

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.4.2009
COM(2009) 126 final

2009/0054 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating late payment in commercial transactions

(Recast)

Implementing the Small Business Act

{SEC(2009) 315}

{SEC(2009) 316}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Many payments in commercial transactions between businesses or between businesses and public authorities are made very late after delivery and often later than agreed or laid down in general commercial conditions. These practices impinge on liquid assets and complicate the financial management of enterprises. Late payments affect the competitiveness and viability of companies, notably SMEs. Payment delays also have a negative effect on intra-Community commercial transactions. Payment delays can be responsible for bankruptcies of otherwise viable businesses with the potential to trigger, in the worst case scenario, a series of bankruptcies across the supply chain. This risk strongly increases in periods of economic downturn when access to financing is particularly difficult. There are signs that this has started to happen as the current economic crisis unfolds, calling for a strong policy reaction.

The Small Business Act [COM(2008)394] highlighted the key importance of SMEs for the competitiveness of the EU economy and stressed that effective access to finance was one of the major challenges SMEs have to face, together with the need to make better use of the opportunities provided by the Single Market. The European Economic Recovery Plan [COM(2008) 800] stressed that sufficient and affordable access to finance was a pre-condition for investment, growth and job creation in the context of the economic slowdown and asked the EU and the Member States to ensure that public authorities pay invoices for supplies and services within one month.

Late payment by public administrations undermines the credibility of policies and contradicts declared policy objectives to provide for stable and predictable operating conditions for enterprises and foster growth and employment. Given the importance of public procurement in the EU (more than 1,943 billion euro per year), late payment by public authorities has a strong negative impact on enterprises, notably SMEs. Many public authorities do not face the same financing constraints as businesses and late payment in their case is avoidable. It should therefore be more severely sanctioned when it occurs. Moreover, diverging payment attitudes across the EU might hamper business participation in public tenders, which not only distorts competition and undermines the functioning of the internal market, but also reduces the capacity of public authorities to get best value for tax payers' money.

Accordingly, this proposal aims at improving the cash flow of European business which is particularly important in times of economic downturn. It also aims at facilitating the smooth functioning of the internal market via the elimination of related barriers to cross-border commercial transactions.

It will achieve this by providing creditors with instruments that enable them to fully and effectively exercise their rights when paid late and by confronting public administrations with measures that effectively discourage them from paying late.

- **General context**

In the EU, most goods and services are supplied by businesses to other businesses and to public authorities on a deferred payment basis whereby the supplier gives the client time to pay. This time period is agreed between the parties, or set out in the supplier's invoice or laid down by law. At the latest at the end of this period, the supplier expects payment for the goods delivered or services rendered. Payment made after this period constitutes late payment.

Directive 2000/35/EC was adopted to combat late payment in commercial transactions between businesses or between businesses and public authorities. It specifies, inter alia, that statutory interest may be charged when payment is not made within the contractual or legal deadline.

There is overwhelming evidence that, despite the entry into force of Directive 2000/35/EC late payment in commercial transactions is still a general problem within the EU. In addition, there is also evidence in a number of Member States of unjustifiably long contractual payment periods in transactions involving public administrations. Both problems are a serious impediment to a healthy business environment and to the functioning of the single market magnified in times of economic downturn. The roots of late payment in commercial transactions and the corresponding passive attitude of many creditors are diverse and interrelated:

1. The market structure: 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.

2. Changing macroeconomic conditions: A business cycle downturn is likely to cause more late payments as firms delay paying their invoices. The consequences of late payment are also more serious in times of economic downturn as alternative financing is more difficult to obtain.

3. Access to finance and budgetary constraints: The availability of credit, monetary policy, the flow and nature of credit information, the liquidity position of the firm and the availability of financial resources from banks may also affect late payment, particularly for businesses for which bank credit is a substitute for supplier financing. Many debtor enterprises consider late payment an efficient and cheap way to finance their own businesses and activities. For public authorities, late payments to creditors are an easy, but unjustified, way to overcome budgetary constraints by postponing payments to the next budgetary period.

4. The financial management practice of debtors (including public authorities) and the credit management practice of creditors as well as their product and service quality and after-sales service are important factors in (avoiding) late payment.

5. The absence of effective and efficient remedies: despite Directive 2000/35/EC, many businesses, in particular SMEs, do not charge interest when entitled to do so, which in turn decreases the motivation of debtors to pay in time. For some creditors, the cost of taking action against late payment is not justified by the financial benefits. In many cases, the expenses of the extra paperwork cannot be recovered. Chasing late paying

clients or charging interest for late payments generates administrative costs that many businesses wish to avoid. In addition, several key provisions of the Directive are unclear or difficult to implement in practice.

Although Directive 2000/35/EC has some shortcomings, the fundamental concepts of interest for late payment, the retention of title and recovery procedures for unchallenged claims constitute essential and widely accepted pillars of the legal framework combating late payment. However, despite some recent improvements, late payment remains a generalized problem in the EU, with public administrations in a number of Member States displaying particularly bad payment behaviour. This continues to negatively affect the functioning of the internal market and risks posing a serious threat to business survival in times of economic crisis. Therefore, while safeguarding the main elements of the Directive, it is essential to introduce additional tools to reduce the number of late payments in commercial transactions, to shorten payment periods for public administrations and to substantially reinforce the incentives for public administrations to pay in time by recasting the Directive, incorporating in a single text both the substantive amendments made to the Directive and its unchanged provisions. This proposal would replace and repeal Directive 2000/35/EC. Once adopted by the legislator, it will naturally be taken into account by the Commission at the occasion of the forthcoming revision (2010) of the Financial Regulation and its Implementing Rules.

Meanwhile, as the revision of the financial rules by the legislator is a long process, the Commission adopted a Communication¹ instructing its services to implement without delay a set of measures aimed at streamlining financial rules and accelerating budget implementation to help economic recovery, in particular through the improvement of its own payment performance and the setting of targets for reduced payment time-limits.

- **Existing provisions in the area of the proposal**

The only existing provision is Directive 2000/35/EC which would be recast by this proposal.

- **Consistency with the other policies and objectives of the Union**

This proposal is part of the Lisbon Agenda for Growth and Jobs and implements the Small Business Act [COM(2008)394] and the Commission Communication on a European Economic Recovery Plan [COM(2008)800].

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Stakeholders were consulted in a general public consultation through I.P.M. (Your

¹ SEC(2009)477final of 8 April 2009.

Voice in Europe). The EBTP (European Business Test Panel) was also consulted.

Summary of responses and how they have been taken into account

A broad majority of respondents believes that the current statutory rate laid down in the directive is satisfactory. Most respondents, however, urged the Commission to put in place effective and efficient remedies in case of late payment and to strengthen the role of representative organisations. The responses served as a very important element for the impact assessment.

An open consultation was conducted over the internet from 19/05/2008 to 31/08/2008. The Commission received 510 response(s). The results are available on http://ec.europa.eu/enterprise/regulation/late_payments/index.htm.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The impact assessment and its executive summary give an overview of the different options.

Only options 3a/2 (legislative - harmonisation of periods for payment by public authorities to businesses), 3c (legislative - the abolition of the € threshold), 3d (legislative - the introduction of a "Late Payment Fee") and 3e (legislative - the introduction of a "Late Payment Compensation") meet the criteria of effectiveness, efficiency and consistency. Therefore, these 4 options constitute the basis of this proposal.

The Commission carried out an impact assessment listed in the Work Programme, whose report is accessible on http://ec.europa.eu/enterprise/regulation/late_payments/index.htm.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This recast of Directive 2000/35/EC aims at improving the effectiveness and the efficiency of remedies for late payment through the introduction of an entitlement to the recovery of administrative costs and compensation for internal costs incurred due to late payment. In the case of public administrations, the proposal aims at shortening payment periods through the harmonisation of periods for payment by public authorities to businesses and at reinforcing disincentives to late payment by a flat rate compensation from the first day of the delay amounting to 5% of the invoiced amount in addition to the interest for late payment and the compensation for recovery costs. Finally, the proposal also abolishes the possibility to exclude claims for interest of less than €.

- **Legal basis**

Article 95 EC Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

In the absence of Community legislation prior to the implementation of Directive 2000/35/EC, late payment in commercial transactions was an important impediment to intra-Community trade.

This is because the absence or ineffectiveness of national rules combating late payment unfairly protects national economic operators against products and services coming from other Member States. Failure by a Member State to prevent obstacles to the free movement of goods or services originating in other Member States caused by late payment by national authorities or undertakings is just as damaging to intra-Community trade as a trade-restrictive act. In addition, diverging payment attitudes of public authorities across the EU might hamper business participation in public tenders, which not only distorts competition and undermines the functioning of the internal market, but also reduces the capacity of public authorities to get best value for tax payers' money.

Community action will better achieve the objectives of the proposal for the following reason(s).

The objective of ensuring the functioning of the internal market by reducing obstacles to intra-EU trade arising from late payment could not be sufficiently achieved by Member States or by Directive 2000/35/EC. It was therefore felt appropriate in accordance with the principle of subsidiarity, by reason of the scale and effects of the problem, to achieve this by further action at Community level.

Surveys and consultation of stakeholders confirm that the reduction of late payment in commercial transactions requires EU action through a recast of Directive 2000/35/EC. The available figures indicate that most businesses perceive selling goods and services to businesses and authorities in another Member States as entailing a higher risk of late payment. Among other reasons, the risk of late payment discourages enterprises from selling products and services in other Member States since it increases uncertainty and the cost of doing business. In that case, transaction costs are higher due to asymmetric information and insecurity about the market position and the solvency of a client established outside the domestic market. For many debtors the risk to reputation related to late payment is much lower when the creditor is established in another Member State since the damage to reputation diminishes with distance. Moreover, trade across national borders amplifies the costs of offering trade credit because language, jurisdiction and access to solvency data tend to be different and, thus, monitoring costs increase while the chances of successfully enforcing payment are lower. As a result, trade credit insurance and other instruments coping with trade risk management are often used in cross-border trade. These instruments reduce revenue uncertainty but may

absorb an important fraction of the profit margin, in particular for small enterprises.

During the impact assessment process, many non-legislative options were discarded for reasons related to subsidiarity as set out in detail in the impact assessment.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The Directive remains an optional instrument for economic operators in so far as it does not oblige them to claim interest for late payment or to claim compensation for recovery costs. Moreover, the proposal does not prevent undertakings from agreeing upon other contractual provisions regarding payment, including in the case of transactions between undertakings and in exceptional cases also between public authorities and undertakings the payment period, in accordance with the fundamental principle of freedom of contract between economic operators. The proposal also includes sufficient flexibility to allow Member States to transpose the Directive in the light of economic and commercial conditions in their territory. In addition, the proposal does not affect the existing possibility for Member States to maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with the Directive.

This proposal does not lead to any new administrative burden for economic operators. The financial burden stemming from the new entitlement to claim reimbursement of recovery costs will be proportional to businesses' payment behaviour. The budgetary impact for national authorities will be proportional to their capacity to ensure compliance with the provisions of the directive.

- **Choice of instruments**

Proposed instruments: directive.

Other means would not be adequate for the following reason(s).

Considering that this proposal is a recast of an existing Directive which provides for a wide margin of manoeuvre for Member States, alternative options would not have been sufficient to achieve the proposed objectives

4. BUDGETARY IMPLICATION

The budgetary implications are limited to administrative expenditure.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation.

The definitions of essential terms of the Directive are broadened and regrouped in order to put an end to divergent interpretations. Ambiguous provisions as regards the rights of creditors are either deleted or fully redrafted so that economic operators know exactly their rights under the Directive. A further element of simplification is the general obligation of transparency introduced for the Member States. Finally, the vague concept of "recovery costs" is replaced by a new system consisting of a defined sum for internal recovery costs.

The proposal is included in the Commission's rolling programme for up-date and simplification of the *acquis communautaire* and its Work and Legislative Programme under the reference 2009/ENTR/006.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **Review/revision/sunset clause**

The proposal includes a review clause.

- **Recasting**

The proposal involves recasting

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

The provisions of Directive 2000/35/EC on its scope (Article 1 of this proposal), interest in case of late payment (Article 3), the retention of title (Article 8) and the recovery procedure for unchallenged claims (Article 9) remain fundamentally unchanged. The various definitions and concepts are streamlined and brought together in Article 2.

The reasons for the other proposed substantive amendments are the following:

Article 1(2) removes the possibility that claims for interest of less than €5 may be excluded by Member States. This will clear a hurdle for claiming interest for late payments, in particular for SMEs and for late payment in smaller transactions where interest amounts to only a small sum.

Article 4 specifies that, in the case of late payment, creditors will be entitled to obtain a

sum for internal recovery costs related to the amount paid late. The objective is twofold: firstly, the creditor would be able to recover his internal administrative costs related to late payment and, secondly, this would have a deterrent effect on debtors, additional to the statutory interest.

Article 5 of the proposal tackles late payment by public authorities which will be obliged as a general rule to pay invoices for commercial transactions leading to the delivery of goods or the provision of services within 30 days. Past this period, the creditor will in principle be entitled to compensation of 5% of the amount specified, in addition to the interest for late payment and the compensation for recovery costs. The budgetary impact for national authorities will be proportional to their capacity to ensure compliance with the provisions of the directive. In addition, the expected improvement in payment behaviour of public authorities will help reduce the number of business bankruptcies and thus reduce the social costs that they entail.

Article 6 of the proposal strengthens the provisions about grossly unfair contractual clauses. It includes a provision whereby a clause which excludes interest for late payment will always be considered as grossly unfair.

Article 7 obliges Member States to ensure full transparency about the rights and obligations stemming from this directive and in particular to publish the statutory interest rate. This aims at providing in the most appropriate way practical information to businesses, and especially SMEs, and will enable them to take action against debtors paying late.

Article 10 lays down the monitoring and evaluation system allowing other European institutions and stakeholders an insight into the actual implementation of the Directive.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating late payment in commercial transactions

(Recast)

(Text with EEA relevance)

↓ 2000/35/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

↓ new

(1) A number of substantive changes are to be made to Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions⁵. In the interest of clarity, that Directive should be recast.

(2) Most goods and services are supplied within the internal market by economic operators to other economic operators and to public authorities on a deferred payment basis whereby the supplier gives its client time to pay the invoice, as agreed between parties, or set out in the supplier's invoice or laid down by law.

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 200, 8.8.2000, p. 35.

(3) Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions. Although the goods are delivered or the services performed, many corresponding invoices are paid well after the deadline. Such late payment negatively affects liquid assets and complicates the financial management of enterprises. It also affects their competitiveness and profitability when the creditor needs to obtain external financing because of late payment. This risk strongly increases in periods of economic downturn when access to financing is more difficult

(4) Judicial claims related to late payments are already facilitated by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁶, Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims⁷, Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure⁸ and Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure⁹. However, in order to discourage late payment in commercial transactions, it is necessary to lay down complementary provisions.

↓ 2000/35/EC	Recital	(1)
(adapted)		

~~(1) In its resolution on the integrated programme in favour of SMEs and the craft sector¹⁰, the European Parliament urged the Commission to submit proposals to deal with the problem of late payment.~~

↓ 2000/35/EC	Recital	(2)
(adapted)		

~~(2) On 12 May 1995 the Commission adopted a recommendation on payment periods in commercial transactions¹¹.~~

↓ 2000/35/EC	Recital	(3)
(adapted)		

~~(3) In its resolution on the Commission recommendation on payment periods in commercial transactions¹², the European Parliament called on the Commission to consider~~

⁶ OJ L 12, 16.1.2001, p. 1.

⁷ OJ L 143, 30.4.2004, p. 15.

⁸ OJ L 399, 30.12.2006, p. 1.

⁹ OJ L 199, 31.7.2007, p. 1.

¹⁰ ~~OJ C 323, 21.11.1994, p. 19.~~

¹¹ ~~OJ L 127, 10.6.1995, p. 19.~~

~~transforming its recommendation into a proposal for a Council directive to be submitted as soon as possible.~~

↓ 2000/35/EC Recital (4)
(adapted)

~~(4) On 29 May 1997 the Economic and Social Committee adopted an opinion on the Commission's Green Paper on Public procurement in the European Union: Exploring the way forward¹².~~

↓ 2000/35/EC Recital (5)
(adapted)

~~(5) On 4 June 1997 the Commission published an action plan for the single market, which underlined that late payment represents an increasingly serious obstacle for the success of the single market.~~

↓ 2000/35/EC Recital (6)
(adapted)

~~(6) On 17 July 1997 the Commission published a report on late payments in commercial transactions¹³, summarising the results of an evaluation of the effects of the Commission's recommendation of 12 May 1995.~~

↓ 2000/35/EC Recital (7)

~~(7) Heavy administrative and financial burdens are placed on businesses, particularly small and medium-sized ones, as a result of excessive payment periods and late payment. Moreover, these problems are a major cause of insolvencies threatening the survival of businesses and result in numerous job losses.~~

↓ 2000/35/EC Recital (8)
(adapted)

~~(8) In some Member States contractual payment periods differ significantly from the Community average.~~

¹² [OJ C211, 22.7.1996, p. 43.](#)

¹³ [OJ C287, 22.9.1997, p. 92.](#)

¹⁴ [OJ C216, 17.7.1997, p. 10.](#)

↓ 2000/35/EC Recital (9)
(adapted)

~~(9) The differences between payment rules and practices in the Member States constitute an obstacle to the proper functioning of the internal market.~~

↓ 2000/35/EC Recital (10)
(adapted)

(5) ~~This has the effect of considerably limiting commercial transaction between Member States. This is in contradiction with Article 14 of the Treaty as e~~Entrepreneurs should be able to trade throughout the internal market under conditions which ensure that transborder operations do not entail greater risks than domestic sales. Distortions of competition would ensue if substantially different rules applied to domestic and transborder operations.

↓ 2000/35/EC Recital (11)
(adapted)

~~(11) The most recent statistics indicate that there has been, at best, no improvement in late payments in many Member States since the adoption of the recommendation of 12 May 1995.~~

↓ new

(6) In its communication "Think small first" – A "Small Business Act" for Europe¹⁵, the Commission emphasized that small and medium-sized enterprises' (SMEs) access to finance should be facilitated and that a legal and business environment supportive to timely payments in commercial transactions should be developed.

(7) One of the priority actions of the "European Economic Recovery Plan"¹⁶ is the reduction of administrative burdens and the promotion of entrepreneurship by, inter alia, ensuring that public authorities pay invoices, including to SMEs, for supplies and services within one month to ease liquidity constraints.

↓ 2000/35/EC Recital (12)

(8) The objective of combating late payments in the internal market cannot be sufficiently achieved by the Member States acting individually and can, therefore, be better achieved by the Community. This Directive does not go beyond what is necessary to

¹⁵ COM(2008)394.

¹⁶ COM(2008)800.

achieve that objective. This Directive complies therefore, in its entirety, with the requirements of the principles of subsidiarity and proportionality as laid down in Article 5 of the Treaty.

↓ 2000/35/EC Recital (13)
(adapted)

- (9) This Directive should be limited to payments made as remuneration for commercial transactions and ~~does~~ should not regulate transactions with consumers, interest in connection with other payments, e.g. payments under the laws on cheques and bills of exchange, payments made as compensation for damages including payments from insurance companies.
-

↓ 2000/35/EC Recital (22)

- (10) This Directive should regulate all commercial transactions irrespective of whether they are carried out between private or public undertakings or between undertakings and public authorities, having regard to the fact that the latter handle a considerable volume of payments to business. It should therefore also regulate all commercial transactions between main contractors and their suppliers and subcontractors.
-

↓ 2000/35/EC Recital (14)

- (11) The fact that the liberal professions are covered by this Directive does not mean that Member States have to treat them as undertakings or merchants for purposes not covered by this Directive.
-

↓ 2000/35/EC Recital (16)
(adapted)
⇒ new

- (12) Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low or no interest rates charged on late payments and/or slow procedures for redress. A decisive shift, including making the exclusion of the right to charge interest an unfair contractual clause and providing for a compensation of creditors for the costs incurred, is necessary to reverse this trend and to ensure that the consequences of late payments are such as to discourage late payment.
-

↓ new

- (13) In the interest of consistency of Community legislation, the definition of "contracting authorities" in Directive 2004/18/EC of the European Parliament and of the Council of

31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts¹⁷ should apply for the purposes of this Directive.

- (14) Statutory interest due for late payments should be calculated on a daily basis as simple interest, in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits¹⁸.

↓ 2000/35/EC Recital (17)
(adapted)
⇒ new

- (15) ⇒ A fair compensation of creditors for the recovery costs incurred through late payment is necessary to ensure that the consequences of late payments are such as to discourage late payment. Recovery costs should also include the recovery of administrative costs and compensation for internal costs incurred due to late payment for which this Directive should determine the possibility of flat-rate minimum amount which may be cumulated with interest for late payment ~~↔~~. ~~The reasonable~~ ~~€~~ Compensation for the recovery costs ~~has to~~ ☒ should ☒ be considered without prejudice to national provisions according to which a national judge ~~can~~ ☒ may ☒ award to the creditor any additional damage ~~caused by~~ ☒ regarding ☒ the debtor's late payment, ~~taking also into account that such incurred costs may be already compensated for by the interest for late payment.~~

↓ new

- (16) Surveys show that public authorities often require contractual payment periods for commercial transactions that are significantly longer than 30 days. Therefore, payment periods for procurement contracts awarded by public authorities should be as a general rule limited to a maximum of 30 days.

- (17) Late payment is particularly regrettable if it occurs despite the debtor's solvency. Surveys show that public authorities often pay invoices very late after expiration of the applicable payment period. Public authorities may face lighter financing constraints because they may benefit from more secure, predictable and continuous revenue streams than private undertakings. At the same time, they depend less than private undertakings on building stable commercial relationships for the achievement of their aims. Consequently, public authorities may have less incentive to pay on time. In addition, many public authorities can obtain financing at more attractive conditions than private undertakings. Therefore, late payment by public authorities not only leads to unjustified costs for private undertakings, but to inefficiency in general. It is therefore appropriate to introduce correspondingly higher dissuasive compensation in case of late payment by public authorities.

¹⁷ OJ L 134, 30.4.2004, p. 114.

¹⁸ OJ L 124, 8.6.1971, p. 1.

↓ 2000/35/EC Recital (18)

~~18) This Directive takes into account the issue of long contractual payment periods and, in particular, the existence of certain categories of contracts where a longer payment period in combination with a restriction of freedom of contract or a higher interest rate can be justified.~~

↓ 2000/35/EC Recital (19)
(adapted)
⇒ new

(18) This Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor. Where an agreement mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor ⇒, for example through the exclusion of the possibility for the creditor to charge interest for late payment or specifying an interest rate for late payment which is substantially lower than the statutory interest provided for in this Directive ⇐, or where the main contractor imposes on his suppliers and subcontractors terms of payment which are not justified on the grounds of the terms granted to himself, these may be considered to be factors constituting such an abuse. This Directive ~~does~~ ☒ should ☒ not affect national provisions relating to the way contracts are concluded or regulating the validity of contractual terms which are unfair to the debtor.

↓ 2000/35/EC Recital (21)

(19) It is desirable to ensure that creditors are in a position to exercise a retention of title on a non-discriminatory basis throughout the Community, if the retention of title clause is valid under the applicable national provisions designated by private international law.

↓ 2000/35/EC Recital (15)

(20) This Directive only defines the term "enforceable title" but does not regulate the various procedures of forced execution of such a title and the conditions under which forced execution of such a title can be stopped or suspended.

↓ 2000/35/EC Recital (20)

(21) The consequences of late payment can be dissuasive only if they are accompanied by procedures for redress which are rapid and effective for the creditor. In conformity with the principle of non-discrimination contained in Article 12 of the Treaty, those procedures should be available to all creditors who are established in the Community.

↓ 2000/35/EC Recital (23)
(adapted)
⇒ new

(22) ⇒ It is necessary to ensure that the recovery procedures for unchallenged claims related to late payment in commercial transactions ~~← Article 5 of this Directive requires that the recovery procedure for unchallenged claims be completed within a short period of time in conformity with national legislation, but does not require Member States to adopt a specific procedure or to amend their existing legal procedures in a specific way.~~

↓ new

(23) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2000/35/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(24) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of Directive 2000/35/EC.

↓ 2000/35/EC

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive shall apply to all payments made as remuneration for commercial transactions.

↓ 2000/35/EC Art. 6(3) (adapted)

~~32.~~ In transposing this Directive, Member States may exclude the following :

(a) debts that are subject to insolvency proceedings instituted against the debtor;

(b) contracts that have been concluded prior to 8 August 2002. ~~and~~

~~(c) claims for interest of less than EUR 5.~~

↓ 2000/35/EC (adapted)

Article 2

Definitions

For the purposes of this Directive ☒ , the following definitions shall apply ☒:

~~1~~(1) "commercial transactions" means transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration;

↓ 2000/35/EC (adapted)
⇒ new

(2) "public authority" means any contracting authority ~~or entity~~ , as defined by ~~the Public Procurement Directives 92/50/EEC¹⁹, 93/36/EEC²⁰, 93/37/EEC²¹ and 93/38/EEC²²~~ ☒ Directive 2004/18/EC ☒;

(3) "undertaking" means any organisation ⇒, other than a public authority, ⇐ acting in the course of its independent economic or professional activity, even where it is carried on by a single person;

~~2~~(4) "late payment" means ~~exceeding the contractual or statutory period of payment~~ ⇒ failure to pay within the period of payment specified in Article 3(2) or Article 5(2) ⇐ ;

↓ new

(5) "interest for late payment" means statutory interest or interest negotiated and agreed upon between undertakings;

(6) "statutory interest" means simple interest for late payment at a rate which is the sum of the reference rate, plus at least seven percentage points;

(7) "reference rate" means either of the following:

¹⁹ ~~QJL 209, 24.7.1992, p. 1.~~

²⁰ ~~QJL 199, 9.8.1993, p. 1.~~

²¹ ~~QJL 199, 9.8.1993, p. 54.~~

²² ~~QJL 199, 9.8.1993, p. 84.~~

↓ 2000/35/EC
⇒ new

4(a) the interest rate applied by the European Central Bank to its most recent main refinancing operations or the marginal interest rate resulting from variable-rate tender procedures for such operations; " means the interest rate applied to such operations in the case of fixed-rate tenders. In the event that a main refinancing operation was conducted according to a variable-rate tender procedure, this interest rate refers to the marginal interest rate which resulted from that tender. This applies both in the case of single-rate and variable-rate auctions;

↓ 2000/35/EC Art. 3(1)(d) second sentence (adapted)

(b) For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above shall be the equivalent rate set by its national central bank.

↓ 2000/35/EC

3(8) "retention of title" means the contractual agreement according to which the seller retains title to the goods in question until the price has been paid in full;

↓ 2000/35/EC (adapted)
⇒ new

5(9) "enforceable title" means any decision, judgment or order for payment issued by a court or other competent authority, including those that are provisionally enforceable, whether for immediate payment or payment by instalments, which permits the creditor to have his claim against the debtor collected by means of forced execution; it shall include a decision, judgment or order for payment that is provisionally enforceable and remains so even if the debtor appeals against it.

Article 3

Interest in case of late payment

~~(e)~~1. Member States shall ensure that ⇒ in commercial transactions between undertakings, the creditor ~~shall be~~ is entitled to interest for late payment without the necessity of a reminder ~~to the extent that~~ if the following conditions are satisfied:

- ~~(a)~~ ⇒ the creditor ~~he~~ has fulfilled its contractual and legal obligations; ~~and~~
- ~~(b)~~ ⇒ the creditor ~~he~~ has not received the amount due on time, unless the debtor is not responsible for the delay.

~~2.~~ ⇒ Where the conditions set out in paragraph 1 are fulfilled, Member States shall ensure ~~that~~ the following

- (a) interest ~~in accordance with point (d)~~ ⇒ for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;
- (b) if the date or period for payment is not fixed in the contract, interest ⇒ for late payment shall become payable automatically ~~without the necessity of a reminder~~ within any of the following time limits :
 - (i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment; ~~or~~
 - ~~(ii) if the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 days after the date of receipt of the goods or services; or~~
 - ~~(iii)~~(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services; ~~or~~
 - ~~(iv)~~(iii) if 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 days after ~~this latter~~ that date.

⇒ 3. Member States shall ensure that the applicable reference rate:

- (a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;

(b) for the second semester of the year concerned shall be the rate in force on 1 July of that year. ↩

↓ 2000/35/EC (adapted)

~~(d) the level of interest for late payment ("the statutory rate"), which the debtor is obliged to pay, shall be the sum of the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half year in question ("the reference rate"), plus at least seven percentage points ("the margin"), unless otherwise specified in the contract. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above shall be the equivalent rate set by its national central bank. In both cases, the reference rate in force on the first calendar day of the half year in question shall apply for the following six months;~~

~~(e) unless the debtor is not responsible for the delay, the creditor shall be entitled to claim reasonable compensation from the debtor for all relevant recovery costs incurred through the latter's late payment. Such recovery costs shall respect the principles of transparency and proportionality as regards the debt in question. Member States may, while respecting the principles referred to above, fix maximum amounts as regards the recovery costs for different levels of debt.~~

~~2. For certain categories of contracts to be defined by national law, Member States may fix the period after which interest becomes payable to a maximum of 60 days provided that they either restrain the parties to the contract from exceeding this period or fix a mandatory interest rate that substantially exceeds the statutory rate.~~

~~3. Member States shall provide that an agreement on the date for payment or on the consequences of late payment which is not in line with the provisions of paragraphs 1(b) to (d) and 2 either shall not be enforceable or shall give rise to a claim for damages if, when all circumstances of the case, including good commercial practice and the nature of the product, are considered, it is grossly unfair to the creditor. In determining whether an agreement is grossly unfair to the creditor, it will be taken, inter alia, into account whether the debtor has any objective reason to deviate from the provisions of paragraphs 1(b) to (d) and 2. If such an agreement is determined to be grossly unfair, the statutory terms will apply, unless the national courts determine different conditions which are fair.~~

~~4. Member States shall ensure that, in the interests of creditors and of competitors, adequate and effective means exist to prevent the continued use of terms which are grossly unfair within the meaning of paragraph 3.~~

~~5. The means referred to in paragraph 4 shall include provisions whereby organisations officially recognised as, or having a legitimate interest in, representing small and medium-sized enterprises may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that contractual terms drawn up for general use are grossly unfair within the meaning of paragraph 3, so that they can apply appropriate and effective means to prevent the continued use of such terms.~~

↓ new

Article 4

Compensation for recovery costs

1. Member States shall ensure that, when interest for late payment becomes payable in commercial transactions in accordance with Articles 3 and 5 and unless otherwise specified in the contract, the creditor is entitled to obtain from the debtor any of the following amounts:

- (a) for a debt of less than EUR 1 000, a fixed sum of EUR 40;
- (b) for a debt of EUR 1 000 or more, but less than EUR 10 000, a fixed sum of EUR 70;
- (c) for a debt of EUR 10 000 or more, a sum equivalent to 1% of the amount for which interest for late payment becomes payable.

2. Member States shall ensure that the amounts referred to in paragraph 1 shall be payable without the necessity of a reminder and as compensation for the creditor's own recovery costs.

↓ 2000/35/EC Art. 3(1)(e)
(adapted)
⇒ new

~~3. Unless the debtor is not responsible for the delay, the creditor shall~~ ⇒ , in addition to the amounts set out in paragraph 1, ⇐ be entitled to obtain reasonable compensation from the debtor for all ~~relevant~~ ⇒ remaining ⇐ recovery costs incurred through the latter's late payment. ~~Such recovery costs shall respect the principles of transparency and proportionality as regards the debt in question. Member States may, while respecting the principles referred to above, fix maximum amounts as regards the recovery costs for different levels of debt.~~

↓ new

Article 5

Payment by public authorities

1. Member States shall ensure that, in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if the following conditions are satisfied:

- (a) the creditor has fulfilled its contractual and legal obligations;

(b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.

2. Where the conditions set out in paragraph 1 are fulfilled, Member States shall ensure the following:

(a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following time limits:

(i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment;

(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services;

(iii) if 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 days after that date.

3. Member States shall ensure that the maximum duration of a procedure of acceptance or verification referred to in paragraph 2(b)(iii) shall not exceed 30 days, unless otherwise specified and duly justified in the tender documents and the contract.

4. Member States shall ensure that the period for payment fixed in the contract shall not exceed the time limits provided for in paragraph 2(b), unless it is specifically agreed between the debtor and the creditor and is duly justified in the light of particular circumstances such as an objective need to schedule payment over a longer period.

5. Member States shall ensure that when interest for late payment becomes payable, the creditor is entitled to a lump sum compensation equal to 5% of the amount due. This compensation shall be additional to the interest for late payment.

6. Member States shall ensure that the applicable reference rate in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities:

(a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;

(b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

↓ 2000/35/EC (adapted)

Article 6

⊗ *Grossly unfair contractual clauses* ⊗

↓ 2000/35/EC Art. 3(3), (4) and (5) (adapted)
⇒ new

~~31.~~ Member States shall provide that ~~an agreement~~ ⇒ a clause in a contract ⇐ ~~on~~ ⊗ relating to ⊗ the date for payment ~~or~~ ⇒, the rate of interest for late payment or recovery costs ⇐ ~~on the consequences of late payment which is not in line with the provisions of paragraphs 1(b) to (d) and (2) either~~ shall ~~not~~ ⇒ either ⇐ be enforceable ⇒ unenforceable ⇐ or shall give rise to a claim for damages if ~~, when all circumstances of the case, including good commercial practice and the nature of the product, are considered~~ it is grossly unfair to the creditor. In determining whether ⇒ a clause ⇐ ~~an agreement~~ is grossly unfair to the creditor, ⊗ all circumstances of the case shall be considered, including good commercial practice and the nature of the product ⊗ ⇒ or the service. ⇐ ~~it will~~ ⊗ Account shall ⊗ ⇒ also ⇐ be taken ~~, inter alia,~~ ⊗ of ⊗ into account whether the debtor has any objective reason to deviate from ~~the provisions of paragraphs 1(b) to (d) and 2~~ ⇒ the statutory rate of interest or from Article 3(2)(b), Article 4(1) or Article 5(2)(b) ⇐. ~~If such an agreement is determined to be grossly unfair, the statutory terms will apply, unless the national courts determine different conditions which are fair.~~

⇒ For the purpose of the first subparagraph, a clause which excludes interest for late payment shall always be considered as grossly unfair. ⇐

~~42.~~ Member States shall ensure that, in the interests of creditors and competitors, adequate and effective means exist to prevent the continued use of ~~terms~~ ⇒ clauses ⇐ ~~and practices~~ which are grossly unfair to the creditor within the meaning of paragraph ~~3~~ 1.

~~53.~~ The means referred to in paragraph ~~42~~ shall include provisions whereby ⇒ representative ⇐ organisations ~~officially recognised as, or having a legitimate interest in, representing small and medium-sized enterprises~~ may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that ~~contractual terms drawn up for general use~~ ⇒ clauses ⇐ are grossly unfair ~~within the meaning of paragraph 3,~~ so that they can apply appropriate and effective means to prevent ~~the~~ ⇒ their ⇐ continued use ~~of such terms.~~

↓ new

Article 7

Transparency

Member States shall ensure full transparency about the rights and obligations stemming from this Directive, in particular by publishing the applicable statutory interest rate.

↓ 2000/35/EC

Article ~~48~~

Retention of title

1. Member States shall provide in conformity with the applicable national provisions designated by private international law that the seller retains title to goods until they are fully paid for if a retention of title clause has been expressly agreed between the buyer and the seller before the delivery of the goods.

2. Member States may adopt or retain provisions dealing with down payments already made by the debtor.

↓ 2000/35/EC (adapted)
⇒ new

Article ~~59~~

Recovery procedures for unchallenged claims

1. Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, ~~normally~~ within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed. ~~This duty shall be carried out by Member States in conformity with their respective national legislation, regulations and administrative provisions.~~

2. ~~The respective~~ National legislation, regulations and administrative provisions shall apply the same conditions for all creditors who are established in the European Community.

3. ~~The 90 calendar day period referred to in paragraph 1 shall not include the following~~
☒ When calculating the period referred to in paragraph 1, the following shall not be taken into account ☒:

- (a) periods for service of documents;
- (b) any delays caused by the creditor, such as periods devoted to correcting applications.

~~4. This Article shall be without prejudice to the provisions of the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters²³~~

⇒ 4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions of Regulation (EC) 1986/2006. ⇐

↓ new

Article 10

Report

1. Member States shall send a report to the Commission on the implementation of this Directive within two years after the date referred to in Article 11(1) and subsequently at three-year intervals.

2. Within three years after the date referred to in Article 11(1), the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive. The report shall be accompanied by any appropriate proposals.

↓ 2000/35/EC (adapted)

Article ~~6~~11

Transposition

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 8 August 2002. They shall forthwith inform the Commission thereof.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

²³ Consolidated version in OJ C 27, 26.1.1998, p. 3.

↓ . (adapted)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 7 and 9 by *[last day of the 12th month following publication of this Directive in the Official Journal of the European Union]* at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

↓ 2000/35/EC (adapted)

⇒ new

42. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

23. Member States may maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.

4. In transposing the Directive, Member States may exclude contracts ⇒ concluded prior to the date specified in paragraph 1. ⇐

~~3. In transposing this Directive, Member States may exclude:~~

~~(a) debts that are subject to insolvency proceedings instituted against the debtor;~~

~~(b) contracts that have been concluded prior to 8 August 2002; and~~

~~(c) claims for interest of less than EUR 5.~~

~~4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

~~5. The Commission shall undertake two years after 8 August 2002 a review of, inter alia, the statutory rate, contractual payment periods and late payments, to assess the impact on commercial transactions and the operation of the legislation in practice. The results of this review and of other reviews will be made known to the European Parliament and the Council, accompanied where appropriate by proposals for improvement of this Directive.~~

↓ new

Article 12

Repeal

Save as regards contracts concluded before [*the date set out in Article 11(1)*] to which this Directive does not apply pursuant to Article 11(4), Directive 2000/35/EC is repealed with effect from that date, without prejudice to the obligations of the Member States relating to the time-limit for its transposition into national law and its application.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in the Annex.

↓ 2000/35/EC
⇒ new

Article ~~13~~

Entry into force

This Directive shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

↓ 2000/35/EC

Article ~~14~~

Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX

Correlation table

Directive 2000/35/EC	This Directive
Article 1	Article 1(1)
Article 2(1) first subparagraph	Article 2(1)
Article 2(1) second subparagraph	Article 2(2)
Article 2(1) third subparagraph	Article 2(3)
Article 2(2)	Article 2(4)
-	Article 2(5)
-	Article 2(6)
-	Article 2(7), introductory words
Article 2(3)	Article 2(8)
Article 2(4)	Article 2(7)(a)
Article 2(5)	Article 2(9)
Article 3(1)(a)	Article 3(2)(a)
Article 3(1)(b), introductory words	Article 3(2)(b)
Article 3(1)(b)(i)	Article 3(2)(b)(i)
Article 3(1)(b)(ii)	-
Article 3(1)(b)(iii)	Article 3(2)(b)(ii)
Article 3(1)(b)(iv)	Article 3(2)(b)(iii)
Article 3(1)(c)	Article 3(1)
Article 3(1)(d), first and third sentences	-
Article 3(1)(d), second sentence	Article 2(7)(b)
-	Article 4(1)
-	Article 4(2)
Article 3(1)(e)	Article 4(3)

Article 3(2)	-
-	Article 5
Article 3(3), first and second sentences	Article 6(1), first subparagraph
Article 3(3), third sentence	-
-	Article 6(1), second subparagraph
Article 3(4)	Article 6(2)
Article 3(5)	Article 6(3)
-	Article 7
Article 4	Article 8
Article 5(1), (2) and (3)	Article 9(1), (2) and (3)
Article 5(4)	-
-	Article 5(4)
-	Article 10
Article 6(1)	-
-	Article 11(1)
Article 6(2)	Article 11(3)
Article 6(3)	Article 1(2)
Article 6(4)	Article 11(2)
Article 6(5)	-
-	Article 11(4)
-	Article 12
Article 7	Article 13
Article 8	Article 14
-	Annex

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL

Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast).

2. ABM / ABB FRAMEWORK

Title 02 – Enterprise – Chapter 02 03 Internal market for goods and sectoral policies.

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

02.0301

3.2. Duration of the action and of the financial impact:

Considering that the action is a legislative proposal, its duration is undetermined.

3.3. Budgetary characteristics:

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
02.0301	Non-comp	Diff ²⁴	NO	YES	NO	1a

²⁴ Differentiated appropriations

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2010	2011	2012	2013	2014	2015 and later	Total
------------------	-------------	--	------	------	------	------	------	----------------	-------

Operational expenditure²⁵

Commitment Appropriations (CA)	8.1.	a	0	0	0	0	0	0	0
Payment Appropriations (PA)		b	0	0	0	0	0	0	0

Administrative expenditure within reference amount²⁶

Technical & administrative assistance (NDA)	8.2.4.	c	0	0	0	0	0.3	0	0.3
---	--------	---	---	---	---	---	-----	---	-----

TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	0	0	0	0	0.3	0	0.3
Payment Appropriations		b+c	0	0	0	0	0.3	0	0.3

Administrative expenditure not included in reference amount²⁷

Human resources and associated expenditure (NDA)	8.2.5.	d	0.244	0.244	0.244	0.244	0.244	0.244	1.464
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	0.1	0.1	0.1	0.1	0.1	0.1	0.6

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d +e	0.344	0.344	0.344	0.344	0.644	0.344	2.364
TOTAL PA including cost of Human Resources		b+c +d +e	0.344	0.344	0.344	0.344	0.644	0.344	2.364

²⁵ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

²⁶ Expenditure within article xx 01 04 of Title xx.

²⁷ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

4.1.2. *Compatibility with Financial Programming*

The proposal is compatible with existing financial programming.

4.1.3. *Financial impact on Revenue*

The proposal has no financial implications on revenue.

4.2. **Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.**

Annual requirements	2010	2011	2012	2013	2014	2015 and later
Total number of human resources	2	2	2	2	2	2

5. **CHARACTERISTICS AND OBJECTIVES**

5.1. **Need to be met in the short or long term**

See the Explanatory Memorandum.

5.2. **Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy**

See the Explanatory Memorandum.

5.3. **Objectives, expected results and related indicators of the proposal in the context of the ABM framework**

See the Explanatory Memorandum.

5.4. **Method of Implementation (indicative)**

Centralised Management: directly by the Commission.

6. **MONITORING AND EVALUATION**

The organisation of a reliable monitoring and evaluation scheme is complicated by the principle that the rules laid down in this proposal do not have a compulsory effect on businesses, i.e. businesses will not be obliged to apply these rules and to claim their rights. In addition, evidence suggests that a negative economic cycle is likely to negatively influence timely payment as it affects companies' cash flows and funding opportunities. During a period of economic growth, enterprises benefit from better cash inflow which, at least partly, can be used for paying more promptly.

The monitoring system consists of 2 pillars:

- Transparency: the proposal obliges the Member States to ensure full transparency about the rights and obligations stemming from this Directive.

- **Reporting:** the proposal obliges Member States to send a report to the Commission on their implementation of the Directive at three-year intervals. The Commission shall gather this information and then draft a report on the implementation of this Directive. This report will probably be drafted, inter alia, by reference to the information and data set out in annexes 1, 2 and 3 (partly) of the Impact Assessment which will be used as complementary indicators for the achievement of the objectives. The organisation of new, similar surveys will enable the Commission to compare the behaviour of creditors before and after implementation of the Directive.

7. ANTI-FRAUD MEASURES

Not applicable.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Not applicable.

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		2010	2011	2012	2013	2014	2015
Officials or temporary staff ²⁸ (XX 01 01)	A*/AD	1	1	1	1	1	1
	B*, C*/AST	1	1	1	1	1	1
Staff financed ²⁹ by art. XX 01 02		0	0	0	0	0	0
Other staff ³⁰ financed by art. XX 01 04/05		0	0	0	0	0	0
TOTAL		2	2	2	2	2	2

8.2.2. Description of tasks deriving from the action

The tasks consist of the administrative management of the Directive, including the handling of complaints and infringements, the implementation of the transparency measures and the preparation and drafting of the report referred to under point 6.

²⁸ Cost of which is NOT covered by the reference amount

²⁹ Cost of which is NOT covered by the reference amount

³⁰ Cost of which is included within the reference amount

8.2.3. *Sources of human resources (statutory)*

Posts to be redeployed using existing resources within the managing service (internal redeployment)

8.2.4. *Other Administrative expenditure included in the reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	2010	2011	2012	2013	2014	2015 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies ³¹	0	0	0	0	0	0	0
Other technical and administrative assistance							
- <i>intra muros</i>	0	0	0	0	0	0	0
- <i>extra muros</i>	0	0	0	0	0.3	0	0
Total Technical and administrative assistance	0	0	0	0	0.3	0	0

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	2010	2011	2012	2013	2014	2015 and later
Officials and temporary staff (XX 01 01)	0.244	0.244	0.244	0.244	0.244	0.244
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	0	0	0	0	0	0
Total cost of Human Resources and associated costs (NOT in reference amount)	0.244	0.244	0.244	0.244	0.244	0.244

³¹ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

8.2.6. Other administrative expenditure not included in the reference amount

EUR million (to 3 decimal places)

	2010	2011	2012	2013	2014	2015 and later	TOTAL
XX 01 02 11 01 – Missions	0.05	0.05	0.05	0.05	0.05	0.05	0.3
XX 01 02 11 02 – Meetings & Conferences	0.05	0.05	0.05	0.05	0.05	0.05	0.3
XX 01 02 11 03 – Committees	0	0	0	0	0	0	0
XX 01 02 11 04 – Studies & consultations	0	0	0	0	0	0	0
XX 01 02 11 05 - Information systems	0	0	0	0	0	0	0
2 Total Other Management Expenditure (XX 01 02 11)	0.1	0.1	0.1	0.1	0.1	0.1	0.6
3 Other expenditure of an administrative nature (specify including reference to budget line)	0	0	0	0	0	0	0
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0.1	0.1	0.1	0.1	0.1	0.1	0.6