days in 2011 to 47 days in 2014. In terms of average payment delays, there has only been a small decrease in B2B transactions (from 20.5 days in 2011 to 19.3 days in 2014). At the same time, there continues to be significant cross country variation in both average payment duration and delays.

Ninety percent of companies apply payment terms of 60 days or less as required by the Directive. In addition, more than two thirds (70%) of companies indicate that their payment terms do not exceed 30 days. Country and sector affiliation are more important drivers of payment terms than other company characteristics or awareness of the rules around late payment. Companies in manufacturing and construction have payment terms that are on average more than 10 days longer than companies in other sectors.

As for PA2B transactions, average payment duration in the EU has decreased (from 65 days in 2011 to 58 days in 2014), but it stays well beyond the terms set out by the Directive and 10 MS actually experienced an increase in payment delays from public authorities. At the same time, companies that work primarily with public authorities are less likely to have seen a deterioration in payment delays over the past three years than those that have primarily other businesses as their customers.

Country and sector effects are more important drivers of payment terms than any other company characteristics or awareness of the rules around late payment.

Rather than legislation, national business culture, economic conditions and power imbalances are the driving factors for payment behaviour.

There is not yet evidence on the effectiveness of the Directive in terms of reducing uncertainty in cross-border transactions.

Relevance

Despite differences in payment behaviour across countries, industry stakeholders across all sectors agree that late payment remains a highly relevant issue.

In 2009, the results of the Impact Assessment recommended a legislative solution in the form of a recast of the former late payment Directive (2000/35), with stricter provisions, to tackle the ongoing issue of late payment in commercial transactions.

This study shows that, in order to improve the relevance of the current Directive as a tool to combat late payment, a number of aspects could be clarified within the legislation itself.

First, the definition of what constitutes *grossly unfair* is seen as ambiguous with too much scope for interpretation.

Second, there is a lack of clarity regarding when the calculation of a payment term starts.

There are also concerns regarding recovery procedures which vary across MS.

Finally, given the multi-faceted nature of the problem, there can be no one size fits all legislative solution and the LPD can only be one measure among many in the fight against late payment.

Efficiency

There are no administrative or reporting burdens resulting directly from the Directive. Indeed, the only direct cost to businesses as a result of the Directive relates to a one-off requirement for businesses having to familiarise themselves with the legislation.

There are also no regulatory costs stemming from the transposition of the Directive. All costs to public authorities as a result of the Directive are one-off and, on the whole, they are considered marginal by the authorities themselves.

Set against these negligible costs, the Directive has the potential to deliver significant benefits, estimated at up to EUR 158 million for each one-day reduction in payment delays.

Coherence and complementarity

There is no evidence of contradictions between the Directive and any other EU relevant actions for combating late payment.

There are a number of EU actions that complement the objectives of the Directive such as the European Small Claims Procedure.

However, in the context of cross-border transactions, there could be some overlap between the Directive (Article 10) and the European Payment Order Procedure.

EU Added Value

There is a general consensus among industry and national authorities that the Directive generates significant added value. National authorities and industry suggest that the impacts of the Directive would have been unlikely to be achieved by Member States individually.

Despite a few national derogations, the added value lies in the fact that - to the extent possible – there is now greater uniformity in payment terms across the Single Market.

While the average payment duration in PA2B transactions still exceeds the limits set out by the Directive, EU added value lies in ensuring the problem of late payment is high on the political agenda, sending a message to creditors that the problem is being addressed.

Related to this, public authorities also highlighted the added value of the Directive in monitoring improvements in payment duration. A common measurement methodology would enhance this value added. Finally, though it does not solve the problem on its own, the Directive can provide an anchor point for the introduction of effective accompanying measures at national or sectoral level and for an exchange of good practices between Member States.

3. RECOMMENDATIONS

The study has identified a number of specific areas where there could be room for improvement without changing the fundamental characteristics of the current legislation. There are two types of recommendations: changes related directly to the Directive itself and accompanying measures.

Recommendations related to the Directive itself

1. **Clarifying certain aspects of the Directive**. This includes in particular the following: "grossly unfair" and the calculation of contractual terms. Across various Member States stakeholders found that the definition of what constitutes grossly unfair was ambiguous and left too much scope for interpretation. Similarly, there is lack of clarity of the Directive on when the calculation of a payment term starts. There are different practices across different sectors and across the EU. In some instances, the payment term is calculated from the issue of an invoice, whereas in other cases the payment term starts from the receipt of goods. These aspects could be clarified either in a revised text of the Directive or alternatively, though a guidance document published by the European Commission explaining how these elements should be interpreted.

2. **Assessment of the implementation of Article 10 in all Member States**. The Directive states that that MS shall ensure that an enforceable title can be obtained within 90 calendar days of the lodging of the creditor's action or application to a court, provided that the debt is not disputed. However, the procedures available to companies vary across Member States due to different requirements in i.e. eligible sums of claim, need for lawyer, and type of procedure (i.e. online).

3. **Changes to the way the interest rate is claimed**. At present, it is up to the creditor to decide whether to claim interest for late payment and this means that even businesses who are aware of the rights introduced by the Directive often do not exercise these rights, due to the fear of damaging business relationships. Automatic interest on late payment would remove the requirement for the creditor to take the initiative in exercising their right and provide an additional incentive for the debtor to pay promptly.

4. **Increasing the minimum 40 EUR compensation fee.** The EUR 40 compensation fee is seen as not proportional to the sums owed and the costs implied by late payment. The minimum fee should be higher to reflect the effort required in chasing and recovering late payment. A higher compensation fee could encourage businesses to claim their rights in the short term and contribute to changing payment culture in the long term.

External aspects

1. **Raising awareness of the impact of late payment.** The introduction of the LPD, was accompanied by an EU-wide awareness campaign surrounding late payment rules. This study has shown that the main determinant of late payment is not related to awareness of the rules but to country specific effects (e.g. business culture). Rather

than focusing on rules and legislation, a future awareness campaign should focus on the impact of late payment on businesses, with the aim of making late payment a "socially unacceptable" practice in all MS.

2. **Fostering the development and implementation of prompt payment policies in all MS**. The study has shown that prompt payment policies/codes in the public and private sectors are an effective way to shorten payment duration. The Commission should take active steps to support all MS in developing such schemes as accompanying measures to the LPD. This would entail developing the "business case" for the creation of prompt payment policies, drawing on the experiences of countries that have implemented such schemes (see also the recommendation below) and engaging with sectoral associations and MS authorities to promote the implementation of prompt payment schemes.

3. **Facilitating the exchange of best practices though peer review workshops.** Since the Directive has introduced the possibility for MS to introduce voluntary measures, other MS would welcome more information regarding the effectiveness of these measures. "Peer review" type workshops involving public authorities and experts from all EU MS could be organised in specific MS which are taking (or intend to take) an active approach to tackling late payment. In this way, policy officers from different departments could share their experiences with Member States lacking a coordinated approach.

4. **Providing access to effective remedies.** In the presence of lengthy juridical procedures an effective system of ADR should be provided at the national level. Of importance is the European Small Claims Procedure which provides a fast and efficient way of recovering debt, but is not often used by companies. One of the reasons for this seems to be the relatively low sum.

5. **Monitoring progress** - The Directive is silent regarding how to measure late payment. Such harmonised measurement would facilitate the provision of up to date statistical data and it would allow cross-country comparison over time.

4. Introduction

This report presents the findings, conclusions and recommendations of the Evaluation of Late Payment Directive (2011/7/EU, LPD – the Directive).

4.1. Objectives

The study assesses the first results of the implementation of the Directive in the EU-28 across all sectors, specifically its effectiveness, efficiency, relevance, coherence, and EU added value.

According to Article 11 of the LPD, the European Commission is required to submit a report to the European Parliament and the European Council on the implementation of the Directive by 16 March 2016. The results of the present study will help prepare this report.

However, the study needs to take into account the fact that the Directive has only recently come into force (the transposition deadline was 16 March 2013), which means that some anticipated effects and impacts have not yet materialised. Thus, the study focuses on the first results of the implementation of the LPD and assesses whether it is on the right track to achieve its objectives. This evaluation will help determine whether the provisions provided by the Directive are being used (effectively) and whether their use has started to generate the expected results.

4.2. Scope

The scope of this study includes:

- **Legislation**: Late Payment Directive 2011/7/EU
- **Time period**: since the date of the adoption in each single Member State
- **Geography**: European Union (EU) - 28
- **Sectors**: all sectors but with a focus on construction, public health and food
- **Stakeholders**: primary data are partly sourced from public authorities but mainly from businesses established in the European Union (target group of the Directive) and their representatives, with a particular focus on Small and Medium Enterprises (SMEs)

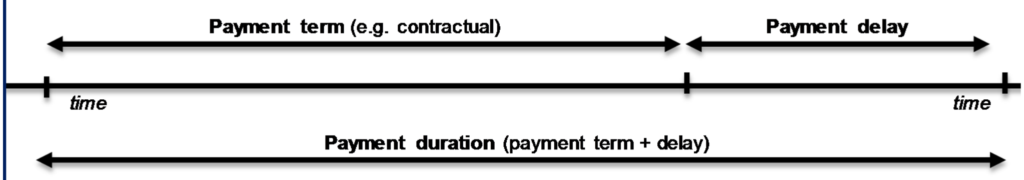
Box 1 - A note on terminology

When looking at the impact and effects of the Directive, it is important to keep in mind the difference between payment terms, delays, and durations.

- **Payment term** is the time period set out in the contract, and agreed by the two parties. It is thus the period allowed for a buyer to pay off the amount due;

- **Payment delay** is the period starting after the due date according to the contract (payment term), until the payment is received;
- **Payment duration** is the total period of time required for the payment to reach the creditor, i.e. from the beginning of the payment term until the payment is received (total sum of payment term and potential delay).

The figure below visualises the difference between these concepts:



Changes in payment terms, payment durations and payment delays are important indicators in in the context of this study since the Directive sets out provisions relating both to payment terms and to payment delays.

5. Research Methodology

This section outlines the research methodology applied throughout the study.

Box 2 - Key points of this chapter

- Data collection for this study consisted of a combination of desk research, an online survey with a representative sample of enterprises and interviews with public authorities, enterprises and sector representations in all 28 Member States.
- Data analysis activities included descriptive evaluations of existing data, a qualitative analysis of interview results and an estimation of several regression models based on the survey data.

5.1. Overview of data collection activities

In order to answer the evaluation questions, the data collection plan was structured around the following activities:

- Desk research
- Online survey
- Interviews at Member State level
- Follow up interviews

5.1.1. Desk research

While desk research covered all sectors, there was a specific focus on the health, construction and food sectors. The research was conducted in three steps:

1. National laws were scrutinised to identify those more favourable to the creditor than required in the Directive.
2. National sources of information on average payment duration and delays, impacts on economic growth and employment were assessed. Due to the recent adoption of the Directive, there are no studies on the impacts of the LPD or corresponding national legislation. This lack of secondary data means that primary data collection (i.e. interviews and survey) was key to assessing the impacts of the Directive.
3. Information regarding any additional measures (mandatory or voluntary) at national level was identified and analysed.

At European level, the most comprehensive data to date is collected in the European Payment Index (EPI). While this report makes extensive use of these data, it is important to be aware of several caveats in relation to the EPI, namely:

- The EPI (up to 2014) is based on the responses of 6,000-10,000 companies across Europe. Since the sample can vary from year to year, this might affect findings on the potential scope of late payment trends in some Member States. The Payment Index is calculated from eight differently weighted sub-indices, which are based on a total of 21 individual values.

- Not all EU Member States are covered in the Index. Data from Luxembourg and Malta are missing and some Member States such as Bulgaria, Croatia, Romania and Slovenia are only covered from 2012 or 2013 onwards.
- Pan-European average figures available in the Index report are not (entirely) relevant for this study. These figures are based on data from 26 EU Member States and other countries including Bosnia-Herzegovina, Norway, Russia, Serbia, Switzerland and Turkey.
- EPI 2015 followed a different methodology than previous years making a historical comparison impossible. Changes include adjustments and improvements to the weighting of data and sample size was increased by about 10 percent in 2015. As a result of these changes, no historical comparison should be drawn between 2015 and previous years.

In addition to the EPI, other cross-country data used in this report include:

- EOS - "European Payment Practices" asked 2,600 companies in 12 European countries about payment practices in their respective countries. 200 companies in each of the following countries UK, Spain, France, Austria, Greece, Romania, Russia, Slovakia, Bulgaria, Poland and Belgium, and 400 companies from Germany, answered questions about their own payment experiences, economic developments in their countries and on issues relating to risk and receivables management. These results were used throughout the report, but it should be noted that EOS averages include non-EU countries.[1]
- Atradius - Atradius conducts annual reviews of international corporate payment practices through a survey called the "Atradius Payment Practices Barometer". This report presents the results of the survey's 2015 edition conducted in 13 countries across Western Europe based on a sample of 2,713 interview respondents. Due to a change in research methodology no year-on-year comparison is feasible.
- Euler Hermes Country Reports present economic profiles of individual countries, including sections on economic strengths and weaknesses, country rating based on country grade and country risk level, main activity sectors and trade partners, economic forecasts and more. Relevant information from these reports, was used throughout the report.
- Grant Thornton's "European Business Survey" is a survey of 6,000 European companies, which provides a comparative analysis of the opinions of small and medium-sized enterprises in 17 European countries on a wide range of issues relevant to their competitiveness. The Grant Thornton survey results were derived from: Conway L. (1997): Late Payment of Commercial Debt, Research Paper 97/25, 12 February 1997.

[1] Quoted random sample according to revenue and sector, results for Germany weighted. Country data integrated into overall result with same weighting. (2014: https://www.eos-solutions.com/fileadmin/user_upload/studies/2014_Zahlungsgewohnheiten/20140606_EOS_Zahlungsgewohnheiten_2014_final_ENG.pdf)

5.1.2. Online Survey

Given the above limitations in terms of secondary data, the company survey was a key element of this study.

The objective of the survey was to collect primary data from a representative sample of companies across all Member States regarding:

- Awareness of late payment regulations;
- Payment terms applied by companies;
- Experience of delays by other companies/public authorities;
- Awareness and exercise of the provisions in the directive; and
- Impact of late payments on companies.

The sample of targeted companies was developed to ensure representativeness in terms of the European industrial structure (different strata were created for company size and country group). Details on the survey sample can be found in annex 3.

Finally, due to demand by industry associations, a version of the online survey was made available to the general public from June 2 to July 19 in the form of a public consultation. European and national industry associations were provided links to this consultation to be shared with their members. 273 responses were received in this open consultation. Due to the representative nature of the company survey, it is important to maintain the integrity of the sample of survey respondents. Hence it was not possible to merge survey and consultation results. However, the consultation does provide interesting corroborating information to the survey and its results are described in Annex 3.

5.1.3. Interviews at Member State level

The objective of the interviews was to gain a richer, in-depth qualitative understanding of the issues faced by businesses in terms of late payment.

Overall 135 telephone interviews with companies, industry and sector associations were conducted.

- 111 business representatives were interviewed, including chambers of commerce, sector associations, SME associations, European Enterprise Network members, or general business associations. Given the focus of the study on construction, public health and food sector, the team focused on these three sectoral associations.

- Interviews with 22 public authorities collected key information regarding transposition measures.

- In 2 cases (in Croatia and in Spain) individual experts on late payment were interviewed.

These interviews included 2 round table discussions - one in London and one in Brussels. 18 organisations (11 national industry associations and 7 companies) were present at these meetings.

Annex 5 provides the names of the organisations that were consulted during the study as well as a breakdown of stakeholders by country and type of organisation.[2]

5.1.4. Follow up interviews

Finally, following closure of the survey, 31 follow-up interviews with companies took place between June and September 2015. The follow up interviews focused on the responses provided in the questionnaire and the study team aimed at discussing the costs incurred by companies due to late payment. For this reason, the study team contacted companies which indicated awareness of the possibility to claim interest and compensation (Q17 of the survey), experience with claiming interest or compensation (Q18 of the survey) and other activities undertaken in case of late payment (Q20 of the survey). Annex 5 has a list of companies that participated in follow-up interviews.

5.2. Overview of the analytical approach

It is very difficult to directly attribute changes in payment duration, terms or delay over time to the Directive. There are indeed a large number of intervening factors, such as the impact of the financial crisis, national and sectoral differences, business culture and social norms, which make it impossible to quantify the direct impact of the Directive on payment behaviour. In addition, the Directive was only implemented recently and its effects have not yet fully materialised.

This study is therefore a first step to establish the *état des lieux* regarding payment behaviour following the implementation of the Directive, to understand the direction of travel in the key variables that the Directive aims to influence and to identify key drivers and obstacles with respect to improving payment behaviour in B2B and PA2B transactions.

No single analytical method could deliver all of the objectives of this study. Hence, in addition to a descriptive survey analysis (i.e. cross-tabs) and extensive qualitative analysis of interview findings, a multivariate regression analysis based on survey data was conducted to identify explanatory factors related to different dimensions of late payment. Regression analysis allows to examine the statistical significance and the *relative magnitude* of the impact of different factors on a dependent variable or on the probability of occurrence of an event.

As a result, though it stops short of enabling the study to directly attribute impacts to the Directive, the regression complements and – indeed - adds significant value to the descriptive bi-variate survey analysis and the qualitative information gathered through interviews.

Different regression model specifications were estimated to identify inter alia:

- What factors explain awareness of the rules regulating late payments across European countries;

[2] 30 organisations declined participation in interviews for various reasons including: lack of data/information/opinion/human resources.

- Which types of companies are more likely to experience late payments;
- Which types of companies are more likely to exercise their rights under the Directive;
- What factors increase the probability of companies facing difficulties to pay within contractually agreed terms; and
- What factors explain payment terms applied by companies?

Age, size, turnover of the company (% in own country) and type of customer were used as explanatory factors when performing the analysis. Dummy variables for each country and sector were also included to control for country specific impacts (business culture, regulatory framework, etc.) and sector heterogeneity.

Results and conclusions should be approached with some caution as self-reporting of late payment experiences and behaviours related to late payment can be subject to mis-reporting, particularly since the survey questionnaire asked for late payment experiences over a period of three years. Furthermore, additional non-observed factors are not taken into account in the model. However, non-observed factors that are related to country or sector characteristics are captured by the corresponding fixed-effect variables.

Full details of the regression methods and the results are in Annex 2.

6. Background, Intervention Logic and State of Play

This section outlines the main issues associated with late payment across the EU as well as the political context prior to the implementation of the Directive.

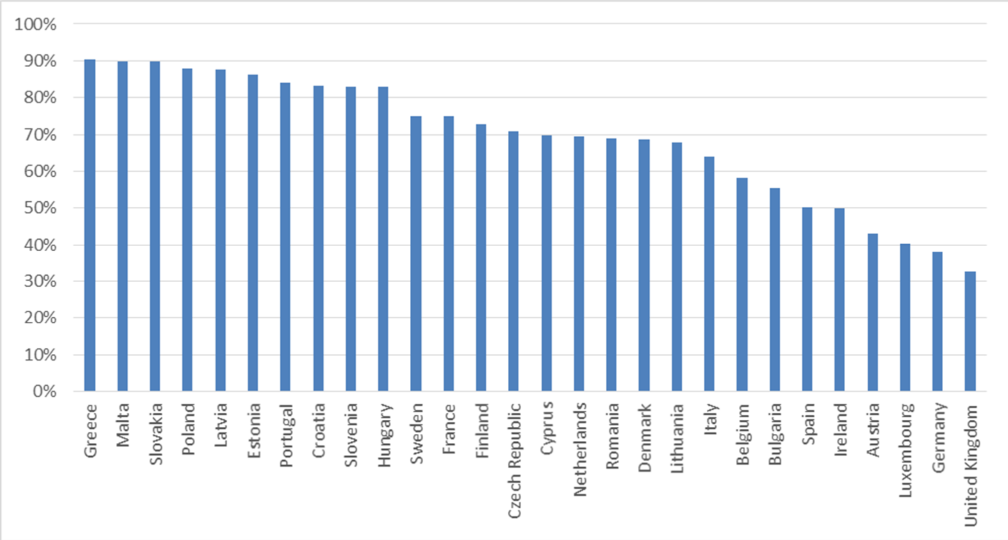
Box 3 - Key points of this chapter

- Almost three out of four (78%) companies in Europe have experienced later payments in the last three years.
- SMEs are likely to be disproportionately worse affected by late payments.
- Late payment can lead to insolvency and job losses, and it can negatively affect public procurement and cross-border trade.
- The drivers of late payment behaviour are multi-faceted with the most significant aspects being business culture/norms, external economic conditions (e.g. the crisis) and power imbalances in the market.
- In addition to the LPD which sets out minimum EU-level measures, a number of MS have introduced stricter provisions and engaged in complementary national level initiatives to combat late payment.
- Among these, prompt payment codes and specific sector initiatives are seen as particularly promising.
- Thirteen infringement procedures were launched so far by the Commission against MS in the context of the LPD.

6.1. The problem of late payments

Almost three out of four (78%) companies in Europe have experienced late payments in the last three years. The figure below shows that in most countries more than half of survey respondents had experienced late payments over this period. However, there are significant variations across countries. While 90% of respondents in Greece, Malta and Slovakia reported experience of late payments, the equivalent figure was only 33% in the UK and 38% in Germany.

Figure 1. Share of survey respondents that experienced late payments in the last three years (%)



Source: company survey

Working capital management is a crucial factor in individual firm performance.[3] Working capital ensures that firm have sufficient funds to cover their short term financial obligations and to continue operating. Accounts receivable (i.e. the management of the firm's debtors) and accounts payable (i.e. the management of the firm's creditors) are two important elements of working capital (alongside inventories and cash).

The use of trade credit, (where a product or service is delivered today but only paid for at a later stage) is widespread in Europe. As Paul and Boden find in their 2011 article on late payments in the UK, « trade credit is a prominent part of the UK trading environment, where at least 80 per cent of business-to-business transactions are on credit ». Furthermore, many SMEs are not able to pay their suppliers before they are paid by their customers, owing to liquidity constraints, and might thus end up paying late[4].

Given the importance of accounts receivable/payable for firm performance and the extensive use of trade credit, it is clear that late payment is a crucial determinant of enterprise survival. Indeed, Wilson (2008) reports that working capital management and late payment problems are a primary cause of small business failure.[5] This is because late payments negatively affect cash flow, and add financial costs and uncertainty for creditors. The financial crisis has further constrained cash flow thus

[3] Paul, S and Boden, R (2001): Size matters: the late payment problem, Journal of Small Business and Enterprise Development Vol. 18 No. 4, 2011 pp. 732-747.

[4] Ibid.

[5] Wilson, N. (2008): An Investigation into Payment Trends and Behaviour in the UK: 1997-2007, CMRC Centre, Leeds University Business School, Leeds.

amplifying the importance of prompt payment for a speedy economic recovery.[6]

Moreover, SMEs are likely to be disproportionately affected by late payments because:

1. they may not have easy access to finance to cover any temporary shortfalls,

2. such finance – where it is available - may be more expensive than for larger companies, and

3. they do not always have appropriate credit management systems for preventing or managing late payments.

It is thus not surprising that, at EU level, **the proportion of firms identifying late payment as a barrier increases with the decreasing size of the firm**, with 47% of micro firms against 35% of big firms identifying late payment as a barrier.[7] This goes so far that SMEs in the UK, prior to introduction of national legislation on late payments, "considered the introduction of statutory penalties to curb late payment the most important factor associated with improving the performance of their business"[8].

In addition, issues related to late payments extend beyond the impact on directly affected companies to public services, employment, and the internal market.

1. Late payment imposed on businesses by public authorities can discourage participation in public procurement contracts which, in turn, prevents public authorities from getting the best **value for taxpayers' money**.

2. From a social point of view, **late payment increases uncertainty for many creditors and may impact employment strategies.** For example, in Germany, 35% of companies indicated that late payment had a strong impact on the need to lay people off (similarly 30% in the UK, 28% in Spain and 25% in France)[9]. On average 40% of European business managers said late payment contributed to them not hiring, while one out of four European companies said the consequences of late payment included job cuts. The figure below shows the share of managers across the EU who believe that late payment has an impact on redundancies.

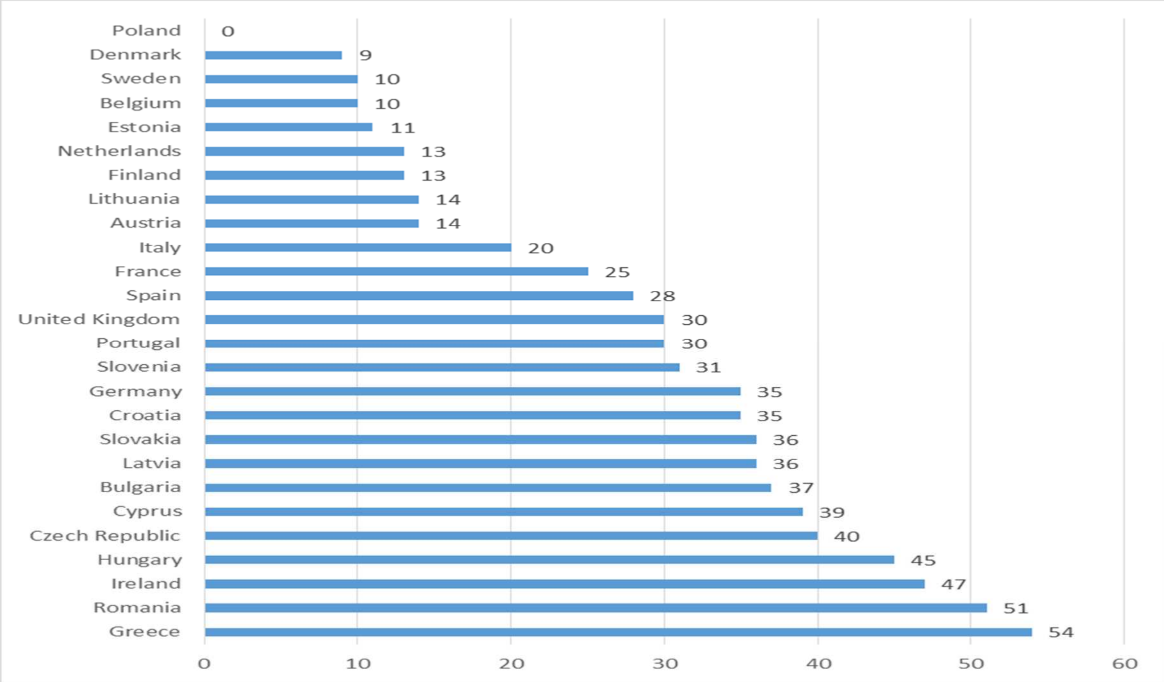
[6] More information can be found at: http://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp531_en.pdf

[7] DG Enterprise and Industry (2010): Evaluation of SMEs' access to public procurement markets in the EU.

[8] Peel, M.J., Wilson, N. and Howorth, C. (2000), "Late payment and credit management in the small firm sector: empirical evidence", International Small Business Journal, Vol. 18 No. 2, pp. 17-37.

[9] Ibid.

Figure 2. Management perceptions of the impact of late payment on redundancies - % of respondents



Source: Intrum Justitia, EPI (2014)

3. An Intrum Justitia report found that 36% of businesses believed that their very survival was being threatened by late payment[10]. Indeed, insolvencies are estimated to lead to the **loss of 450,000 jobs each year** in the EU and outstanding debts of EUR 23.6 billion[11].

4. Late payments may also have a **negative impact on the functioning of the internal market** and **cross-border trade**. Many businesses consider cross-border trade with businesses or public authorities from other Member States more risky in terms of the frequency of late payments and the uncertainty on how to deal with late payers. As a consequence, companies may refrain from cross-border trade to the detriment of the functioning of the internal market.

Ultimately, late payment can lead to insolvency. According to the European Commission, insolvencies lead to the loss of 450,000 jobs each year in the EU and outstanding debts of EUR 23.6 billion[12]. Focusing on the issue of bad debt only, Intrum Justitia[13] reported that in 2014 total bad debt losses for European businesses had risen from 3.0 to 3.1% of revenues, roughly equalling the cost of 8 million jobs.

[10] Ibid.
[11] The Slovak Spectator, http://spectator.sme.sk/c/20046312/tackling-late-payments.html
[12] European Commission (2012): Avoiding bankruptcy by tackling late payments, Press release, published on: 05/10/2012
[13] Intrum Justicia, EPI 2014

6.2. Drivers of late payment

While late payment behaviour is a multi-faceted, complex phenomenon, there are three key drivers that explain differences in the experience of late payments across sectors, countries, and over time.

First, in the 2015 EOS survey the **current economic situation** is cited as the reason for late payment for one in five companies in 2014, and one in four companies in 2015. Consultation with industry confirms that the general economic climate was a factor that heavily influenced payment behaviour.

Second, the **prevailing business culture** is another key explanatory factor for differences in the prevalence of late payments across countries. In some countries intentional non-payment is common in B2B transactions and it is still exercised by almost one out of five companies. Evidence from consultation with industry shows that Southern MS such as Spain, Italy, Portugal, Greece which historically have had higher average payment duration and delay are perceived as countries where late payment is standard business behaviour. In contrast, in Nordic countries such as Denmark, Sweden or Estonia, late payment is not seen as a major problem as these Member States had traditionally a good payment culture motivating companies to comply with contractual payment terms.

Third, **power imbalances** in the supply chain is another primary cause of late payment, whereby more powerful actors impose long payment periods on smaller suppliers. In fact, the Impact Assessment for the Late Payment Directive noted: *"the level of competition within a market, the market power of market participants and the corresponding fear of harming commercial relationships with clients are important factors determining whether creditors accept or refuse late payment and whether debtors seek an extension of the period of trade credit"*[14]. Of course, the Directive has not had any impact on these market structures. Larger firms can continue to impose the payment terms they wish, as smaller businesses fear retaliation or a potential end to the seller-buyer relationship.

From the supplier's point of view, tolerating late payment against the promise of future business is often a rational choice – as is forbearance when a customer is facing difficulties. **This combination of incentives makes it very hard for policymakers to tackle late payment;** and in economic downturns or less developed markets the case for tolerating late payment becomes stronger. Armed with better information and occasionally more influence over their trading partners, suppliers can actually be more effective sub-prime lenders than the banking sector[15].

6.3. Origin of the Late Payment Directive

In response to the above concerns, the **European Commission has made a number of efforts over the past years to address the issue of late payment**. Following Commission recommendations in 1995 and in 1997, the

[14] European Commission (2009): Commission Staff Working Document accompanying document to the Proposal for a Directive on combating late payment in commercial transactions (recast) – Impact assessment {COM(2009) 126 final} {SEC (2009 316}; hereinafter 'the EC Impact assessment'.

[15] ACCA: Ending late payment PART 3: Reflections on the Evidence

first Directive on late payment was adopted in 2000 (Directive 2000/35/EC). As noted in 2006 by Hoche[16], a few years after the introduction of this Directive, there had been a decrease in the average payment time in the EU, but there was a significant difference between EU Member States and between sectors. Furthermore, public administrations had demonstrated to be the slowest payers.

Based on these considerations, in 2009 the European Commission carried out an impact assessment to assess the following policy options for tackling late payment:

- Harmonisation of periods of payment by public authorities to business;
- The abolition of the EUR 5 threshold[17];
- The introduction of a "Late Payment Fee"; and
- The introduction of a "Late Payment Compensation".

Following inter-institutional negotiations, the Commission adopted a legislative proposal which resulted in Directive 2011/7/EU. Directive 2011/7/EU on combating late payment in commercial transactions replaced the earlier Late Payment Directive 2000/35/EC. The terms of the revised Directive needed to be transposed into national law of all EU Member States by 16 March 2013.

The main provisions of the Directive include:

- **Harmonisation of period for payment by public authorities to businesses**: Public authorities have to pay for goods and services that they procure within 30 days or, in very exceptional circumstances, within 60 days.
- **Contractual freedom in business' commercial transactions**: Enterprises have to pay their invoices within 60 days, unless they expressly agree otherwise and provided it is not grossly unfair.
- **Businesses are entitled to claim interest for late payment** and are also able to obtain a minimum fixed amount of EUR €40 as a compensation for recovery costs. They can claim compensation for all remaining reasonable recovery costs.
- **The statutory interest rate for late payment** in the Member States should be increased to at least 8 percentage points above the European Central Bank's reference rate. Public authorities are not allowed to fix an interest rate for late payment below that figure.
- **Member States shall ensure that recovery procedures for undisputed claims are available** so that an enforceable title can be obtained within 90 calendar days of the lodging of the creditor's action or application to a court.

6.4. Intervention logic

The general objectives of the Directive are to contribute to the development and improvement of the Single Market, and to improve

[16] Hoche (2006): Review of the effectiveness of European Community legislation in combating.

[17] The Directive 2000/35/EC specified that Member States may exclude claims for interest of less than €5 [Article 6.3(c)].

European competitiveness. The Directive also aims to eliminate barriers to cross-border commercial transactions.

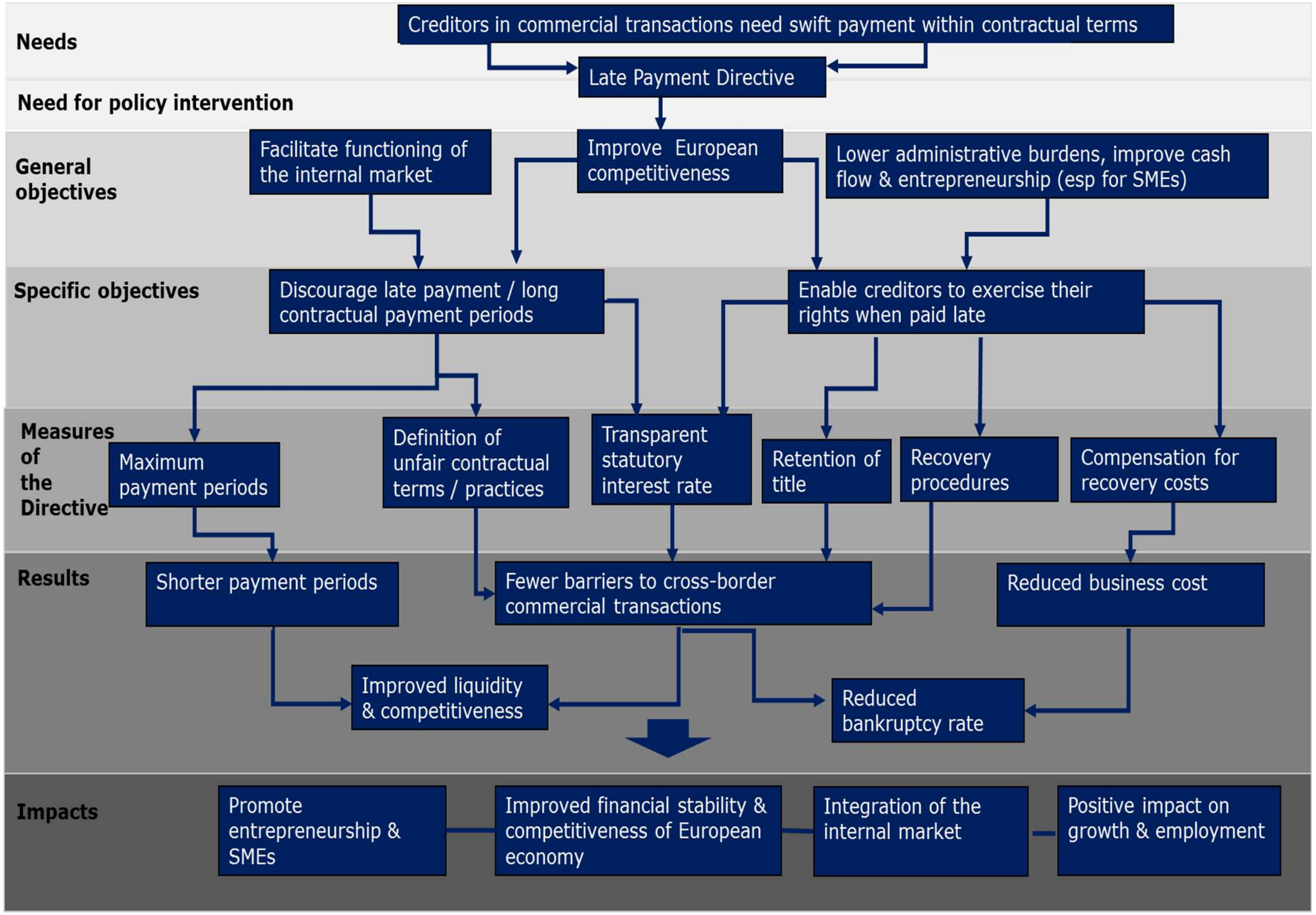
By introducing contractual payment terms, **the Directive aims to discourage long payment periods and late payment but also to enable creditors to exercise their rights when they are paid late**. To achieve these objectives, the LPD sets out a range of measures including harmonised rules for payment periods, increased transparency on interest to be paid by late payers and compensation rights for companies that are paid late.

These measures, in turn, should **improve the cash flow of European enterprises, remove barriers to cross-border commercial transactions in the EU, reduce cost to businesses and SMEs in particular, thus reducing bankruptcy rates**.

Finally, these results – if achieved – should have the following impacts, reflecting the general objectives stated at the outset: **positive impact on growth and employment, integration of the single market and improved financial stability and competitiveness of the EU economy**.

The structure of the intervention logic is visualised in the figure overleaf. The detailed list of evaluation questions can be found in Annex 6.

Figure 3. Intervention logic



6.5. State of play

6.5.1. MS regulations that are more favourable to the creditor

A small number of countries have brought into force provisions that are more favourable to the creditor than those necessary to comply with the minima set out in the Directive. Variants include e.g. a higher interest rate, capped payment terms, and the option not to use the exception for public institutions providing healthcare.

6.5.1.1. Stricter national provisions

A limited number of countries have adopted stricter provisions with regards to payment terms.

In **Sweden** and **Denmark** the national legislations transposing the Directive introduced stricter provisions, which imply that the longer the payment term is, the more likely that a court will consider it to be grossly unfair. In both countries, if payment terms in a B2B transaction exceed 30 days, this must be agreed in writing by the two parties. Furthermore, under Swedish law, businesses may explicitly agree on a longer payment term, but the parties also need to agree on a payment plan over which the debt is paid by instalments. The consulted public authority in Sweden mentioned that in regards to the expression "grossly unfair", Sweden actually opted for the stricter term "unfair". Paragraph 36 of the Swedish contract law establishes that while investigating unfair contract terms, specific consideration should be given to protect the party which is in the weaker position in a business relationship. In Sweden, sector associations have the possibility of bringing a case to the market court to prevent unfair conditions in future contracts.

The maximum payment terms for public authorities in **Denmark** are set at 30 days, however, they can be extended to up to 60 days by executive order. As in **Sweden**, the payment terms for public authorities are set at 30 days, but specific contractual agreements can be made on the condition that a payment plan is established. In both countries, these arrangements can be made by all types of PAs, not only in the health sector.

In **France** - the LME (*loi de modernisation de l'économie*) provides for maximum payment terms in B2B transactions of 60 days or 45 after the end of the month. The latter term means that a payment could be as long as 75 days depending on the date of the specific invoice, as long as this is expressly agreed in the contract and provided it is not grossly unfair to the creditor. Exemptions to the 60 day cap are not authorised (except where the parties have chosen the 45 days from the end of the month period).

Furthermore, new legislative measures were introduced in France at the beginning of 2015. These measures include administrative penalty fees (that can reach EUR 375,000 for a legal entity) in cases when late payment regulations are not respected. The Parliament can alert public authorities through the company's auditor in case of repeated and significant late payment from companies that have certified accounts, as well as from their clients. Practices that tend to abusively delay payment period starting points, such as hidden periods (*délais cachés*) are also sanctioned with a fee that can reach EUR 375,000 per legal entity. Finally, in 2008, an inter-enterprise mediation was established in France, with the aim of solving conflicts between companies while maintaining a good business relationship with the principal client.

Bulgarian legislation has given creditors the right to receive interest 14 days following the date of receipt of the invoice, in case no payment term is specified in the contract. Germany goes even further in that payment is immediately due on receipt of the invoice when no payment term has been specified in the contract. While this is established by the German Civil Code, section 270, the maximum period will generally be 60 days according to the provisions resulting from the transposition of the Directive[18].

Finally, **Spain** has also introduced a maximum payment term in B2B transactions of 60 days. In addition, in Spain it is compulsory to send the invoice a maximum of 30 days following delivery[19].

Ireland, the United Kingdom and **the Netherlands** have made the decision not to include the possibility to extend payment terms to 60 days for public entities providing healthcare. In addition, **France** has limited this possibility of extension to 50 days instead of 60 days. According to one interviewee in Denmark, public authorities are not allowed to extend the payment term above 30 days, however, some types of institutions on the basis of an executive order can ask for an exception to this requirement. The interviewee also mentioned that this requirement is yet to be enforced. According to one Spanish industry association, this is the case also for Spain where the official statutory payment period for the national health system is 30 days, whereas the Directive goes up to 60 days.

6.5.1.2. Interest rate for late payment

A number of Member States have introduced a higher interest rate than that required by the Directive (i.e. the ECB/national central bank's reference rate plus 8 percentage points). Table 1 shows an overview of these variations.

Table 1. MS Interest rate for late payment

Country	Interest rate
Austria	ECB + 9 percentage points
Bulgaria	Bulgarian National Bank + 10 percentage points
France	ECB + 10 percentage points
Germany	ECB + 9 percentage points
Hungary	Hungarian National Bank + 10 percentage points
Romania	Romanian National Bank + 9 percentage points
Slovakia	Dual system in place for interest rates: a fixed one based on the ECB rate increased by 9 percentage points, a variable rate based on the ECB rate increased by 8 percentage points.

6.5.2. Additional national initiatives to combat late payment

In addition to the provisions introduced by the Late Payment Directive at EU level, some Member States have put in place other measures, both voluntary and structural, to deal with the issue of late payments.

6.5.2.1. Prompt payment codes

Among the most effective measures are **prompt payment policies by public authorities**. In the field of PA2B transactions, the UK, Ireland and the Netherlands, have introduced policies to pay suppliers within 5, 15 and 30 days respectively. In Ireland the Government 15 Day Prompt Payment Requirement is a policy to reduce the payment period by public bodies to their suppliers from 30 to 15 days. In July 2011, the governmental non-statutory requirement applicable to Central Government

[18] More information available at: http://www.informita.com/resources/Informita+-+EU+ Directive+on+ Late+Payment+-+February+2014.pdf

[19] Art.4.2 Law 15/2010

Departments was extended to all public bodies. Ireland is currently examining the possibility, through a public consultation, of incorporating a government decision into national legislation, which obliges all public bodies to pay suppliers within 15 days. In the UK, central government departments have committed to the aim of paying 80% of undisputed invoices in five days, based on a policy set in 2010[20]. Data from April 2014-March 2015 regarding payments by UK central government departments demonstrate that this objective has been reached. Over this period, 98.57% of invoices were paid within 5 days. Finally, in the Netherlands data on payment results from the Dutch central government offices show that in 2014 all governmental bodies paid 90% of invoices on time (within the 30 day limit). The main issues come from the local public authorities, which have committed to improving payment delays[21]. Indeed, some improvements have already been made with local authorities making 84% of invoice payments on time in 2014 as compared to 77.5% in the two previous years.

In the field of **B2B**, the UK and Ireland have again followed a similar route by introducing a prompt payment code (joint public-industry initiative) which is accompanied by a prompt payment portal (Ireland) or a fair payment campaign (UK). In addition, the UK Small Business Act was signed into law in March 2015, introducing the obligation for the UK's largest companies to report on payment practices twice a year[22]. In France, a Charter for Responsible Supplier Relations and a Responsible Supplier Relations Label aims to distinguish companies that have proven to work for sustainable and balanced business relations with suppliers. The label is promoted by the French government and is awarded to companies for a period of three years.

6.5.2.2. Sector initiatives

At sector level, the UK and Ireland have attempted to address the issue of late payment in construction through different approaches. In the UK, a Construction Supply Chain Payment Charter was set up, a public-industry initiative that gathers the key firm in the sector. The real impacts of the Charter are yet to be seen as the Charter is only one of several joint industry and government initiatives between now and 2025. The **Construction Act,** includes a scheme for Construction Contracts setting a payment period of 17 days in case no payment term has been agreed in the contract. The **Groceries Supply Code of Practice** and the **Groceries Code Adjudicator** complement the transposition of the Directive in the food sector[23].

In Ireland, on the other hand, the government implemented the Construction Contracts Act to introduce statutory requirements regarding payment and the provision for adjudication as a forum for the resolution of payment disputes (Table 2).

Table 2. Construction Act in Ireland

Construction Contracts Act 2013 in Ireland
The Act applies to certain construction contracts with a value in excess of EUR 10,000 entered into after such date as the Minister for Public Expenditure and Reform (the 'Minister') designates by way of statutory instrument. The term 'construction contract' is widely defined under the Act and includes all types of contracts traditionally considered to be construction contracts. In addition, it includes consultant appointments

[20] UK Government, 5-days prompt payment, 2015, https://www.gov.uk/government/publications/5-day-prompt-payment

[21] Minutes: 5th Meeting of the Late Payment Expert Group – Directive 2011/7/EU - 13 April 2015, Brussels

[22] Association of International Accountants (2015): Large Firms Must Publish Payment Practices available at: http://www.aiaworldwide.com/news/large-firms-must-publish-payment-practices

[23] UK Government, Groceries Code Adjudicator, https://www.gov.uk/government/policies/preventing-and-reducing-anti-competitive-activities/supporting-pages/groceries-code-adjudicator

for professionals, such as architects, and contracts covering the supply/manufacture and installation of materials, equipment or systems, such as, for example, fire protection or air-conditioning systems.

Interim payments

Under the new Act, all construction contracts shall include adequate arrangements for determining both the amounts of, and periods for, interim payments. Whilst most standard form construction contracts allow for such arrangements, the Act provides for default arrangements where these are not set. In the case of sub-contracts, these default provisions will apply unless the sub-contract provides for more favourable terms for the sub-contractor. 'Pay when paid' clauses shall be prohibited, exceptional circumstances relating to the insolvency of the employer or contractor further up the supply chain.

Payment claims

In addition to the above, the Act also sets out a **procedure for dealing with payment claims**. Where a payment claim notice is delivered and the amount is contested by the paying party, then it must respond within a 21-day period with certain minimum information. Any undisputed amount must be paid by the due date for payment.

The Act gives contractors a statutory right to suspend work in the event of non-payment. A party who does not receive payment on the date that it falls due, will be allowed to suspend work, provided that party has delivered a written notice to the paying party at least 7 days before the proposed suspension is due to begin.

Adjudication

The 2013 Act provides a statutory entitlement to refer 'payment disputes' arising under a construction contract to adjudication. Each party has a right to adjudication but there is no mandatory requirement to use it. Irish law allows multiple disputes to be referred to adjudication under related construction contracts. A party can seek adjudication at any time through issuing a notice of intention, whether at practical completion stage or whilst works are ongoing. The parties can agree on an adjudicator or select one from a panel. The format is flexible in that the process can be based solely on written evidence. This will keeps costs down. The process is intended to ensure swift payment for works and so naturally operates under tight deadlines; an adjudicator must reach a decision within 28 days of referral, or 42 days with the referring party's consent. The Code of Practice for the 2013 Act states that the adjudicator must give written reasons for their decision. The adjudicator's award is binding on an interim basis and is enforceable until a court or arbitrator decides otherwise or the parties settle the dispute. Each party is responsible for their own costs and the costs of the adjudicator on a joint and several basis. However the adjudicator may direct that one party pays the costs and expenses of the adjudicator.

In France, according to one interviewed authority, in some cases the maximum payment terms in B2B transactions are more restrictive than the Directive. This is the case e.g. in the transport sector (30 days from the invoice date), and perishable food (30 days after the 10 day delivery). In road transport of goods, failure to comply with a 30 day payment term carries a **fine** of EUR 15,000 since 2006.

In Spain, a **multi-sectorial platform** against late payment was created in 2008[24]. The platform was created by inter-sector and sectorial organisations both at national and regional levels to call on big enterprises, the government and political parties to adopt a common position on the issue of late payment. The platform has concluded an agreement on zero tolerance against late payment and it acts as an interest group, lobbies the Spanish government and promotes best practices. The platform called for several measures to be introduced: a system of sanctions for late payers; the creation of a Late Payment Control Agency; the unification of payment terms and periods for all enterprises; a strict 30-days payment policy for the PA; and a fast and cheap extrajudicial settlement system. In early 2015, the platform presented to the Spanish Government and the various political groups a set of 16 proposals for new laws and

[24] More information available at: http://www.pmcm.es/

regulations to minimise the risk of default, combat late payments and fight against corporate defaults[25].

6.5.2.3. Other measures

In Sweden, the management of invoices electronically by public authorities is another complementary measure. A regulation from 2008 introduced the obligation to use **electronic invoices** for public authorities, and in 2013 another regulation introduced the same obligation for companies of more than 50 employees. Also the French government is committed to improving the functioning of electronic invoices. By 2017, e-invoicing will become mandatory for bigger businesses, with a target of all private companies, including micro-enterprises, using this system by 2020. In Italy, as of March 2015, electronic invoicing became compulsory for all public authorities[26]. Also in Spain, the use of electronic invoicing in the public sector has been mandatory since 15 January 2015 following the adoption of Law 25/2013 of 27 December 2013.

A system of **administrative penalties** in case of late payment has been introduced in France through legislation 2014-344 on consumer affairs. Since the legislation only entered into force at the beginning of 2015, it is too early to measure any potential impacts[27]. Other French measures include the voluntary Charter for Responsible Supplier Relations, and the CHORUS database which was opened in April 2014 – an online database with the aim of facilitating and speeding up some of public authority payments[28].

In Italy, **VAT** payments on unpaid invoices were addressed by the government. Businesses with an annual turnover of EUR 200,000 or less have the option of accounting for VAT on the basis of cash received with respect to business-to-business supplies. Under the new decree, payment of VAT can be deferred until payment for the supply has been received. This should help companies handle the burden of taxation in situations of poor cash flow as a result of late payment. Similarly, in Spain, as of January 2014 self-employed business owners and SMEs are able to postpone the payment of VAT until the relevant invoice has been duly paid. Interestingly, in its 31 October 2014 decision, Jetaircenter NV vs. the Belgian State, the Court of Cassation ruled that late payment interest cannot be claimed by the Belgian State when the taxable person under review has no VAT debit. Under the Belgian VAT legislation, late payment interest at 9.6% is legally due by the taxable person when the VAT amount is not paid to the Belgian authorities on time. In other words, the late payment interest cannot be claimed when there is no VAT debit in the hands of the taxable person, i.e. no VAT payable to Belgian authorities.

A new accrual based account system in Malta will be implemented in 2017. This new system will ensure that average creditor days are properly calculated and ensure that no invoices are unregistered.

France, Spain as well as Italy introduced measures aiming at **monitoring payment duration**. In France, a governmental Observatory for payment periods examines once a year the situation in regards to B2B late payment, whereas in Italy the Prompt payment indicator can be used by all government departments to calculate the exact time they are taking to pay trade creditors. In Spain, the Spanish Federation of Small

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[25] Manifiesto "Tolerancia Cero contra la Morosidad", February 2015, Plataforma Muctisectorial Contra la Morosidad

[26] More information available at: http://www.governo.it/GovernoInforma/Dossier/fattura_elettronica/2015-03-09CircolareMEF.pdf

[27] Information sheet on late payments, http://www.economie.gouv.fr/files/files/directions_services/dgccrf/documentation/fiches_pratiques/2015/Delais_paiement.pdf, Legislation2014-344, http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028738036&categorieLien=id

[28] CHORUS database, https://chorus-portail-pro.finances.gouv.fr/chorus_portail_pro/, French Ministry of Justice, http://www.justice.gouv.fr/organisation-de-la-justice-10031/frais-de-justice-12698/des-paiements-plus-rapides-pour-les-prestataires-du-ministere-26961.html

and Medium Enterprises (CEPYME), together with the department for enterprise and SMEs (DGPYME), publishes a quarterly bulletin on late payment in B2B transactions and enterprises financing, which collects and analyses data on late payment. Monthly monitoring research is in place in Poland to monitor the debt of Polish enterprises and the level of obligations paid by Polish companies.

In Denmark, the Ministry of Finance has issued an administrative order concerning transparency measures for late payment by public authorities, which has recently come into force[29].

6.5.3. Infringement procedures

Since the transposition deadline of the Directive, the Commission launched 13 infringement actions:

- **Non-communication** infringement cases were opened against 4 Member States. These countries delayed communicating their transposition measures to the Commission. The deadline was 16 March 2013 and the final notification was received from one Member State in July 2014. All of these cases are now closed.
- **Non-conformity** (or incorrect transposition) infringement cases were opened against 6 Member States. 2 cases remain open but will be closed by end of 2015.
- **Bad application** infringement cases are open against 3 Member States:
  - **Greece**: The Greek government has established a practice of enacting laws of short duration which provide that suppliers of the healthcare sector must waive their rights to 1) claim interest on accumulated debt and 2) compensation for recovery costs in order to be paid by public bodies. These laws are in contradiction with the Directive.
  - **Italy**: The Italian public authorities appear not to be respecting the payment deadlines set out in the Directive. This is confirmed by different sources and is allegedly a widespread issue in Italy.
  - **Spain**: The Spanish public authorities appear not to be respecting the payment deadlines set out in the Directive. This is confirmed by different sources and is allegedly a widespread issue in Spain.

[29] Meeting with the Commission and national experts, 17 April, 2015

7. Effectiveness of the Directive

The first evaluation dimension to be addressed relates to the effectiveness of the Directive i.e. the extent to which it has achieved (or is on track to achieving) its objectives. In this study, effectiveness is measured in terms of:

a. The awareness of businesses regarding late payment legislation
b. The extent to which businesses make use of the remedies conferred by the Directive
c. The extent to which the Directive has led to a reduction in payment periods
d. The extent to which the Directive has positively influenced liquidity/cash flow of the target group
e. The extent to which the Directive has facilitated cross-border trade
f. Unintended consequences of the Directive

Box 4 - Key points of this chapter

While overall awareness of the Directive's provisions and the possibility to claim compensation and/or interest is relatively high, SMEs and younger firms are less likely to be aware of the rules regulating late payment.

Firms that are aware of the rules related to late payment are less likely to have experienced a deterioration in average payment delays.

60% of survey respondents suggested that their company never exercises its right to claim compensation and/or interest in the event of late payment.

SMEs are much less likely to exercise their rights under the Directive than larger companies.

For 39% of companies, the main reason for not exercising their rights is to maintain good commercial relationships.

Lack of efficient remedy procedures is another barrier preventing companies from exercising their rights to compensation and interest

Payment duration has decreased in recent years in both PA2B and B2B transactions but very significant differences remain across countries. MS with above average payment duration in PA2B transactions also tend to have above average payment durations in B2B transactions.

While it is difficult to attribute these changes in payment behaviour directly to the Directive, there is little evidence that the Directive has had an impact on payment behaviour and late payment practice.

However, regarding payment terms, more than two thirds (70%) of companies indicate that they apply payment terms of 30 days or less, while 90% apply terms of 60 days or less as required in the Directive.

Country and sector effects are more important drivers of payment terms than any other company characteristics or awareness of the rules around late payment.

Rather than legislation, national business culture, economic conditions and power imbalances are the driving factors for payment behaviour.

In PA2B transactions, prompt payment policies are seen to have made a significant contribution towards the reduction of overall payment duration.

To date, there is little evidence that the Directive has already achieved its wider objectives regarding liquidity improvements or facilitation of cross-border trade.

7.1. Awareness of the Directive

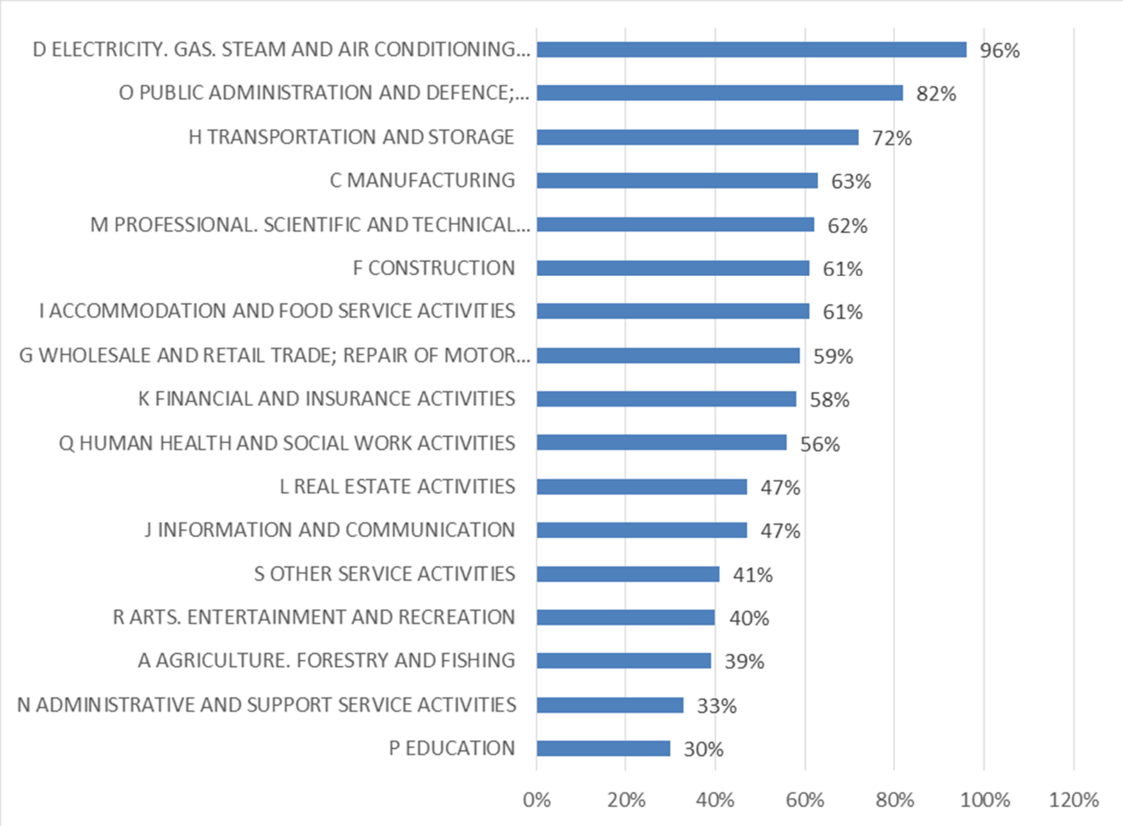
First, overall awareness of the Directive's provisions and the possibility to claim compensation and/or interest is relatively high. Almost two thirds of companies are aware of the (general) rules regulating late payments. At the same time, 86% of companies know about their right to claim compensation and/or interest[30].

Second, delving into the causes of awareness, the regression analysis shows that the size and age of the company are statistically significant. **SMEs and younger firms (less than 10 years old) are less likely to be aware of the rules regulating late payment**. This relationship holds even after country and sector variables have been taken into account.

The figure below shows awareness of the rules regulating late payment by sector. Firms in education, administration, agriculture, forestry and fishing are least aware of their rights under the Directive. The health (56%), food (61%) and construction (61%) sectors are in the middle of the table and close to the overall average. Perhaps unsurprisingly companies that are closest to the public sector (utilities, public administration) are most aware of late payment rules.

[30] The fact that there more companies are aware of the specific right to claim compensation and/or interest than are aware of the (general) rules regulating late payment shows that some companies are knowledgeable of their rights even though they might not link this to any regulatory intervention.

Figure 4. Likelihood (odds-ratio) of awareness of the rules regulating late payment by sector



Source: Company survey

Interviews in three sectors (construction, public health and food) confirm that **awareness of the rules regulating late payment varies across companies**. The SME association in Ireland notes that a company is likely to be more aware of its rights if it takes part in an organised business forum (e.g. association, sector chamber) where issues such as late payment are discussed. Furthermore, about half of business representatives (*inter alia* Cyprus, Denmark, Greece, Malta, France, Poland, Italy, Ireland, Portugal, Croatia, Spain, and the UK) noted that even if companies are aware of their rights, they fear the consequences of exercising these rights.

Although general awareness of rules regulating late payment and specific rights to claim compensation and/or interest are relatively high, this on its own does not of course prevent companies from experiencing late payments. Indeed, **80% of companies which experienced a late payment in the last three years were aware of the possibility to claim compensation and/or interest.**

However, the regression analysis shows that **firms that are aware of the rules related to late payment are less likely to have experienced a *deterioration* of average payment delays** (odds ratio of 0.78) over the last three years than companies that are not aware of the rules. This is an important result which clearly demonstrates the impact of both the existence of late payment rules and the importance of being aware of these rules.

7.2. Compensation and interest

The first key finding of desk research, survey and interviews is that **usage of the provisions introduced in the Directive is not widespread**. Indeed, 60% of survey respondents indicated that their company never exercises its right to claim compensation and/or interest in the event of late payment. This result is in line with desk research which suggests for example, that only 16% of companies in Portugal and only 3.5% of Irish SMEs claim interest in cases of late payment[31].

At the same time, there is a difference between countries with higher and lower average payment duration. **In countries with a shorter average payment duration, companies are *more* likely to always exercise their right** (11% against 3%) with another 41% which do it sometimes (against 31% in the other group). Thus, the Directive seems to be a more relevant instrument, in this sense, for companies in countries where the problem of late payment is less severe. At the same time, the Directive may actually exacerbate cross-country differences in late payments because the rights that it confers are used more in countries where the problem of late payments is less severe.

The figure below shows the share of companies that exercise their rights under the Directive. Companies in France are least likely to ever exercise their rights while companies in Lithuania and Luxembourg (followed by Sweden and Germany) are most likely to always exercise their rights.

Figure 5. Share of companies that exercise their right to claim compensation and/or interest in the event of late payment

Source: Company survey

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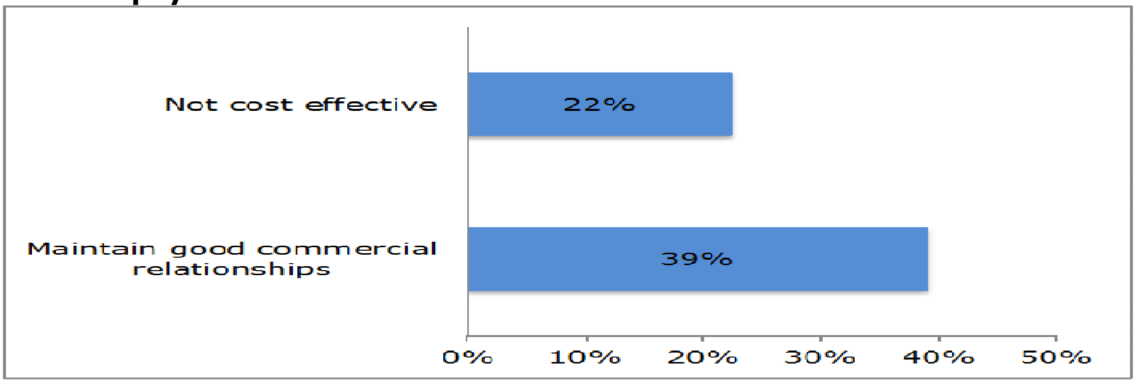
[31] ISME Press Release SME Credit Watch, Q1 2015.

Second, the regression analysis delves a bit deeper to understand the causes of this failure by companies to exercise their rights. The results show that **SMEs are much less likely to exercise their rights under the Directive than larger companies.** Indeed, the odds of SMEs exercising their right to claim compensation and/or interest in the event of late payment are about half those of larger companies (odds ratio of 0.51). This relationship holds, even when all other factors are taken into account (sector, country, company age, main clients and share of turnover that is domestic). The strong association between size and usage of the Directive's provisions is also confirmed in interviews with industry stakeholders. Associations in Belgium, Ireland, Italy, Portugal, Romania and Spain confirmed that the factors that prevent companies from exercising their rights are more accentuated among smaller companies than among larger business.

Company age, main type of client, share of domestic turnover or sector[32] are not significant predictors of how likely a company is to exercise its rights under the Directive. There is a small effect for companies with only public authorities as main clients who are more prone to use the provisions available to them than companies whose clients include other businesses. However, this relationship disappears when the company's sector is taken into account.

Furthermore, the survey results show that **for 39% of respondents, the main reason for not exercising their rights is to maintain good commercial relationships.** Interviews and desk research confirm that claiming compensation or interest is not a simple case of exercising one's rights but it often involves a complex calculation of multiple clashing interests. By far, the most cited reason (industry associations in *inter alia* Cyprus, Greece, Croatia, Spain, Ireland, Italy, France, Denmark, Portugal, Poland, Malta and the UK) for not exercising their rights is the fear of damaging existing business relationships. Indeed, companies fear losing clients after requesting rightful contract terms, claiming interest on late payment, or compensation for recovery costs.

Figure 6. Reasons for not claiming interest and compensation in the event of a late payment



Source: Company survey

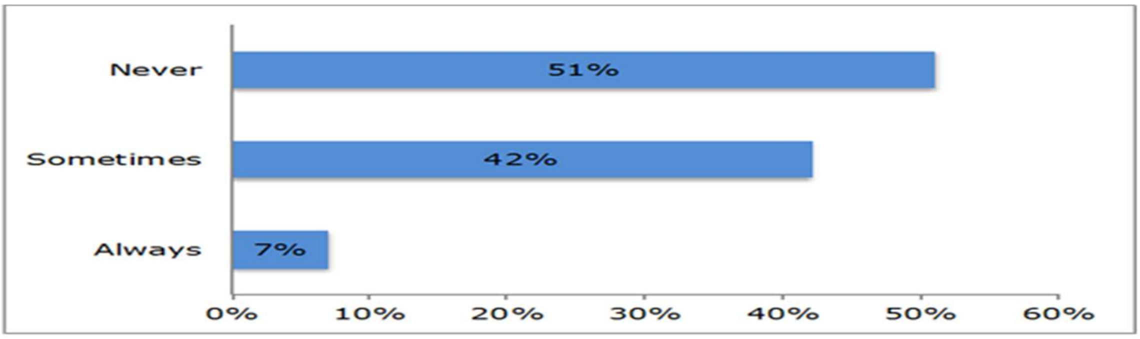
Business representatives also suggested that the **powerful position of the public sector** as a contracting entity as well as a fear of relationship damage with the contracting authority means companies often do not ask for interest on late payment. As a result of this, for example in Denmark, one association suggests that small companies that have experienced this problem should contact them, and the association might in turn be able to deal with a court case on behalf of several smaller

[32] With the exception of "agriculture, forestry and fishing" (less likely) and "electricity, gas, steam and air conditioning supply" (more likely)

companies at once to avoid them risking their business relationships.[33] Industry stakeholders maintained that the fear of damaging business relationships is bigger when dealing with strategic partners. Some industry stakeholders (*inter alia* in the UK, Portugal and Italy as well as UEAPME, the SME association at EU level) argued that this situation could be remedied with mechanisms that automatically impose interest on late payment. This would mitigate the negative effects on business relationships in case interest is claimed by creditors.

Finally, **lack of efficient remedy procedures is another barrier preventing companies from exercising their rights to compensation and interest.** Even if they do decide to exercise their rights under the Directive, and despite the expedited recovery procedures under Article 10 of the Directive, companies consider that debt recovery currently takes too long. Using the national court system tends to be long and inefficient. The time required for and cost of court procedures discourages companies from taking a late payer to court, in particular in cases of smaller sums where the companies risk spending more money than they would actually have recovered. Consequently, creditors prefer to write off unpaid bills rather than go to court and sue for a bad debt. Indeed, according to the results gathered through the online survey, half the companies (51%) never engaged in litigation or used alternative dispute resolution to recover unpaid invoices.

Figure 7. Use of litigation or alternative dispute resolution to recover unpaid invoices



Source: Company survey

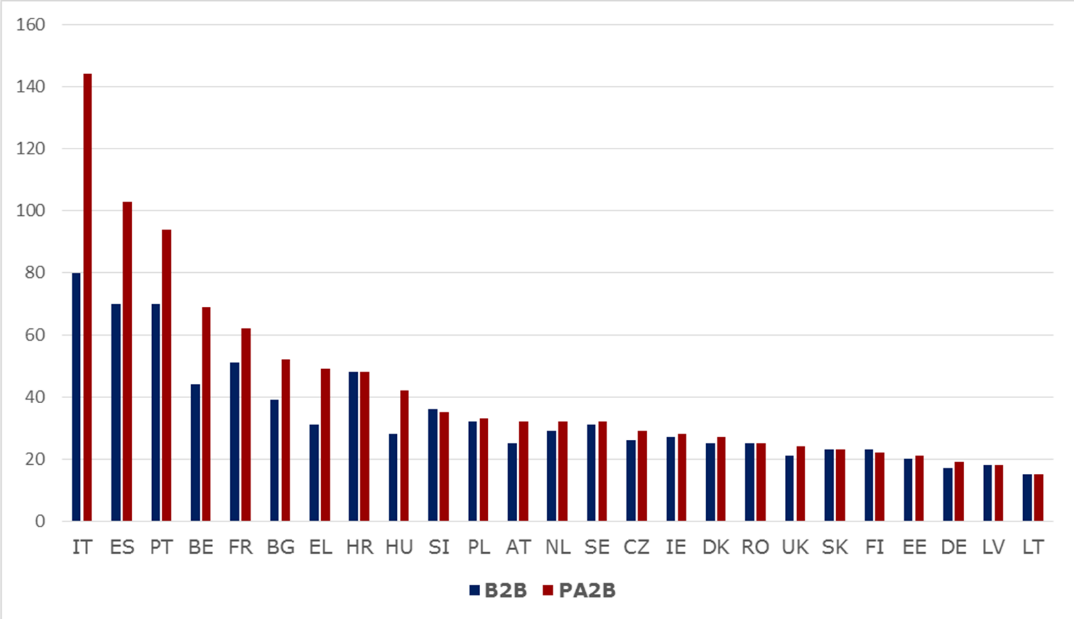
7.3. Average payment duration in PA2B and B2B transactions

The figure below shows differences in average payment duration across MS for both PA2B and B2B transactions in 2015. Italy, Spain and Portugal have the longest overall payment duration, while the Baltic countries and Germany are at the other end of the spectrum.[34]

[33] Building Supply, June 2013, http://www.building-supply.dk/article/view/105291/lov_om_betaling_sfr ister_uden_effekt?ref=_newsletter#.VTPckiFViko

[34] It should be noted that the 2015 figure for Greece is a significant improvement over previous years. However, this should be seen within the context of the economic crisis, which has hit Greece particularly hard and where, as a result, the use of trade credit has decreased significantly with a number of suppliers requiring upfront payment for goods and services.

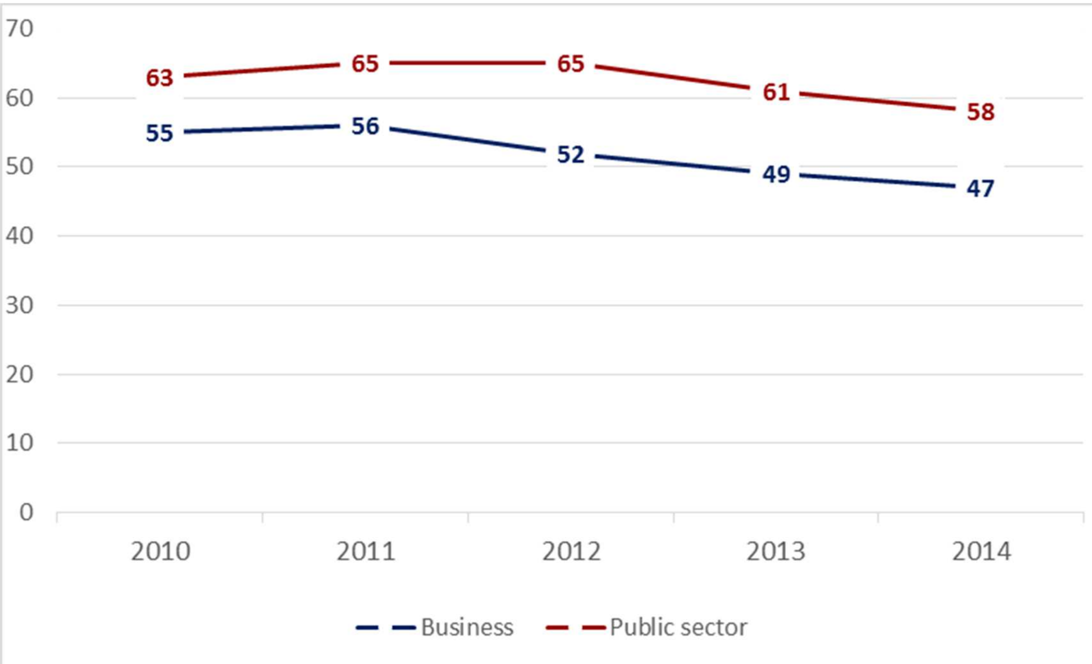
Figure 8. Average 2015 payment duration in B2B and PA2B transactions by country



Source: Intrum Justitita, (EPI 2015)

The below shows changes in EU average payment duration since the implementation of the Directive. Average payment duration has decreased in both B2B and PA2B transactions, but it remains higher than the limits set by the Directive.

Figure 9. Average payment duration in the EU 2010-2014



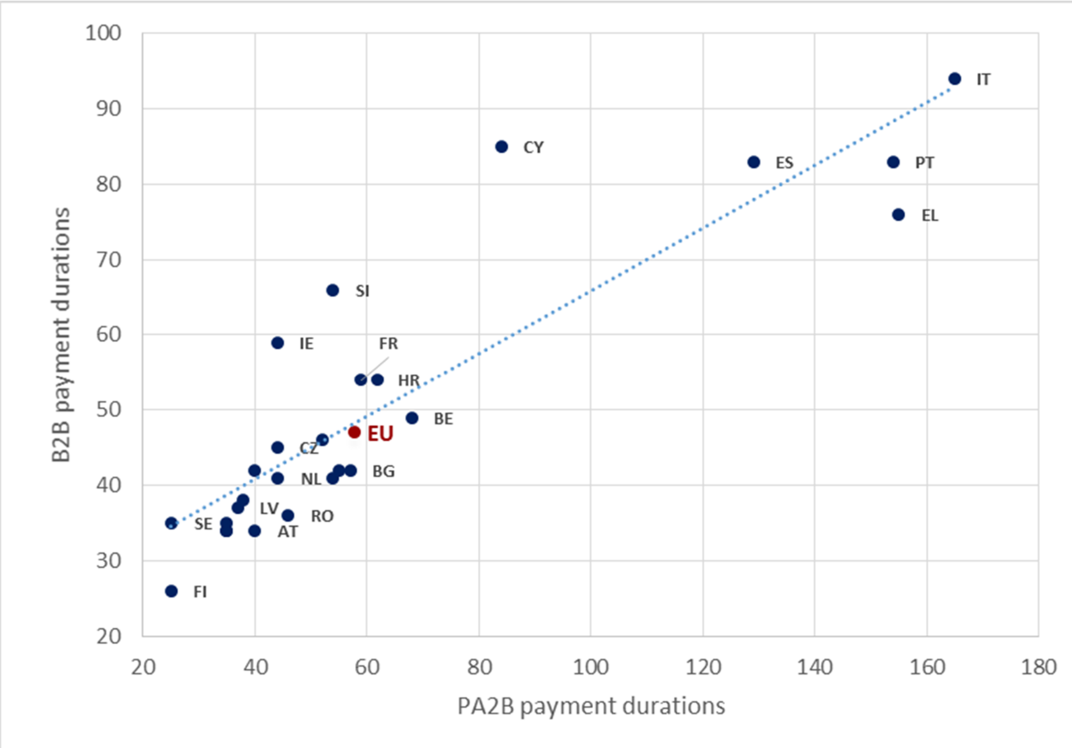
Source: Intrum Justitia, EPI (2014)

A detailed country analysis shows that Italy (165 days on average), Greece (155 days), Spain (154 days) and Portugal (129 days) are the slowest payers, while only Finland and Estonia out of all EU Member States comply with the 30 day limit introduced for PA2B transactions by the new Directive (on average).

The figure below shows the **average payment duration in EU Member States and for the EU as a whole for both B2B and PA2B transactions**. There is a positive association between B2B and PA2B payment durations. Countries that have a low average payment duration in B2B transactions also tend to have relatively low payment durations in PA2B transactions.

Nevertheless, and despite the only marginal decrease in average payment duration in some Member States[35], it is clear that **some countries have payment durations that are much higher than the EU average** (IT, ES, EL, PT, CY). Furthermore, in these countries it is **PA2B payment durations which remain particularly high**. Some of the Nordic countries on the other hand, have relatively low payment durations in PA2B transactions, in particular SE and FI.

Figure 10. Average B2B and PA2B payment duration in EU MS (2014)



Source: Intrum Justitia, EPI (2014)

7.4. Payment duration, payment delays and payment terms in B2B transactions

As mentioned in chapter 5, it is very difficult to directly attribute changes in payment terms, duration or delay to the Directive. There are indeed a large number of intervening factors, such as the impact of the financial crisis, which make it impossible to quantify the impact of the Directive on payment behaviour.

Nevertheless, it is clear that the Directive has streamlined payment terms across the EU and as such it *should* have contributed to a reduction in overall payment duration.

[35] All MSs except BG, RO, SI

In addition, as a pan-European intervention, the Directive *should* have contributed to reducing cross-country and cross-sectoral differences in payment behaviour.

At the same time, given the wide variety of drivers of late payment, this study demonstrates that a legislative instrument cannot – on its own – change payment behaviour. Indeed, stakeholders in *inter alia* Austria, Bulgaria, Denmark, Finland, Sweden, Slovakia, Spain, Romania, and the UK argued that **the Directive has, to date, had only minor effects on payment behaviour and late payment practice** in their Member State. For example, in the Nordic countries business representatives and public authorities agreed that historically there has been a very strict culture to abide by contractual obligations which influences the propensity to pay promptly. In Austria, one sector association argued that it is too early to judge if the Directive changed late payment practice. In Romania, business representatives suggested that the Directive only impacted the length of payment in PA2B transactions but no change in payment practice was observed in B2B transactions.

7.4.1. Payment duration in B2B transactions

The table below shows that **the average payment duration in B2B transactions in the European Union has indeed decreased from 56 days in 2011 to 47 days in 2014.**

Table 3. Average payment duration 2010-2014

Average payment duration (EPI)				
	2011	**2012**	**2013**	**2014**
B2B	56	52	49	47

Source: Intrum Justitia, EPI (2011-2014)

While this reduction in the overall average payment duration is certainly worth celebrating, the situation becomes more muddled once these headline figures are disaggregated. Since 2010, **average payment duration has decreased in only about half of the MS** while it remained stable in the other countries (see Table 4). In fact, for the subset of countries where a longer data series exists, comparing the current situation with the 1990s is quite a sobering exercise. While there has been a reduction in payment duration in 7 of the 14 countries where data are available, payment duration has actually increased in 6 countries in the last 20 years. Furthermore, differences between countries have accentuated with some of the best performers (e.g. Finland) in the 1990s managing to deliver further reductions in payment duration, while the situation has deteriorated in some of the worst performers (e.g. Italy).

Table 4. Average length of payment duration (2010/2014)

	EPI Data 2010-2014 (Intrum Justitia)				
Country/ Year	2011	2012	2013	2014	*Avg*
Austria	38	36	35	34	*36*
Belgium	50	54	48	49	*50*
Denmark	38	37	35	34	*36*
Finland	27	27	26	26	*26.5*
France	59	57	55	54	*56*
Germany	37	35	34	34	*35*
Greece	110	80	78	76	*86*
Ireland	65	66	60	59	*62.5*
Italy	103	96	96	94	*97*
Netherlands	43	43	42	41	*42*
Portugal	92	90	85	83	*87.5*
Spain	99	97	85	83	*91*
Sweden	35	35	35	35	*35*
UK	46	44	41	42	*43*
EU-14	**60.1**	**56.9**	**53.9**	**53.1**	**56.0**

Source: Intrum Justitia, EPI (2010-2014)

7.4.2. *Payment delays in B2B transactions*

As mentioned in Section 6, four out of five companies (78%) have experienced payment delays in the last three years. At the same time, pan-EU data from the EPI indicates that there has been a slight decrease in payment delays in B2B transactions from 20.5 days in 2011 to 19.3 days in 2014 (-1.2 days).

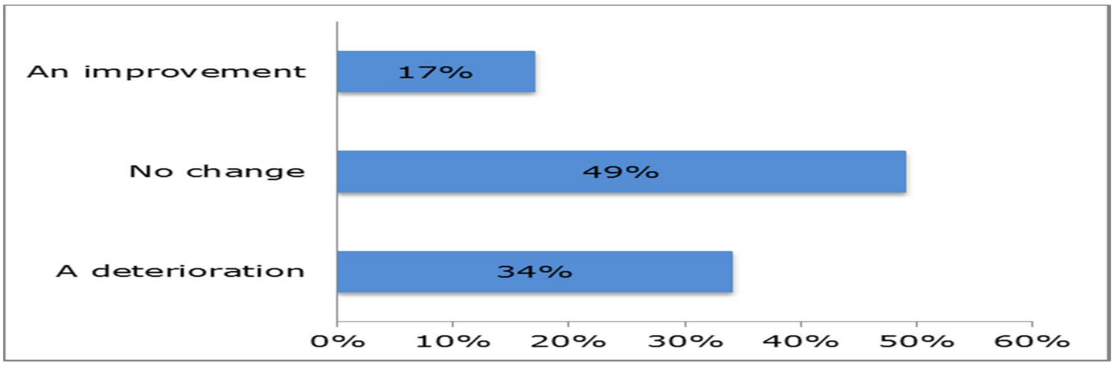
Table 5. Average payment delay 2010-2014

Average payment delay (EPI)				
	2011	**2012**	**2013**	**2014**
B2B	20.5	20.6	19.6	19.3

Source: Intrum Justitia, EPI (2011-2014)

The perception that **payment delays have only slightly improved or remained static** is shared by the survey respondents where the situation has improved only for almost one in five companies and it has been stable for almost half of the respondents. One third of companies think that there has been a deterioration in average payment delays.

Figure 11. Perceived change in average payment delays in the last three years (with other businesses)



Source: Company survey

The above figure masks significant **differences in terms of the evolution of delays across countries.** As the regression analysis finds, firms in Greece are more likely to have seen delays either deteriorate or improve over the last 3 years rather than experiencing no change. This suggests that the business environment for firms in the country has been rather unstable but also that it has not been equally negative for all companies. In Hungary, in contrast, firms are less likely to have experienced either improvement or deterioration than in other countries. Hungary seems to have a more stable business environment than other countries in terms of payment behaviour.

As for payment duration, the situation regarding delays remains very mixed across the EU with some Member States experiencing a decrease in payment delays while other Member States have seen an increase during the same period.

Overall there is no clear trend with the majority of Member States having seen little or no change in payment delays. However, a decrease in payment delays is noted in some Member States - Italy, Hungary, Cyprus, Spain and Portugal - though these improvements need to be set against the relatively higher delays in these countries compared with the Nordic countries where improvements have been more modest. The only country with a large increase in delays is Greece (11 days). It should be noted that lack of a clear improvement in payment delays may be due to the fact that Directive has come into force only relatively recently. In the case of Denmark (one of the countries with a small decrease in payment delays), this is strengthened by a survey[36] with SMEs which showed that 59.6% of respondents in January 2015 felt that the situation regarding late payment was unchanged since the national legislation implementing the Directive came into force.

Table 6. Changes to payment delays in B2B transactions (2011-2014, in days)

Large decrease	Small decrease	No major change	Small increase	Large increase
Italy (-5)	Germany (-3)	Netherlands (-2)	Croatia[37] (+4)	Greece (+11)
Hungary (-6)	Slovakia (-3)	Estonia (-1)	Belgium (+4)	
Cyprus (-6)	Denmark (-4)	Finland (-1)		
Spain (-6)	France (-4)	Ireland (-1)		
Portugal (-8)	Lithuania (-4)	Czech Republic (0)		
		Sweden (0)		
		United Kingdom (+1)		
		Bulgaria[38] (+1)		
		Austria (+1)		
		Poland (+2)		
		Latvia (+2)		
		Romania[39] (+2)		

Source: Based on Intrum Justitia, EPI (2011-2014).

Looking at the drivers of change in payment delays, the regression analysis shows that once country and sector effects have been taken into account, companies that are aware of the rules regulating late payment are less likely to have seen a worsening of payment delays over the last three years (odds-ratio of 0.78). This suggests that, while such rules do not eliminate late payments, they can prevent the situation from deteriorating.

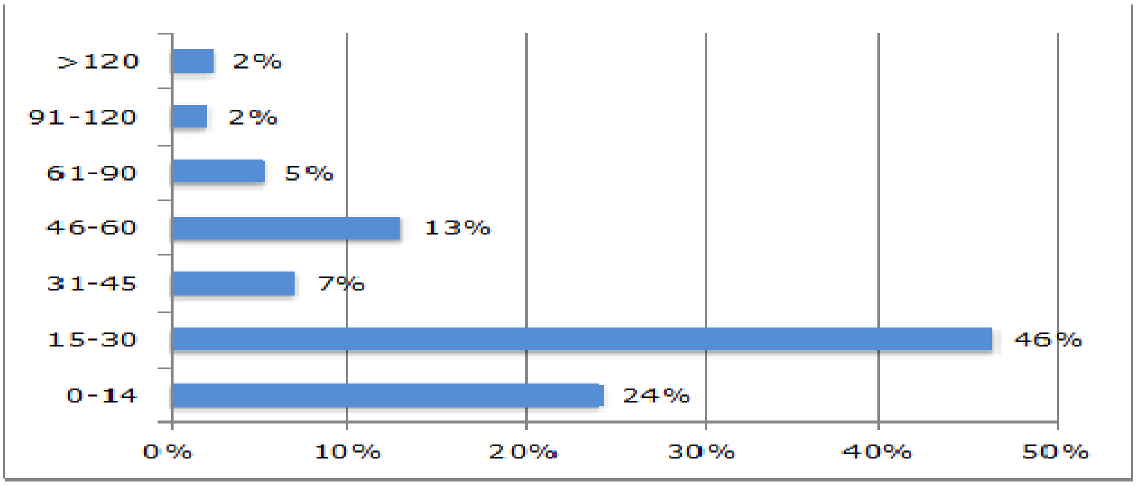
This result is shared by industry interviewees who indicated that **greater awareness is likely to have triggered better payment practices**. The impact of the economic crisis may have forced businesses to take a more active approach to handling late payment. For instance, one Romanian industry interviewee stated that after a two-week delay, companies usually send out payment reminders threatening to take the debtor to court. This is also supported by companies that are more persistent in contacting debtors before further action is taken, if any.

7.4.3. Payment terms in B2B transactions

Finally, since the Directive came into force payment terms applied by companies have changed. This is because the Directive does in fact set a maximum payment term for both B2B (unless expressly agreed otherwise and not grossly unfair) and PA2B transactions. Out of all companies that participated in the survey, **more than two thirds (70%) apply payment terms of 30 days or less, while 90% apply terms of 60 days or less** as required in the Directive.

Figure 12. Average payment terms (in days) applied in B2B transactions

[36] Danish Association of SMEs (not publicly available).
[37] Data available for 2013-2014
[38] Data available for 2012-2014
[39] Data available for 2012-2014



Source: Company survey

The regression analysis allows a more detailed analysis of the drivers of these payment terms. The model shows that company size, age or share of turnover in the domestic market do not explain the payment terms applied in B2B transactions. At the same time, awareness of the rules regulating late payment does not have any significant impact on the payment terms that companies actually apply, once all other variables are taken into account.

Instead, country and sector effects are more important drivers of payment terms than other company characteristics or awareness of the rules around late payment. In terms of sector impacts, companies in manufacturing and construction have payment terms that are on average more than 10 days longer than companies in other sectors. Conversely, companies in "human health and social work" and in education have significantly lower payment terms in B2B transactions. Similarly, when all other factors are taken into account, companies in Greece apply payment terms that are more than 60 days longer than the reference group (Austria). Companies in Italy, Portugal, Cyprus, and Spain experience payment terms between 30 and over 50 days longer than Austrian companies with otherwise equivalent characteristics.

What explains these stark country differences? First of all, consultation with industry across all MS confirms that **companies do agree longer payment terms during tougher times** i.e. the recent financial crisis. Industry representatives (i.e. a general representative of business in Sweden and Ireland, construction in the UK, public health in Croatia) argued that in the current economic environment creditors very often do not have a choice other than agreeing to longer terms. Firms across the supply chain are exposed to liquidity constraints and obtaining free credit from suppliers is the easiest remedy to problems with cash flow. Secondly, **power imbalances** may partially explain why the average payment duration is higher than 30 days. Firms accept longer payment terms, especially in contracts with stronger partners who often dictate the terms. More powerful actors impose longer payment periods on smaller suppliers with the latter accepting those in a fear of damaging or losing a business partner. Redress solutions are not always useful because they would mean that creditors would have to confront their debtors, effectively ending business relationships. Finally, stakeholders (*inter alia* construction representative in Spain) argued that **late payment became the norm** in some of the Southern states. Over the years, companies treated delays as a part of day-to-day business not willing to challenge the status quo.

All these factors fall outside the scope of a legislative measure, whether European or national. As a result, while industry stakeholders are supportive of the aims of the Directive and they credit it with bringing the problem high onto the political agenda, many are sceptical about the possibility for a legislative instrument alone to succeed in combating late payments.

Box 5. Case study: food sector

Interviews with industry stakeholders showed that late payment constitutes a problem in the food sector. Stakeholders also pointed out that in addition to payment delays, companies in the food sector suffer from prolonged payment terms. For example, the **UK food sector** exhibits a significant diversity in payment terms[40]. In **Ireland**, according to the Food and Drink Industry Ireland (FDII), access to credit and late payment are amongst the major challenges the Irish food sector is currently facing[41]. The imbalance of power between suppliers and retailers in particular results in late payment which places a heavy cost on food and drink businesses. SMEs are particularly hit by this problem as the ensuing credit restrictions limit the financial capability of companies[42].

Stakeholders argued that the Directive has only been in force for a relatively short time, which made it difficult to judge its effectiveness, especially given the scale of economic challenges faced in parts of the EU. This was made even more challenging with certain Member States such as the UK, introducing additional legislation to enforce optional elements of the Directive.

There is no pan-European data on the EU food sector to demonstrate the extent of the problem across MS but some national sources point to the impact of late payment.

- For example, a **Hungarian** study on supplier relationships in regards to private labels, found that 20-25% of buyers in the food retail sector frequently or always paid late[43]. A survey carried out in 2014 found that two-thirds of food processing firms stated they were paid late[44].
- The Food and Drink Industry **Ireland** (FDII) estimated that access to credit and late payment are amongst the major challenges the sector is currently facing[45]. The imbalance of power between suppliers and retailers in particular results in late payment which places a heavy cost on food and drink businesses. SME's are particularly hit by this problem as the ensuing credit restrictions limit the financial capability of companies[46].
- National sources also showed in 2014 a 92% increase in the number of companies in the **UK's** food and beverage manufacturing industry experiencing 'significant financial distress'[47]. One of the key reasons for the financial distress of SMEs in the food supply chain related to the elongated payment terms put in place by major UK retailers. In fact, as the payment period is not an isolated commercial condition, but forms part of a larger set of commercial terms, stakeholder organisations across the food supply chain have developed a joint voluntary initiative called the Supply Chain Initiative (SCI), whose purpose it is to promote fair business practices in the food supply chain as a basis for commercial dealings. Operators who register in the SCI commit to applying the Principles of Good Practice, among which the respect of the agreed terms[48].
- Finally, stakeholders argued that longer payment terms in the sector are linked to the seasonality of produce and buying windows of 3-4 months. For this reason, several Member States, such as **Italy** and **France** have introduced sector-specific legislation on payment practices in the grocery sector. **Ireland** is currently reviewing its draft legislation aiming to regulate fair trading in the supply chain.

This correspondents with our findings where market power imbalances play an important role in combating late payment.

[40] Food Manufacture (2015): Late payments hinder food jobs, available at: http://www.foodmanufacture.co.uk/Business-News/Food-jobs-hindered-by-late-payments
[41] Irish Ministry of Agriculture (2012), Annual Report 2012
[42] Food & Drink Industry Ireland - Competitiveness Indicators 2010
[43] European Commission (2011): The Impact of Private Labels on the Competitiveness of the European Food Supply Chain, available at: http://ec.europa.eu/enterprise/sectors/food/files/study_privlab04042011_en.pdf
[44] More information available at : http://auditandrisk.org.uk/news/supply-chain-problems-and-late-payment-hit-food-processing-sector
[45] Irish Ministry of Agriculture (2012), Annual Report 2012
[46] Food & Drink Industry Ireland - Competitiveness Indicators 2010, available at: http://www.fdii.ie/Sectors/FDII/FDII.nsf/vPages/News_and_Events~Press_release_archive~food-sector-launches-competitiveness-indicators-report-2010/$file/FDII%20Competitiveness%20Indicators%20Report%202010.pdf
[47] More information available at: http://www.begbies-traynorgroup.com/news/business-health-statistics/supermarket-price-war-could-force-food-suppliers-to-go-bust
[48] More information available at : http://www.supplychaininitiative.eu/

7.5. Payment duration and payment delays in PA2B transactions

As section 6 has shown, payment duration and delays in PA2B and B2B countries are highly correlated. Countries where late payments is a problem in the private sector also exhibit similar problems in the public sector.

7.5.1. Payment duration in PA2B transactions

To date, the Directive has had limited effect on the average payment duration in PA2B transactions.[49] While the average payment duration has decreased from 65 days in 2011 to 58 days in 2014, it stays well beyond the terms set out by the Directive.

Table 7. Average payment duration in PA2B transaction 2010-2014

Average payment duration (EPI)				
	2011	2012	2013	2014
PA2B	65	65	61	58

Source: Intrum Justitia, EPI (2011-2014)

In some countries such as Greece, Italy and Spain the average payment duration greatly exceeds the European average. For example, payment duration in Italy and Spain for PA2B transactions remains at the level of 165 and 154 days respectively.

At the same time, **while the average payment duration in Southern countries stays well above the EU average, these countries have also benefited from the greatest reduction** in recent years. For example, in Italy payment duration was reduced by 15 days (from 180 days to 165 days) in the 2011-2014 period. However, ten countries have seen an increase of between 1 and 9 days and four countries have not experienced any change in payment duration in PA2B transactions.

Table 8. Changes in payment duration PA2B transactions (2011 to 2014, in days)

Large decrease	Small decrease	Stable	Small increase	Large increase
Italy (-15)	Lithuania (-4)	Hungary (-2)	n/a	Slovenia[50] (+9)
Greece (-13)	Belgium (-4)	Denmark (-2)		Bulgaria (+5)[51]
Portugal (-10)		The Netherlands (-1)		Latvia (+5)
Austria (-9)		Finland (0)		
United Kingdom (-7)		Germany (0)		
France (-5)		Poland (0)		
Ireland (-5)		Sweden (0)		
		Spain (+1)		
		Romania[52] (+1)		
		Slovakia (+1)		
		Cyprus (+1)		

[49] It needs to be reiterated that it is very difficult to directly attribute changes in payment terms, duration or delay to the Directive due to the large number of intervening factors, such as the impact of financial crisis, which make it impossible to quantify the impact of the Directive on payment behaviour.

[50] Ibid.

[51] Data available for 2012-2014

[52] Data vailable 2012-2014

Large decrease	Small decrease	Stable	Small increase	Large increase
		Croatia (+2)[53]		
		Czech republic (+1)		
		Estonia (+1)		

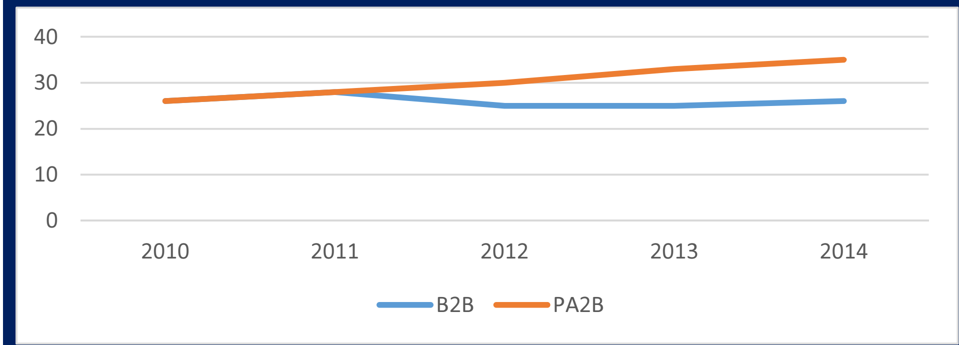
Source: Based on Intrum Justitia, EPI (2011-2014)

In trying to explain the above picture, further analysis shows that **prompt payment policies made a significant contribution towards the reduction of the overall payment duration**. Additionally, the industry argued that the key reason for public authorities paying more promptly was the awareness that they need to set a good example to help enforce the provisions of the Directive. For instance, in Spain, although the average payment duration for public authorities is above the limits set out in the Directive, it has decreased in recent years. In this vein, the interviewed stakeholders argued that the Directive was effective, as it has obliged the government to act. In Spain, a recent law[54] forces the government to pay in place of regions should they fail to do so within 6 months. Another law on transparency and good governance has also been implemented to provide penalties for officials who accept commercial transactions without budget support. Furthermore, in the Netherlands, Ireland and the UK, industry stakeholders stated that public authority payment has improved with the introduction of the Directive. This is supported by the national data which indicates that central government offices pay 90% of invoices on time. In these countries, prompt payment policies helped reinforce the positive effect of the Directive (see also Section 6.5.2.1).

Box 6. Case study: construction sector

Payment delays in the construction sectors have remained largely stable in B2B transactions and have increased in PA2B transactions. However, the causes of late payment in the construction sector can be attributed to the specifics of the sector.

Average payment delay in the construction sector (in days)



Source: Adapted from European Payment Index White Paper 2014

The EPI White Paper 2014[55] showed that, while average payment terms had remained stable on 30 days in PA2B and B2B transactions, since 2010 late payment had decreased slightly in terms of B2B transactions, whereas it had increased by 9 days in PA2B transactions. In fact, in 2014, the bad debt of the construction companies had increased slightly to 4%, up from 3.9% in 2013. For example, in **Belgium**, 61% of construction companies had to write off debt in 2014 due to the inability to collect payment.

In the **UK**, imposing longer payment terms or delays on sub-contractors and suppliers are said to be "accepted practices". In a survey conducted in 2012, 97% of the 250 responding SMEs in the construction sector, reported to have felt "unfairly treated" by main contractors[56]. In **Spain**, the

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[53] Data available 2013-2014
[54] Royal Decree 635/2014, of 25 July 2014
[55] Intrum Justicia (2014): European Payment Index – white Paper, available at: http://www.intrum.com/Global/Countries/DE/Whitepaper_Engels_2014_ENG_Sec.pdf; hereinafter 'Intrum Justicia White Paper'. Intrum Justicia, White Paper
[56] Designing Buildings Wiki, http://www.designingbuildings.co.uk/wiki/ Remedies_for_late_payment _in_the_construction_industry

construction sector is the sector with the highest percentage of companies paying within a period of over 120 days according to a 2012 survey. At the same time, in the second quarter of 2014, SMEs in the construction sector have seen the highest reduction in average payment delays with a reduction of 2.3 days compared to the previous quarter (reaching 95.1 days)[57]. In **Poland**, the debt of companies in the construction sector increased by nearly EUR 30 million (PLN 116 million) and is now at EUR 110 million (PLN 634 million) [58]. The **Italian** construction sector is experiencing severe payments delays, which have increased by 178% in the last five years. ANCE (National Association of Property Developers) reported[59] that, in the second quarter of 2014, 72% of enterprises in the construction sector have experienced payment delays. Overall, 39.8% of companies appear to be paying on the due date, whereas 46.3% pay within a delay of 30 days[60]. The **Austrian** construction sector has the longest payment delay with around 50 days, which is above the average payment delay for the country. This is despite the fact that the sector enjoys the longest payment terms with an average of 33 days[61]. Construction is also a very important sector for the **Irish** national economy, accounting for approximately 5% of GDP in 2012[62]. Yet, there has been a history of late and, in some cases, non-payment in the Irish construction industry. In **Belgium**, payment practices vary greatly across sectors, with the financial services and services sectors paying with the shortest delay. In contrast, the construction sector has the highest number of bad payers, amounting to 1.7 % (but still significantly lower than in other countries) (Cribis, 2013).

Indeed, construction is commonly pointed out as one of the sectors suffering the most in regards to late payment in Europe. Late payment has been an important matter on the agenda of the construction sector, especially since the onset of the economic crisis in 2008[63], which led many construction firms into bankruptcy in a relatively short time span. In 2012, 40% of invoices were paid within the due date and 50% of invoices were paid with a delay of up to 30 days in the construction sector[64]. Data from the UK construction and building sector illustrated that 65% of companies had liquidity problems due to the issue of late payment[65].

The causes for late payment are often linked to specifics of the sector. According to the Regulatory Impact Analysis of the Construction Contract Bill[66], the issue of delayed or non-payment in the construction industry can be attributed to a variety of factors, such as:

- The structure of the sector which involves long value chains of economic operators (e.g. client, consultant, main contractor, several sub-contractors, potentially many sub-sub-contractors, suppliers to all contractors and sub-contracts);
- The lack of credit;
- The sharp downturn in business levels in the sector over the past years and insolvency of many key players; and
- Increased competition for business as a result of a shrinking market leading to aggressively priced tender bids.

In addition, the industry culture seems to be more tolerant than in other industries. For example, stakeholders suggested that oral contracts in some cases "pay when paid clauses" (whereby contractors pay their sub-contractors only when they themselves have been paid), lack of clarity on payment dates and in some cases deliberate non-payment or slow-payment arrangements are more frequent in the construction sectors than in others which also has an important role on the perceived impact of late payment in the construction sector.

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[57] More information available at: Boletin de Morosidad y Finaciacion Empresarial, n. 2 (October 2014)
[58] More information available at: http://www.portalspozywczy.pl/technologie/wiadomosci/problemem-branzy-spozywczej-sa-opoznienia-w-platnosciach-generowane-przez-sieci-handlowe,99648.html
[59] December 2014, Pagamenti della Pubblica Amministrazione: un Quadro in Chiaroscuro, con piu luci che ombre
[60] CRIBIS D&B (2015), Studio Pagamenti
[61] Atradius (2015): Country Report on Austria available at: http://global.atradius.com/paymentpractice/list/paymentpractices.html
[62] Forfas (2013), Ireland's construction Sector: Outlook and strategic plan to 2015, available at http://www.forfas.ie/media/19072013-Irelands_Construction_Sector-Publication.pdf
[63] More information can be found at: http://www.fiec.eu/en/themes-72/late-payment.aspx
[64] CRIBIS D&B (2013)
[65] Intrum Justicia, White Paper
[66] Department of Public Expenditure and Reform (2011) : Summary of Regulatory Impact Analysis (RIA) Construction Contracts Bill 2010: http://www.per.gov.ie/wp-content/uploads/Regulatory-Impact-Analysis-of-the-Construction-Contract-Bill.pdf

7.5.2. Payments delays in PA2B transactions

The average payment delay in PA2B transactions decreased by 1.8 days in 2011-2014 (see Table below)[67]. At the same time, ten MS experienced an increase in payment delays from public authorities[68]. The greatest increase in delays from public authorities was seen in Spain, where delays increased by 13 days between 2011 and 2014[69].

Table 9. Average payment delay in B2B transaction 2010 -2014

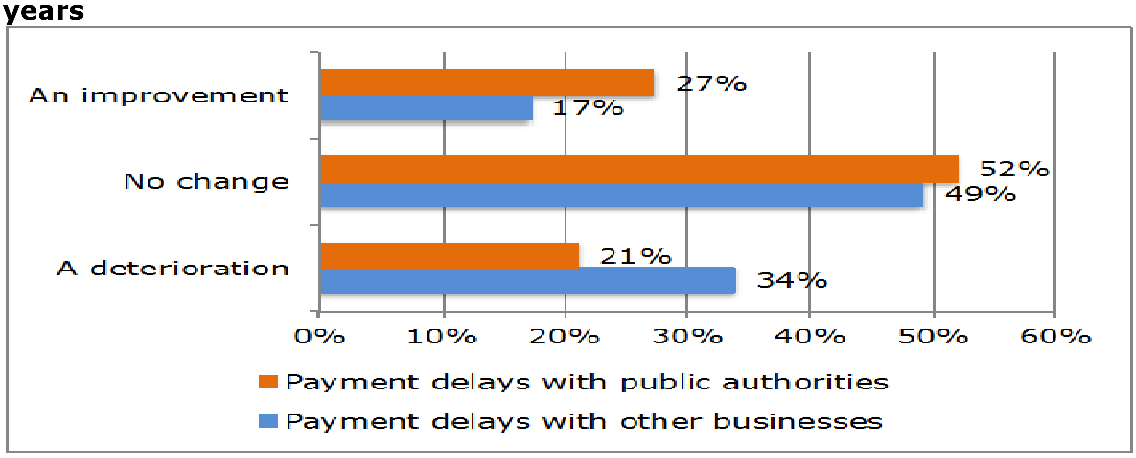
Average payment delay (EPI)				
	2011	**2012**	**2013**	**2014**
PA2B	29.7	29.4	28.2	27.9

Source: Intrum Justitia, EPI (2011-2014)

Almost half of the survey respondents have not noticed any change in payment delays in the last three years compared with only 1 in 3 who have seen an improvement.

At the same time, compared with the situation in B2B transactions, the regression indicates that **companies that work primarily with public authorities are less likely to have seen a deterioration in payment delays over the past 3 years** (odds ratio 0.72). This is confirmed by the survey results which show that 10% more companies noticed an improvement in PA2B transactions than in B2B transactions (see figure below).

Figure 13. Perceived change in average payment delays in the last three years



Source: Company survey

As mentioned in section 8.2.1, this result **could be linked to the fact that some MS have made additional efforts to combat late payment from public authorities**. For instance, in the Netherlands, Ireland and the UK, a prompt payment

[67] While this decrease seesm small on its own, it should be seen in the context of decreasing payment terms in PA2B transactions over the same period.

[68] Based on EPI - Bulgaria (+5), Croatia (+2), Cyprus (+1), Czech Republic (+1), Estonia (+1), Greece (+3), Latvia (+5), Romania (+1), Slovenia (+6), Spain (+13).

[69] Examining data on the average payment delays from public authorities between 2010 and 2014, it can be noticed that the greatest increase was in Greece where the average payment delay increased by 40 (65 to 105). This is likely due to the impact of the financial crisis on the cash position of Greek public authorities. However, in the same period, in parallel to an increase in payment delays there has also been a decrease of 40 days in the average payment terms. In other words, companies in Greece apply shorter payment terms but they need to wait longer for payments after the invoice is due.

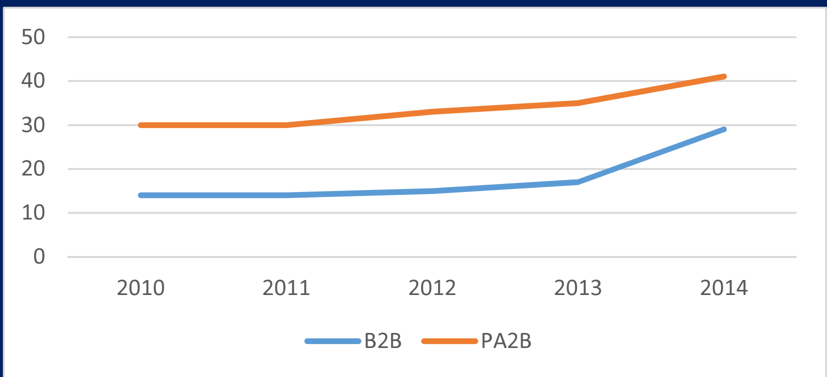
code in the public sector ensures that most payments in PA2B transactions are made on time.

Box 7. Case study: health sector

Payment delays in the healthcare sector seem to have increased more steeply than in the construction sector. For instance, in the region of Catalonia in **Spain**, the average payment duration in the health sector was 150 days following receipt of the invoice. In **Italy,** the health sector is perceived as one of the sectors most affected by late payment. According to data published by Farmaindustria, the association of the pharmaceutical industry, the average payment durations for the PA to pharmaceutical industries peaked at 262 days in September 2011. Payment durations have since decreased, dropping to 116 days in December 2014. However, in June 2015, average payment duration had increased again to 151 days[70]. Trends in payment durations in the health sector vary greatly across regions in Italy and the situation appears to be critical especially in the South of Italy, where payment terms for supplies in the health sector reached 794 days in 2014, as reported by Assobiomedica, the federation of companies that provide medical devices to private and public healthcare providers.

The average payment delay in 2014 was 41 days in PA2B transactions whereas for B2B transactions the delay was 29 days, compared to 14 days in 2010[71].

Average payment delay in the health care sector (in days)



Source: Adapted from European Payment Index White Paper 2014

Pan-European data show that 65% of companies active in the health sector experienced liquidity problems due to late payment. This could be explained that in addition to payment delays, companies active in the sector are subjected to longer payment terms. According to the Directive, public hospitals have twice as long to pay private contractors than other governmental bodies. Running costs in the health sector are generally large and according to stakeholders this makes it difficult to meet the 60 day rule. While health authorities in several Member States are already paying faster than 60 days after receiving invoices, stakeholders in some Member States argued that public hospitals struggle to shorten payment periods. The main reason for this are problems with liquidity.

Stakeholders across various MS agreed however that in public health care payment delays are traditionally higher. This view was shared amongst stakeholders in Ireland who stated that even though the payment duration within the central government have improved in recent years, the Irish Health Executive remains a slow payer.

It is also important to note that by law, companies operating in the sector are obliged to supply goods – as a good of necessity – which exacerbates payment issues. Even if companies are not being paid on time, they still supply the goods as it is an ethical as well as a reputational issue.

[70] More information available at: http://www.farmindustria.it/index.php?option=com_jdownloads&Itemid=0&view=finish&cid=101821&catid=68

[71] No data was available on the average payment period.

7.5.3. *Regional differences*

While payment durations vary importantly from one country to another, this can also be true for regions within a specific country. Two clear examples of such differences are Spain and Italy.

- **Spain** and its regions provide for an interesting and concrete example of differences in payment terms, in particular in relation to public bodies and autonomous communities. La Rioja (32 days), Galicia, Navarra and the Basque Country (all 38 days), are the communities where the public authorities pay fastest. On the contrary, Catalonia (138 days), Comunidad Valenciana (135 days) and Andalusia (132 days) are the slowest payers.
- In **Italy**, regional differences are also considerable and the situation appears to be more problematic in the South of the country and on the islands, compared with the rest of the country[72].

7.6. Wider impacts of the Directive

As the intervention logic in Chapter 6 sets out, the LPD aims to reduce payment periods, facilitate cross-border trade (by reducing the perceived risk of trading within the Single Market) and reduce business costs (by offering compensation and interest in case of late payment). This should reduce bankruptcy rates and eventually generate a positive impact on growth and employment, integration of the single market and improved financial stability and competitiveness of the EU economy.

The previous sections have shown that the Directive has only had a limited impact on payment behaviour to date. Given that it has only recently come into force, that it has not yet led to clear improvements in payment behaviour (sections 8.3 and 8.4) and that a large share of companies do not exercise their rights to compensation or interest under the Directive (section 8.2), it is unsurprising that measurable wider impacts have yet to materialise. In addition, even where there are improvements in relevant indicators, it is difficult to clearly attribute these to the Directive.

7.6.1. *Liquidity and cash flow*

One of the key objectives of the Late Payment Directive is to contribute to the improvement of financial performance (in terms of e.g. liquidity and cash flow) of European businesses and especially SMEs. This in turn should lead to enhanced competitiveness and reduced bankruptcy rates. There are many reasons why businesses struggle with cash flow and it is difficult to isolate the effectiveness of the Directive in improving liquidity.

Pan-European data show that **the number of companies with liquidity problems has risen**. Indeed, as much as 57% of businesses in Europe claim to have problems with liquidity due to late payment, an increase of 10% since 2011[73]. Furthermore, according to EOS surveys, half of respondents cited cash flow problems in the supply chain as the key reason for which they are paid late[74].

However, as industry stakeholders noted, **there are a large number of reasons why companies struggle with cash flow**, including the financial crisis, availability of trade credit or poor internal credit control. During the financial crisis, for example, access to credit has been more restricted than it was before and this has had a direct bearing on company liquidity. Access to finance is important, especially for SMEs, where it is most limited and expensive. Worsening access to credit is one of the main

[72] Intrum Iustitia, EPI, 2014
[73] More information can be found at: http://spectator.sme.sk/c/20046312/tackling-late-payments.html
[74] EOS Survey (2013): 'European Payment Practices' (hereinafter EOS 2013); EOS Survey (2014): European Payment Practices' (Hereinafter EOS 2014); EOS Survey (2015): 'European Payment Practices' (Hereinafter EOS 2015).

problems SMEs have had to solve during crisis. According to a survey by the Czech Chamber of Commerce, three quarters of firms had to scale down their activities due to a lack of finance and more than half postponed or cancelled planned investments.[75]

Liquidity and cash flow can be both a cause and a result of late payment. Indeed, as a result of limited liquidity, many SMEs are not able to pay their suppliers before they are paid by their customers. Additionally, a large proportion of companies are forced to pay invoices later because they are not able to generate sufficient cash-flow[76]. The regression analysis shows **that firms with PA2B customers as main clients are more likely to face difficulties paying suppliers** within contractually agreed terms. This indicates that payment delays in PA2B can have an impact along the wider supply chain.

As a result of the multiple factors that determine company liquidity, alongside rules on late payment, **internal credit control mechanisms are extremely important.** Creditors in commercial transactions, and particularly SMEs sometimes do not have appropriate credit management systems for preventing or managing late payment and might therefore encounter considerable problems in regards to funds recovery. Indeed, research conducted in the UK, shows that companies with strict credit control facilities are less likely to have a serious issue with late payment than companies with informal set-ups[77]. In fact, internal credit control is unstructured for many SMEs, which lack experience of dealing with late or bad payers. SMEs are also less likely to have an in-house credit controller dedicated to the recovery of outstanding funds. In fact, as many as 77% of SMEs in the UK have no procedures or individuals charged with the organised pursuit of bad debt recovery[78]. Creditors may also benefit from employing an invoice financing company to be in charge of cash flow management issues. Furthermore, new forms of electronic systems can have an important effect on reducing payment periods by providing an internal and automatic credit control (e.g. electronic commerce invoicing and collection system – EICS, FreeAgent, Basware Pay).

The **internal organisation and financial management practices of debtors (including public authorities) were mentioned by many stakeholders as important factors impacting late payment**. As shown in the table below, there are a number of ways in which payment surveillance can be implemented. Despite the increasing popularity of electronic invoicing manual checking remains a common method, especially for SMEs.

Table 10. Payment Surveillance Practices

[75] More information available at: http://www.visegrad.info/smes-and-innovative-businesses/factsheet/smes -in-v4-countries.html

[76] Ibid.

[77] The Guardian, http://www.theguardian.com/small-business-network/2014/may/12/business-credit-control-late-payments; Forum of Private Business, 2014, https://www.fpb.org/press/may-2014/late-payment-remains-concern-smes-despite-improving-economy-says-forum

[78] Satago, more information available at: http://www.cashprotectionagency.co.uk/chasing-bad-debts-too-awkward-for-1-in-3-smes.html

Payment Surveillance Practices						
	Manual checking (weekly)	Manual checking (monthly)	Automated system identifies when invoices are due	Automated system which prepares and sends invoices	When time is available	Other
>250 staff	3.2%	1.6%	61.9%	6.3%	0.0%	27.0%
<250 staff	10.7%	9.4%	45.3%	6.9%	1.9%	25.8%

Source: European Commission (2009): Impact assessment, COM (2009)126 final

While the number of companies with liquidity problems has risen since the Directive came into force this can be due to the financial crisis, availability of trade credit or poor internal credit control. This has been particularly important during the financial crisis. Given the challenging economic environment and the fact the LPD was implemented only recently, it is unsurprising that improvements in liquidity and cash flow of EU companies are yet to be seen.

7.6.2. Cross border transactions

One of the key objectives of the Directive is to facilitate the smooth functioning and the completion of the internal market through setting a common legal framework and reducing uncertainty in cross-border commercial transaction. Late payment may have a negative impact on cross-border trade as companies may be reluctant to do business with public authorities and businesses in other Member States due to the uncertainty in receiving payment.

However, **little evidence was found so far on the effectiveness of the Directive in terms of reducing uncertainty in cross-border transactions**. The regression results show that the share of turnover generated outside the domestic market is insignificant across all models run for this study. Furthermore, interviews with stakeholders across all MS found that late payment is not perceived as a major obstacle to cross-border trade. Rather, it is the economic crisis which has made commercial transactions with businesses from Southern MS appear more risky. As a result, companies sometimes ask for advanced payments to overcome the risk of late payment (or no payment in the worst cases).

7.7. Unintended consequences of the Directive

Across the consulted stakeholders in the Member States, there was **little evidence of any unintended consequences of the Directive, whether positive or negative**. In some countries such as Finland and Slovenia, which have traditionally had a good prompt payment culture, the Directive is believed to have normalised longer payment periods. Stakeholders in these countries argued that the Directive may have given larger companies more leverage to demand longer payment periods.

National experts mentioned however, that due to the short time period since the implementation of the Directive, there has been very limited time to measure effects, and impacts and unintended consequences may not yet have been identified.

8. Relevance of the Directive

The second evaluation question to be addressed relates to the relevance of the Directive. Broadly, relevance refers to the extent to which the objectives of the Directive address an actual need for policy intervention. In this study, relevance is measured in terms of the perceived importance of the problem of late payments for businesses.

Box 8 - Key points of this chapter

Late payment remains a very prevalent and important issue for companies across Europe.

While late payment experiences vary significantly across countries, industry stakeholders across all sectors agree that late payment remains an important issue after adoption of the Directive.

The results of the Impact Assessment recommended a legislative solution in the form of a recast of the former late payment Directive (2000/35), with stricter provisions, to tackle the ongoing issue of late payment in commercial transactions.

In terms of the Directive itself, some concepts should be clarified in order to make it a more relevant tool to combat late payment.

Given the multi-faceted nature of the problem, there can be no one size fits all legislative solution and the LPD can only be one measure among many in the fight against late payment.

8.1. Relevance of the problem of late payment

First of all, as section 6 and 7 have shown, late payments remain very prevalent across the EU. **78% of companies in the survey sample for this study have experienced late payment in the last three years**. Desk research confirms that while the average payment duration in both PA2B and B2B transactions has decreased since the implementation of the Directive, improvements can still be made, particularly in the public domain where average payment duration remains well above the maximum payment limit provided by the Directive.

Second, as section 6 has shown, **when late payment does occur, its impact can be devastating for the creditor company**. Late payment can lead to insolvencies and job losses and it is a particularly important issue for smaller companies.

Third, **the regression analysis carried out for this study demonstrates the relative importance of different drivers of late payments.** As the logistic regression results show, in addition to the company's age, its share of turnover from sales in the domestic market correlates with the probability of experiencing late payment (although the magnitude of this effect is very limited). However, experiences of late payment do not depend on the customer base of the company (e.g. PA2B only, B2B only or a mix of both)[79] and there are no statistically significant differences in the likelihood of experiencing late payments between sectors.[80]

[79] However, companies with public authorities as their main clients are less likely to have experienced a deterioration of average payment delays than other firms.

[80] With the exception of financial services and agriculture which have a lower likelihood of late payments.

Furthermore, as section 6.3 has already shown, **country variation in average payment duration is significant** with some southern European Member States experiencing payment delays well above the EU average (Italy, Spain, Greece, Portugal, Cyprus) compared with Nordic countries. Indeed, controlling for all variables included in the regression model, the odds for Greek companies of experiencing late payment are 30 times larger than for companies in the reference group. Other countries where the country specific effect was significant include many of the East European countries.

Industry stakeholders across all sectors agreed that late payment remains an important issue after adoption of the Directive. Industry associations in *inter alia* Greece, Portugal, Spain, Italy and Romania suggested that the volume of outstanding debt from public authorities has the biggest impact on companies, whereas business representatives in *inter alia* Belgium, Ireland, the Netherlands, Poland and the UK argued that the most significant problem related to B2B transactions. However, stakeholders across all countries noted that there is a need for a coordinated approach towards late payment as EU businesses need legislative support in creating a well-functioning market.

It should be noted that the EU does not necessarily have the power to act in some aspects related to late payment. As indicated in the Commission Impact Assessment[81] certain problems related to the structure of national or regional markets should be dealt with by Member States while, as regards the business cycle, most economic policy levers are in the hands of the Member States so that no overall solution for all problem causes can be found at EU level. The European Commission noted that well established national arrangements and the organisation and working of Member States' legal systems should be respected but the form of Community action should be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement.

8.2. Relevance of the provisions of the Directive

Evidence collected through interviews with industry stakeholders shows that unclear definitions of key concepts: "grossly unfair" and "payment duration" are an obstacle to the effective application of the Directive. Clearer definitions of these concepts would make the Directive even more relevant. Additionally, compensation and interest are seen as too limited and not proportional to the claims at stake.

Firstly, across various Member States stakeholders found that **the definition of what constitutes *grossly unfair* was ambiguous and left too much scope for interpretation**. Industry stakeholders also noted that smaller companies fear challenging unfair terms as they fear being removed from the supplier list. In the UK, in 2015, the Department for Business, Innovation and Skills issued a consultation on the definition of grossly unfair. A vast majority of respondents, including those representing SMEs, stated that late payment and unfair terms were an issue[82]. Moreover, 75% of respondents indicated that they had noticed an increase in the use of "grossly unfair" terms and practices. Respondents also provided some examples of the term used in practice which is summarised in the box below.

[81] European Commission (2009) : Impact assessment: Directive of the European Parliament and the Council on Combating Late Payment, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC03 15&from=EN

[82] Department for Business, Innovation& Skills - BIS (2015): Challenging Grossly Unfair Payment Terms And Practices, Summary of Responses, June 2015

Box 9 - UK examples of grossly unfair terms

A variety of terms considered as grossly unfair, many of which are sector specific:

- Lower interest rates for late payments
- Excessively long payment terms
- Flat fees/"pay to stay"
- Discounts – either for prompt payment or applied retrospectively ("balance sheet bonuses")
- Making a (sub)contractor responsible for, or unable to challenge, a decision that was made as part of a wider project or further up the supply chain
- Clauses which allow the payer/client to withhold or delay payment:
    - By imposing the right to withhold money for losses that might occur in the future
    - By setting off the money due on one contract for alleged breaches of another
    - By exploiting complexities of the Construction Act payment provisions to prevent payments from becoming due
    - By including provisions that make the payer the sole arbiter of whether the required quality has been achieved, allowing arbitrary deductions from the value of work performed or resulting in delays in payments
    - By imposing administrative conditions, after work has started, as a precedent to payment
    - - By imposing impracticable conditions precedent to the right to be paid for changes or extras

Some other grossly unfair terms provided by respondents included:

- Exclusive remedy provisions – SME documents may exclude the SME from utilising any of the remedies available in general law and limit the SME only to those remedies expressed within the contract
- Pay-when-paid third party insolvency – the SME is asked to bear the financial brunt of a third party upstream becoming insolvent, when the SME has no visibility upstream to monitor the risk of that party becoming insolvent and its client is best placed to manage that risk

Source: BIS (2015): Challenging Grossly Unfair Payment Terms And Practices

Secondly, national industry stakeholders as well as European industry associations commented on the **lack of clarity of the Directive on when the calculation of a payment term starts**. Although, the Directive provides definitions of time limits, these are not sufficiently detailed. There are different practices across different sectors and across the EU. In some instances, the payment term is calculated from the issue of an invoice, whereas in other cases payment term start from the receipt of goods. The stakeholders consulted maintained that it would help to have more clarity in the Directive in regards to this issue.

Table 11. Time limits in the Directive

Time limits in the Directive
Article 3 and Article 4 refer to the following time limits: - (i) 30 calendar days following the date of receipt by the debtor of the invoice or an equivalent request for payment; - (ii) where the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 calendar days after the date of receipt of the goods or services; - (iii) where the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 calendar days after the date of the receipt of the goods or services; - (iv) where a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by statute or in the contract and if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place, 30 calendar days after that date.

Source: Late Payment Directive

Third, **recovery procedures for unchallenged claims vary across Member States**. The process of debt recovery does not fall within EU competence which is limited to judicial cooperation in civil matters with cross border implications. However the Directive does state that MS shall ensure that an enforceable title can be obtained within 90 calendar days of the lodging of the creditor's action or application to a court, provided that the debt is not disputed (Article 10)[83]. In some Member States similar fast track procedures were, in fact, in place prior to the implementation of the Directive (e.g. Sweden, Denmark, and Spain) though companies are often not aware of their existence.

However there are **concerns about the effectiveness of Article 10 in some countries**. Indeed, stakeholders in Spain, Greece, the Netherlands, Bulgaria, and France suggested that fast-track procedures are limited to a maximum sum, that the time required exceeds 90 days, and that they are too costly in proportion to the recovered debt. For example, a Spanish recovery procedure for unchallenged claims called "*Procedimiento Monitorio*", according to stakeholders, rarely complies with the condition that the procedure should take no longer than 90 calendar days from the lodging of the creditor's application at the court or other competent authority. At the same time, a recovery procedure for unchallenged claims in Sweden is well regarded by the industry, it applies irrespective of the amount of the debt, and more than 82% of cases are concluded within 3 months[84].

Section 7 has shown that the awareness of the right to claim compensation and interest in case of late payment is high, at the same time, these tools are widely seen as **too limited and not proportional to the claims at stake.** While various interviewees mentioned that the principle of compensation is positive, in the vast majority of cases the amount of €40[85] is not proportional to the damages suffered due to late payment and an increase in the minimum compensation should be considered, especially given the risk of damaging commercial relationships.

Of course, the compensation set in the Directive provides only a minimum and **companies or national authorities can specify higher amounts** in their contracts or in national law. For instance, in Belgium, one industry association mentioned that companies often specify their own interest rate and compensation fees in the general conditions and that these tend to be higher than the minima prescribed in the Directive (generally 12% interest and 10% for the compensation fee)[86]

Together, the findings of desk research, company survey and interviews show that late payment remains an important issue after the adoption of the Directive and stakeholders underlined that there is a strong need for continued policy intervention. Indeed, legislation provides economic operators with support in their effort to promote timely payment of invoices. However, the results confirm that the causes of late payment are quite diverse, with no one size fits all solution. Put differently, the LPD – though it addresses an issue that continues to be very relevant, can only provide part of the solution to the problem of late payments.

[83] Directive 2011/7/EU, Article 10

[84] SOU 2012:11, available at: http://www.regeringen.se/contentassets/ddd03505d8c140a7b253fa9a8b94cae9/snabb are-betalningar-hela-dokumentet-sou-201211

[85] Or equivalent in MS outside Eurozone

[86] Furthermore, companies in some Member States (Germany, Netherlands, and Luxembourg) use discounts for timely payment as an alternative to compensation for late payment. For instance, in Luxembourg, companies can offer clients a 2% discount when they pay within 15 days and this system is reported to work well by one business association.

9. Efficiency of the Directive

The third evaluation dimension relates to the efficiency of the Directive. Efficiency is measured in terms of:

- The extent to which regulatory costs are proportionate to the benefits achieved
- The extent to which regulatory costs (including administrative burden) have been reduced through the implementation of the Directive
- The aspects of the Directive that are the most efficient or inefficient, especially in terms of resources that are mobilised by stakeholders during the different phases of the process
- The administrative and reporting burdens on stakeholders.

There are four types of costs that need to be considered: costs to business in terms of reporting and administrative burden, costs to public authorities related to the transposition and implementation of the Directive, costs to the public purse associated with voluntary measures that are linked to the Directive, and costs to business of any activities that result directly from the Directive (i.e. the exercise of rights granted by the Directive).[87]

Box 10 - Key points of this chapter

There are no administrative or reporting burdens resulting directly from the Directive and companies consider the LPD to be efficient.

There are also no regulatory costs stemming from the transposition of the Directive

All costs to public authorities as a result of the Directive are one-off and, on the whole, they are considered marginal by the authorities themselves

Set against these negligible costs, the Directive has the potential to deliver significant benefits, estimated at up to EUR 158m for each one-day reduction in payment delays.

9.1. Costs for businesses as a result of the Directive

There are no administrative or reporting burdens resulting directly from the Directive. Indeed, the only direct cost to business as a result of the Directive relates to a one-off requirement for businesses having to familiarise themselves with the legislation. This view (of negligible costs to business) was largely shared among industry stakeholders: the Directive has not resulted in any specific additional requirement that companies need to adjust to.

The Directive provides two important legal tools that can be applied by companies in case of late payment, i.e. the possibility of claiming interest and a compensation fee for recovery costs. In line with the fact that there are no costs directly associated with them, **companies consider these provisions as generally quite efficient.**

[87] It should be noted that consulted stakeholders were not able to provide any actual figures on costs. A detailed desk research also did not result in any quantitative estimates. As a result, this section is largely based on qualitative data.

Rather than the provisions of the Directive, **the costs of late payment for companies are linked to chasing late payers, taking cases to ADR or court or external debt recovery.** These costs fall outside the scope of the current Directive, they vary widely depending on national judicial procedures and processes and they were pertinent before the Directive came to force.[88]. Nevertheless, for the sake of completeness, the box below briefly discusses each of these follow-on costs for businesses that exercise the rights conferred unto them by the Directive.

Box 11 - Cost of follow-on actions in case of late payment

Chasing late payment

First the costs of chasing late payments include administrative burden generated through follow up actions such as sending and receiving reminder invoices or using external help in recovery of unpaid debt. Evidence suggests that smaller firms typically spend the longest chasing late payments; around 1.65 hours per day[89]. In the UK, prior to the implementation of the Directive, it was estimated that the total costs of chasing late payment in £ 107 million (€145 million) per year. The UK authorities estimated that the cost of chasing late payment is approximately £5000 per small business. According to them only 2.2% of businesses are paid late and go on to chase this late payment using legislation.

Debt recovery

Another type of costs that is associated with late payment is the cost of debt recovery. Again, although the consultation shows that this cost is important for stakeholders, it falls outside the scope of the Directive.

For smaller sums, companies tend to avoid involving external legal advice or debt collection agencies because of the potential costs of these procedures. When the sums are low, companies aim to solve the issue through dialogue and resort to legal advice– internally or externally – only when amicable solutions fail. In this context, stakeholders mentioned the Small Claims Procedure as an efficient method of recovering unpaid invoices.

ADR and court procedures

Interviews show that costs linked to ADRs and court procedures are important for the companies. Legal proceedings and the pace of proceedings are seen as a prohibitive in relation to the amounts that can often be claimed. Although these costs cannot be reduced through the Directive, facilitation of a less time consuming claim system would help stakeholders use the Directive and exercise their rights. This view was largely shared throughout the interviews - a support structure e.g. an easy way of recovering late payment, either through ADR, the court system or both, is needed, in particular for SMEs.

9.2. Costs to public authorities

There are no regulatory costs stemming from the transposition of the Directive, notably related to Article 12.1. The EU impact assessment carried out in view of the adoption of the Directive did not mention any specific costs in regards to public authorities[90]. Consulted public authorities shared the view that the Directive's transposition was a standard legislative procedure, and as such business-as-usual. None of the consulted experts could provide any data on costs, and desk research in the UK[91] and Denmark[92], where national level impact assessments were undertaken, showed that no regulatory costs were identified. This view was reinforced during interviews with public authorities.

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[88] Indeed, to the extent that the Directive succeeds in combating late payment, these costs could in fact decrease as a result of the legislation

[89] BIS (2012): Impact Assessment: Directive of the European Parliament and the Council on Combating Late Payment available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32706/12-1132-impact-directive-on-combating-late-payment.pdf

[90] Impact assessment (2009): Directive of the European Parliament and the Council on Combating Late Payment, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN

[91] BIS (2012): Impact Assessment: Directive of the European Parliament and the Council on Combating Late Payment

[92] DK Ministry of Justice(2012): Gennemførelse af direktivet om bekæmpelse af forsinket betaling i handelstransaktioner Report 1535, available at: http://jm.schultzboghandel.dk/upload/microsites/jm/ebooks/bet1535/pdf/bet1535.pdf

Costs for public authorities, if any, relate to **awareness raising, information campaigns and electronic invoicing** (i.e. Article 8 of the Directive on prompt payment codes, awareness raising, etc.). In particular it is worth mentioning potential costs in relation to the introduction of electronic invoices (e.g. in Austria and Italy). While there might be an initial cost for the introduction of such a system, including potential training, technical support or extra staff, in the long term, this should lead to improved organisation and more timely management of invoices. Furthermore, in some countries, electronic invoicing was already in place before the Directive was transposed into national law (i.e. Sweden).

Generally, however **all costs to public authorities as a result of the Directive are one-off and, on the whole, they are considered marginal by the authorities themselves**. In addition, because these measures are voluntary, it is ultimately up to each country to decide whether to invest in any measures related to Article 8 or not and hence it is not possible to attribute all resulting costs directly to the Directive.

9.3. Comparing costs and (potential) benefits

Compared with these negligible costs, the Directive could lead to substantial benefits even if there are only moderate reductions in average late payments. In its Impact Assessment accompanying the Late Payment Directive, the Commission estimated that a total of EUR 1,864 billion in company turnover are paid late each year.[93] Assuming that companies need to finance the entirety of these late payments using overdraft facilities offered by their financial institutions, this would lead to a total cost of about EUR 158 million per day of late payment.[94]

Put differently, **each day of reduction in late payment that the Directive delivers, saves European companies EUR 158 million in finance costs that they would otherwise have incurred**. It should be noted that these estimates are based on a large number of assumptions, they need to be interpreted with caution and they should only be seen as an indication of the order of magnitude of costs related to late payments.

[93] See http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN. Actually the IA does not specify whether this is an annual cost but it is based on annual Eurostat turnover data which suggests that the figure should be seen as annual.

[94] See http://sdw.ecb.europa.eu/reports.do?node=1000002883. The interest rate used in this calculation is the December 2014 figure for « revolving loans and overdrafts, convenience and extended credit card credit ».

10. Coherence and Complementarity of the Directive

The fourth evaluation dimension relates to coherence and complementarity between the Directive and other interventions at EU and international level.

Box 12 - Key points of this chapter

There is no evidence of contradictions between the Directive and any other EU relevant actions for combating late payment There are a number of EU actions that complement the objectives of the Directive such as the European Small Claims Procedure. In the context of cross-border transactions, there could be some overlap between the Directive (Article 10) and the European Payment Order Procedure

There is **no evidence of contradictions between the Directive and any other EU relevant actions for combating late payment**. The general objectives of the Directive are to improve European competitiveness, and to facilitate the functioning of the internal market through the elimination of barriers related to cross-border commercial transactions. This is **coherent with a number of EU initiatives** such as the Lisbon Partnership for Growth and Jobs, the Small Business Act, and the European Economic Recovery Plan. However, as a result of compliance with the terms provided by the Directive, some Member States could have had problems with the Stability and Growth Pact (SGP).

At the same time, **there are a number of EU actions that complement the objectives of the Directive**. For example, within the context of providing ways for recovering debt, the European Small Claims procedure was mentioned as of particular importance, also in cross border disputes. Additionally, Member States implemented a number of voluntary actions, the importance of which was highlighted by industry, especially with regards to awareness and the commitment to prompt payment by central government (see Section 6).

The overarching purpose of the Directive is to improve business cash flow in EU Member States, and to facilitate the functioning of the internal market through the elimination of barriers related to cross-border commercial transactions. Another important objective is to contribute to the development and improvement of the Single Market. More specifically, the Directive on late payment in commercial transactions contributed to the achievement of goals enshrined in the renewed **"Lisbon Partnership for Growth and Jobs"**. Moreover, timely payment in commercial transactions is included in the **"Small Business Act"** (SBA) as one of ten principles to guide the conception and implementation of policies both at EU and Member State levels. These are essential to bring added value at EU level, create a level playing field for SMEs and improve the legal and administrative environment throughout the EU. The Directive also contributes to the implementation of **the European Economic Recovery Plan** by providing an important impetus to overcome the current economic crisis. The crucial role of the Directive was recently noted in the "**Regulatory Fitness and Performance Programme (REFIT)**", where it is considered as one of the initiatives to simplify EU law and to reduce regulatory costs.

On the other hand, within the context of the **Stability and Growth Pact** (SGP) the requirement for public authorities to pay within 30 (or maximum 60) calendar days could lead to deficit or public debt issues in violation of the SGP. A number of industry representatives in e.g. Italy argued that it is possible that some public authorities deliberately delayed payment to comply with deficit rules. At the same time, the Italian government implemented Decreto-Legge 66/2014 stressing the importance of paying on time. For example, PAs are obliged to monitor their payments and if their delay on average goes beyond 60 days, they are not allowed to hire new staff the following year.

Debt recovery

The process of debt recovery does not fall within EU competence which is limited to judicial cooperation in civil matters with cross border implications. In the context of late payment, three other elements at EU level complement the efforts of the LPD:

- European Enforcement Order,
- European Payment Order, and
- European Small Claims Procedure

The Late Payment Directive, notably Article 10 should be without prejudice to the provisions of Regulation (EC) No 1896/2006 establishing the European order for payment[95]. However, **in the context of cross-border transactions, there could be some overlap between the Directive (Article 10) and the European Small Claims Procedure.** The ESCP is available to litigants as an alternative to the procedures existing under the laws of the Member States. The procedure can be used for claims up to the value of EUR 2,000. A judgment given in the European Small Claims Procedure is recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. The only reason that enforcement in another Member State can be refused is if it is irreconcilable with another judgment in the other Member State between the same parties. Enforcement takes place in accordance with the national rules and procedures of the Member State where the judgment is being enforced.

SME representatives in Ireland claimed that the European Small Claims Procedure (ESCP) can be of particular importance to companies. The interviewees noted that even though it is relatively quick to recover debts through this procedure, its limitation lies in a low maximum value of claim (EUR 2,000). The limited statistical data available indicates that very few ESCP cases are being filed (around 100 per Member State each year)[96]. A recent proposal for amending the regulation recommended raising the maximum allowable claim to EUR 10,000 to improve the effectiveness of the ESCP.[97]

In addition to ESCP, 21 EU Member States have small claim procedures in place, although these national systems vary from one country to another, both in terms of the actual procedures as well in terms of the maximum debt amounts that they consider[98]. For instance, in Germany, small claims procedures can be used for sums not exceeding EUR 600, while in the Netherlands the sum cannot exceed EUR 25,000.

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[95] The European order for payment is recognised and enforced in all EU countries except Denmark.

[96] European Parliament (2014): European Small Claims Procedure, Legal analysis of the Commission's proposal to remedy weaknesses in the current system

[97] European Commission (2013): Proposal amending the European Small Claims Procedure, available at: http:// www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0403%28COD%29&l=en

[98] European Commission (2013): Assessment of the socio-economic impacts of the policy options for the future of the European Small Claim Procedure

Awareness raising

Apart from procedures for recovering debt, **two EU awareness raising actions also complemented the objectives of the Directive**.

First, in 2012, the European Commission launched an **"Information campaign"** to increase awareness amongst European stakeholders, in particular SMEs, and within public authorities about the rights conferred by Directive 2011/7/EU. This campaign was organised in the 28 Member States and it ran from October 2012 to July 2014. Organised events provided a forum for the exchange of best practices to help businesses tackle late payment issues. Speakers involved *inter alia* the national authority in charge of the transposition of the Directive, national and regional experts, credit managers and debt collectors and members of the Enterprise Europe Network (EEN). Invitations to the events were sent to organisations representing SMEs, policy makers from the national or regional authorities, chambers of commerce, business associations, entrepreneurs, economic operators, legal professions and the judiciary.

Second, the European Commission organised a **"Pilot project on the rapid and efficient enforcement of outstanding claims by SMEs operating across borders"**. The general objective of the project was to support SMEs operating cross-border by facilitating cross-border debt recovery. The aim was to improve access to information on claim management instruments and options. In addition, the initiative aimed to improve the use, understanding and awareness of the available legal instruments. The project included the following actions:

- The publication of a practice-based guide on claims management and on the application of existing legal instruments for cross-border enforcement of claims.
- The organisation of seminars in the 28 Member States to provide SMEs with information on credit and claims management and on the available legal instruments. The seminars took place from March 2013 to June 2014.
- The preparation of teaching modules, the content of which can be integrated into advanced vocational training and the advanced training of young entrepreneurs.

Invitations to the events were sent to organisations representing SMEs, chambers of commerce, business associations, entrepreneurs, economic operators, legal professions and the judiciary.

11. EU ADDED VALUE OF THE DIRECTIVE

This section introduces evidence from the stakeholder consultation regarding the EU added value of the Directive. This section explores the following dimensions of EAV:

- whether the Directive's objectives could have been achieved without EU intervention; and
- what would be the most likely consequences of stopping or repealing this Directive.

Box 13 - Key points of this chapter

There is a general consensus among industry and national authorities that the Directive generates significant added value. Despite limited changes in payment behaviour that are directly attributable to the Directive, the added value of the LPD is to ensure that the issue of late payment remains at the top of the political agenda in Europe. The Directive has also harmonised practices and provided a level playing field for companies across the Single Market. Furthermore, public authorities see added value in monitoring changes in payment duration and further cooperation among MS to exchange best practices. None of the stakeholders requested or suggested the repeal of the Directive.

There is a general consensus among industry and national authorities that the Directive generates significant added value. National authorities and the industry representatives across three sectors (construction, health care and food) suggest that the impacts of the Directive would have been unlikely to be achieved by Member States individually. Indeed, stakeholders agreed that by introducing payment terms for both B2B and PA2B transactions and the right to claim interest and compensation, the **Directive harmonised practices and provided a level playing field for companies across the EU**. Despite a few national derogations, uniformity in payment terms was enhanced to the extent possible across the Single Market.

In addition to the legislative provisions themselves, **the added value of the Directive is to ensure that the issue of late payment remains at the top of the political agenda in Europe**. While stakeholders across sectors (*inter alia* Ireland, Spain, Poland, the UK) noted that the problem itself cannot be resolved by a legislative intervention only, the LPD **sends out a strong message that the problem of late payments is being investigated and addressed**. Indeed, the mere existence of EU legislation might even have an impact on payment culture in some countries, where the problem of late payment still exists.

Finally, public authorities see added value in the monitoring of changes in payment duration. According to them, a common measurement methodology would further enhance value added, as progress could be measured in a more uniform way within and across MS. A better understanding of the evolution of payment delays what works and what does not, in turn, enhances **cooperation between MS** and the possibility to exchange best practices. For instance, the Directive introduced a possibility for MS to have voluntary measures, and there is an interest among all MS in exchanging information regarding the effectiveness of these measures.

None of the stakeholders requested or suggested the repeal of the Directive. Such a move would indeed risk greater fragmentation of the internal market and a move toward national payment terms in B2B and PA2B transactions. The reasons for this are twofold:

- Some MS could value freedom to contract above uniform payment rules thus potentially eliminating regulation of payment terms. This would lead to divergent and possibly longer payment terms across the EU.
- Responses to the current economic crisis and the pressures that the national budget is exposed to could introduce longer payment terms in PA2B transactions. This could negatively impact the internal market as enterprises across the EU would suffer different (and longer) payment terms.

Furthermore, if the Directive was repealed, it is likely that, over time, the application of the statutory interest rate for late payment would vary within the EU. The Directive guarantees that interest can be charged. However, charging interest for late payment is only a possibility and not an obligation under the Directive. It is therefore important that this possibility exists throughout the EU to give creditors useful tools to encourage timely payment for goods and services.

12. Conclusions

Context

Almost three out of four (78%) companies in Europe have experienced late payments in the last three years with SMEs likely to be disproportionately affected by this phenomenon. Indeed, late payment can lead to insolvency and job losses, and it can negatively affect public procurement and cross-border trade.

The drivers of late payment behaviour are multi-faceted with the most significant aspects being business culture/norms, external economic conditions (e.g. the crisis) and power imbalances in the market.

State of Play

In addition to the LPD, which sets out minimum EU-level measures, a number of MS have introduced stricter provisions and promoted complementary initiatives at national level to combat late payment. Among these, prompt payment codes and specific sector initiatives are seen as particularly promising.

At the same time, thirteen infringement procedures were launched so far by the Commission against MS in the context of the LPD.

Effectiveness

Almost two thirds of companies are aware of the (general) rules regulating late payments and 86% of companies know about their right to claim compensation and/or interest. SMEs and younger firms are less likely to be aware of the rules regulating late payment.

Awareness of the rules, on its own, does not prevent companies from experiencing late payments. Indeed, four out of five companies that experienced a late payment in the last three years were aware of the possibility to claim compensation and/or interest. However, firms that are aware of the rules related to late payment are less likely to have experienced a deterioration of average payment delays over the last three years compared to companies that are not aware of the rules.

Despite relatively high awareness levels, usage of the provisions of the Directive is not widespread. 60% of respondents indicated that they never exercise their rights to claim interest and/or compensation fees for recovery costs. SMEs are much less likely to exercise their rights under the Directive than larger companies.

At the same time, in countries with a shorter average payment duration, companies are more likely to always exercise their rights. Thus, in this sense, the Directive seems to be a more effective instrument for companies in countries where the problem of late payment is less severe.

The main reason for failing to exercise their rights under the Directive is the fear, among creditor firms, of damaging good business relationships. Lack of efficient remedy procedures is another barrier preventing companies from exercising their rights to compensation and interest.

Payment duration has decreased by a small extent in recent years in both PA2B and B2B transactions but very significant differences remain across countries. MS with above average payment duration in PA2B transactions also tend to have above average payment durations in B2B transactions.

While it is difficult to isolate the reasons for this progress, there is little evidence that the Directive has had an impact on payment behaviour and the practice of late payment.

For B2B transactions, average payment duration in the European Union has indeed decreased from 56 days in 2011 to 47 days in 2014. In terms of average payment delays, there has only been a small decrease in B2B transactions (from 20.5 days in 2011 to 19.3 days in 2014). At the same time, there continues to be significant cross country variation in both average payment duration and delays.

Ninety percent of companies apply payment terms of 60 days or less as required by the Directive. In addition, more than two thirds (70%) of companies indicate that their payment terms do not exceed 30 days. Country and sector affiliation are more important drivers of payment terms than other company characteristics or awareness of the rules around late payment. Companies in manufacturing and construction have payment terms that are on average more than 10 days longer than companies in other sectors.

As for PA2B transactions, average payment duration in the EU has decreased (from 65 days in 2011 to 58 days in 2014), but it stays well beyond the terms set out by the Directive and 10 MS actually experienced an increase in payment delays from public authorities. At the same time, companies that work primarily with public authorities are less likely to have seen a deterioration in payment delays over the past three years than those that have primarily other businesses as their customers.

Country and sector effects are more important drivers of payment terms than any other company characteristics or awareness of the rules around late payment.

Rather than legislation, national business culture, economic conditions and power imbalances are the driving factors for payment behaviour.

There is not yet evidence on the effectiveness of the Directive in terms of reducing uncertainty in cross-border transactions.

Relevance

Despite differences in payment behaviour across countries, industry stakeholders across all sectors agree that late payment remains a highly relevant issue.

In 2009, the results of the Impact Assessment recommended a legislative solution in the form of a recast of the former late payment Directive (2000/35), with stricter provisions, to tackle the ongoing issue of late payment in commercial transactions.

This study shows that, in order to improve the relevance of the current Directive as a tool to combat late payment, a number of aspects could be clarified within the legislation itself.

First, the definition of what constitutes *grossly unfair* is seen as ambiguous with too much scope for interpretation.

Second, there is a lack of clarity regarding when the calculation of a payment term starts.

There are also concerns regarding recovery procedures which vary across MS.

Finally, given the multi-faceted nature of the problem, there can be no one size fits all legislative solution and the LPD can only be one measure among many in the fight against late payment.

Efficiency

There are no administrative or reporting burdens resulting directly from the Directive. Indeed, the only direct cost to businesses as a result of the Directive relates to a one-off requirement for businesses having to familiarise themselves with the legislation.

There are also no regulatory costs stemming from the transposition of the Directive. All costs to public authorities as a result of the Directive are one-off and, on the whole, they are considered marginal by the authorities themselves.

Set against these negligible costs, the Directive has the potential to deliver significant benefits, estimated at up to EUR 158 million for each one-day reduction in payment delays.

Coherence and complementarity

There is no evidence of contradictions between the Directive and any other EU relevant actions for combating late payment

There are a number of EU actions that complement the objectives of the Directive such as the European Small Claims Procedure.

However, in the context of cross-border transactions, there could be some overlap between the Directive (Article 10) and the European Payment Order Procedure.

EU Added Value

There is a general consensus among industry and national authorities that the Directive generates significant added value. National authorities and industry suggest that the impacts of the Directive would have been unlikely to be achieved by Member States individually.

Despite a few national derogations, the added value lies in the fact that - to the extent possible – there is now greater uniformity in payment terms across the Single Market.

While the average payment duration in PA2B transactions still exceeds the limits set out by the Directive, EU added value lies in ensuring the problem of late payment is high on the political agenda, sending a message to creditors that the problem is being addressed.

Related to this, public authorities also highlighted the added value of the Directive in monitoring improvements in payment duration. A common measurement methodology would enhance this value added. Finally, though it does not solve the problem on its own, the Directive can provide an anchor point for the introduction of effective accompanying measures at national or sectoral level and for an exchange of good practices between Member States.

13. Recommendations

Based on the above, the study team proposes the following set of recommendations for the European Commission.

The study has identified a number of specific areas where there could be room for improvement without changing the fundamental characteristics of the current legislation. We differentiate between two types of recommendations: changes related directly to the Directive itself and accompanying measures.

Recommendations related to the Directive itself

1. **Clarifying certain aspects of the Directive**. This includes in particular the following: "grossly unfair" and the calculation of contractual terms. Across various Member States stakeholders found that the definition of what constitutes grossly unfair was ambiguous and left too much scope for interpretation. Similarly, there is lack of clarity of the Directive on when the calculation of a payment term starts. There are different practices across different sectors and across the EU. In some instances, the payment term is calculated from the issue of an invoice, whereas in other cases payment term start from the receipt of goods. These aspects could be clarified either in a revised text of the Directive or alternatively, through a guidance document published by the European Commission explaining how these elements should be interpreted.

2. **Assessment of the implementation of Article 10 in all Member States**. The Directive states that that MS shall ensure that an enforceable title can be obtained within 90 calendar days of the lodging of the creditor's action or application to a court, provided that the debt is not disputed. However, the procedures available to companies vary across Member States due to different requirements in i.e. eligible sums of claim, need for lawyer, and type of procedure (i.e. online).

3. **Changes to the way the interest rate is claimed**. At present, it is up to the creditor to decide whether to claim interest for late payment and this means that even businesses who are aware of the rights introduced by the Directive often do not exercise these rights, due to the fear of damaging business relationships. Automatic interest on late payment would remove the requirement for the creditor to take the initiative in exercising their right and provide an additional incentive for the debtor to pay promptly.

4. **Increasing the minimum 40 EUR compensation fee.** The EUR 40 compensation fee is seen as not proportional to the sums owed and the costs implied by late payment. The minimum fee should be higher to reflect the effort required in chasing and recovering late payment. A higher compensation fee could encourage businesses to claim their rights in the short term and contribute to changing payment culture in the long term.

External aspects

1. **Raising awareness of the impact of late payment.** The introduction of the LPD, was accompanied by an EU-wide awareness campaign surrounding late payment rules. This study has shown that the main determinant of late payment is not related to awareness of the rules but to country specific effects (e.g. business culture). Rather than focusing on rules and legislation, a future awareness campaign should focus on the impact of late payment on businesses, with the aim of making late payment a "socially unacceptable" practice in all MS.

2. **Fostering the development and implementation of prompt payment policies in all MS**. The study has shown that prompt payment policies/codes in the public and private sectors are an effective way to shorten payment duration. The Commission should take active steps to support all MS in developing such schemes as accompanying measures to the LPD. This would entail developing the "business case" for the creation of prompt payment policies, drawing on the experiences of countries that have implemented such schemes (see also the recommendation below) and engaging with sectoral associations and MS authorities to promote the implementation of prompt payment schemes.

3. **Facilitating the exchange of best practices though peer review workshops.** Since the Directive has introduced the possibility for MS to introduce voluntary measures, other MS would welcome more information regarding the effectiveness of these measures. "Peer review" type workshops involving public authorities and experts from all EU MS could be organised in specific MS which are taking (or intend to take) an active approach to tackling late payment. In this way, policy officers from different departments could share their experiences with Member States lacking a coordinated approach.

4. **Providing access to effective remedies.** In the presence of lengthy juridical procedures an effective system of ADR should be provided at the national level. Of importance is the European Small Claims Procedure which provides a fast and efficient way of recovering debt, but is not often used by companies. One of the reasons for this seems to be the relatively low sum.

5. **Monitoring progress** - The Directive is silent regarding how to measure late payment. Such harmonised measurement would facilitate the provision of up to date statistical data and it would allow cross-country comparison over time.

14. Annex 1: Transposition of Late Payment Directive in Member States

Country	Summary
Austria	In Austria, the Late Payment Directive was transposed through the Law (BGBl. I Nr. 50/2013 Art. 9), which entered into force on 21 March 2013. As a general rule, invoices should be paid within 30 calendar days upon receipt of the invoice, and no payment terms should exceed 60 days. For late payments, if the parties have not agreed upon an interest rate, this shall be the one determined by the ECB for the relevant semester increased by 9 percentage points. In addition, the creditor is entitled to demand a fixed amount for recovery costs of EUR 40.
Belgium	In Belgium, the Late Payment Directive was transposed through the Act of 22 November 2013, which entered into force retroactively on 16 March 2013. Under Belgian law, if an agreement does not contain a payment date or term, each payment should be executed within 30 days. In B2B transactions companies are free to agree on a payment term of no more than 60 days, or on a longer period, provided this is not grossly unfair to the creditor. The interest rate for late payments is the one set by ECB plus 8 percentage points. The minimum fixed sum for compensation is set at EUR 40.
Bulgaria	In Bulgaria, the Late Payment Directive was transposed though the Bulgarian Commercial Law Act, which entered into force on 4 March 2013. Under Bulgarian law, the maximum statutory period to complete a payment is 60 days in B2B transactions. Exceptions to this time limit can be expressly agreed in the contract if it is objectively justified in light of the particular nature or feature of the goods/services; and it is not grossly unfair to the creditor and contrary to good faith. The payment terms in PA2B transactions are set at 30 days but can be extended to 60 days on the same grounds as mentioned before. For late payments, the interest rate is the one set by the Bulgarian Central Bank plus 10 percentage points and the creditor has the right to receive interest 14 calendar days following the date of receipt by the debtor of the invoice or an equivalent request for payment. The minimum fixed compensation for recovery costs is 80 BGN.
Croatia	Croatia transposed the Late Payment Directive before joining the EU in July 2013 - the Croatian Financial Operations and Pre-Bankruptcy Settlement Act "Zakon o financijskom poslovanju i predstečajnoj nagodbi", which entered into force on 1 October 2012. Under Croatian law, the payment term is 30 days in B2B transactions unless differently agreed by the parties in the contract and cannot exceed 60 days. Exceptionally, parties to the contract can agree on a longer payment terms under the condition that the agreement is made in writing, however, the payment terms cannot exceed 360 days in any case. In PA2B transactions, if not agreed in contract, the statutory period of 30 days is applied. Exceptionally, parties to the contract can agree on a longer payment terms under the condition that the agreement is made in writing, however, the payment period cannot exceed 60 days in any case. The interest rate is the one set by the Croatian Central Bank plus 8 percentage points. The minimum fixed sum for compensation costs is the equivalent of EUR 40 in Kuna.
Cyprus	Cyprus transposed the Late Payment Directive into its national laws on 27 July 2012. For B2B and PA2B transactions, the law provides for a payment term of 30 days. Public entities in the healthcare sector can opt for a deadline of up to 60 days. Between private businesses if the parties agree to extend the due date for payment beyond 60 days, this will only be valid if the extension is not "grossly unfair" to the creditor. The interest rate is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Czech Republic	Czech Republic transposed the Late Payment Directive into national legislation (paragraph 61), specifically into Civil Code Act No 89/2012. Sb. The statutory interest rate for late payment and the compensation for recovery costs are regulated in Government Decree No 351/2013 Sb, sections 2 and 3. Under Czech law the payment term is set at 30 days in B2B transactions. There is a possibility, in exceptional cases, to extend payment to 60 days. In PA2B transactions, the payment term may extend beyond the 30 days only when it may be justified by the nature of the obligation and in no case it may exceed 60 days. This rule applies also for subcontractors involved in public contracts. The interest rate is the one set by the Czech National Bank increased by 8 percentage points. The minimum compensation cost for recovery is CZK 1,200 (equivalent to approximately EUR 40).
Denmark	In Denmark, the Late Payment Directive was transposed though amendment no. 1244 of 18 December 2012 to the Danish Interest Act, which entered into force on 1 March 2013. The maximum payment term in PA2B transactions is set at 30 days from the date on which the creditor has sent the invoice or made an equivalent request for payment and can be extended to up to 60 days by executive order. Also, in B2B transactions payment term is set at 30 days but parties in the contract may agree on an extended period provided that two conditions are met: i) the extended payment period shall be expressly

	approved by the creditor; and ii) the extended payment period shall not be unfair to the creditor. The interest rate is the one set by the Danish National Bank increased by 8 percentage points. The minimum compensation cost for recovery is DKK 310.
Estonia	Estonia transposed the Late Payment Directive through amendments to the Law of Obligations Act and its Code of Civil Procedure, which entered into force in April 2013. Under Estonian law, the maximum statutory payment term is 60 calendar days, but the time-limit for the reception and examination of delivered goods or services must not exceed 30 days. Special agreements between entrepreneurs (for example longer payment deadlines) are allowed, if these are written down explicitly, i.e. customary practice between entrepreneurs must be in accordance with law. The agreement must not be exceedingly unfair to debtors and the principles of good faith and reasonableness must be followed. Public authorities cannot agree on a payment period of more than 30 days, unless this derives from the nature or special features of the contract (state departments whose economic activities have industrial or commercial nature or provide duly recognized healthcare service). The interest rate is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for recovery costs is EUR 40.
Finland	In Finland, the Late Payment Directive was transposed with a new Act on Payment Terms in Commercial Relations and through amendments to the Collection of Receivables and to the Interest Act, which entered into force on 16 March 2013. Under Finnish law, the payment term is 30 days in PA2B transactions. The Finnish Parliament has recently amended the Act of Payment Terms in Commercial Relations so that the period for payment fixed in the contract may now not exceed 30 days (down from 60 days), unless otherwise expressly stated in the contract. The interest rate is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
France	France transposed the Late Payment Directive into its national legislation in 2012 with decree No. 2013-269 of 29 March 2013 on combatting late payments in public contracts covering the application of law No. 2013-100 of 28th January 2013 adapting national law to the provisions of the 2011 Directive, and in particular, extending the scope of previous national regulation to all public sector contracting authorities. Under French law, if there is no contractual agreement, the maximum statutory period of payment is 30 days following the date on which the goods were received or the services were provided. The parties in the contract can set a different payment period of up to 45 calendar days end of month or 60 calendar days following the date the invoice was issued. In PA2B transactions, the payment term is generally set at 30 calendar days (50 for public health bodies). The interest rate is agreed by the parties and the minimum interest rate is equivalent to three times the legal interest rate. If there is no contractual arrangement, the interest rate is the one set by the ECB increased by 10 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Germany	The majority of German legislation was already compliant with major parts of the Late Payment Directive before its entry into force. Yet, the law transposing the Late Payment Directive entered into force in July 2014. Under German legislation, where there was previously no maximum statutory period to execute a payment, this is now set at 60 calendar days, reduced to 30 days when a payment is to be made by a public authority. The payment term may be extended and exceed 60 days if agreed by the parties and if such delay is not grossly unfair to the interests of the creditor. A public debtor may only extend the period of payment to a maximum of 60 days, even if the aforementioned conditions are met. If the parties in the contract have not agreed on an interest rate, this shall be the basic rate increased by 9 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Greece	In Greece, the Late Payment Directive was transposed with Law 4152/2013 of 9 May 2013, which entered into force with a retroactive effect on 16 March 2013. Under Greek law, the period for payment fixed in any contract may not exceed 60 calendar days, unless otherwise expressly contractually agreed, and provided that this would not be grossly unfair to the creditor. In PA2B transactions a statutory period for payments is set at 60 calendar days. If there is no contractual arrangement, the interest rate is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Hungary	In Hungary amendments to the Hungarian Civil Code transposed the Late Payment Directive. In commercial transactions, as a general rule, the maximum payment period shall be 30 calendar days (unless it is provided in the contract otherwise); parties may agree on a payment period of longer than 30 days but, as a general rule, such a period cannot exceed 60 days. Unless proven otherwise, contractual provisions stipulating a payment period of longer than 60 days shall be considered as unfair conditions. If there is no contractual arrangement, the interest rate for late payments is the one set by the

	Hungarian National Bank increased by 10 percentage points. The minimum fixed compensation for recovery costs is the equivalent of EUR 40 in Hungarian currency.
Ireland	Ireland transposed the Late Payment Directive with the Late Payments in Commercial Transactions Regulations 2012. The Irish law provides that in B2B transactions the general deadline is 30 days unless otherwise stated in the contract. It is possible, if both parties agree to extend payment terms up to 60 days. The period may be extended beyond 60 days only if "expressly agreed" by the parties in the contract and provided that it is not grossly unfair to the supplier. The standard deadline for public authorities to business payments is 30 days. Payment can be extended up to 60 days only if it is "expressly agreed" and justified in light of the nature or feature of the contract. If there is no contractual arrangement, the interest rate is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Italy	The Late Payment Directive was transposed in Italy by the Legislative Decree n. 192 of 9 November 2012. Under Italian law, the maximum statutory payment term is 30 days. In case of B2B transactions, the term can be derogated by the parties and shall be expressly agreed upon if it exceeds 60 days. Regarding transactions with certain types of public enterprises and with local health authorities, a 60-day term applies. If the parties in the contract have not agreed upon an interest rate, this shall be the ECB's reference rate of the relevant semester increased by 8 percentage points. The parties can agree on a different interest rate, provided it is not grossly unfair. The minimum fixed sum for compensation costs is set at EUR 40.
Latvia	Amendments to the Latvian Civil Law, entered into force on 1 July 2013, which transposed the Late Payment Directive. A limit is applied to the payment term and may not exceed 30 days. The payment term can be extended up to 60 days only if this can be justified by taking into account the obligation to be performed. The interest rate is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Lithuania	The Late Payments Directive was transposed into Lithuanian national law through the Law on Prevention of Late Payments in Commercial Transactions and through the Law on Payment for Agriculture Products (Art. 5, 6, 7, 11, 12, and 13). Under Lithuanian law, the maximum payment period is set at 60 calendar days in B2B transactions (unless otherwise provided by the Law) and 30 days in PA2B transactions. Deviations from this rule are allowed in cases established by the Law. The interest rate is the one determined by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Luxembourg	In Luxembourg, the Late Payment Directive was transposed by Law of 29 March 2013. The maximum duration of payment periods, which as a general rule can no longer exceed 60 days. However, the contracting parties may depart from this rule by explicitly defining longer payment periods in their agreement. Nevertheless, the extension of this deadline must not be grossly unfair to the creditor. In PA2B transaction 30 days payment deadline is set, unless stipulated otherwise by contract. A longer payment period, with a maximum of 60 days, must be duly justified by the specific nature of the contract or by specific elements in the contract. If the parties have not agreed on an interest rate, this shall be the ECB's reference rate of the relevant semester increased by 8 percentage points. Where interest for late payment becomes payable, the creditor is entitled to a minimum compensation sum of EUR 40.
Malta	The Late Payments Directive was transposed into the Maltese law through Legal Notice 272 published on 14 August 2012. The transposition forms part of the Commercial Code (Chapter 13 of the Laws of Malta). Further legal amendments were carried out following initial transposition and full transposition was completed through Legal Notice 13 published on 17th January 2014. This transposition also forms part of the Commercial Code (Chapter 13 of the Laws of Malta). Under Maltese law, the payment term is set at 30 days. If a different payment term is agreed in the contract, this shall not exceed 60 days. Public authorities providing health care have an extension of the payment term to 60 days. If the parties have not agreed on an interest rate, this shall be the one determined by the ECB's for the relevant semester, increased by 8 percentage points. The creditor is also entitled to a minimum of EUR 40 as compensation for the creditor's own recovery costs.
Netherlands	In the Netherlands, the Late Payment Directive was into national law on public procurement in 2014. Under Dutch law, the maximum statutory period to execute a payment in B2B transactions is 30 days, if a different payment term is not agreed between the parties in the contract. The parties can agree upon a longer period of up to 60 days and on a period exceeding 60 days provided it is not grossly unfair to the creditor. The payment term in PA2B transactions is set at 30 days. If the parties have not agreed on an interest rate, this shall be the one determined by the ECB's for the relevant semester, increased by 8 percentage points. The creditor is entitled to demand a fixed amount for recovery costs set at EUR 40.
Poland	In Poland, the Act on Payment Dates in Commercial Transactions, which transposed the Late Payment Directive, entered into force on 28 April 2013. Under Polish law, the maximum statutory period to execute a payment in B2B transactions is 60 days as of the date of receipt of the invoice or receipt confirming the delivery of goods or provision of services. The parties can agree otherwise provided this is not grossly unfair to the

	creditor. In case it is a public entity, the maximum payment term cannot exceed 30 days, unless a longer period would be objectively justified by the particular nature or specific features of the contract. As a rule 60 days for healthcare sector was set. If the parties have not agreed on an interest rate, this shall be the Polish National Bank reference rate of the relevant semester increased by 8 percentage points. Where interest for late payments becomes payable, the creditor is entitled to a minimum compensation sum of the equivalent of EUR 40 in the Polish currency. Interest and compensation are calculated solely on the basis of overdue amounts.
Portugal	In Portugal, Decree Law 62/2013 of 10 May 2013 transposed the Late Payment Directive. Under Portuguese law, the payment term in B2B should not exceed 60 days, without prejudice to the parties being free to set a longer period. In PA2B transactions payment periods should not exceed 30 days, although longer periods may be agreed by the parties provided it is objectively justified in light of the particular nature or features of the contract. PAs in healthcare sector payment periods should not exceed 60 days. If the parties have not agreed on an interest rate for late payments, this shall be the one determined by the ECB's for the relevant semester increased by 8 percentage points. The creditor is entitled to demand a fixed amount for recovery costs set at EUR 40.
Romania	In Romania, Law 72/2013 entered into force on 2 April 2013 which transposed the Late Payment Directive. Under Romanian law, the maximum statutory payment term in the private sector is 30 days. A longer payment term can be agreed provided it is not grossly unfair to the creditor. For public authorities, the payment term is set at 30 days Exceptionally, the parties may agree to increase the payment term to 60 calendar days, if the clause is not manifestly unfair to the creditor and if such an increase is justified given the subject matter of the contract. Payment term in PA2B transactions in the healthcare is set at 60 days. If the parties have not agreed on an interest rate for late payments, this shall be the one determined by the Romanian National Bank for the relevant semester increased by 9 percentage points. The creditor is entitled to demand a fixed amount for recovery costs set at the equivalent of EUR 40 in LEI.
Slovenia	In Slovenia, the Act on Prevention of Late Payment is in force since July 2012. Under Slovenian law, the maximum statutory payment term is 60 days. A longer payment term can be agreed but it shall not exceed 120 days. When the debtor is a public authority, the payment term shall not exceed 30 days. The interest rate for late payments is the one set by the ECB increased by 8 percentage points. The minimum fixed sum for compensation costs is set at EUR 40.
Slovakia	In Slovakia the Late Payment Directive was transposed through amendments to the Commercial Code. In B2B transactions enterprises should pay invoices within 60 days unless they expressly agree otherwise and it is not "grossly unfair" to the creditor. Public authorities must pay for goods and services within 30 days or, under very exceptional circumstances, within 60 days. Slovakia provides for a dual system for late payment interest rates, a fixed one and a variable one. In the case of a fixed rate, the debtor will have to pay late payment interest equal to the base interest rate of the ECB, increased by 9 points percentage. In the case of a variable rate, the debtor will have to pay late payment interest equal to the ECB base rate, increased by 8 points percentage. If the creditor has not explicitly requested any of the two rates of late payment interest, the fixed rate takes precedence. The minimum fixed sum for compensation costs is set at EUR 40.
Spain	In Spain, the Royal Decree-Law 4/2013 of 22 February 2013 transposed the Late Payment Directive. Under Spanish law, where the parties have not agreed a payment period, this is set at 30 days after the receipt of goods or services, even if the invoice has been previously received. Where the parties have agreed to a different payment period, this cannot exceed 60 calendar days. For the public sector, the payment term is set at 30 days. If the parties have not agreed on an interest rate, this shall be the ECB's reference rate of the relevant semester increased by 8 percentage points. A different interest rate shall not be abusive to the supplier. The recovery costs are set at EUR 40 and charged by the creditor in addition to any interest rate on late payment.
Sweden	In Sweden, the Late Payment Directive was transposed through amendments to four existing laws: 1975:635; 1981:739; 1984:292, and 1990:746. Under Swedish law, the maximum payment term in B2B and PA2B transactions is set at 30 days. Parties may agree on a longer payment term provided that the creditor agrees by an explicit approval or the parties have agreed to a payment plan, in which the debt is paid by instalments in a fixed plan. This arrangement applies to all PAs, not only in the health sector. If the parties have not agreed on an interest rate, this shall be the Swedish Riksbank's reference rate of the relevant semester increased by 8 percentage points. The recovery costs are set at SEK 450 and charged by the creditor in addition to any interest rate on late payments.

United Kingdom	The Late Payment Directive was transposed under English law by the Late Payment on Commercial Debts Regulations 2013 (SI 2013/395) and the Late Payment of Commercial Debts (n. 2) Regulations 2013 (SI 2013/908), which amend the Late Payment Act of 1998. It applies to commercial contracts made on or after 16 March 2013. When there is no agreement between the parties in the contract, the payment term is set at 30 days after i) receipt of the supplier's invoice; ii) receipt of goods or services from the supplier; and iii) the day following the acceptance or verification of the goods or services, where such a procedure is provided for by statute or the contract. A longer period of up to 60 days can be agreed between the parties, but if it is longer than 60 days it must be fair to both businesses. In PA2B transactions a limit of 30 days was set, however, verification or acceptance of goods and services should not exceed, as a general rule, 30 days. Nevertheless, it should be possible for a verification procedure to exceed 30 days where agreed by both parties and not grossly unfair to the supplier. Where a public authority purchases goods or services, interests start to run after 60 days. If the parties have not agreed on an interest rate, this shall be the Bank of England reference rate of the relevant semester increased by 8 percentage points. In the UK, the minimum compensation sum for recovery costs depends on the size of the debt. It is set at £40 for debts below £1,000, £70 for debts between £1,000 and £10,000 and £100 for debts above £10,000.

15. Annex 2: Data Collection and Analysis

15.1. Data collection

15.1.1. Survey

Construction of the sample

The survey was based on an appropriate random sample of companies from all EU-28 MS. The necessity of random sampling has been well documented in the relevant scientific literature. In short, the main reason for choosing random samples is that only they can "equip" the resulting estimators with the desired properties like unbiasedness, and normality, which justify their use to ascertain the population values. When convenience sampling is used or – even worse – self-selection of the respondents, the resulting estimators have very poor quality. If, for example, a mass mailing of the study questionnaire to all companies is used, then the respondents do not constitute a random sample, but a self-selected sub-sample. It could be possible that the companies which face the problem investigated by the study (i.e. payment delays by clients) are much more likely to answer than the ones which do not face this problem. This would result in serious bias of the estimator and the potentially larger sample will only result in greater bias. On the other hand, if a random selection was used, then the potential non-response of the companies selected in the sample can be ameliorated though non-response analysis techniques, which are fully valid in random samples.

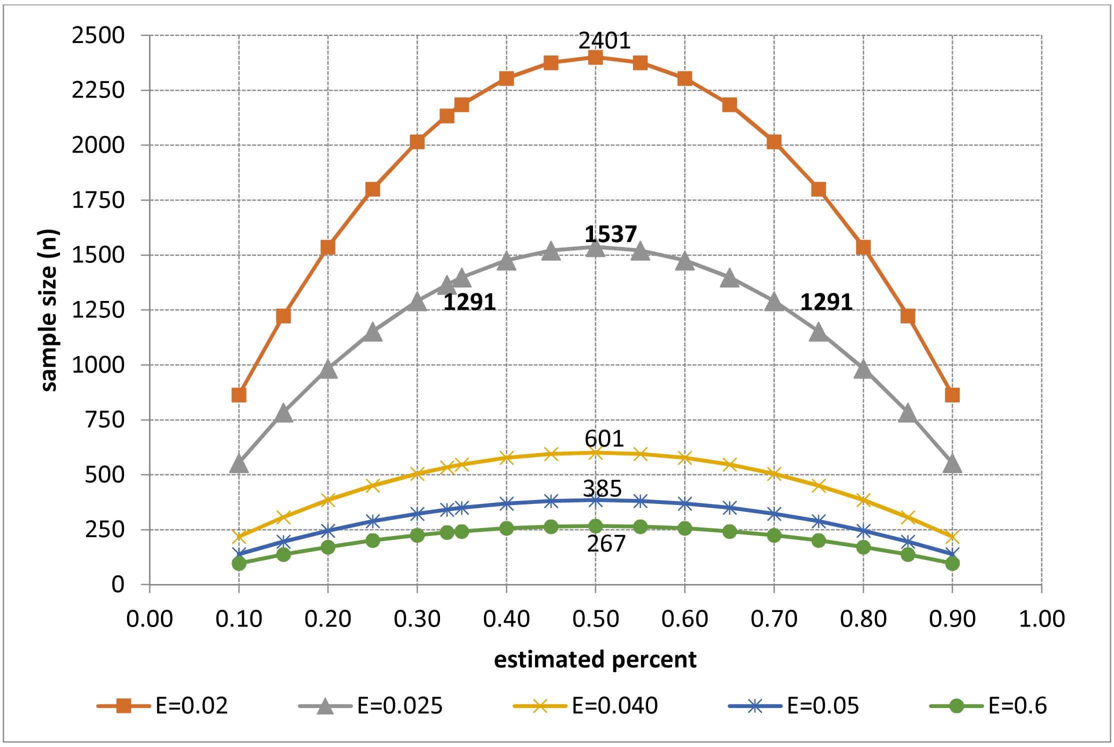
The sample size required is a function of the desired accuracy of the estimators of the study parameters and the sampling method used. Thus, in order to derive the sample size a main study parameter and an appropriate plan was chosen. It was proposed to choose the **proportion of companies reporting payment delays** in the population, as the **main study parameter**, and stratified random sampling as the sampling plan. As strata two variables were used:

- the country (28 levels: EU-28 member states); and
- the company size (4 levels: very small, small, medium, large).

This resulted in 28X4=112 strata. The advantages of the latter include the ability to derive separate estimates within sub-populations, and the potential reduction in the variance of the estimators, which in turn leads to greater accuracy.

The relation of accuracy to sample size has the form: $E = z_{a/2} \cdot \sqrt{\frac{p(1-p)}{n}}$ (1), where E is the accuracy of the estimator, p the (unknown) population proportion, n the sample size and $z_{a/2}$ is the normal distribution percentile (equal to 1.96 when α=0.05). Solving equation (1) for n for various values of E and p we derive a picture of the relation, which can be used to select the appropriate sample size for the study. This picture is presented in the figure below.

Figure A2.1: Sample size (n) as a function of the estimated percent (p) at four maximum error levels (E).



As it can be seen from the figure, a sample size of 2400 companies will result in an accuracy of ±2%, when the estimated percent is 50% (i.e. a 95% confidence interval [48%, 52%]). For smaller estimated percent, the accuracy will be grater (as it can be seen using equation 1).

For example, if the estimated percent is 25% or 75%, then the accuracy is ±1.7%, while for 10% or 90% it is ±1.2%. The previous statements apply when the sampling plan is simple random sampling (SRS). When it is desired to produce valid estimators within subpopulations, the method of stratified random sampling (StRS) is used. If that is the case, the previous statements apply within the strata, but the overall calculations are different. When the allocation of the sample to the strata is proportional, equation (1) becomes: $E = z_{a/2} \cdot \sqrt{\frac{\sum_{h=1}^{H} W_h P_h (1-P_h)}{n}}$ (2), where $W_h = \frac{N_h}{N}$ is the stratum weight (with N_h the size of the stratum in the population and N the size of the population), and P_h is the (unknown) true percent in stratum h. If the proportions within the strata are all the same, equation (2) reduces to equation (1). If the allocation is not proportional the formulae become more complicated, but still manageable.

The StRS procedure has clear ramifications of the analysis method. The formulas to estimate aggregate means and proportions are different, thus straight forward application of analysis tools of statistical analysis software should be used with extreme caution. Good alternatives are the SURVEYMEANS and SURVEYREG procedures of SAS™ statistical software which take into consideration the sampling methods. To give an example of the potential problems, an unbiased estimator of the mean in StRS is $\bar{y} = \sum_{h=1}^{H} W_h \bar{y}_h$, (where W_h the stratum h weight, and $\bar{y}_h$ the within stratum h sample mean), with estimated variance: $S_{\bar{Y}}^2 = \sum_{h=1}^{H} W_h^2 \cdot \frac{S_h^2}{n_h}$ where S_h^2 the within stratum h sample variance. The corresponding formulae for SRS are different ($\bar{y} = \sum_{i=1}^{n} \frac{y_i}{n}$, and $S_{\bar{Y}}^2 = \sum_{i=1}^{n} \frac{(y_i - \bar{y})^2}{n-1}$, respectively for the sample mean and variance), thus the calculations involved in summary statistics presentation and hypothesis testing lead to different results.

Given the low response rate expected, the issue of non-response analysis should be raised. Since the non-response rate exceeds 30%, then some adjustments could have been made in order to preserve the validity of the estimation and analysis. It should be noted that non-response is expected to be "informative" meaning that non-responders are different from the responders.

One could easily assume that companies facing payment problems from the customers, are more likely to respond than companies which do not face such problems. In order to resolve this problem, a non-response analysis could have been carried out which would involve selecting a smaller sample (500 to 700 companies) from the non-response set, and aggressively pursuing response on a drastically reduced version of the study questionnaire containing no more than five questions using direct contact methods (telephone interviews). Once the data is collected, it can be used to adjust the full sample estimates.

A final note on the source of the data and the (potential) problems it confers upon the study. Sampling procedures like SRS and StRS are based on some type of a list of the population members, in the present case companies based in EU-28 member states. Such a catalogue is not available. The best proxy available is the AMADEUS database. Technically speaking, the results of a study sampling from AMADEUS, is applicable only to the "population" of the companies included in the database. Yet, we can (or should) assume that the companies included in AMADEUS, are not different from the rest of the companies in EU-28. Given that the sampling methods is StRS and the stratum sizes are taken from EUROSTAT (thus are representative of the total population), we feel that the proposed method is the best – in the present circumstances.

The two sub-samples

In our offer, we proposed the sample to be divided in two strata using as a criterion the percentage of companies facing late payments. The proxy[99]we used for the allocation of the countries into two strata was the GDP trend, under the hypothesis that companies in countries with negative or stagnated GDP growth tend to suffer more by late payments than in countries with relatively high growth.

The rationale behind the grouping was to increase further the accuracy of the survey from 2.5% to around 1.9% by selecting groups of countries that depart from the initial assumption of 50%[100] within each of these groups. If we assume that the proportion of companies reporting payment delays drops from 50% towards 30% in one group and increases to 70% in the other group then setting the accuracy level to 2.5% within each group, the per group sample size is 1300 companies and the overall is 2600, leading to overall accuracy of 1.92%.

In line with the discussion at the kick-off meeting, we have elaborated further the criteria for grouping the countries using actual data on late payments (Intrum Justitia, 2014). Therefore, in addition to our initial scenario, we suggest a grouping

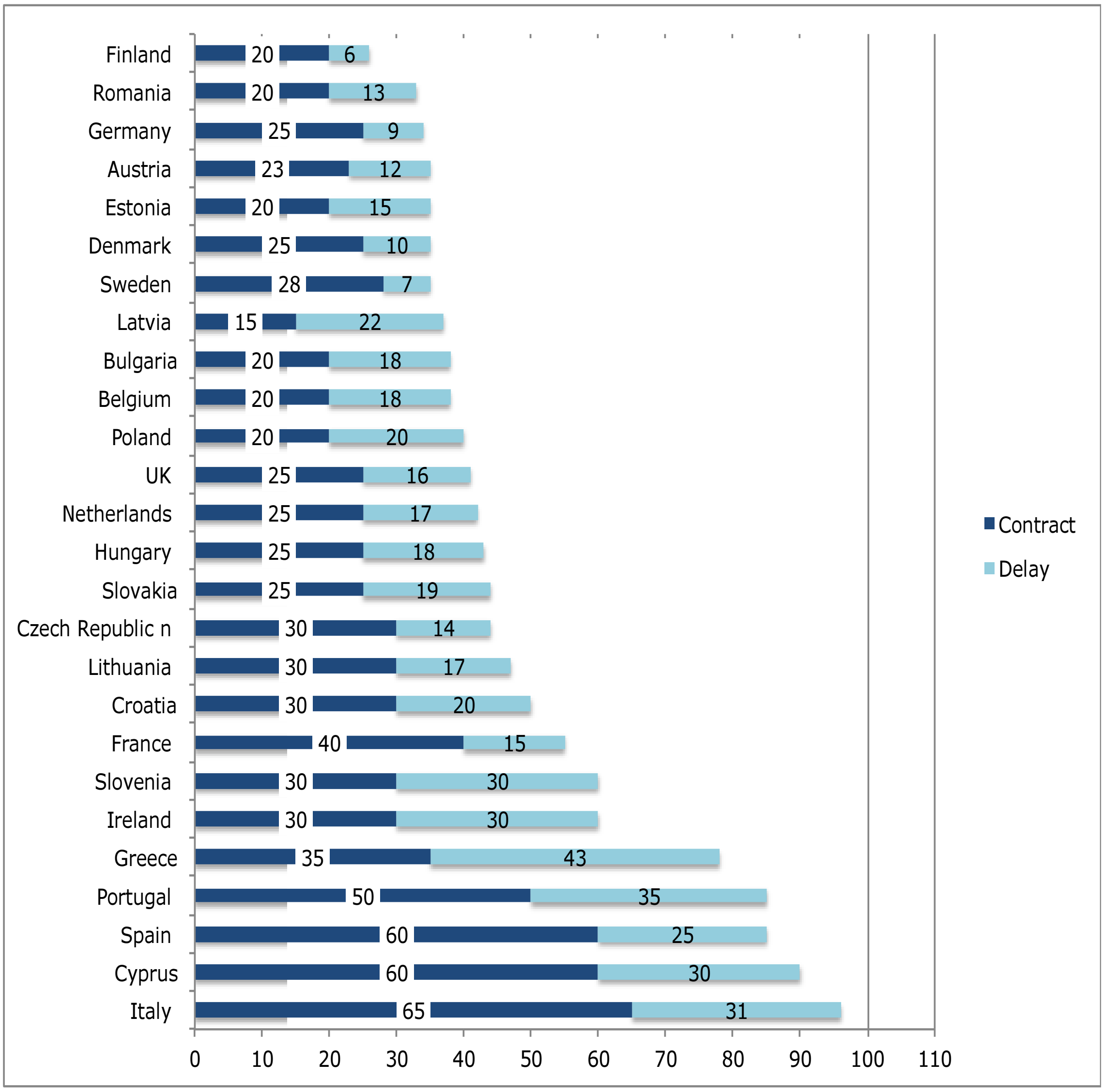
[99] Proxy variable is a variable that is not in itself directly relevant, but that serves in place of an unobservable or immeasurable variable.

[100] The assumption for the development of the sample is that the main variable of the survey has a value close to 50% (e.g. share of companies with facing late payment problems).

based on **the deviation of the average payment duration in a country from the Directive's target of 30 days for transactions with public authorities and 60 days for the B2B transactions**.

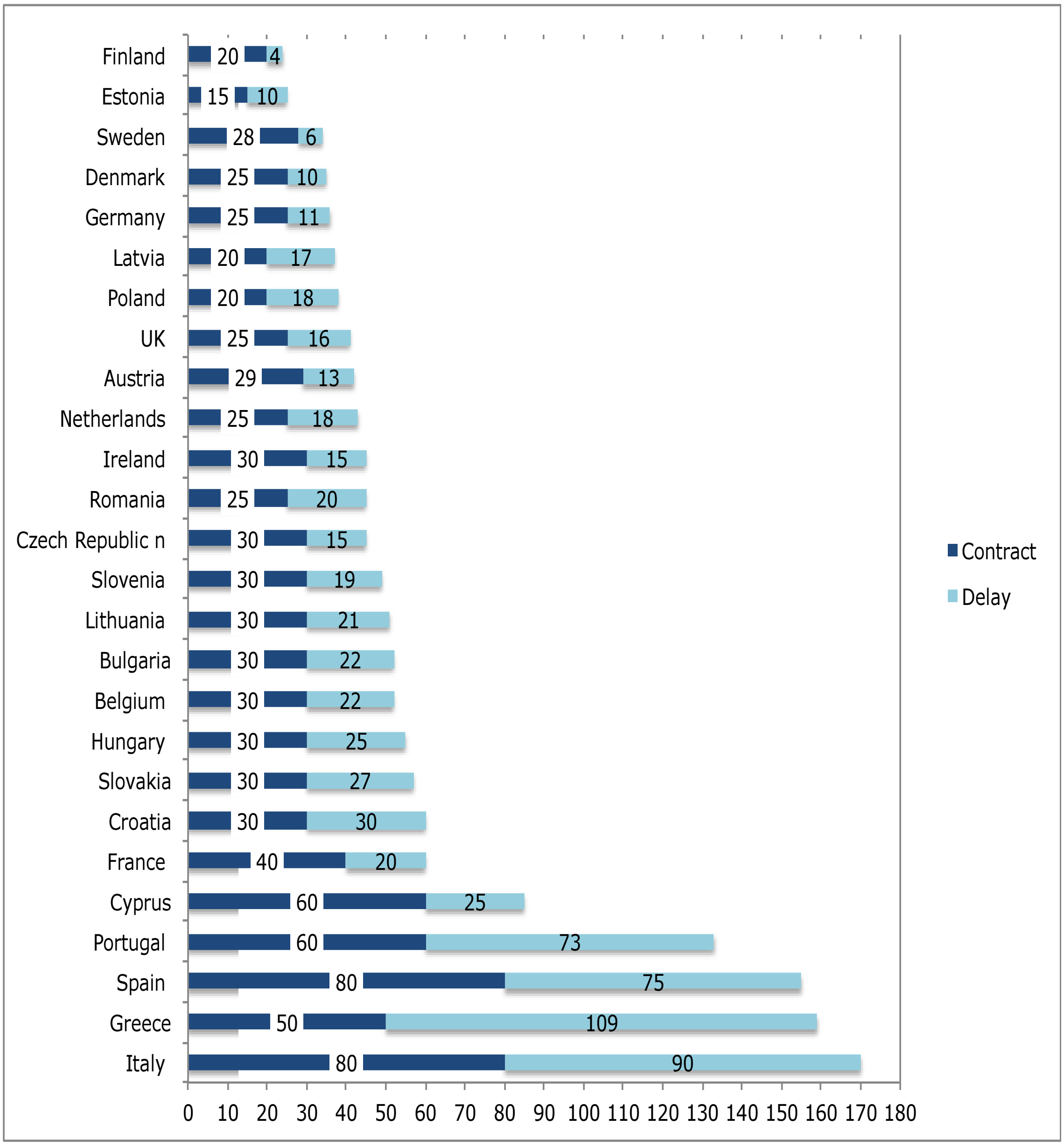
The figure below present the average payment term (contract) and the average delay in days for each MS in B2B and PA2B transactions.

Figure A.2.2: Average payment term (contract) and the average delay in days for the transactions with other businesses



Source*: Intrum Justitia, EPI 2014*

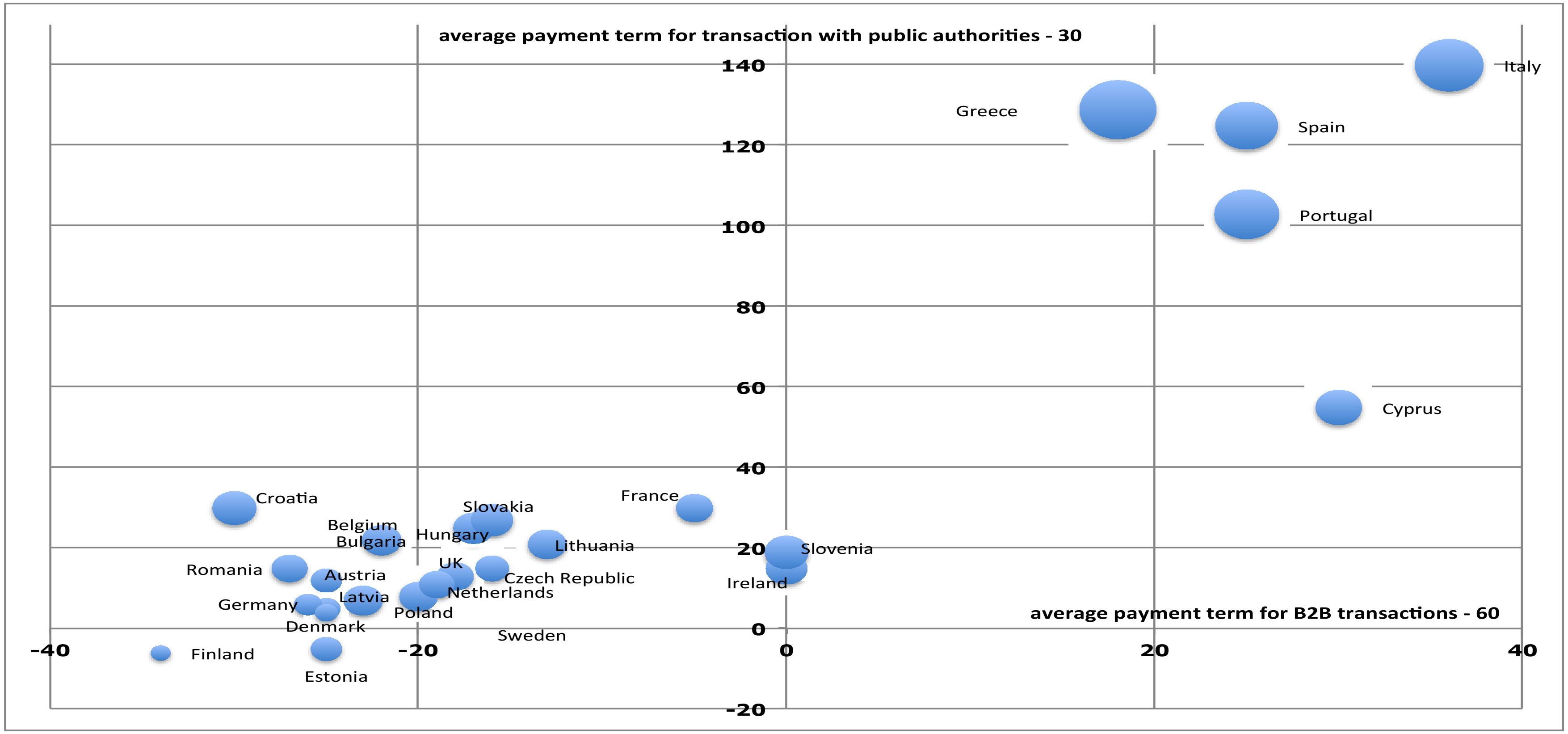
Figure A2.3: Average payment term (contract) and the average delay in days for the transactions with public authorities



Source: Intrum Justitia , EPI 2014

The figure below presents the deviation of the average payment duration in the MS from Directive's requirement. The Y-axis corresponds to the average number of days for payment for companies in each MS below or above the requirement of the Directive for the B2B transactions (60 days). The X-axis is the same for the transactions with public authorities. The size of the bubbles corresponds to the sum of days of delay for all transactions. The Figure enables to see how far the reality is for the companies compared to the requirements of the LPD.

Figure A.2.4: Average number of days of payment above or below the Directive's requirement



Source: Intrum Justitia (2014), Late Payment Index 2014. Calculations Technopolis Group-VVA-E&Y

Several countries are very unfavourable for creditors: Italy, Spain, Portugal, Cyprus and Greece. These countries weight 35% of the total of enterprises in the EU (see table below). Other countries are not very favourable to creditors to what regards transactions with public authorities: France, Croatia and Slovenia. These three countries represent 14% of the total enterprises in the EU.

The two samples were as follows:

- Italy, Greece, Spain, Portugal, Cyprus, France, Croatia and Romania
- Luxembourg, Lithuania, Austria, Latvia, UK, Ireland, Germany, Bulgaria, Estonia, Croatia, Denmark, The Netherlands, Finland, France, Belgium, Hungary, Sweden, Poland, Malta, Czech Republic, Slovakia and Slovenia.

Please note that data are not available for Malta and for Luxembourg. We propose to put these two countries in the second group.

Figure A.2.5: Share of MS in the total of EU enterprises

Country	% of enterprises in the EU total
Austria	1%
Belgium	2%
Bulgaria	1%
Croatia (2012)	1%
Cyprus	0%
Czech Republic	4%
Denmark	1%
Estonia	0%
Finland	1%
France	12%
Germany	11%
Greece (*)	3%
Hungary	2%
Ireland	1%
Italy	16%
Latvia	0%
Lithuania	0%
Luxembourg	0%
Malta	0%
Poland	8%
Portugal	3%
Romania	2%
Slovakia	2%
Slovenia	0%
spain	12%
Sweden	3%
The Netherlands	4%
UK	8%

source: EUROSTAT.

(*) SBA Fact Sheet 2012, Greece Estimates for 2011, based on 2005-2009 figures from the Structural Business Statistics Database (Eurostat). Estimates have been produced by Cambridge Econometrics.

Figure A.2.6: Weights applied for the analysis

Country	size	group	Overall weight	Group weight
Croatia	1	1	0,006559108	0,013104194
Croatia	2	1	0,000482094	0,000963157
Croatia	3	1	0,000087516	0,000174845
Croatia	4	1	0,000019102	0,000038162
Cyprus	1	1	0,001947836	0,003891507
Cyprus	2	1	0,000133868	0,000267450
Cyprus	3	1	0,000024536	0,000049020
Cyprus	4	1	0,000004674	0,000009337
France	1	1	0,109698452	0,219162383
France	2	1	0,005639183	0,011266309
France	3	1	0,000930424	0,001858858
France	4	1	0,000200934	0,000401438
Greece	1	1	0,032091903	0,064115198
Greece	2	1	0,002205568	0,004406421
Greece	3	1	0,000404250	0,000807636
Greece	4	1	0,000077000	0,000153836
Italy	1	1	0,162306379	0,324265771
Italy	2	1	0,011154770	0,022285694
Italy	3	1	0,002044514	0,004084658
Italy	4	1	0,000389433	0,000778034
Portugal	1	1	0,036106291	0,072135392
Portugal	2	1	0,001611808	0,003220171
Portugal	3	1	0,000235683	0,000470863
Portugal	4	1	0,000035865	0,000071654
Romania	1	1	0,017214027	0,034391254
Romania	2	1	0,001938217	0,003872290
Romania	3	1	0,000364290	0,000727802
Romania	4	1	0,000070600	0,000141048
Spain	1	1	0,100271628	0,200328889
Spain	2	1	0,005454302	0,010896943
Spain	3	1	0,000702603	0,001403703
Spain	4	1	0,000128179	0,000256085
Austria	1	2	0,012194890	0,024415908
Austria	2	2	0,001501692	0,003006600
Austria	3	2	0,000229204	0,000458899
Austria	4	2	0,000047097	0,000094295
Belgium	1	2	0,023796883	0,047644748
Belgium	2	2	0,001265290	0,002533291
Belgium	3	2	0,000193385	0,000387184
Belgium	4	2	0,000040083	0,000080251
Bulgaria	1	2	0,012999916	0,026027684
Bulgaria	2	2	0,001044552	0,002091342
Bulgaria	3	2	0,000194722	0,000389861
Bulgaria	4	2	0,000031105	0,000062277
Czech Republic	1	2	0,043531481	0,087156225
Czech Republic	2	2	0,001516308	0,003035865
Czech Republic	3	2	0,000304999	0,000610652
Czech Republic	4	2	0,000063723	0,000127582
Denmark	1	2	0,008933507	0,017886154

Denmark	2	2	0,000613970	0,001229255
Denmark	3	2	0,000112532	0,000225305
Denmark	4	2	0,000021435	0,000042915
Estonia	1	2	0,002259276	0,004523393
Estonia	2	2	0,000218446	0,000437360
Estonia	3	2	0,000045080	0,000090256
Estonia	4	2	0,000006571	0,000013156
Finland	1	2	0,009515715	0,019051817
Finland	2	2	0,000706477	0,001414467
Finland	3	2	0,000117246	0,000234742
Finland	4	2	0,000027827	0,000055714
Germany	1	2	0,090345427	0,180884413
Germany	2	2	0,006209137	0,012431576
Germany	3	2	0,001138049	0,002278535
Germany	4	2	0,000216772	0,000434009
Hungary	1	2	0,023631386	0,047313401
Hungary	2	2	0,001109681	0,002221739
Hungary	3	2	0,000186401	0,000373201
Hungary	4	2	0,000036675	0,000073429
Ireland	1	2	0,005990003	0,011992838
Ireland	2	2	0,000435319	0,000871571
Ireland	3	2	0,000079788	0,000159747
Ireland	4	2	0,000015198	0,000030428
Latvia	1	2	0,003514870	0,007037271
Latvia	2	2	0,000336379	0,000673479
Latvia	3	2	0,000063952	0,000128041
Latvia	4	2	0,000008412	0,000016843
Lithuania	1	2	0,005276061	0,010563426
Lithuania	2	2	0,000481376	0,000963783
Lithuania	3	2	0,000096058	0,000192322
Lithuania	4	2	0,000013310	0,000026649
Luxembourg	1	2	0,001156380	0,002315238
Luxembourg	2	2	0,000136233	0,000272757
Luxembourg	3	2	0,000027048	0,000054154
Luxembourg	4	2	0,000006372	0,000012758
Malta	1	2	0,001198755	0,002400079
Malta	2	2	0,000060483	0,000121096
Malta	3	2	0,000012836	0,000025700
Malta	4	2	0,000002277	0,000004559
Netherlands	1	2	0,033917041	0,067906747
Netherlands	2	2	0,001884205	0,003772447
Netherlands	3	2	0,000385409	0,000771644
Netherlands	4	2	0,000069912	0,000139974
Poland	1	2	0,065866541	0,131874197
Poland	2	2	0,002417896	0,004840972
Poland	3	2	0,000699822	0,001401142

Poland	4	2	0,000139381	0,000279060
Slovakia	1	2	0,017896077	0,035830495
Slovakia	2	2	0,000610671	0,001222649
Slovakia	3	2	0,000103454	0,000207130
Slovakia	4	2	0,000023503	0,000047056
Slovenia	1	2	0,005056744	0,010124322
Slovenia	2	2	0,000263709	0,000527983
Slovenia	3	2	0,000053790	0,000107695
Slovenia	4	2	0,000010391	0,000020805
Sweden	1	2	0,027977612	0,056015164
Sweden	2	2	0,001337189	0,002677242
Sweden	3	2	0,000229173	0,000458838
Sweden	4	2	0,000045584	0,000091266
United Kingdom	1	2	0,068866974	0,137881492
United Kingdom	2	2	0,006841735	0,013698129
United Kingdom	3	2	0,001181732	0,002365996
United Kingdom	4	2	0,000268370	0,000537315

Note: size 1 corresponds to companies with less than 10 employees, size 2 to companies with 10 to 49 employees, size 3 to companies with 50 to 249 employees and size 4 to companies with 250 employees or more.

Survey implementation

In a first phase, the sample of companies was invited by email to respond to an online version of the survey (available in 12 languages: EN, FR, DE, IT, ES, EL, PT, SE, PL, BG, RO, HU) between 20 April and 30 June 2015.

Despite several reminders, the number of responses to this online version of the survey remained low with only 962 complete responses 37% of the target of 2600 responses). As a result, two companies were sub-contracted to perform telephone interviews to complete the questionnaires. The telephone campaign was carried out between 8 and 30 June. Companies contacted by phone were randomly selected from the full set of companies that were initially invited to the survey, thus keeping to the original representative sample. 1,715 complete responses were collected through the telephone campaign, leading to an overall total of ***2,677 complete responses***. The survey data collected for this study is the most complete, most representative and most up to date dataset on late payments in Europe.

The table below shows the number of responses collected by country.

Figure A.2.7. Survey responses by country

Country	Number of responses
Austria	114
Belgium	79
Bulgaria	63
Croatia	66
Cyprus	89
Czech Republic	31
Denmark	35
Estonia	22
Finland	11
France	143
Germany	222
Greece	145
Hungary	47
Ireland	12
Italy	476
Latvia	24
Lithuania	28
Luxembourg	57
Malta	49

Country	Number of responses
Netherlands	62
Poland	41
Portugal	87
Romania	74
Slovakia	39
Slovenia	53
Spain	299
Sweden	60
United Kingdom	249
Total	**2677**

15.1.2. Interviews at Member State level

A proposed list of organisations to be consulted was drafted in accordance with the Terms of Reference and reaffirmed during the inception phase. Interviews with industry stakeholders and public authorities were conducted by phone.

Prior to contacting the interviewees, we translated the interview guide and we also drafted an introductory email in some of the national languages of the interviewees. We believed that information provided in the native languages was going to help the interviewees understand the purpose of the study. A number of interviews were conducted in the national languages of the interviewees and these included interviews in: Austria, Belgium, Bulgaria, Germany, France, Luxemburg, Italy, Ireland, Malta, Poland, Spain, Sweden, and UK.

Lastly, two round table discussions were organised. The first round table took place in London on 12 June 2015 and was co-organised by the European DIY-Retail Association. The second round table discussion took place in Brussels and was hosted by Eurocommerce. In total, 18 organisations (11 national industry associations as well as seven companies) were present at these meetings.

Figure A.2.8: Breakdown of interviews per MS and type of stakeholder

ALL	Public authority	Industry	Other	Completed
Austria	1	3		4
Belgium	1	4		5
Bulgaria		3		3
Cyprus	1	3		4
Croatia		2	2	4
Czech Republic	1	2		3
Denmark	1	2		3
Estonia		3		3
Finland	1	4		5
France	2	4		6
Germany		5		5
Greece		5		5
Hungary			1	1
Ireland	1	7		8
Italy	2	9		11
Latvia		4		4
Lithuania	2			2
Luxemburg	1	2		3
Malta	1	2		3
Netherlands	1	6		7
Poland	1			1
Portugal		6		6
Romania		3		3
Slovakia	1	1		2
Slovenia	1	2		3

Spain	1	9	1	11
Sweden	1	6		7
UK	1	5		6
Total	**22**	**102**	**4**	**128**

A list of public authorities was provided to the study team by the European Commission. We received names of the individuals that gave their consent to be directly contacted by the study team. Furthermore, following the meeting held on 13 April 2015 between the European Commission, national experts and the study team, it was agreed that the national experts were going to provide an indication of which national (business) stakeholders should be contacted in the respective MS.

15.1.3. Follow-up interviews

Follow-up interviews with companies took place between June and September 2015. The follow up interviews focused, but were not limited to, companies that participated in the online survey.

We derived a list of companies that expressed their interest in taking part in the follow-up interview. Over 120 companies indicated willingness to engage with the study team. Taking into account that the follow-up interviews needed to focus on costs incurred by companies due to late payment, the study team contacted companies which positively answered the following questions:

- Are you aware that your company is entitled to compensation and interest in the event of a late payment? (Q17of the survey)
- Practice with claiming interest or compensation (Q18 of the survey)
- Other activities undertaken in case of late payment (Q20 of the survey).

This approach enabled the study team to select only companies that were aware of their rights and had an experience in claiming an interest and /or compensation. The study team also discussed the possibility to use recovery procedures for unchallenged claims and internal credit collection systems used by companies. Overall, 31 companies from Belgium, Bulgaria, Croatia, Cyprus, France, Greece, Hungary, Italy, Luxemburg, Malta, Sweden, Romania and the UK were consulted.

15.2. Data analysis

Primary data which were collected through the online survey, interviews with business representatives and public authorities and follow up interviews with companies were analysed in order to answer the main evaluation questions specified in the terms of reference. Where possible the results of desk reach were taken into account. Due to lack of quantitative data all information was analysed quantitatively. Recommendations were formulated on the basis of data analysis and were included in Section 12 of this report which is the final output of the study.

15.2.1. Overview

The table below presents an overview of different data collection and analysis techniques which were applied in the evaluation.

Figure A.2.9: Data collection and analysis techniques applied in the evaluation

	Input for the evaluation	Relevance per type of evaluation question					
		Relevance	Effectiveness	Efficiency	Coherence	EU added value	Prospective questions
Online Survey	Quantitative data on the effectiveness and EU added value questions	X	X				
Regression analysis		X	X				
Qualitative interview with industry representatives	Provide a more in-depth understanding of the issues investigated in the survey – but also to provide information on the key success factors of the Directive, its potential barriers and their outcomes/impacts	X	X	X	X	X	X
Qualitative interviews with public authorities	Provide information on the outcomes/ impacts of the Directives, on their barriers and their added value	X	X	X	X	X	X
Follow up interview with companies		X		X			
Desk research: qualitative and quantitative analysis of existing documents and reporting	Provide key background information on the Directives and on the potential impacts of their application		X	X	X	X	

15.2.2. *Regression analysis*

Based on data from the survey, regression analysis produces estimates to identify the factors that affect variables related to late payment.

Inference tests are conducted to examine the statistical significance of the effects of factors on a dependent variable or on the probability of occurrence of an event. Odd ratios[101] and coefficients are examined to assess the magnitude of these effects. Several dimensions are observed simultaneously as the method allows for a multivariate approach.

This section addresses the following questions:

- What factors are associated with the awareness of the rules regulating late payments across European countries?
- Which companies are more likely to experience late payments?
- Which companies are more likely to claim for the provisions in the directive?
- What factors are increasing the probability of the companies facing difficulties to pay within contractually agreed terms?
- What factors are related to the payment terms applied by companies? Which companies has experienced a change in the average of the payment delays?

15.2.2.1. Methodology

Different regression methods were carried out in order to address appropriately the nature of the response variable: logit, multinomial logit and ordinary least squares (OLS).

Logit model

The regression analysis was conducted in order to estimate the impact of several factors on the following variables:

- Awareness of the rules regulating late payments: binary variable that is equal to one if *the company was aware of these rules*, zero otherwise.

- Late payment experience: binary variable that is equal to one if the *company had experienced payment delays in the last three years,* zero otherwise.

- Claim for provisions under the directive: variable based on the question "*in your experience, does your company exercise its right to claim compensation and/or interest in the event of late payments?".* Possible answers were "always", "sometimes" and "never". The variable used is a binary variable that is equal to one if the company has exercised its rights to claim compensation and/or interest, zero otherwise.

- Difficulties paying suppliers within agreed terms: variable based on the question "*in the last year, has your company faced difficulties paying suppliers within contractually agreed terms*?". The variable used is a binary variable equal to one if the company had difficulties, and zero otherwise.

[101] Odds of an event correspond to the probability of success of this event divided by the probability of failure. An odds-ratio related to a discrete factor is the ratio between the odds when the factor is observed and the odds when the factor is not observed. An odds-ratio of 1 implies that the factor has no effect on the odds of the event.

We tested the relationship between company characteristics and these binary variables by estimating a logit model. This relationship is described as follows:

$$Y_i \sim B(n_i, \pi_i)$$

$$\pi_i = Prob(Y = y|F, C, S\ ) = \frac{e^{(\alpha \quad + F'\gamma_2 + \ \delta_C C_i + \delta_S S_i)}}{1 + e^{(\alpha \quad + F'\gamma_2 + \ \delta_C C_i + \delta_S S_i)}} \tag{2}$$

Where Y_i is a binary variable of the late payment experiences or behaviours of company *i* (i.e dependent variable) that follows a binomial distribution*; F* is a vector of company's characteristics such as age, turnover, SME (i.e. less than 250 employees) and type of main customers' clients (other business and public authorities). Country (*C*) and Sector (*S*) effects were also included to control for any difference in the implementation of the directive in each country and for any discrepancies that may exist between sectors.

The regression analysis was carried out using data of 1929 companies. We excluded from the analysis companies with only consumers as main clients (539 observations) and the questionnaires for which no answer was available for questions related to the late payment experiences and behaviours (about 200 obs.).

OLS

In order to determine which characteristics of the companies have an effect on the payment terms applied by companies, we estimated the following equation:

$$P_i = \ \alpha_i \ + F'\gamma_2 + \ \beta_1 X_{1i} + \ \ \delta_c C_i + \delta_s Si + \varepsilon_i \tag{2}$$

Where P_i is the average number of days of the payment delays that the companies have experienced. This variable was created from the question "*to the best of your knowledge, what is the actual average payment delay (in days)*". The responses to this question were given in ranges. In order to build a continuous variable, we estimated the average of the following ranges: 0-14; 15-30; 31-45; 46-60; 61-90; 91-120; 120-365. This question was limited to companies whose main clients were other businesses. As explanatory variables, we included the awareness of rules regulating late payment (X_1), company's characteristics, country and sector effects. Ordinary least squares regression method was used.

Multinomial logit

As additional results, we considered that the observed changes in the average payment delays might be influenced by characteristics of the companies. As the response variable is not binary (deterioration of delays, improvement, or no change) we estimated a multinomial logit model, which generalises the logit model to multiclass analysis when there are more than two outcomes.

15.2.2.2. Results

The table below presents the results of the logit regressions. Odd ratios significantly larger (respectively smaller) than one correspond to a positive (resp. negative) effect of the factor on the probability related to the response variable.

Regarding awareness of the rules regulating late payments in commercial transactions in the country (see model I), size, age and type of client of the company present statistically significant impact (i.e. odds ratios are statistically different from 1). SME companies are less likely to be aware of the rules regulating late payment. On the other hand, oldest companies are more likely to be aware of these rules than youngest ones. Companies with only public authorities as main clients are more prone to be aware of the late payment rules compared with companies with mixed group of clients (e.g. other businesses and consumers). However, this relationship is no longer significant when sector is included in the model specification. This means that having public authorities as a main client is to be related to the company's sector affiliation and mediates the relationship between type of client and awareness of the rules.

Model II presents the findings related to the likelihood of experiencing late payment. According to the logistic regression analysis, companies older than 5 years are more likely to experiment late payments compared with younger companies. In addition, the share of the turnover of the company's sales in the country slightly correlates with the probability of experiencing late payment.

Model III shows that SME companies are less likely to exercise the right to claim compensation and/or interest in the event of late payment. Companies with only public authorities as main clients are more prone to claim for these provisions but this relationship disappears when sectors are taken into account.

Findings in the table below also show that companies with only public authorities as main clients are more inclined to face difficulties paying suppliers within contractually agreed terms by companies (model IV). Size and age of the companies do not seem to be related to reporting difficulties to pay.

Regarding the country and sector effects on late payment experiences and behaviours, the figures below show the non-adjusted (when only sectors are included in themodels) and adjusted (when all factors are included in the models) odds ratio of these effects. Differences are observed across countries but the effects are reduced when the characteristics of the companies were taken into account. The same results are observed for sectors.

The average number of days of payment delays applied by companies are related to the size, age and turnover of the companies. SMEs show longer periods of payment delays applied to their consumers than large firms. Companies older than 10 years apply on average 15 more days of payment delays than other companies. However this effect becomes non-significant when country effects are considered in the analysis. This means that the characteristics related to countries (business culture, regulatory framework, etc.) act as a mediator between age and the average number of payment delays. The share of sales in the country is statistically significant for explaining the average number of payment delays (negative impact) but this effect disappears when sectors are included in the model specification. Thus, sector effects capture the relationship between turnover and average number of days. Awareness of the rules regulating late payment is not a significant determinant of the average number of days of payment delays.

The odds ratios related to the observed changes in the average payment delays are presented in the table below. Odds ratios related to improvement and deterioration are to be interpreted separately in comparison with a situation were no change is reported by the company. Companies with 10-49 employees are more likely to report a deterioration in their average payment delays in the last three years. However, this relationship becomes non-significant when countries are included in the model. Companies with public authorities as main clients are also less likely to observe a deterioration in their average payment delays, and this effect remains significant after including both country and sector controls in the model. The same result was obtained for awareness of the rules regulating late payment. Being aware of the rules also increases the probability to observe an improvement in the late payments delays compared with no change in the delays, but this effect is no longer significant when we add country effects.

Figure A.2.10 Late payment experiences or behaviours of the companies, EU-28. Odds-ratio estimates.

Company's characteristics	Model (I)			Model (II)			Model (III)			Model (IV)		
	Awareness of the rules regulating late payments in commercial transactions in your country			Company has experienced late payments			Company has claimed for the provisions in the directive			Company has faced difficulties paying suppliers within contractually agreed terms		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Size of company	0.49**	0.56**	0.57*	0.86	0.72	0.71	0.50**	0.53**	0.51**	1.40	1.08	1.04
SME(<250 empl.)	(0.137)	(0.163)	(0.168)	(0.235)	(0.205)	(0.205)	(0.139)	(0.155)	(0.151)	(0.385)	(0.312)	(0.305)
Age of the company (Ref. =< 5 years)												
5-10 years	1.34	1.39	1.34	2.27***	2.36***	2.37***	0.83	0.84	0.84	0.85	0.77	0.75
	(0.291)	(0.326)	(0.320)	(0.532)	(0.608)	(0.615)	(0.232)	(0.250)	(0.253)	(0.199)	(0.196)	(0.194)
More than 10 years	1.86***	1.56**	1.54**	1.98***	2.57***	2.57***	0.92	0.81	0.76	0.72	0.75	0.74
	(0.351)	(0.329)	(0.331)	(0.385)	(0.587)	(0.590)	(0.227)	(0.219)	(0.211)	(0.146)	(0.172)	(0.173)
Company's main consumers												
Only B2B	0.88	0.92	0.93	1.28	1.08	1.08	0.83	0.82	0.77	1.32	1.15	1.19
	(0.200)	(0.221)	(0.234)	(0.322)	(0.290)	(0.295)	(0.211)	(0.220)	(0.216)	(0.300)	(0.279)	(0.302)
Only PA2B	1.14	1.34**	1.26	1.38**	1.12	1.12	1.13	1.31*	1.30	1.89***	1.62***	1.59***
	(0.146)	(0.186)	(0.179)	(0.205)	(0.180)	(0.184)	(0.168)	(0.208)	(0.213)	(0.244)	(0.226)	(0.226)
% turnover of company's sales in country	0.99	0.99	0.99	1,003	1.003*	1.003*	1,001	1,001	1,001	1,001	1,001	1,001
	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)	(0.002)
Constant	2.59**	1.56	3.26**	1.11	0.71	0.92	2.10	3.69**	4.83**	0.23***	0.18***	0.15***
	(1.083)	(0.785)	(1.822)	(0.480)	(0.373)	(0.540)	(0.986)	(2.145)	(3.084)	(0.098)	(0.100)	(0.090)
Observations	1,929	1,929	1,929	1,929	1,929	1,929	1,277	1,277	1,277	1,893	1,893	1,893
Log Likelihood	-1247	-1166	-1150	-1084	-981.3	-973.4	-877.4	-827.9	-815.1	-1120	-1037	-1028
Pseudo R2	0.0107	0.0748	0.0877	0.00976	0.103	0.110	0.00529	0.0614	0.0759	0.0141	0.0877	0.0952
Country FE		Yes	Yes		Yes	Yes		Yes	Yes		Yes	Yes
Sector FE			Yes			Yes			Yes			Yes

standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Figure A.2.11: Odds ratio* of countries in models of late payment experiences and behaviours

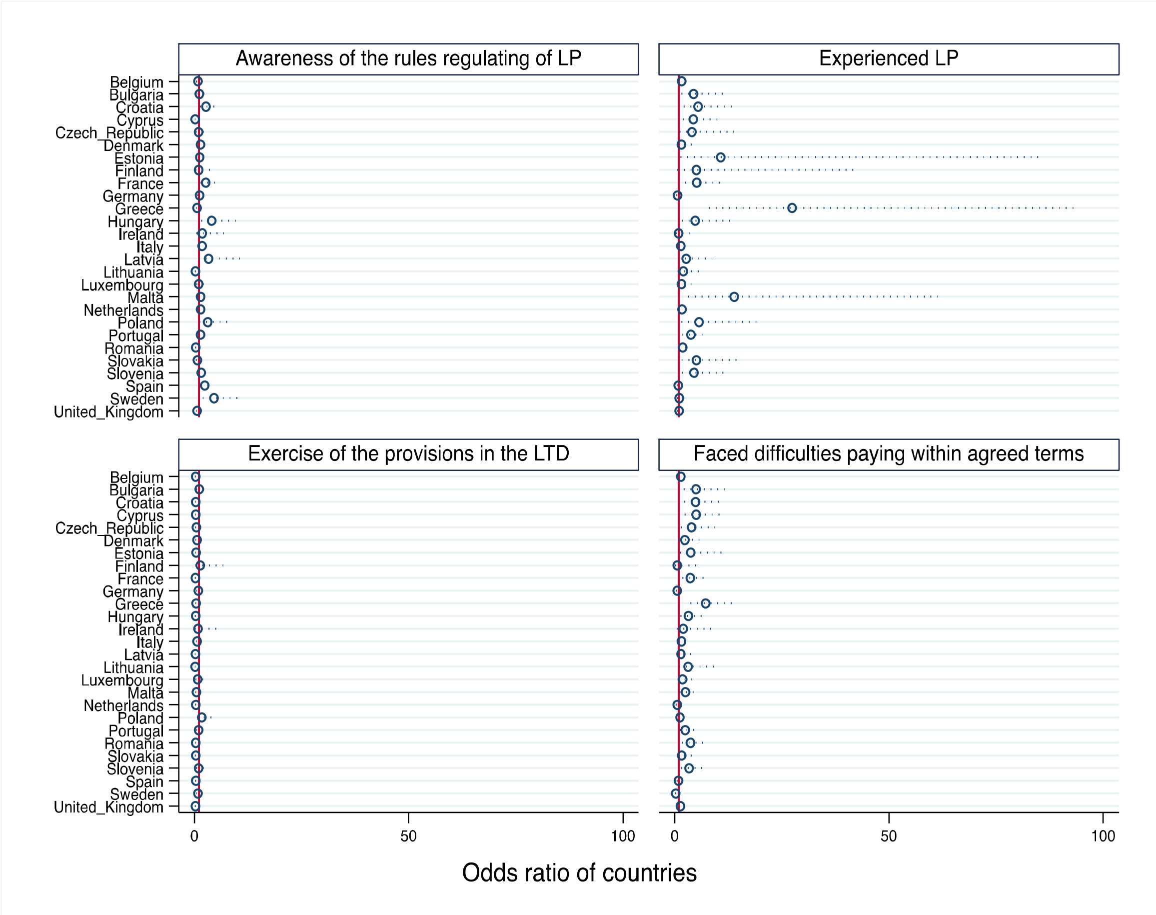
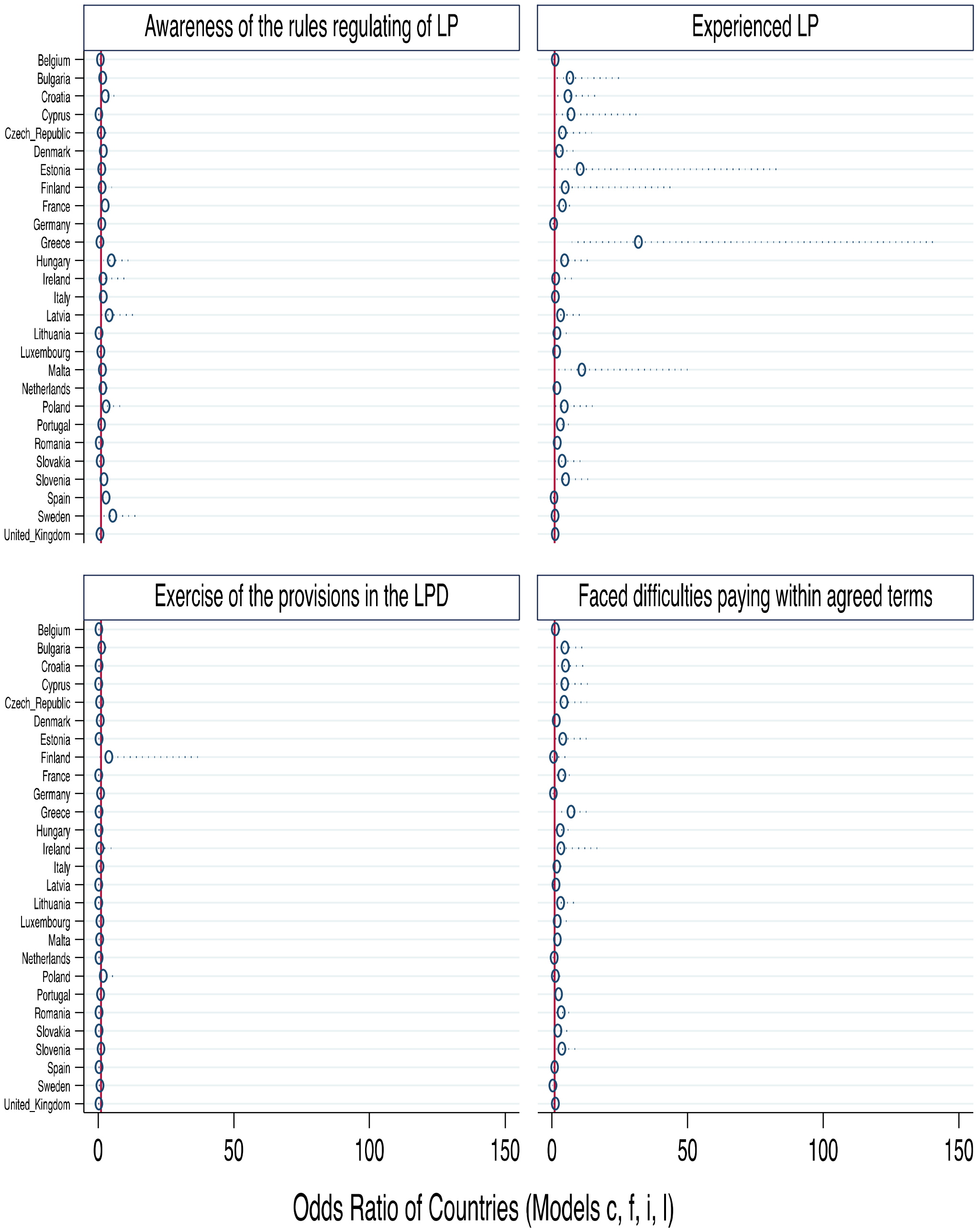


Figure A.2.12: Adjusted odds ratio* of countries in models of late payment experiences and behaviours



* Odds ratio adjusted by sector, size, age, turnover and main consumers of the companies. The reference country was Australia. Red line in one. Dots refers to CI (95%)

Figure A.2.13: Odds ratio of sector in models of late payment experiences and behaviours

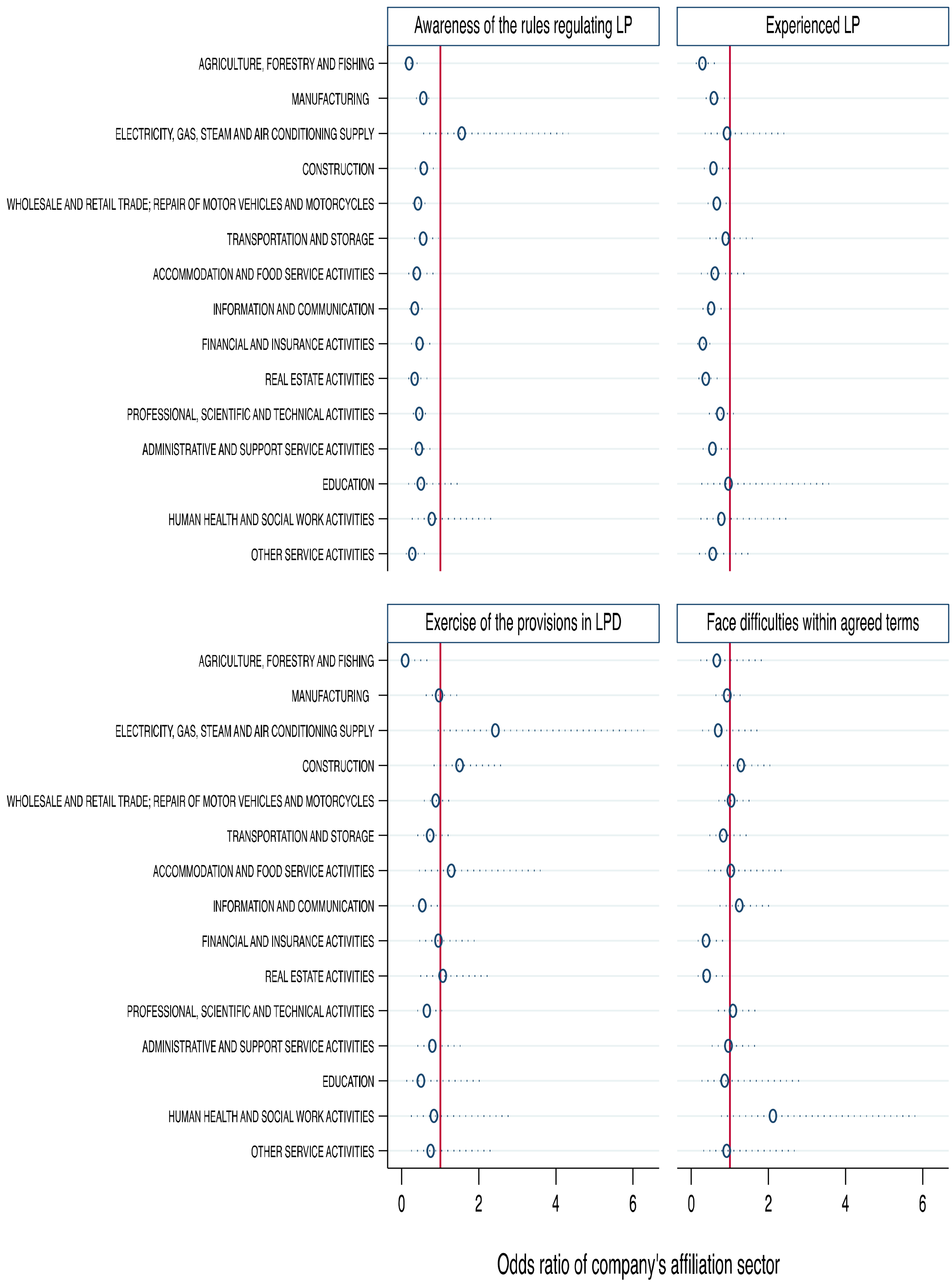
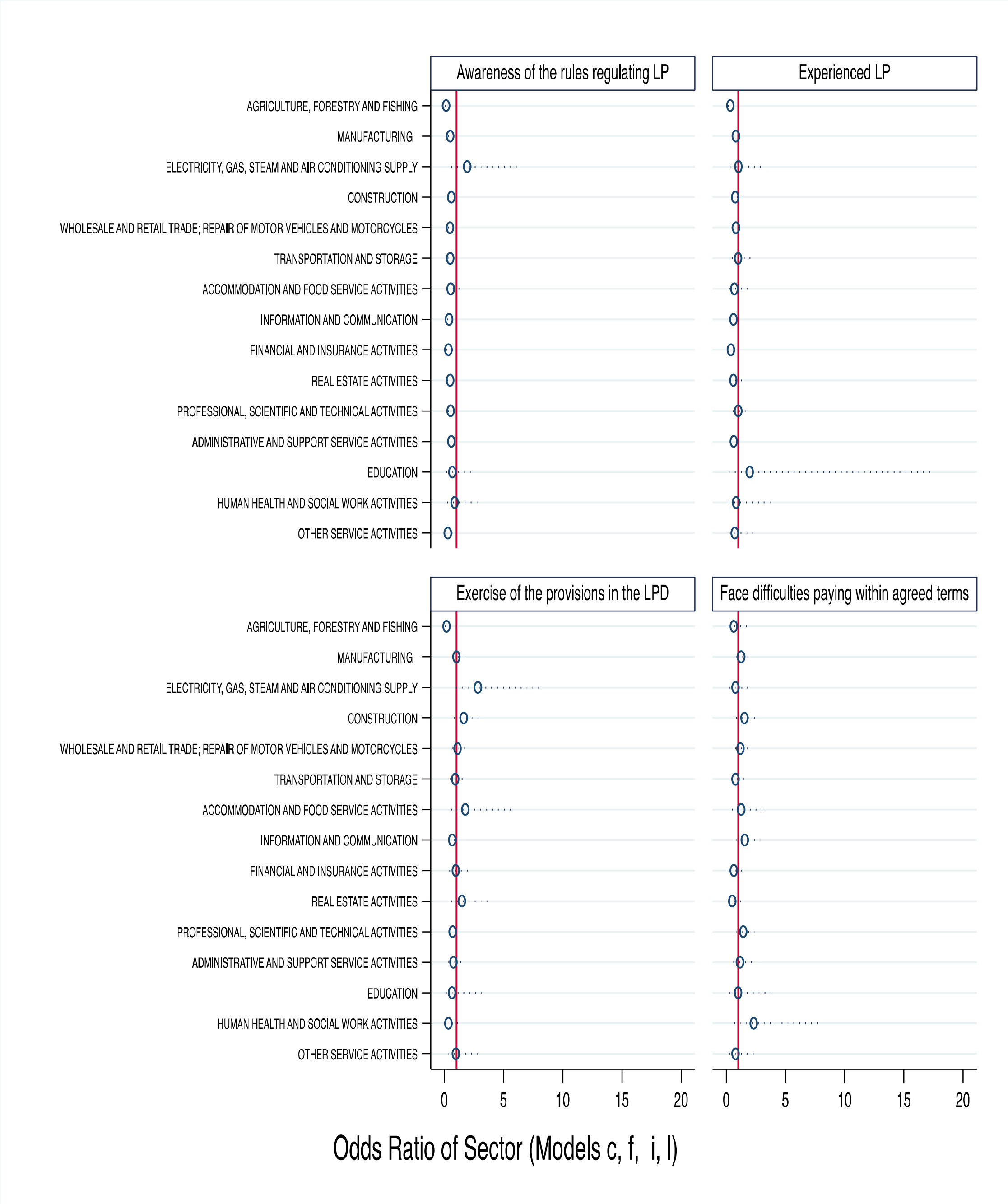


Figure A.2.14: Adjusted odds ratio* of sector affiliation of the companies in models of late payment experiences and behaviours



* Odds ratio adjusted by country, size, age, turnover and main consumers of the companies. The reference sector was other sectors (i.e. mining, water supply, public administration and arts).

Figure A.2.15: Payment terms applied by companies, EU-28. OLS estimations.

Company's characteristics	Average of the number of days of the payment terms that the company applies to its customers (only B2B)		
	Average number of days (Model V)		
	OLS	with country effects	with country and sector effects
Size of company			
SME(<250 empl.)	6.91**	4.98*	2.46
	(3.11)	(2.56)	(2.56)
Age of the company (Ref. =< 5 years)			
5-10 years	0.63	-0.82	0.03
	(3.12)	(2.63)	(2.61)
More than 10 years	14.55***	5.14	5.15
	(3.00)	(2.63)	(2.62)
% turnover of company's sales in country	-0.09**	-0.06*	-0.04
	(0.04)	(0.03)	(0.04)
Awareness of the rules regulating late payment	2.53	1.98	2.25
	(2.14)	(1.95)	(2.03)
Constant	26.93***	35.36***	32.55***
	(5.04)	(4.43)	(5.83)
Observations	1,465	1,465	1,465
R-squared	0.03	0.28	0.30

*** p<0.01, ** p<0.05, * p<0.1, heteroskedasticity-consistent standard errors in parentheses.

Figure A.2.16: Odds ratio of the observed change in average payment delays compared with no change. Companies in EU 28. Multinomial logit

Company's characteristics	The company has noticed any change in average payment delays in the last three years					
	Model (VI)		Model (VII)		Model (VIII)	
	A deterioratio	An improvement	A deterioration	An improvement	A deterioration	An improvement
	Odds Ratio	Odds Ratio	Odds Ratio	Odds Ratio	Odds Ratio	Odds Ratio
Size of company Ref (<=9 empl.)						
10-49	1.92***	1.25	1.15	0.91	1.11	0.90
	(0.280)	(0.214)	(0.195)	(0.179)	(0.193)	(0.180)
50-249	1.27	1.52**	0.82	1.08	0.77	1.10
	(0.247)	(0.306)	(0.178)	(0.244)	(0.171)	(0.256)
250 or more	0.95	1.52	0.72	1.15	0.71	1.13
	(0.338)	(0.497)	(0.270)	(0.402)	(0.267)	(0.404)
Age of the company (Ref. =< 5 years)						
5-10 years	0.78	1.12	0.67	1.10	0.66	1.06
	(0.243)	(0.430)	(0.230)	(0.437)	(0.230)	(0.427)
More than 10 years	1.07	1.43	0.68	1.23	0.69	1.19
	(0.293)	(0.500)	(0.211)	(0.454)	(0.217)	(0.444)
Company's main consumers						
Only B2B	1.10	0.83	1.22	0.98	1.15	0.86
	(0.334)	(0.256)	(0.391)	(0.314)	(0.382)	(0.285)
Only PA2B	0.75*	0.84	0.72*	0.90	0.70*	0.89
	(0.127)	(0.158)	(0.133)	(0.178)	(0.133)	(0.180)
% turnover of company's sales in country	1.00	1.00	1.00	1.00	1.00	1.00
	(0.002)	(0.002)	(0.002)	(0.003)	(0.002)	(0.003)
Awareness of the rules regulating late payment	0.76**	1.33*	0.78*	1.23	0.78*	1.19
	(0.099)	(0.209)	(0.113)	(0.208)	(0.114)	(0.205)
Constant	0.37**	0.22***	0.81	0.15***	0.78	0.26*
	(0.167)	(0.114)	(0.467)	(0.107)	(0.509)	(0.204)
Observations	1,460	1,460	1,460	1,460	1,460	1,460
Log Likelihood	-1438	-1438	-1335	-1335	-1323	-1323
Country FE			Yes	Yes	Yes	Yes
Sector FE					Yes	Yes

seEform in parentheses
*** p<0.01, ** p<0.05, * p<0.1

The dependant variable was created from question: "in your experience, have your noticed any change in average payment delays in the last three years?" - Responses: an improvement, a deterioration, no change. The reference of the dependant variable was “No change” in the average payment delays.

Company's characteristics	The company has noticed any change in average payment delays in the last three years					
	Model (VI)		Model (VII)		Model (VIII)	
	A deterioratio	An improvement	A deterioration	An improvement	A deterioration	An improvement
	Odds Ratio	Odds Ratio	Odds Ratio	Odds Ratio	Odds Ratio	Odds Ratio
Size of company Ref (<=9 empl.)						
10-49	1.92***	1.25	1.15	0.91	1.11	0.90
	(0.280)	(0.214)	(0.195)	(0.179)	(0.193)	(0.180)
50-249	1.27	1.52**	0.82	1.08	0.77	1.10
	(0.247)	(0.306)	(0.178)	(0.244)	(0.171)	(0.256)
250 or more	0.95	1.52	0.72	1.15	0.71	1.13
	(0.338)	(0.497)	(0.270)	(0.402)	(0.267)	(0.404)
Age of the company (Ref. =< 5 years)						
5-10 years	0.78	1.12	0.67	1.10	0.66	1.06
	(0.243)	(0.430)	(0.230)	(0.437)	(0.230)	(0.427)
More than 10 years	1.07	1.43	0.68	1.23	0.69	1.19
	(0.293)	(0.500)	(0.211)	(0.454)	(0.217)	(0.444)
Company's main consumers						
Only B2B	1.10	0.83	1.22	0.98	1.15	0.86
	(0.334)	(0.256)	(0.391)	(0.314)	(0.382)	(0.285)
Only PA2B	0.75*	0.84	0.72*	0.90	0.70*	0.89
	(0.127)	(0.158)	(0.133)	(0.178)	(0.133)	(0.180)
% turnover of company's sales in country	1.00	1.00	1.00	1.00	1.00	1.00
	(0.002)	(0.002)	(0.002)	(0.003)	(0.002)	(0.003)
Awareness of the rules regulating late payment	0.76**	1.33*	0.78*	1.23	0.78*	1.19
	(0.099)	(0.209)	(0.113)	(0.208)	(0.114)	(0.205)
Constant	0.37**	0.22***	0.81	0.15***	0.78	0.26*
	(0.167)	(0.114)	(0.467)	(0.107)	(0.509)	(0.204)
Observations	1,460	1,460	1,460	1,460	1,460	1,460
Log Likelihood	-1438	-1438	-1335	-1335	-1323	-1323
Country FE			Yes	Yes	Yes	Yes
Sector FE					Yes	Yes

seEform in parentheses

*** p<0.01, ** p<0.05, * p<0.1

The dependant variable is created from question: "in your experience, have your noticed any cahnge in average payment delays in the last three years?" - Responses: an improvement, a deterioration, no change. The reference of the dependant variable is No change in the average payment

16. Annex 3: Consultation results

16.1. Profile of respondents

16.1.1. Size

Almost 60% of respondents are very small or small companies for 20% of medium companies and 20% of large companies.

Answer	Number of respondents	% of respondents
Up to 9	*53*	20%
10-49	*99*	38%
50 - 249	*56*	21%
250 or more	54	21%
Total	*262*	**100.0%**

Question: How many staff does your company currently employ?

16.1.2. Main customers

82% of respondents have other businesses as main clients and 33% have public authorities as main clients.

Answer	Number of respondents	% of respondents
Other businesses (B2B)	220	82%
Public authorities	*89*	33%
Consumers (retail)	*74*	28%

Number of respondents: 268
Question: Who are your company's main customers?

16.2. Main results

16.2.1. Awareness of the rules regulating late payment

Almost 80% of respondents are aware of the rules.

Answer	Number of respondents	% of respondents
Yes	*210*	*79%*
No	*55*	*21%*
Total	***265***	***100.00%***

Question: Are you aware of the rules regulating late payment in commercial transactions in your country?

Information campaign is the first channel of information (for one third of the respondents).

Answer	Number of respondents	% of respondents
Informed by accountant	75	28%
Informed by bank	13	5%
Informed by company	11	4%
Informed by information campaign	89	33%
Other	92	34%

Number of respondents: 269
Question: How has your company been informed about these rules? (tick all that apply)

16.2.2. Average payment terms

More than 60% of companies can sometimes agree periods of payment that exceed 60 calendar days. Almost 30% of companies never accept that while 10% always agree periods of payment that exceed 60 calendar days.

Answer	Number of respondents	% of respondents
Always	23	10%
Sometimes	138	61%
Never	66	29%
Total	**227**	**100.0%**

Question: In contracts with businesses does your company explicitly agree periods of payment that exceed 60 calendar days?

16.2.3. Payment delays

The respondents have almost unanimously (95%) experienced payment delays in the last three years.

Answer	Number of respondents	% of respondents
Yes	215	95%
No	11	5%
Total	**226**	**100.0%**

Question: Has your company experienced payment delays in the last three years?

For more than one third of the companies (36%) that experienced payment delays with other businesses, the delay was superior to 30 days.

Regarding the companies that experienced payment delays with public authorities, the delay rises to more than 60 days for 44% of the respondents.

Answer	Number of respondents	% of respondents
Payment delays with other businesses		
Less than 10 days	25	12%
Between 10 and 29 days	60	29%
Between 30 and 60 days	75	36%
More than 60 days	48	23%
Total	**208**	**100%**
Payment delays with public authorities		
Less than 10 days	18	14%
Between 10 and 29 days	24	18%
Between 30 and 60 days	33	25%
More than 60 days	58	44%
Total	**131**	**100%**

Question: To the best of your knowledge, what is the actual average payment delay (in days)?

The situation has improved in the last three years for 28% of companies that experienced payment delays with other businesses and for 39% of companies that experienced payment delays with other public authorities.

The situation has not changed for 37% of the respondents as regards the payment delay for B2B contracts, and for 46% with respect to contracts with public authorities.

Even though, it is worth noticing that for 35% the companies that experienced payment delays with other businesses, the situation worsens.

Answer	Number of respondents	% of respondents
Change in average payment delay for B2B contracts		
No change	76	37%
A deterioration	73	35%
An improvement	58	28%
Total	**207**	**100%**
Change in average payment delay for contracts with public authorities		

Answer	Number of respondents	% of respondents
No change	66	46%
A deterioration	21	15%
An improvement	55	39%
Total	**142**	**100%**

Question: In your experience, have you noticed any change in average payment delays in the last three years?

16.3. Late payers

SMEs are the customers that are the most likely to pay late (for 41% of the respondents) followed by large companies (37%) and then Public authorities (35%). These results however are linked to the fact that there are fewer companies that only deal with public authorities than only with other businesses.

Answer	Number of respondents	% of respondents
SMEs	113	41%
Large companies	100	37%
Public authorities	96	35%

Number of respondents: 273
Question: In your experience, which types of customers are most likely to pay late? (Multiple answers possible)

According to the companies that experienced payment delay for their contracts with public authorities, 41% of the late payments were due to national administrations, 37% to regional administrations and 35% to local administrations.

Answer	Number of respondents	% of respondents
National administrations	36	41%
Regional administrations	60	37%
Local administrations	68	35%

Number of respondents: 273
Question: If you selected "public authorities", have you experienced late payments from any of the following? (Multiple answers possible)

16.4. Awareness of rights

Almost 90% of the companies are aware that they are entitled to compensation and interest in the event of a late payment.

Answer	Number of respondents	% of respondents
Yes	188	88%
No	25	12%

Answer	Number of respondents	% of respondents
Total	**213**	**100%**

Question: Are you aware that your company is entitled to compensation and interest in the event of a late payment?

16.5. Actual actions in case of late payments

Almost one half of the companies (49%) "sometimes" exercise their rights to claim compensation and/or interest. 41% do not exercise these rights.

Answer	Number of respondents	% of respondents
Always	17	9%
Sometimes	92	49%
Never	77	41%
Total	**186**	**100%**

Question: In your experience, does your company exercise its right to claim compensation and/or interest in the event of late payments?

For almost one half of the companies (49%), the main reason is to maintain good commercial relationships. For 26% it is because it is considered not cost effective.

Answer	Number of respondents	% of respondents
Maintain good commercial relationships	134	49%
Not cost effective	71	26%
Other	34	12%

Number of respondents: 273
Question: Why does your company not always claim interest and compensation in the event of a late payment (Multiple answers possible)?

38% of the companies never use external financing to ensure liquidity in case of late payment against more than 60% that use it (always or sometimes).

Answer	Number of respondents	% of respondents
Use external financing to ensure liquidity		
Always	43	21%
Sometimes	81	40%
Never	77	38%
Total	**201**	**100%**

Question: In case of late payment, does your company (sometimes, never, always) use external financing to ensure liquidity (e.g. bank loan)?

Almost 60% of the companies (58%) sometimes use external legal advice or debt agency to recover unpaid invoices.

Answer	Number of respondents	% of respondents
Use legal advice or debt agency to recover unpaid invoices		
Always	32	17%
Sometimes	109	58%
Never	46	25%
Total	**187**	**100%**

Question: In case of late payment, does your company (sometimes, never, always) use legal advice or debt agency to recover unpaid invoices?

Almost 60% of the companies (58%) sometimes engage in litigation or use alternative dispute resolution to recover unpaid invoices

Answer	Number of respondents	% of respondents
Engage in litigation or use alternative dispute resolution to recover unpaid invoices		
Always	25	14%
Sometimes	101	58%
Never	48	28%
Total	**174**	**100%**

Question: In case of late payment, does your company (sometimes, never, always) engage in litigation or use alternative dispute resolution to recover unpaid invoices?

16.6. Difficulties in paying suppliers

Seven respondents out of ten (73%) state they did not have difficulties in paying their suppliers in time.

Answer	Number of respondents	% of respondents
Yes	70	27%
No	193	73%

Answer	Number of respondents	% of respondents
Total	**263**	**100%**

Question: In the last year, has your company faced difficulties paying suppliers within contractually agreed terms?

Almost one half of the companies (48%) made a significant effort to decrease the number of late payments over the year.

Answer	Number of respondents	% of respondents
Yes, to a large extent	34	48%
Yes, to a moderate extent	27	38%
Yes, to a small extent	8	11%
No	2	3%
Total	**71**	**100%**

Question: Has your company made efforts to decrease the number of late payments over the last year?

17. Annex 4: Survey questionnaire and interview guides

17.1. Survey questionnaire

EVALUATION OF THE LATE PAYMENT DIRECTIVE

Technopolis Group, VVA and EY have been asked by the European Commission to assess the effects of Directive 2011/7/EU (the 'Late Payment Directive') on businesses, employment and growth.

Country X transposed the Directive through law xxx (name of law) on MM/YY.

The main provisions of the law are that:

1. Public authorities must pay for goods and services that they procure within 30 days or, in very exceptional circumstances, within 60 days.
2. Businesses have to pay their invoices within 60 days, unless they expressly agree otherwise and provided it is not grossly unfair to the creditor.
3. Businesses are entitled to automatically claim interest for late payment as well as a fixed sum as compensation for recovery costs.

This survey provides vital data on the impact of late payments on businesses. It takes approximately 10-15 minutes to fill in and all responses will be anonymised and used only in the context of this study.

Your input will contribute to finding effective solutions to help combat late payment in commercial transactions.

1. Are you aware of the rules regulating late payment in commercial transactions in your country?
    - Yes/ No

2. How has your company been informed about these rules? (tick all that apply)
    - By your accountant
    - By your bank
    - By another company
    - By an information campaign
    - Other (please specify)

3. Where is your company located?

4. Please specify the age of your company
    - Less than 5 years
    - 5-10 years
    - More than 10 years

5. Please specify your company's turnover for the last year of operation
    - Less than € 2 million
    - € 2 million - € 10 million
    - € 10 million - € 50 million
    - More than € 50 million

6. Approximately what proportion of the turnover of your company comes from sales...? (Please make sure the total does not exceed 100%)
    - In your country
    - In other EU countries
    - Outside the EU

7. How many staff does your company currently employ?
    - Up to 9
    - 10–49
    - 50–249
    - 250 or more

8. Who are your company's main customers? (Multiple answers possible)
    - Other businesses (B2B)
    - Public authorities
    - Consumers (retail)

9. On average, what payment terms (in days) does your company apply to its customers (other businesses only)?

10. In contracts with businesses does your company explicitly agree periods of payment that exceed 60 calendar days?
    - Sometimes
    - Always
    - Never

11. Could you briefly explain in which cases your company explicitly agrees periods of payment that exceed 60 days?

12. Has your company experienced payment delays in the last three years?
    Yes/ No

13. To the best of your knowledge, what is the actual average payment delay (in days)?

	Less than 10 days	Between 10 and 29 days	Between 30 and 60 days	More than 60 days (please specify)
With other businesses				
With public				

authorities				

More than 60 days (please specify)

14. In your experience, have you noticed any change in average payment delays in the last three years?

	An improvement	No change	A deterioration
In business to business contracts			
In contracts with public authorities			

15. In your experience, which types of customers are most likely to pay late? (Multiple answers possible)
    - SMEs
    - Large companies
    - Public authorities

16. If you selected "public authorities", have you experienced late payments from any of the following? (Multiple answers possible)
    - National administrations
    - Regional administrations
    - Local administrations

    Can you please gives examples of specific public administrations with which you have experienced late payments?

17. Are you aware that your company is entitled to compensation and interest in the event of a late payment?
    - Yes/ No

18. In your experience, does your company exercise its right to claim compensation and/or interest in the event of late payments?
    - Always
    - Sometimes
    - Never

19. Why does your company not always claim interest and compensation in the event of a late payment (Multiple answers possible)?
    - To maintain good commercial relationships with our customers
    - It is not cost effective (e.g. the amounts are too small, claiming is too costly/time consuming)
    - Other (please specify)

20. In case of late payment, does your company...

	Always	Sometimes	Never
... use legal advice or debt agency to recover unpaid invoices?			
... use external financing to ensure liquidity (e.g. bank loan)?			
... engage in litigation or use alternative dispute resolution to recover unpaid invoices?			

21. Do you have any further suggestions on how to combat late payments?

22. In the last year, has your company faced difficulties paying suppliers within contractually agreed terms?
    - Yes/ No

23. Has your company made efforts to decrease the number of late payments over the last year? No
    - Yes, to a small extent
    - Yes, to a moderate extent
    - Yes, to a large extent

24. What were the reasons for these efforts? (Multiple answers possible)
    - To reduce / avoid compensation payments
    - To reduce / avoid having to pay interest on late payments
    - Other (please specify)

25. Would you be available for a short telephone interview with the research team to answer a few more questions about the issue of late payment? (your replies will be anonymised)
    - Yes/ No

26. Can you please indicate
    - Your first and last name
    - Your email address

- Your phone number

We thank you very much for your support

17.2. Interview guides

17.2.1. Industry associations

Date
Interviewee
Organisation
Position

Short introduction of the main provision introduced in the national legislation of the interviewee's country will be provided.

Relevance

1. Do businesses exercise their rights as given by the Directive and/or corresponding national legislation? If not, why?
2. Before the Directive was transposed into national law in your country, are you aware of any court cases initiated against late payers? If so, could you provide more details? Has this changed after the implementation of the Directive?
3. To which extent do companies in your country consider that late payment has a negative impact on the operations of the companies and their economic development (capacity to innovate, investment etc.)? Are there any data to show the impacts?
4. Considering the main objective of the Directive which was to combat late payments – have the provisions of the Directive and/or national legislation addressed the needs of businesses? Are there new challenges that have emerged since adoption of the Directive that should be addressed?

Effectiveness

5. Are businesses generally aware of the provisions introduced by the Directive and corresponding national legislation? If not, what could be done to increase awareness?
6. Is the payment period in commercial transactions monitored in your country?
7. Has the situation improved as regards <u>number of days of payment</u> since the implementation of the Directive in your country?
8. Has the situation improved as regards <u>number of days of delay</u> since the implementation of the Directive in your country?
9. What are the benefits of establishing payment periods for businesses and public authorities? If they are not respected in your country, what could be the reason for these? Are there any loopholes that businesses and/or public authorities use to prolong the payment periods? If so, what are those?
10. What impact has the Directive had on the uncertainty of businesses regarding payments in cross-border transactions? Has the uncertainty been reduced since the Directive has been implemented in your country?
11. What are the practical barriers preventing an effective application of the national provisions implementing the Directive? How could these be addressed and by whom (EU versus MS)?

12. Are you aware of any unintended consequences of the implementation of the Directive and corresponding national provisions?

13. Are there any countries that companies are reluctant to export to due to the risk of receiving late payment? If yes, what are those countries? Has the Directive and/or corresponding national legislation had any impact on this situation?

Efficiency

14. What were the costs for businesses, including reporting and administrative burdens in relation to late payments before the implementation of the directive? Has this changed after the implementation of the Directive in your country? Would it be possible to provide any quantitative data demonstrating the costs before and after the implementation of the Directive?

15. What are the benefits of the possibility to claim compensation, interest of late payment or fix sum to cover recovery costs? How do they compere to the costs of late payments (i.e. external finances to ensure cash flow)?

16. What aspects of the Directive are the most efficient/inefficient102in terms of resources spent? *Could you rank main provisions of the Late Payment Directive using scale 1 to 4 where 1 stands for least inefficient and 5 for most efficient?*

	1	2	3	4	5
Interest for late payment					
Compensation for recovery costs					
Recovery procedures for unchallenged claims					

Please explain your answers.

Coherence

17. Are there any overlaps/complementarities between the Directive and any other Community/MS action?

18. Some MS decided to introduce stricter rules than those introduced by the Directive[103]. What impacts have these stricter rules had on debtors and creditors in your country? Has this had any impact on the culture of payments in your country?

19. Are there any additional measures that could be taken to enhance the effectiveness of the Directive and corresponding national provisions? If so, what are these?

20. Are you aware of any prompt payment codes, either initiated by public authorities or the industry established in your country?

21. Has your organisation undertaken any activities to raise awareness of the businesses about the rights introduced by the Directive and the national provisions? If so, could you provide more details about these?

Added value

22. What is the added value of the European approach to regulate the issue of late payments compared to the individual national legislations in MS?

Other

23. Do you know any company that has been involved in a court case in relation to late payments? If so, could you provide details of this?

[102] An overview of the main provisions of the Directive as implemented in MS was provided in introduction

[103] An overview of these rules was provided in introduction. This question was only be asked to the stakeholders in countries with stricter rules.

24. Do you have any suggestions who should be interviewed during our assignment?

17.2.2. Public authorities

Date
Interviewee
Organisation
Position

Effectiveness:

1. Is the payment period in commercial transactions monitored in your country?
2. Has the situation improved as regards number of days of payment since the implementation of the Directive in your country?
3. Has the situation improved as regards number of days of delay since the implementation of the Directive in your country?
4. Are there any data to show spending of public authorities linked to the compensations for late payments claimed by businesses in your country?
5. What are the practical barriers preventing an effective application of the national provisions implementing the Directive? How could these be addressed and by whom (EU versus MS)?
6. Are there any legal barriers preventing an effective application of the Directive in your country? How could these be addressed?
7. Are you aware of any unintended consequences of the implementation of the Directive and corresponding national provisions?

Efficiency

8. What are the costs for public authorities in implementing the Directive? Do you consider them affordable?
9. How has the Stability and Growth Pact influenced compliance with the LPD in the public sector? Is this the main cause for late payments on transactions between undertakings and public authorities?
10. Do you see any administrative burdens (in relation to e.g. awareness raising, publication of list of prompt payers, regulating e-invoicing) resulting from the implementation of the Directive? How could administrative burdens be reduced?

Coherence

11. Are there any overlaps/complementarities between the Directive and any other Community/national action?

12. Some MS decided to introduce stricter rules than those introduced by the Directive[104]. What impacts have these had on debtors and creditors in your country? Has this had any impact on the culture of payments?
13. Are there any additional measures that could be taken to enhance the effectiveness of the Directive? If so, what are these?
14. Have you established any prompt payment codes?
15. Have you undertaken any activities to raise awareness of the businesses about the rights introduced by the Directive? If so, could you provide more details about these?

Other

16. What are the improvements made two years following the transposition of the Directive into national laws in your country? Are there any figures to demonstrate these improvements? What was the methodology used to calculate these figures?
17. Are you aware of any public authority involved in the court case due to late payments? If so could you provide details?
18. Do you have any suggestion who should be interviewed during our assignment?

104 An overview of these rules was provided in introduction. This question was only be asked to the stakeholders in countries with stricter rules.

18. Annex 5: Interview Contacts

18.1. Scoping interviews

Scoping interviews
• UAPME (The voice of SMEs in Europe); • Eurochambers; • Eucomed Medical Technology; • FoodServiceEurope; • CEEP (the European Centre of Employers and Enterprises providing Public Services); • European Builders Confederation (EBC); • European Construction Industry Federation; and • European-DIY Retail Association.

18.2. Interviews at MS level

Country	Name of Organisation
Austria	1. Austrian Economic Chamber[105]
	2. Verband der öffentlichen Wirtschaft und Gemeinwirtschaft Österreichs (VÖWG)
	3. KSV1870 - Credit protection association
	4. Federal Ministry of Science, Research and Economy
Belgium	1. Ministry of Justice
	2. Unie van Zelfstandige Ondernemers - UNIZO
	3. Graydon
	4. COMEOS
	5. Bouwunie – Flemish Federation of SMEs of construction
Bulgaria	1. Bulgarian Industrial Association
	2. Bulgarian Construction Chamber
	3. Bulgarian Association of Medical Devices Entrepreneurs
Croatia	1. Croatian Employers' Association
	2. National/academic expert
	3. Innovative Pharmaceutical Initiative
	4. National/academic expert
Cyprus	1. Cyprus Chamber of Commerce and Industry
	2. Cyprus Employers & Industrialists Federation – OEB
	3. Ministry of Energy, Commerce Industry and Tourism
	4. Cyprus Association of Research and Development Pharmaceutical Companies
Czech Republic	1. Ministry of Justice
	2. Czech confederation of commerce and tourism
	3. SPS – Czech Association of Building Entrepreneurs
Denmark	1. Ministry of Justice
	2. Håndværksrådet/Danish Federation of Small and Medium-Sized Enterprises
	3. Organisation asked to be completely anonymised
Estonia	1. Estonian Ministry of Justice
	2. Estonian Chamber of Commerce and Industry
	3. Estonian Employers Confederation

[105] Fachverband der Nahrungs- und Genussmittelindustrie asked to refer to the interview we held with the Austrian Chamber of Commerce.

Finland	1. Ministry of Justice
	2. Helsinki Region Chamber of Commerce
	3. Federation of Finnish Enterprises
	4. Finnish Hardware Association
	5. Finnish Commerce Federation
France	1. Direction des affaires juridiques des ministères économiques et financiers
	2. Ministère de l'Économie, des Finances et de l'Industrie
	3. CCI International
	4. Chambre des Metiers et de l'Artisanat
	5. FMB - La Fédération des magasins de bricolage et de l'aménagement de la maison
	6. FCD - Federation Des Entreprises Du Commerce Et De La Distribution
Germany	1. HDB – Hauptverband der Deutschen Bauindustrie
	2. BVÖD - Bundesverband öffentliche Dienstleistungen - Deutsche Sektion des CEEP e.V.
	3. HDE – Handelsverband Deutschland
	4. ZDB – Zentralverband des Deutschen Baugewerbes
	5. Zentralverband des Deutschen Handwerks und Unternehmerverband Deutsches Handwerk - ZDH und UDH
Greece	1. SEVT - Federation of Hellenic Food Industries
	2. Greek Medical Devices Association
	3. National Confederation of Hellenic Commerce - ESEE
	4. PEDMEDE – Panhellenic Association of Engineers Contractors of Public works
	5. GSEVEE - Hellenic Confederation of Professionals, Craftsmen and Merchants
Hungary	1. Institute for Economic and Enterprise Research
Ireland	1. Department of Jobs, Enterprise & Innovation
	2. Irish Credit Management Institute
	3. Small Firms Association
	4. Chambers Ireland
	5. Hardware Association Ireland
	6. Banking and Payments Federation Ireland
	7. Irish Small and Medium Enterprises Association
	8. Retail Ireland
Italy	1. Confederazione Generale dell' Industria Italiana - CONFINDUSTRIA
	2. Industrial Association of Navora
	3. Ministry of Economic Development - Div. XIII Politiche industriali comunitarie
	4. ANCE – National association of building constructors
	5. CONFARTIGIANATO Imprese
	6. CNA – National association of SMEs
	7. ANAEPA - Associazione Nazionale Artigiani dell'Edilizia dei decoratori, dei Pittori e Attività Affini
	8. Ragioneria dello Stato
	9. Assobiomedica
	10. Confcommercio
	11. Federdistribuzione
Latvia	1. Association of Commercial Banks of Latvia - ACBL
	2. Employers' Confederation of Latvia - LDDK
	3. Business Union of Latvia
	4. Latvian Builders Association
Lithuania	1. Ministry of Economy of Lithuania
	2. Public Procurement Office
Luxembourg	1. Ministry in charge of public works
	2. Luxembourg Chamber of Commerce
	3. Chamber of Craft Businesses
Malta	1. Ministry for Finance
	2. Malta Chamber of SMEs

	3. Malta Credit Association
Netherlands	1. FNLI – Federatie Nederlandse Levensmiddelen Industrie
	2. Vereniging VNO-NCW
	3. VCMB - Credit management branche
	4. Raad Nederlands Detailhandel - RND
	5. Ministerie van Veiligheid en Justitie
	6. DNB Netherlands
	7. Detailhandel Nederland
Poland	1. Ministry of Economy
Portugal	1. Associaçáo Industrial Portuguesa - AIP
	2. CIP - Confederação Empresarial de Portugal
	3. Portuguese Chamber of Commerce and Industry
	4. Portuguese Agency for Competitiveness and Innovation
	5. FEPICOP - Federação Portuguesa da Indústria de Construção e Obras Públicas
	6. Associação Portuguesa das Empresas de Dispositivos Médicos
Romania	1. AMRCR - Asociatia Marilor Retele Comerciale din Romania
	2. Consiliul National al Intreprinderilor Private Mici si Mijlocii din Romania - CNIPMMR
	3. Chamber of Commerce and Industry of Romania
Slovak Republic	1. Ministry of Justice
	2. Slovak Medical Devices Association
Slovenia	1. Ministry of Finance
	2. Slovenian Chamber of Commerce and Industry
	3. Chamber of Craft and Small Business of Slovenia
Spain	1. CNC - Confederacion Nacional de la Construccion
	2. Pere Brachfield, EAE Business School
	3. Asociación de Distribuidores de Ferretería y Bricolage
	4. Spanish Association of Medical Technology Companies
	5. Federacion Autonomos - National Associarion for Independent Workers
	6. Farmaindustria
	7. CEEP - European Centre of Employers and Enterprises providing Public Services
	8. FENIL - Federación Nacional de Industrias Lácteas
	9. ADFB - Asociación de Distribuidores de Ferretería y Bricolaje
	10. ASEDAS – Asociacion Espanola de Distribuidores, Autoservicios y Supermercados
	11. Ministry of Justice
Sweden	1. Ministry of Justice
	2. Confederation of Swedish Enterprise
	3. Svensk inkasso
	4. Swedish Federation of Business Owners
	5. Swedish Construction Federation
	6. FKG - the Scandinavian Automotive Supplier Association
	7. Swedish Trade Association
United Kingdom	1. Department for Business, Innovation and Skills -BIS
	2. British Chamber of Commerce
	3. Federation of Small Businesses
	4. UK Food and Drink Federation
	5. National Federation of Builders
	6. BRC – British Retail Consortium

18.3. Follow-up interviews

Country	Name of Company
Belgium	1. Menogroup
Bulgaria	2. DutchMed
	3. Evdito Ltd
	4. Balkanika Energy
	5. Bulpro
Croatia	6. Kompozit-kemija Ltd
Cyprus	7. L.K. Biosearch LTD
	8. Nemitsas LTD
	9. Zaggoulos Ideal Home
	10. Panchris Group
France	11. Aose
	12. CMN
	13. Imprimerie Noel
Greece	14. Icon Group
	15. Analab
	16. Grivakis
	17. Mandrekas S.A.
	18. Magnitiki Chiou
Hungary	19. Pipelife
Italy	20. Emmebi Ricambi
	21. Giardini Srl
	22. Salumificio Vitali
	23. Roche Diagnostic
Luxembourg	24. Constantini Group
Malta	25. Patrick Tabone
	26. Vella Falzon Group
	27. J M Vassallo Vibro Blocks Ltd
Sweden	28. Dorotea Mekaniska
	29. Lantmännen
Romania	30. SemmelRock
United Kingdom	31. F R Benson & Partners Ltd

19. ANNEX 6: EVALUATION QUESTIONS

For each evaluation question, a list of judgment criteria and indicators was defined covering the main evaluation criteria, i.e. relevance, effectiveness, efficiency, coherence and complementarity and EU added value. The list of judgment criteria and indicators were agreed with DG GROW to guide the development of data collection tools. The table below presents the evaluation framework, including the evaluation questions, judgment criteria, indicators, and main data collection tools and sources.

Table A.6.1 Evaluation framework

Evaluation Questions	Judgment criteria	Indicators	Main Data collection tools and sources
Effectiveness: The extent to which the objectives set are achieved. Which main factors have contributed or stood in the way of achieving those objectives?			
To what extent has the late payment Directive contributed to a reduction in the average delays of late payments in commercial transactions?	Stricter and more consistent rules on late payments in commercial transactions It is harder/more costly for public authorities and businesses to delay payments	• Average number of days of payment delay ○ In PA2B transactions ○ In B2B transactions	• Survey with companies • Regression results • Qualitative interviews with industry associations and public authorities • Desk research • European Payment Index (Intrum Justitia)
To what extent has the Directive contributed to a reduction in payment periods?	Payment periods both in public-private and business transactions have been reduced Stricter and more consistent enforcement of enterprises' rights to swift payment	• Average number of days of payment duration ○ In PA2B transactions ○ In B2B transactions • Average length of payment terms ○ In PA2B transactions ○ In B2B transactions	• Survey with companies • Regression results • Qualitative interviews industry associations and public authorities • Desk research • European Payment Index (Intrum Justitia)
To what extent has the Directive positively influenced liquidity/cash flow? (with a particular focus on SMEs)?	Companies – SMEs – improve their cash-flow by reducing direct and administrative costs of late payments Companies are less often required to pursue late payments, freeing up capacity	• Liquidity of businesses (before and after the entry into force of the Directive) • Impact of late payment on redundancies	• Survey with companies • Regression results • Desk research
To what extent has the Directive facilitated cross-border trade? To what extent do businesses feel more confident/encouraged to trade across European borders?	Facilitation of cross-border trade between Member States. Companies treat cross-border transactions similarly to intra-country transactions in terms of payment procedures.	• Awareness of businesses about the rights conferred by the Directive • Reduction in uncertainty about payment on cross border transactions	• Survey with companies • Follow up interviews with survey respondents • Qualitative interviews with industry associations
What are the factors for an effective application of the Directive and how could the Directive be rendered more effective? If there are any barriers, how could they be overcome?	There are potential barriers in terms of practical and legal issues as well as market structure to the effective application of the Directive, There are cost-effective ways to overcome these barriers There are good practices that render the Directive more effective in its application	• Barriers preventing effective application of the Directive • Increase/decrease in use of the Directive's provisions (claiming interest rate, recovery compensation costs etc.)	• Survey with companies (special questions for SMEs) • Regressions results • Qualitative interviews with industry associations • Qualitative interviews with public authorities • Follow up interviews with survey respondents
Does the Directive have any unintended consequences?	The Directive has engendered wider impacts that were not originally planned	• Qualitative information regarding unintended consequences, whether positive or negative	• Evidence from qualitative interviews with public authorities and industry associations

Evaluation Questions	Judgment criteria	Indicators	Main Data collection tools and sources
			• Follow up interviews with survey respondents
Efficiency: The extent to which the desired effects are achieved at reasonable costs. Is the administrative burden created by the implementation of the Directives' concepts and procedures considered proportionate?			
To what extent are the regulatory costs proportionate to the benefits achieved?	Benefits outweigh costs of regulation	• Costs vs. benefits (quantitative or where not possible qualitative) of the implementation of the Directive.	• Qualitative interviews with industry associations • Follow up interviews with survey respondents • Desk Research
What are the administrative and reporting burdens on stakeholders? To what extent have regulatory costs (including administrative burden) been reduced through the implementation of the Directive?	Reduction of administrative burden. The extent of the administrative burden caused differs by target group	• Estimate of administrative costs before/after implementation of Directive	• Qualitative interviews with industry associations and public authorities • Follow up interviews with survey respondents
What aspects of the Directive are the most efficient or inefficient, especially in terms of resources that are mobilised by stakeholders during the different phases of the process?	Elements of the Directive can be ranked according to their efficiency in terms of resources required by stakeholders	• Resources required ○ for claiming interest of late payment ○ for claiming compensation for recovery cost ○ for recovery procedures for unchallenged claims	• Ranking based on qualitative interviews
How could regulatory costs / administrative burdens be reduced?	There are administrative costs imposed on stakeholders, including authorities implementing the Directive	• Estimated level of administrative burden in relation to payment procedures before/after implementation of Directive	• Qualitative interviews with public authorities and industry representatives • Follow up interviews with survey respondents
Coherence and complementarity: The extent to which the intervention does not contradict other interventions at EU and Member State level with similar objectives but complements them			
To what extent are there overlaps/ complementarities between the Directive and any other Community or Member State action in the relevant areas?	The Directive does not overlap with other initiatives and complements them	• (Degree of) complementarities with other policies and legislation at EU and national level • Number of overlaps with other policies and legislation at EU and national level	• Desk research to identify overlaps and complementarities • Qualitative interviews with public authorities and industry associations • Follow up interviews with survey respondents

Evaluation Questions	Judgment criteria	Indicators	Main Data collection tools and sources
To what extent have Members States made use of the possibility to maintain or bring into force laws and regulations which are more favourable to the creditor than the provisions of the Directive?	Member States have gone beyond or have fallen short of the Directive's requirements	• Share of Member States which have gone beyond the Directive's requirements	• Desk research to identify the effects of recent changes and best practices • Qualitative interviews with public authorities and industry associations • Follow up interviews with survey respondents
To what extent could complementary measures improve the positive effect of the Directive on the issue of late payment, and what measures would these be?	There are additional measures that could be taken to enhance the effectiveness of the Directive	• Complementary/voluntary initiatives in place • Reduction/changes in payment durations in MS with complementary measures in place	• Examples from Member States obtained through desk research and qualitative interviews with public authorities, and industry associations
Relevance: The extent to which the intervention's objectives are pertinent to the needs, problems and issues identified			
To what extent do the objectives of the legislation still correspond to the needs of the stakeholders?	Late payments still remain an important issue after the adoption and/or new challenges have come up since adoption of the Directive.	• Industry awareness of the rights laid down in the Directive • Change in industry needs since the impact assessment • Average payment duration following the Directive (trend)	• Survey with companies • European Payment Index • Qualitative interviews with industry associations • Follow up interviews with survey respondents
To what extent are the rights in the Directive exercised by stakeholders, in particular SMEs?	The rights laid down in the Directive are regularly/frequently exercised by industry stakeholders, including by SMEs	• Industry awareness of the rights laid down in the Directive • Number of companies claiming interest rate and compensation for recovery costs	• Survey with companies • Qualitative interviews with industry associations • Follow up interviews with survey respondents
EU Added value: What is the added value of the Directive? Is the EU level the most appropriate one to address the needs of stakeholders?			
Could the Directive's objectives have been achieved without EU intervention? What would be the most likely consequences of stopping or repealing this Directive?	Facilitation of cross-border trade Harmonised legislation across member states Support to integration of internal market The application of Member State law (and not EU law) would not produce the desired results	• Development of cross-border trade before/after the Directive's implementation (see above) • Degree of variation between Member State law implementing the Directive	• Desk research • Qualitative interviews industry associations

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