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EUROPEAN COMMISSION WANTS 'GREATER CLARIFICATION' FROM ITFA ON LATE PAYMENT STANCE – December

*By **Rebecca Spong**, Editorial Consultant, December 2024*

ITFA met with the European Commission on 4 November to further discuss the commission's proposed changes to the Late Payment Directive which would see a 30-day payment limit imposed on all business-to-business transactions across the European Union.

The meeting concluded with the commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG Grow) asking for more information from ITFA on how supply chain finance (SCF) could be a useful tool to help mitigate the risks of late payments between European companies.

It also asked for greater clarification from ITFA on what it would consider what is and what isn't a "grossly unfair" extension of payment terms.

The existing directive – first issued in 2011 – sets out that payment terms should be no more than 30 days – but allows them to be extended to 60 days or more "if not grossly unfair to the creditor".
However, the Commission argues that the ambiguity around what defines a "grossly unfair" term has led to payment terms were becoming too long and pushing small businesses into bankruptcy.
It was all too often left up to judges to interpret what was "grossly unfair", representatives from DG Grow said.

The Commission's view is that small businesses lack sufficient negotiating power to secure reasonable payment terms from their more powerful large multinational buyers, and therefore a regulation – rather than a directive – which enforces a 30-day payment limit is the fairest option.

ITFA agrees with the commission's move to enforce a regulation across Europe rather than continue with a 'directive' that could be interpreted differently across different countries. A harmonized market with less regulatory barriers is a bonus for business.

However, ITFA's position is that there are other more effective ways to create a fairer market for small businesses that don't have the potential to reduce the competitiveness of the European market.

Specifically, ITFA argues that the proposed legislation does not differentiate between an "abusive" late payment which is bad for business and a "negotiated deferred" payment.

"Negotiated payment terms are a very important part of the tools which suppliers and buyers have at their disposal during their negotiations," says Silja Calac, board member and head of ITFA's advocacy function, who attended the meeting with the commission last month.

Even if payment terms are legally restricted, if those terms do not reflect the real needs of the underlying supply chain, you will continue to see companies paying late and SMEs struggling with 'abusive late' payments that can't be financed.

"It will be very difficult for an SME to actually enforce these shorter terms," she adds.

"However, an SME supplier with a negotiated payment term can access financing - for example through factoring, forfaiting or supply chain finance. There are lots of techniques that the European market has established in a very sophisticated way," Calac explains.

Negotiated payment terms and financing techniques related thereto can also help SMEs that are buyers – which is often the case in sectors such as retail or hospitality – better manage their working capital.

Christian Hausherr, chair of the global supply chain forum – who also attended the meeting with the commission - explains: "The length of the cash conversion cycle varies for different products and industries – meaning a blanket limit of 30 days will create problems for some businesses."

Alongside using SCF, ITFA has previously put together a paper outlining alternative ways of tackling late payments. These include encouraging greater digitalisation of trade finance and specifically the implementation of UN's Model Law on Electronic Transferable Record (MLETR) in a harmonised way across Europe to allow companies to use digital negotiable instruments.

National registries of companies who pay late would be another useful tool for SMEs to "name and shame" large buyers. It would be a far easier and less costly option for an SME than trying to sue a large company that exceeded its 30-day term.

"All these solutions – in our view – are much more efficient for SMEs in Europe and will ensure the European economy stays competitive and avoids the risk of large buyers delocalising their supply chains and moving them outside Europe," says Calac.

This November meeting follows developments earlier this year which saw 14 member EU states asking for the withdrawal of the proposed revision to the directive – which effectively blocked the progress of the legislation at council level.

In April, the European Parliament had agreed its negotiating position, with proposed amendments to the revision including increasing payment terms up to 60 days if specifically agreed in the contract and up to 120 days for slow moving and seasonal goods.

It was expected in July that there was a good chance the commission may have withdrawn its proposed changes – however it seems the commission is keen to pursue its proposal and continues to speak to industry bodies for feedback.

Following this latest meeting, ITFA's regulatory advocacy committee will develop and send the commission a new paper on its position.