European Commission

Meeting with MS experts

Evaluation of Late Payments Directive

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Agenda

1. Objectives
2. Overview of the research
3. The current state of play
4. Results of the evaluation
5. Questions

Objectives

1. **Our brief**
   - Assess first results of the implementation of the LPD in the EU-28 across all sectors
   - Focus on
     - Relevance (i.e. Can it work?)
     - Effectiveness (i.e. Does it work?)
     - Efficiency (i.e. Is it worth it?)
     - Coherence & EU added value (i.e. How should it be done & by whom?)

2. **Main challenges**
   - Direct attribution is very difficult
   - Not much time since implementation
   - Different (national & sectoral) starting points

3. **What this study does**
   - Establish the *état des lieux* regarding payment behaviour
   - Understand trends in key variables that the Directive aims to influence
   - Identify drivers and obstacles with respect to improving payment behaviour

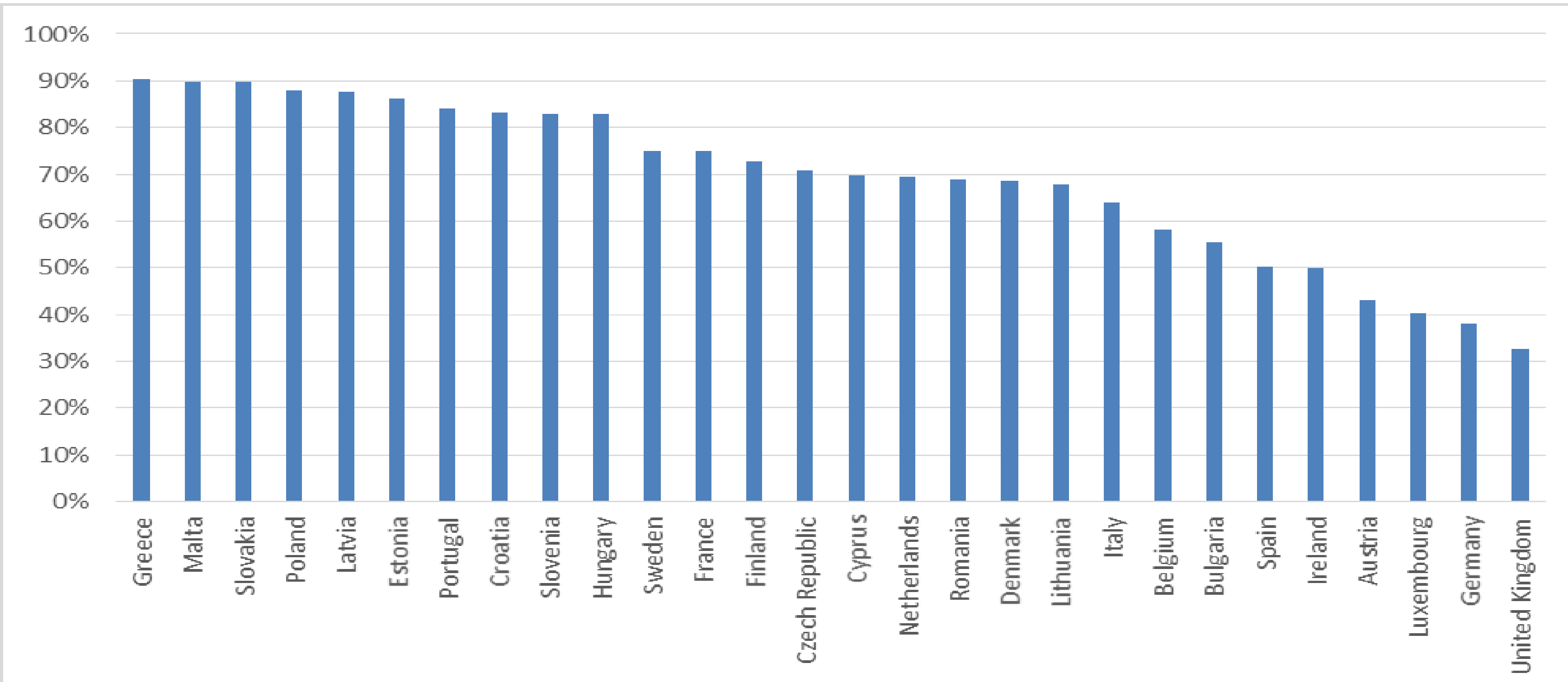
Research overview

1. **Timing**
   - January 2015-November 2015
2. **Data collection**
   - Desk research
   - Online survey
     - Representative sample of enterprises
     - 2,677 responses
   - Public consultation
     - Open to all interested parties
     - Disseminated via sector organisations
     - 273 responses – used to cross-check survey results
   - Interviews
     - Public authorities, sector representatives and enterprises
     - 166 interviews – all EU MS, cross-sectorial, with focus on food, health & construction
3. **Data analysis**
   - Qualitative analysis of interview results
   - Econometric regressions based on survey data
   - Triangulation with interviews and existing literature

Late payments are very widespread …

- **Almost three out of four (78%) companies in Europe have experienced late payments in the last three years**

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



Source: company survey

… they have significant impacts …

- **SMEs are likely to be disproportionately affected by late payment**
  - 47% of micro firms identify late payment as a barrier compared with 35% of big firms
- **Late payment can lead to insolvency and job losses**
  - 36% of businesses say their survival is threatened by late payment
  - In 2014 total bad debt losses for European businesses were 3.1% of revenues (costing the equivalent of 8 million jobs)
- **Late payment can also negatively affect public procurement and cross-border trade**

… and they are very difficult to tackle

- **Drivers of late payment behaviour are multi-faceted** including:
  - business culture/norms
  - external economic conditions (e.g. the crisis)
  - power imbalances in the market
- **This makes late payment very hard for policymakers to tackle!**

But it has been tried!!

- Many national initiatives to change payment behaviour and/or mitigate the impact of late payment:

- Some examples from our research:

  - **National implementation of the LPD** (e.g. some MS have gone beyond minimum provisions)
  - **Enforcement of the LPD** (EC launched 13 infringement cases)
  - **Public sector prompt payment codes** (e.g. UK, NL, IE)
  - **B2B codes** (e.g. UK, IE, FR)
  - **Sector initiatives** (e.g. UK, IE, FR, ES)
  - **E-invoicing** (e.g. SW)
  - **Penalties** (e.g. FR)
  - **VAT payment policies** (e.g. IT, ES)
  - **Monitoring & transparency schemes** (e.g. FR, ES, IT, PL, DK)

Effectiveness (1/7)

- **Awareness of the Directive's provisions**

  - **Awareness is relatively high**
    - Almost two thirds of companies are aware of the general rules regulating late payments.
    - 86% of companies know about their right to claim compensation and/or interest

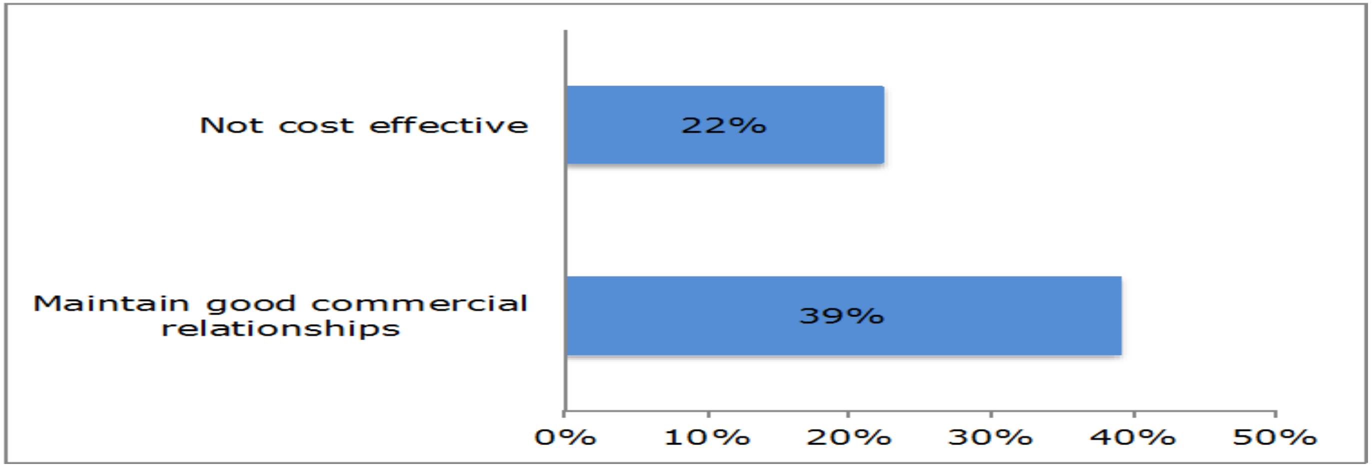
  - Firms that are aware of the late payment related rules are **less likely to have experienced a deterioration** in average payment delays

  - **BUT: SMEs and younger firms are less likely to be aware of the rules** regulating late payment

Effectiveness (2/7)

- Compensation and interest
  - ✓ **Usage of the provisions introduced in the Directive is not widespread** (60% never exercise their right to claim compensation and/or interest)

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



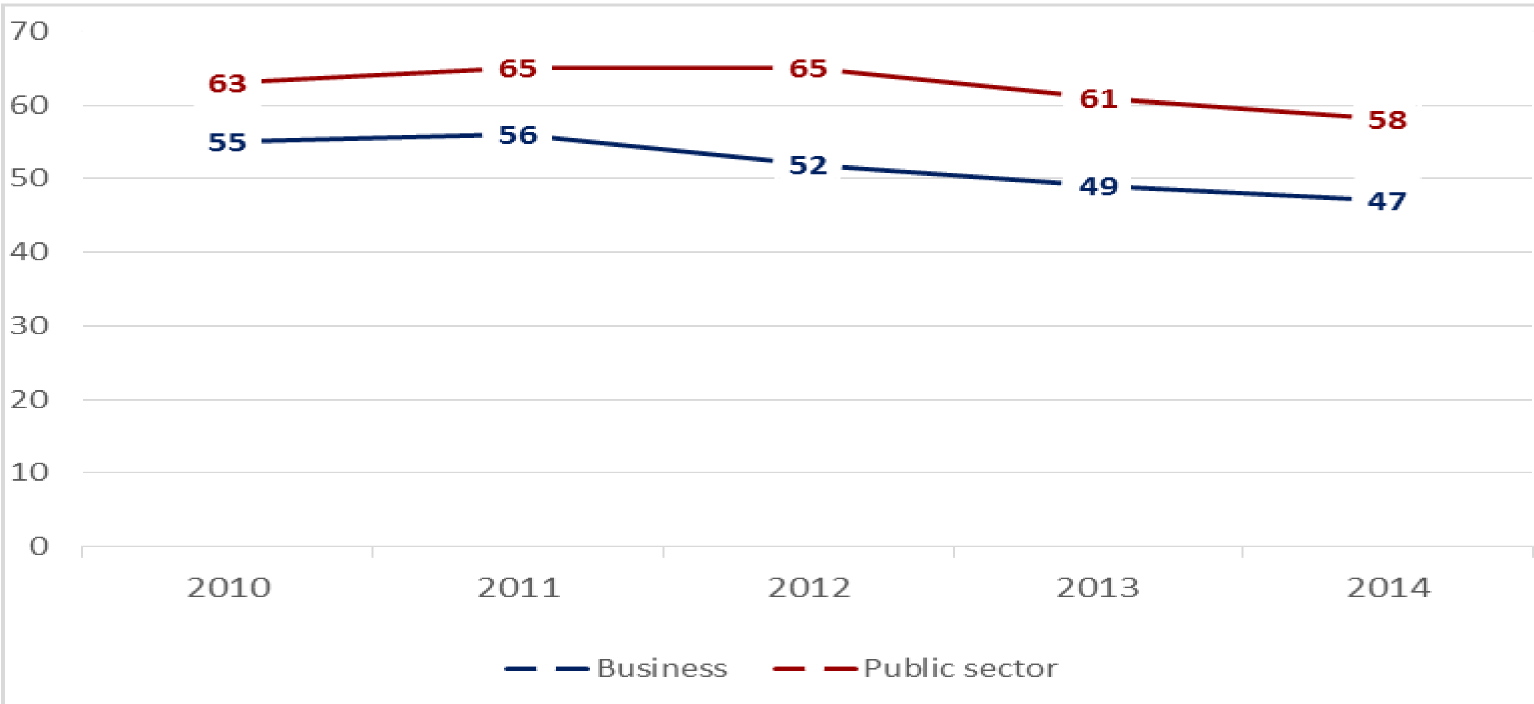
– *Source: Company survey*

  - → Lack of efficient remedy procedures
- ✓ **In countries with a shorter average payment duration, companies are *more* likely to always exercise their right**
  - → Directive more used in countries where late payment is less severe.
- ✓ **SMEs are much less likely to exercise their rights under the Directive than larger companies**
  - → Powerful position of public sector and large companies

Effectiveness (3/7)

- **Payment duration** has decreased in recent years in both PA2B and B2B transactions

Average payment duration in the EU 2010-2014

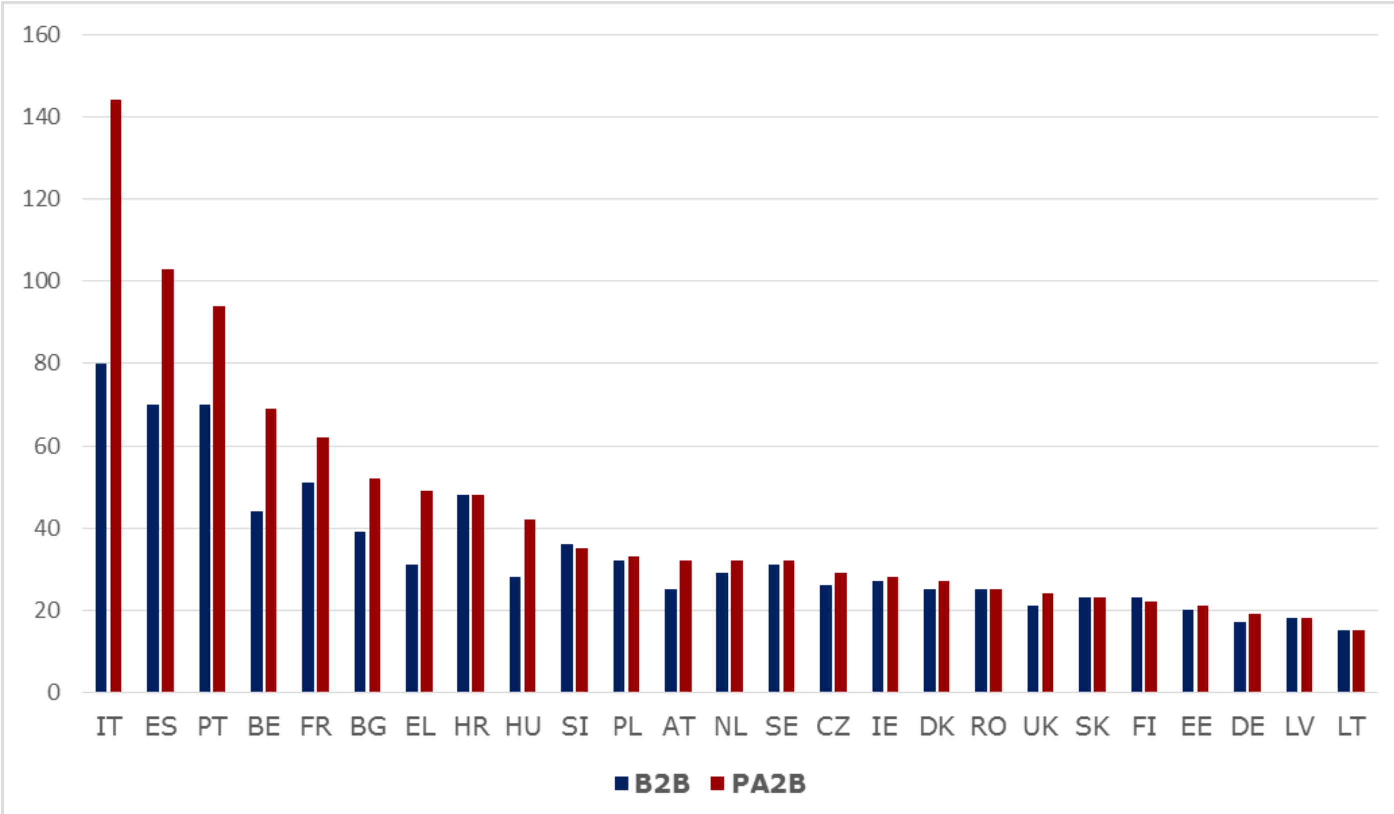


Source: Intrum Justitia, EPI (2014)

Effectiveness (4/7)

- **BUT significant differences remain across countries**

Average 2015 payment duration in B2B and PA2B transactions by country



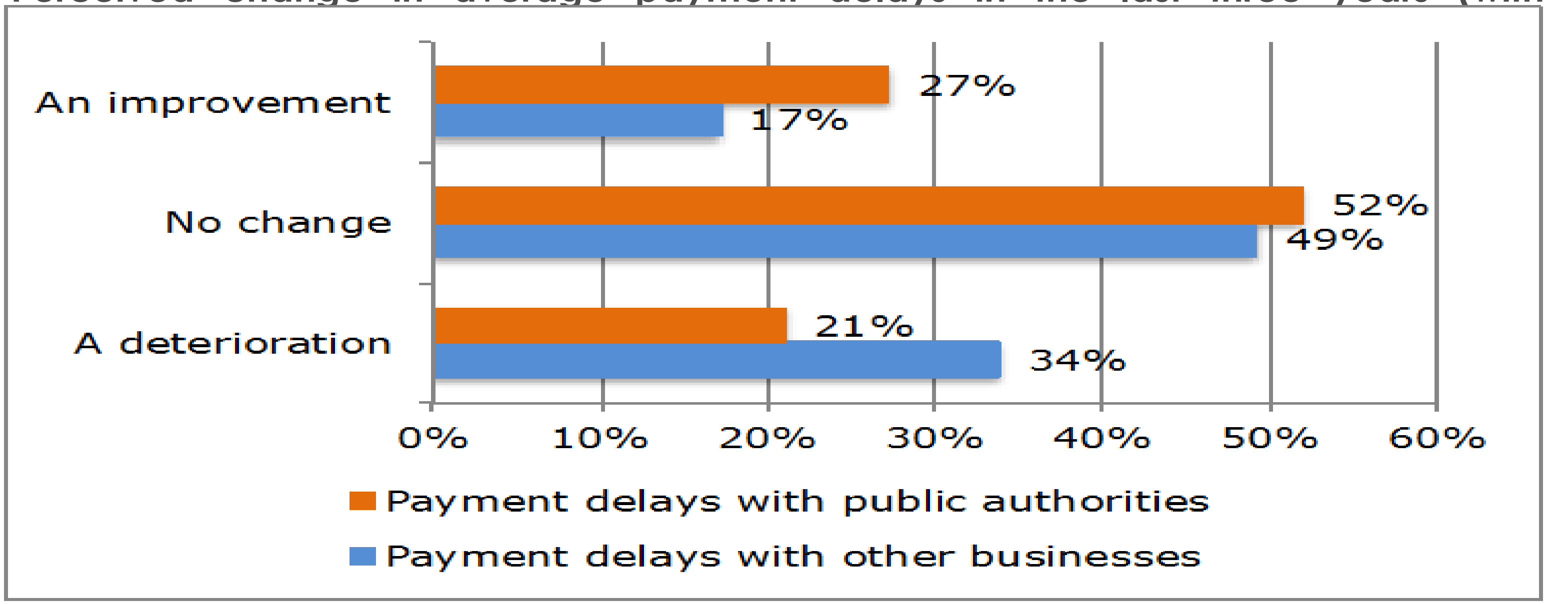
Source: Intrum Justitia

- MS with **above average payment duration in PA2B transactions** also **tend to have above average payment durations in B2B transactions**

Effectiveness (5/7)

- **Payment delays**
  - Overall business perception is that **payment delays have only slightly improved or remained static**

Perceived change in average payment delays in the last three years (with other

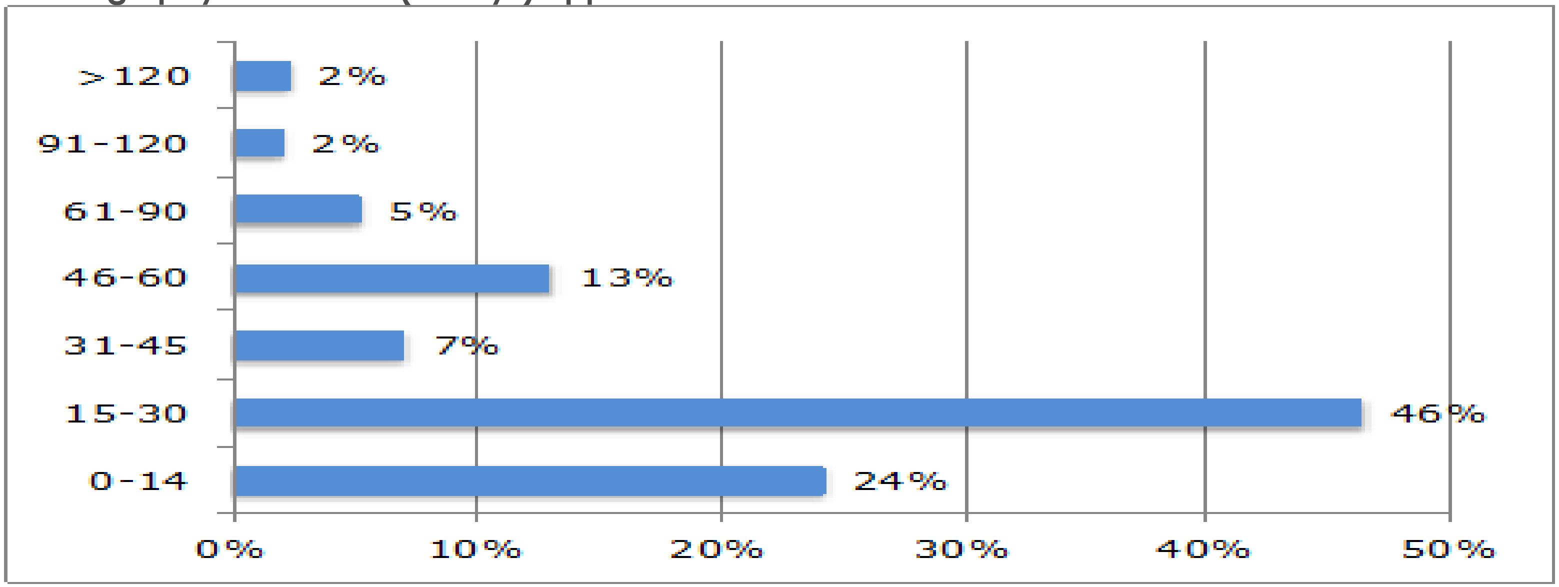


  - No clear trend with the majority of Member States having seen **little or no change** in payment delays
  - Improvement in perception of PA2B delays in some MS could be due to soft measures (e.g. **prompt payment codes**)

Effectiveness (6/7)

- **Payment terms**
  - **90% apply terms of 60 days or less** as required in the Directive
    - ➔ In addition, 70% of companies apply payment terms of 30 days or less

Average payment terms (in days) applied in B2B transactions



– Source: Company survey

- **Country and sector are more important drivers of payment terms** than any other characteristic

Effectiveness (7/7)

- **Payment behaviour & practice**
  - The main driving factors for **payment behaviour are:**
    - → **National business culture**
    - → **Economic conditions**
    - → **Power imbalances in the market**
  - These factors fall outside the scope of a legislative measure, whether European or national.
  - This, combined with the recent adoption of the LPD, mean that there is **insufficient data to date** on the impacts of the Directive on payment practices.
  - For the same reason, it is **too early to conclude** whether the Directive will reach its wider objectives regarding liquidity improvements or facilitation of cross-border trade.
  - However there is already some evidence that the LPD (together with supporting measures at national level) have **begun to change relevant aspects of business culture and brought the issue of late payment to the top of the political agenda**

Relevance (1/1)

- Late payment remains a **very prevalent and important issue for companies** across Europe
  - Almost three out of four (78%) companies in Europe have experienced late payments in the last three years

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

- In terms of the Directive itself:
  - Definition of what constitutes **grossly unfair** is seen as ambiguous with too much scope for interpretation
  - There is also a **lack of clarity regarding when the calculation of a payment term starts** and concerns regarding recovery procedures which vary across MS

Efficiency (1/1)

- Companies consider the **Late Payment Directive to be efficient**
  - There **are no administrative or reporting burdens** resulting directly from the Directive
  - Costs for businesses are outside scope of LPD
    - → chasing late payers, ADR, court, external debt recovery, etc

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

- But **potential to deliver significant benefits**, estimated at up to EUR 158m for each one-day reduction in payment delays.
  - These estimates:
    - → are based on a large number of assumptions
    - → need to be interpreted with caution
    - → should only be seen as an indication of the order of magnitude of costs related to late payments

Coherence & Complementarity (1/1)

- **No evidence of contradictions** between LPD and other EU relevant actions for combating late payment

- **LPD is coherent other EU initiatives** (Lisbon Partnership for Growth and Jobs, the Small Business Act, and the European Economic Recovery Plan)

- Several **EU actions complement** the objectives of the Directive
  - **Debt recovery** (European Enforcement Order, European Payment Order, and European Small Claims Procedure)
  - **Awareness raising** (Information campaign, Pilot project on the rapid and efficient enforcement of outstanding claims by SMEs operating across borders
  - **Voluntary actions by Member Sates** (i.e. prompt payment policies)
- In cross-border transactions, there could be **some overlap between the Directive (Article 10) and the European Payment Order Procedure**

EU Added Value (1/1)

- **Significant added value** - general consensus among industry and national authorities that LPD:

  - ✔ Ensures **late payment remains at top of political agenda** in Europe

  - ✔ Has **harmonised practices** & levelled the playing field for companies across Single Market

- **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

Recommendations (1/5)

- **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

   → These aspects should be clarified either in the revised text of the Directive or alternatively, though the European Commission published guidance how these should be interpreted

2. **Assessment of the implementation of Article 10 in all Member States**.

   → 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)

Evaluation of Late Payment Directive – Recommendations (2/5)

3. Changes to the way the interest rate is claimed

- Businesses who are aware of the rights introduced by the Directive 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 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

Evaluation of Late Payment Directive – Recommendations (3/5)

- External aspects

5. Raising awareness of the impact of late payment

→ 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

6. Fostering the development and implementation of prompt payment policies in all MS

→ 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:

- Creating "business case"
- Drawing on the experiences of countries that have implemented such schemes
- Engaging with sectorial associations and MS authorities to promote the implementation of prompt payment schemes.

Evaluation of Late Payment Directive – Recommendations (4/5)

7. Facilitating the exchange of best practices though peer review workshops

- ➔ "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

8. Providing access to effective remedies

- ➔ 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

Evaluation of Late Payment Directive – Recommendations (5/5)

9. 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

Evaluation of Late Payment Directive - Discussion and Q&A

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