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**AMENDMENTS: 14**

**Róza Thun und Hohenstein**

Combating late payment in commercial transactions

**Proposal for a regulation** COM(2023)0533 - C9-0338/2023 – 2023/0323(COD)

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## Amendment 1

Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Morten Løkkegaard

### Proposal for a regulation

#### Article 3 – paragraph 1

##### *Text proposed by the Commission*

1. In commercial transactions, the payment period shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. This period shall apply both to the transactions between undertakings and between public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive (EU) 2019/633, unless Member States provide for a shorter payment period for such products.

##### *Amendment*

1. In commercial transactions, the payment period ***fixed in the contract*** shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services. ***A longer period may only be agreed expressly and provided it is not grossly unfair to the creditor.*** This period shall apply both to the transactions between undertakings and between public authorities and undertakings. The same payment period shall also apply to the supply of non-perishable agricultural and food products on a regular and non-regular basis as referred to in Articles 3(1)(a), point (i), second indent and 3(1)(a), point (ii), second indent of Directive (EU) 2019/633, unless Member States provide for a shorter payment period for such products.

Or. en

##### *Justification*

*Payment terms are an essential part of contractual relationships between businesses. Often longer payment periods are agreed for legitimate reasons and to the benefit of both parties. Businesses should therefore keep the possibility to determine this element of their contracts but with safeguards to protect the weaker party as presently provided for under Article 3 (5) of Directive 2011/7/EU.*

## Amendment 2

Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen

### Proposal for a regulation

#### Article 3 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. ***A procedure of acceptance or verification may be exceptionally provided for in national law only where strictly necessary due to the specific nature of the goods or services. In that case, the contract shall describe the details of the procedure of acceptance or verification, including its duration.***

***deleted***

Or. en

*Justification*

*In order to protect the debtor from paying for defective or poor quality goods or services, Member States should retain the possibility to provide for acceptance and verification procedures in their national law. At the same time the creditor should be protected by setting a maximum duration for such procedures. It should be possible though for the parties to extend the duration under the same terms as the payment period where they deem appropriate, e.g. for complex machineries or construction projects.*

### **Amendment 3**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Morten Løkkegaard**

#### **Proposal for a regulation Article 3 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Where the contract provides for a procedure of acceptance or verification, ***in accordance with paragraph 2***, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the goods and/or the services that are the object of the commercial

3. Where the contract provides for a procedure of acceptance or verification, ***by which the conformity of the goods or services with the contract is to be ascertained***, the maximum duration of that procedure shall not exceed 30 calendar days from the date of receipt of the goods or services by the debtor, even if such goods or services are supplied prior to the issuance of the invoice or an equivalent request for payment. In this case, the debtor shall initiate the procedure for acceptance or verification immediately upon reception from the creditor of the

transaction. The payment period shall *not exceed 30 calendar days* after such procedure has taken place.

goods and/or the services that are the object of the commercial transaction. *A longer period may only be agreed expressly and provided it is not grossly unfair to the creditor.* The payment period shall *begin to run* after such procedure has taken place.

Or. en

#### **Amendment 4**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Catharina Rinzema**

#### **Proposal for a regulation**

#### **Article 4**

*Text proposed by the Commission*

*Amendment*

#### *Article 4*

*deleted*

#### *Payments to subcontractors in public procurement*

*1. For public works contracts falling within the scope of Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, and 2009/81/EC<sup>56</sup> of the European Parliament and of the Council, contractors shall provide evidence to contracting authorities or contracting entities within the meaning of those Directives that, where applicable, they have paid their direct subcontractors involved in the execution of the contract within the deadlines and under the conditions set out in this Regulation. The evidence may take the form of a written declaration by the contractor and shall be provided by the contractor to the contracting authority or contracting entity prior to, or at the latest together with, any request for payment.*

*2. Where the contracting authority or contracting entity has not received the evidence as provided for in paragraph 1 or has information of a late payment by*

*the main contractor to its direct subcontractors, the contracting authority or contracting entity shall notify the enforcement authority of its Member State thereof without delay.*

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*<sup>56</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.*

Or. en

*Justification*

*No additional burdensome special rules for the already highly regulated construction sector should be introduced. The proposed article is not fit for purpose as it does not reflect the reality of public works relations.*

**Amendment 5**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Morten Løkkegaard**

**Proposal for a regulation  
Article 5 – paragraph 3**

*Text proposed by the Commission*

3. *It shall not **be possible for** the creditor to waive its right to obtain interest for late payment.*

*Amendment*

3. *A **debtor** shall not **request** the creditor to waive its right to obtain interest for late payment **as a precondition for making payments.***

Or. en

*Justification*

*A waiver of interest or the flat fee compensation is often part of amicable settlements or agreements to regulate outstanding payments with debtors which are in economic difficulties. The prohibition to waive these rights should therefore be targeted to cases where the debtor abuses its power by demanding such a waiver from the creditor, e. g. as a condition for making*

payments.

### Amendment 6

Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Morten Løkkegaard

#### Proposal for a regulation

##### Article 8 – paragraph 3

*Text proposed by the Commission*

3. *It shall not **be possible for** the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1.*

*Amendment*

3. *A **debtor** shall not **request** the creditor to waive its right to obtain the flat fee compensation laid down in paragraph 1 **as a precondition for making payments.***

Or. en

#### *Justification*

*A waiver of interest or the flat fee compensation is often part of amicable settlements or agreements to regulate outstanding payments with debtors which are in economic difficulties. The prohibition to waive these rights should therefore be targeted to cases where the debtor abuses its power by demanding such a waiver from the creditor, e. g. as a condition for making payments.*

### Amendment 7

Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Morten Løkkegaard, Catharina Rinzema

#### Proposal for a regulation

##### Article 13 – paragraph 1

*Text proposed by the Commission*

1. Each Member State shall ***designate one or more authorities responsible for the*** enforcement of this Regulation (***'enforcement authority'***).

*Amendment*

1. Each Member State shall ***ensure adequate and effective*** enforcement of this Regulation.

Or. en

#### *Justification*

*The Commission proposes to establish in all Member States a completely new enforcement*

*system which would consist of administrative authorities that would, however, perform the task of courts. Such an enforcement system would place a considerable burden on the Member States and would lead to additional bureaucracy for businesses as well. The Commission has not provided any evidence that enforcement of late payment through administrative authorities is more effective (i.e. that it results in payments being made faster) than the traditional enforcement through a court system. Member States should therefore be free to develop an enforcement system that fits best with their needs and legal tradition.*

#### **Amendment 8**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Morten Løkkegaard, Catharina Rinzema**

#### **Proposal for a regulation**

#### **Article 13 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Member States shall lay down the rules setting out the measures applicable to infringements of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.***

Or. en

#### **Amendment 9**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Catharina Rinzema**

#### **Proposal for a regulation**

#### **Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Where appropriate, enforcement authorities shall take measures necessary to ensure that the deadlines for payments are complied with.***

***deleted***

Or. en

#### **Amendment 10**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Catharina Rinzema**

**Proposal for a regulation**  
**Article 13 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Enforcement authorities shall cooperate effectively with each other and with the Commission and shall provide each other with mutual assistance in investigations that have a cross-border dimension.** *deleted*

Or. en

**Amendment 11**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Catharina Rinzema**

**Proposal for a regulation**  
**Article 13 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Enforcement authorities shall coordinate their activities with other authorities responsible for enforcing other Union or national legislation including through exchange of information obligations.** *deleted*

Or. en

**Amendment 12**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Catharina Rinzema**

**Proposal for a regulation**  
**Article 13 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. Enforcement authorities shall forward the complaints received regarding late payments in the agricultural and food sector to the competent enforcement authorities under** *deleted*

**Amendment 13**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen, Catharina Rinzema**

**Proposal for a regulation**

**Article 14**

*Text proposed by the Commission*

*Amendment*

**Article 14**

***deleted***

***Powers of enforcement authorities***

***1. Enforcement authorities shall have the necessary resources and expertise to perform their duties, and shall have the following powers:***

***(a) the power to initiate and conduct investigations on their own initiative or based on a complaint;***

***(b) the power to require creditors and debtors to provide all necessary information to conduct investigations related to late payments in commercial transactions;***

***(c) the power to carry out unannounced on-site inspections within the framework of their investigations;***

***(d) the power to take decisions finding an infringement of this Regulation and requiring the debtor to pay interest for late payment as provided for in Article 5 or requiring the debtor to compensate the creditor as provided for in Article 8;***

***(e) the power to impose, or initiate proceedings for the imposition of fines and other penalties and interim measures on the subjects responsible for the infringement;***

***(f) the power to require the debtor to bring the infringement to an end;***

(g) *the power to publish its decisions referred to in paragraphs (d), (e) and (f).*

2. *Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.*

3. *Member States shall, [by .../without delay], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.*

Or. en

#### **Amendment 14**

**Svenja Hahn, Nicola Beer, Andreas Glück, Moritz Körner, Jan-Christoph Oetjen**

#### **Proposal for a regulation Article 15**

*Text proposed by the Commission*

*Amendment*

#### *Article 15*

*deleted*

#### *Complaints and confidentiality*

1. *Creditors may address complaints either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member States in which the debtor is established. The enforcement authority to which the complaint is addressed shall be competent to enforce this Regulation.*

2. *Organisations officially recognised as representing creditors or organisations with a legitimate interest in representing undertakings shall have the right to submit a complaint to the enforcement authorities referred to in Article 13 at the request of one or more of their members or, where appropriate, at the request of one or more members of their member*

*organisations, where those members consider that they have been affected by an infringement of this Regulation.*

*3. Where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant. The complainant shall identify any information for which it requests confidentiality.*

*4. The enforcement authority that receives the complaint shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.*

*5. Where an enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons of its decision within a reasonable period of time after the receipt of the complaint.*

*6. Where an enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.*

*7. Where an enforcement authority finds that a debtor has infringed this Regulation, it shall require the debtor to bring the illegal practice to an end.*

Or. en