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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on combating late payment in commercial transactions (recast)**

**Impact assessment**

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Lead DG: ENTR. Other services invited to participate: SG, SJ, COMP, BUDG, SANCO, TAXUD, ECFIN, MARKET and JLS. The Impact Assessment Board delivered its opinion on 17 December 2008 [D(2008)10479]. All recommendations made by the Board were taken into account and this document was amended accordingly. Agenda planning or WP reference: 2009/ENTR/006. This report commits only the Commission's services involved in its preparation and does not prejudge the final form of any decision to be taken by the Commission.

## 1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

An inter-service steering group was established, in which ENTR, ECFIN, MARKET and JLS participated. SG, SJ, COMP, BUDG, SANCO and TAXUD declined. The steering group met on 17 April, 19 May, 11 September and 14 November 2008.

Stakeholders were consulted through a public consultation through I.P.M.<sup>1</sup> (Your Voice in Europe<sup>2</sup>) in accordance with the Commission's minimum standards on public consultation. In addition, the EBTP (European Business Test Panel)<sup>3</sup> was also consulted. The results of these consultations are incorporated in this impact assessment. This impact assessment also draws on external expertise<sup>4</sup> and different publications mentioned in the footnotes throughout the text.

## 2. PROBLEM DEFINITION

### 2.1. The problem and its size

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 its client time to pay (“**trade credit**”). This time period is agreed between parties, or set out in the supplier's invoice or laid down by law. At the latest at the end of the trade credit period, the supplier expects payment for the goods or services delivered. Payment made after the trade credit period constitutes late payment.

When a business delivers products or services to other businesses or to public authorities (hereinafter “**commercial transactions**”), each transaction can represent a significant share of the turnover of the economic operator concerned. Therefore, most businesses expect payment for commercial transactions within a reasonable time so that they can pay their own debts and invest in future activities and assets. The deadline for payment in commercial transactions is either specifically agreed upon or laid down in the general commercial conditions of the economic operator delivering the products or the services.

However, **many payments in commercial transactions** between businesses or between businesses and public authorities are made **later than agreed or laid down**

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<sup>1</sup> <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=Latepayment&lang=en>. See Annex 1.

<sup>2</sup> [http://ec.europa.eu/yourvoice/index\\_en.htm](http://ec.europa.eu/yourvoice/index_en.htm).

<sup>3</sup> [http://ec.europa.eu/yourvoice/ebtp/index\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/index_en.htm). See Annex 2.

<sup>4</sup> Study on the effectiveness of Directive 2000/35/EC (2006), hereinafter the “Hoche report” ([http://ec.europa.eu/enterprise/regulation/late\\_payments/further\\_reading.htm](http://ec.europa.eu/enterprise/regulation/late_payments/further_reading.htm)) and a study by RPA Ltd. (2008), hereinafter the “RPA Report”.

**in the general commercial conditions** (hereinafter “**late payment**”<sup>5</sup>). Although the goods are correctly delivered or the services well performed, the corresponding invoices remain unpaid or are paid well after the deadline. These practices impinge on liquid assets and complicate the financial management of enterprises. They can also affect their competitiveness and profitability when the creditor needs to obtain external financing because of late payments. They also have a negative effect on intra-Community commercial transactions, as will be explained below.

Directive 2000/35/EC was adopted to combat late payment in commercial transactions between businesses or between businesses and public authorities<sup>6</sup>. According to the Directive, statutory interest may be charged when payment is not made within the contractual or legal deadline. It becomes payable from the day following the date, or the end of the period, for payment fixed in the contract, or 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment. The general rule is that the level of interest for late payment (“the statutory rate”), which the debtor is obliged to pay, should 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”)<sup>7</sup>, plus at least seven percentage points (“the margin”), unless otherwise specified in the contract:

<b>Table 1.1: Interest rates for late payments in the EU (1 January 2009)</b>	
<b>Eurozone</b>	
<i>Reference rate (currently the ECB rate is 2.5% plus the margin of at least 7 percentage points in all Member States of the Eurozone)</i>	9.5%
<i>Exceptions: Reference rate plus margin of at least 8 percentage points: Germany, Austria, Slovenia</i>	10.5%
<b>Not Eurozone</b>	
<i>Reference rate (National Bank rate) plus margin of at least 7 percentage points:</i>	
Bulgaria	12.17%
Czech Republic	9.25%
Denmark	10.5%
Estonia	9.5%
Latvia	13%
Lithuania	15.21%
Hungary	17%
Poland	12.25%

<sup>5</sup> According to Article 2(2) of Directive 2000/35/EC on combating late payment in commercial transactions, late payment means “exceeding the contractual or statutory period of payment”. The Court of Justice confirmed in this respect that, pursuant to Article 3(1)(a) of the Directive, the parties are generally free to fix in their contract the date or the period for payment (judgement of 11 December 2008, Commission v. Spain, Case C-380/06).

<sup>6</sup> The Directive defines commercial transactions as “transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration.” The directive applies to more than 23 million undertakings in the EU. It is estimated that there are around 15 billion commercial transactions per year in the EU.

<sup>7</sup> In practice, the ECB rates are published at the beginning of every January and July in the Official Journal, series C. The reference rate in force on the first calendar day of the half-year in question shall apply for the following six months. See <http://www.ecb.eu/stats/monetary/rates/html/index.en.html>. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above is the equivalent rate set by its national central bank. For the purposes of the Directive, the reference rate in force on the first calendar day of the half-year in question applies, in both cases, for the following six months.

Rumania	17.25%
<i>Exceptions: reference rate (National Bank rate) plus margin of at least 8 percentage points:</i>	
United Kingdom	10%
Sweden	10%

The Directive mainly addresses the situation where the commercial debt is eventually paid after the contractual or legal deadline but without any judicial proceedings. Yet, when judicial proceedings are necessary for obtaining payment of the commercial debt, the Directive obliges Member States to 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 neither the debt nor other aspects of the procedure are disputed.

Despite this Directive, **late payments in commercial transactions are still a widespread practice in the EU:**

Table 1.2: Evolution of late payments for SMEs in 7 EU Member States (average actual delays in number of days)					
	2003	2004	2005	2006	2007
Germany	12	13	19	13	15
Belgium	23	16	20	19	17
Spain	10	9	13	18	12
Italy	19	16	27	21	21
Portugal	45	35	38	38	38
U.K.	18	10	18	15	13

*Source : Eurofactor, Baromètres 2006, 2007 and 2008<sup>8</sup>*

There is overwhelming evidence<sup>9</sup> that late payment in commercial transactions is still a general problem within the EU. For example: a study in 10 Member States indicates that 98% of all economic operators experience late payment<sup>10</sup>. Belgian surveys<sup>11</sup> show that 31% to 49% of responding enterprises experience problems with late payments, with an average payment delay of 28 days. For 81% of respondents, late payment is an important problem. Another source points out that average

<sup>8</sup> More detailed figures are shown in Annex 3.

<sup>9</sup> Besides the sources quoted in other footnotes, other information about payment delays can be found, for example, on [http://www.payontime.co.uk/news/news\\_main.html](http://www.payontime.co.uk/news/news_main.html), <http://www.ivkm.be/>, [http://www.finances.gouv.fr/directions\\_services/cedef/synthese/delais-paiement/synthese.htm](http://www.finances.gouv.fr/directions_services/cedef/synthese/delais-paiement/synthese.htm), [http://www.criion.com/cms\\_files/N-77-nlBestand.pdf](http://www.criion.com/cms_files/N-77-nlBestand.pdf), [http://www.iec-iab.be/ned/publicaties\\_info\\_economie.aspx?id=1847](http://www.iec-iab.be/ned/publicaties_info_economie.aspx?id=1847), <http://www.fd.nl/artikel/9669604/top10-betalingsexcuses>, <http://managementscope.nl/nieuws/2028-credit-managers-kredietwaardigheid/2028-credit-managers-kredietwaardigheid>, [http://www.cfo-news.com/ESPANA-%7C-En-Espana-la-Ley-contra-la-morosidad-no-es-suficiente\\_a337.html](http://www.cfo-news.com/ESPANA-%7C-En-Espana-la-Ley-contra-la-morosidad-no-es-suficiente_a337.html), [http://www.cmrc.co.uk/surveys/debt\\_survey/](http://www.cmrc.co.uk/surveys/debt_survey/), [https://www.financialworld.co.uk/Archive/2008/2008\\_06jun/Features/late\\_payments/14414.cfm](https://www.financialworld.co.uk/Archive/2008/2008_06jun/Features/late_payments/14414.cfm), <http://www.startups.co.uk/6678842910891084831/late-payments-rise-to-8-3bn.html>, [http://epp.eurostat.ec.europa.eu/portal/page?\\_pageid=2293\\_59872848\\_2293\\_68195655&\\_dad=portal&\\_schema=PORTAL#fbs2](http://epp.eurostat.ec.europa.eu/portal/page?_pageid=2293_59872848_2293_68195655&_dad=portal&_schema=PORTAL#fbs2), <http://press.experian.com/documents/showdoc.cfm>, [http://eos-ksi.cz/fileadmin/user\\_upload/Eastern\\_Europa/EOS\\_KSI\\_CZ/EOS\\_Payment\\_Practices.pdf](http://eos-ksi.cz/fileadmin/user_upload/Eastern_Europa/EOS_KSI_CZ/EOS_Payment_Practices.pdf), <http://www.eulerhermes.com/en/documents/studybrochurecreditmanagement.pdf/studybrochurecreditmanagement.pdf> and many other sites.

<sup>10</sup> Study on Credit Management Practice in 10 European Economies, commissioned by Euler Hermes, 2006.

<sup>11</sup> Survey organised by UNIZO, "Dossier Betalingsachterstanden: UNIZO-Actieplan tegen slechte betalers", 24 March 2005; Survey organised by NSZ in 2008: [http://www.nsz.be/index.cfm?PageID=18119&News\\_ID=18538&style=66](http://www.nsz.be/index.cfm?PageID=18119&News_ID=18538&style=66).



payment delays throughout Europe increased from 16 days in 2007 to 17 days in 2008<sup>12</sup>. According to a recent survey<sup>13</sup>, over 30% of turnover is paid late to around 44% of the larger companies. The situation is worse for smaller enterprises: 59% of them are paid late for more than 30% of their turnover. A further 27% of large companies indicated that between 20% - 30% of turnover is paid late, with the corresponding figure for smaller companies being around 14%. In the UK, 48% of all SME employers consulted reported late payment as a problem with one in six describing it as a major problem (up from 12% in 2005)<sup>14</sup>. The Survey organised for the RPA Report shows the following results:

<b>Table 1.3: Percentage of turnover paid late</b>							
<b>Percentage turnover</b>	<b>&lt;1%</b>	<b>1-5%</b>	<b>5-10%</b>	<b>10-20%</b>	<b>20-30%</b>	<b>&gt;30%</b>	<b>No response</b>
>250 staff	4.8%	15.9%	9.5%	6.3%	23.8%	38.1%	1.6%
<250 staff	1.3%	10.1%	8.8%	8.2%	14.5%	56.6%	0.6%

Stakeholder Consultations point in the same direction: 53% of the EBTP respondents frequently encounter late payment in B2B transactions while 32% frequently encounter late payment by public authorities. More than 65% of the businesses responding in the IPM consultation frequently encounter late payment in B2B transactions while 61% frequently encounter late payment by public authorities.

Surveys also show that, in general, late payment occurs frequently in the public sector. According to a recent report, public authorities sustained their position as the worst payers in the EU, taking an average of 65 days to pay an invoice, compared to 55 days for businesses<sup>15</sup>. The RPA on-line survey with regard to amounts owed by the public/private sector<sup>16</sup> indicates that around 30% of the SMEs responding stated that 90% or more of their late payments are owed to them by the public sector, with another 30% indicating that a similar percentage is owed to them by the private sector. Only 12.7% of larger companies attribute 90% or more of their late payments to the public sector, while around 32% attribute 90% or more of late payments to private sector clients. When asked about the sectors that have most difficulty paying within 30 days, 31% of all companies responding to the on-line survey highlighted the public sector. Other surveys confirm these findings. In Belgium, for example, only 13% of respondents experienced payment within 90 days<sup>17</sup>. In Italy, a survey points out that payment delays for public administrations increased from 138 days in 2008 to 170 days nowadays. 50% of enterprises supplying to public administrations suffer payment delays averaging 2-4 months. For 25%, it takes about 4 to 6 months to get paid<sup>18</sup>.

<sup>12</sup> Intrum Justitia, European Payment Index 2008.

<sup>13</sup> Survey organised for the RPA report.

<sup>14</sup> BERR, Department for Business, Enterprise & Regulatory Reform, The Annual Survey of Small Businesses' Opinions 2006/07 (ASBS 2006/07), URN 07/389.

<sup>15</sup> Intrum Justitia, European Payment Index 2008: White paper Industries and credit management best practices, September 2008.

<sup>16</sup> See Table 3.11 in Annex 3.

<sup>17</sup> <http://www.sninet.be/>.

<sup>18</sup> <http://www.varesenotizie.it/varese-economics.html>.

## 2.2. The causes of the problem

The roots of late payments in commercial transactions and the corresponding passive attitude of many creditors are diverse and interrelated<sup>19</sup>:

### 2.2.1. 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. The position of a creditor in a specific market will have a large impact on his attitude vis-à-vis late payment and on his fear of damaging his commercial relationship with the client which is the most important reason for EBTP respondents and IPM respondents not to claim interest for late payment.<sup>20</sup>

	<b>IPM</b>	<b>EBTP</b>
Out of fear that the customer would be lost	58.3%	68.5%
It is too complicated to claim interest	47.9%	45.9%
Competitors never claim interest for late payments	37.5%	28.8%
Late interest is considered as revenue, even when it is paid	4.9%	13.5%
Unawareness about the right to charge interest for late payment	11.8%	13.5%
The interest rate is unknown	7.6%	7.2%
Don't know	3.5%	5.4%

Some businesses do not react to late payment since the tacit extension of the trade credit they thereby grant to the customer is an element of their marketing strategy and a potential source of competitive advantage for generating sales and customer loyalty. The acceptance of late payment by suppliers can also respond to the customer's needs or demand for short-term finance, or can signal the financial solidity or the commercial reputation of a business, and even indirectly the quality of the product or service. Nevertheless, many suppliers will take into account the competitive structure of the markets in which they operate, the bargaining strengths of both parties and the conditions affecting the supply of alternative sources of corporate finance<sup>21</sup>.

For debtors, the main reasons for timely payment in commercial transactions are often related to commercial or professional reputation or mutual trust in long-term commercial relationships. In other circumstances, the debtor is in a strong position up to the moment of payment. After the delivery of the goods or services, the power in short-term or one-off commercial relationships automatically shifts to the debtor until the date of payment.

Furthermore, many debtors know that they are unlikely to be sanctioned for paying late. This feeling of impunity derives from several factors, notably the awareness that

<sup>19</sup> See Table 3.1 in Annex 3.

<sup>20</sup> See Annex 3.

<sup>21</sup> Wilson N., "An Investigation into Payment Trends and Behaviour in the UK: 1997-2007", Department for Business, Enterprise & Regulatory Reform and CMRC, 2008.

most creditors are hesitant to take action to preserve their commercial relationships, the slowness and prohibitive cost of legal procedures to claim payment and the corresponding interest and, for some debtors, the non-deterrent rate of the statutory interest. Debtors' insouciance also has its roots in a very competitive supply chain whereby customers can pick and choose their suppliers among many competitors, or in a market with imperfect competition.

In addition to the problem of late payment, stakeholders also often argue that they are forced to stretch the contractual payment period or to accept unreasonable payment conditions. During contract negotiations for commercial transactions or during the public procurement process, parties do not necessarily have equal negotiation power. In particular, SMEs often find themselves in a weak position when negotiating contracts with larger entities and have to consent to very long payment periods to strike the deal. In some cases, they could be forced to sign a contract that expressly excludes the payment of interest in case of late payment. In most Member States, contract law does not set standardised and legally enforceable payment periods protecting SMEs from contractual clauses stipulating very long payment periods. This is compounded by the fact that SMEs normally have insufficient expertise in contract negotiations and/or insufficient time to negotiate contracts.

#### 2.2.2. *The business cycle,*

Changing macroeconomic conditions are another cause of late payment. A business cycle downturn is likely to cause more late payments as firms delay paying their invoices to stretch their liquidity. Also, firms suffer from a reduced ability to generate income from their operations because of receding demand, and banks tighten credit conditions possibly reducing credit volume to firms.

However, improvement in economic conditions may also provoke an increase in late payment for certain firms presented with more investment opportunities and, consequently a greater need to obtain a sufficient amount of financing.

#### 2.2.3. *Access to finance and budgetary constraints*

Monetary policy, the availability of credit, the flow and nature of credit information, the liquidity position of the firm and the availability of financial resources from banks may also affect payment behaviour, particularly for businesses for which bank credit is a substitute for supplier financing.

Many debtor enterprises and public authorities consider late payment an efficient and cheap way to finance their own businesses and activities. For public authorities, late

payments to creditors are an efficient way to overcome budgetary constraints by postponing payments to the next budgetary period<sup>22</sup>.

#### 2.2.4. The internal organisation of creditors and debtors,

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. Creditors in commercial transactions, and especially SMEs, do not necessarily have appropriate credit management systems for preventing or managing late payments:

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

*Source: survey organised for the RPA Report*

For more than 45% of EBTP and IPM respondents, it is too complicated to claim interest when late payment occurs. Smaller enterprises usually have insufficient resources to take action against the debtor. Some of them do not know how to calculate late payment interest while others lack the means to enforce payment. It is arguable that smaller firms are less able than large firms to insist on prompt payment. This, in turn, may be because SMEs feel more pressure, despite the cost of extending trade credit on a net basis, to offer this financial service just to stay in business<sup>23</sup>. More than 28% of the EBTP respondents and 37.5% of IPM respondents never claim interest because their competitors never do.

<sup>22</sup> According to the IMF, payment delays by public authorities often arise from attempts to slow down the recording of expenditures at the final stages of the spending process. Faced with a monthly or quarterly financing constraint, public authorities are often tempted to slow down the payment process by delaying the issue of payment orders in order to meet financing ceilings. In accrual accounting terms, once goods or services are verified as delivered, the government has incurred a liability; only in cash accounting terms do such practices have any purpose (albeit misguided). If the above practices are relied on for a prolonged period, the authorities' liabilities (and hence expenditure levels) are not correctly reflected in the bank accounts, owing to the existence of unpaid overdue bills, which represent expenditure arrears. Therefore, the IMF advises ministries of finance to carefully compare their reports on bills received and payment orders issued with those on payment orders encashed, as recorded by the central bank or government payment agency. The IMF suggests several causes for late payments by public authorities. For example, the budget provision is unrealistic and line ministries are allowed to commit expenditure within that appropriation (i.e., budget provision), even though there is no cash available to liquidate the expenditure. Or the budget figures may be realistic, but the cash plan (and monthly cash limits) associated with the budget are not, or there is no in-year guidance on when expenditures can be committed. Commitments may not be recorded and therefore do not respect the budget ceilings or the timetable defined by the cash plan. Finally, the public authorities may not be efficiently organised. Source: <http://www.imf.org/external/pubs/ft/extend/guide4.htm#probexe>.

<sup>23</sup> Wagenvoort R., "Are finance constraints hindering the growth of SMEs in Europe?", in: Europe's changing financial landscape: The financing of small and medium-sized enterprises, EIB Papers Volume 08. n°2/2003.

## 2.2.5. The absence of effective and efficient remedies

Despite Directive 2000/35/EC, **many businesses, and in particular SMEs, do not charge interest when entitled to do so**, thus contributing to the situation in which debtors are not sanctioned for paying late<sup>24</sup>. 75% of EBTP respondents seldom or never claim interest for late payments. According to the responses from a specific questionnaire on claims for late payment interest, the average claim rate for SMEs is 13.5% of all late payments and the equivalent rate for large companies is 18.24%. According to a consultation organised in France, 90% of participating organizations think that less than 10% of their members put into practice the statutory interest provided for by law. Other sources confirm these figures:

	<b>2005</b>	<b>2006</b>	<b>2007</b>
Germany	54%	47%	52%
Belgium	39%	36%	34%
Spain	25%	22%	14%
France	11%	15%	12%
Italy	25%	21%	21%
Portugal	22%	20%	26%
United Kingdom	11%	13%	22%

*Source : Eurofactor, Baromètres 2006, 2007 and 2008*

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. For about 66% of EBTP and IPM respondents, the loss of management time and working hours is the most important effect of late payment. Furthermore, the final amount of the statutory interest due from a debtor can only be calculated on the day that the creditor is actually paid so the latter must await payment before he can know exactly the amount of interest that he could charge. In addition, the costs of charging interests before the actual date of payment would outweigh the financial benefits in most cases.

In addition, **several key provisions of the Directive are unclear or difficult to implement in practice**<sup>25</sup>. For instance, diverse interpretations are conceivable for the calculation of the applicable interest rate, the definition of “relevant recovery costs” and the possibility of compound interest. Moreover, the Directive specifies that **Member States may exclude claims for interest of less than €5**<sup>26</sup>. Thus, the Directive implies in practice that the creditor will have to wait until the interest reaches €5 before effectively charging it. This additional delay obviously depends on the interest rate and the amount owed. For example, a creditor can only claim interest for a late payment of €1,000 after 17 days following the payment deadline (based on a reference rate of 11%).

<sup>24</sup> Etude sur les délais de paiement”, by Prof. Michel Glais, 2005. See Tables 3.8 and 3.9 in Annex 3.

<sup>25</sup> Although the Directive is fairly recent, already 5 cases with divergent interpretations of the Directive were submitted to the Court of Justice. An overview of this jurisprudence is shown in Annex 6.

<sup>26</sup> See Annex 7.

## 2.3. The effects of the problem

### 2.3.1. Late payment represents a significant cost to creditor enterprises

In general, late payment strains cash flow, adds financial and administrative costs, squeezes investment opportunities and fuels uncertainty for many creditor businesses and in particular, SMEs<sup>27</sup>, especially in an economic downswing with limited and expensive access to finance.

The result is often that their competitiveness and solvency, and eventually their viability are compromised<sup>28</sup>. Based on the responses to a survey and on a number of assumptions<sup>29</sup>, the value of turnover paid late accounts for around €1,864 billion across the EU:

EU	€bn
Large company turnover paid late	724
SME turnover paid late	1,141
<b>TOTAL</b>	<b>1,864</b>

It should be noted that SME's are particularly vulnerable to late payments:

- (1) **SMEs are more exposed to variations in cash flow:** the financial costs of late payment for SMEs are particularly high<sup>31</sup>, with cash-flow needs having to be met by short-term bank loans or overdrafts. Micro and small companies' lower turnover and limited access to finance often result in more expensive credit<sup>32</sup>.

<sup>27</sup> OECD SME, 2002. In *Successes and Challenges for SMEs*, 2003, the SME Union observes that payment delays caused by big companies are twice as frequent as those caused by SMEs. A survey in the UK (*Mamut survey*, published November 2006) showed that 56% of the SMEs with less than 20 employees have debtors who are late payers versus only 29% of those with 20-50 employees. See also *Bulletin de la Banque de France*, n. 168, décembre 2007, p. 82-84.

<sup>28</sup> Pike R., Cheng N.S., Cravens K. and Lamminmaki D.: "Trade Credit Terms: Asymmetric Information and Price Discrimination Evidence From Three Continents"; *Journal of Business Finance & Accounting*, 32(5) & (6), June/July 2005, p. 1201.

<sup>29</sup> This turnover could be linked to any delay, i.e. from one day's delay to 60 days' delay or more. This figure has been calculated by combining the average percentage of turnover paid late with data on average company turnover by size from Eurostat. Yet, since this figure is based on people responding to the RPA questionnaire, it may overestimate the turnover paid late reflecting respondents' bias towards the subject.

<sup>30</sup> Applies average percentage paid late to average company turnover by size, as given in EUROSTAT, but assumes the mid-value for percentage of turnover paid late, i.e. 3%, 7.5%, 15%, 25% and 30% for the last category of percentage turnover paid late. B2B turnover has been calculated assuming that the % of company turnover from B2B transactions is 42% of the overall turnover. This assumption is made on the basis that consumer spending represents approximately 58% of EU GDP. See Table 3.7 in Annex 3 for further details.

<sup>31</sup> In France for instance, it has been calculated that, for 50% of the SMEs, late payments amount to a charge in their cash-flow equivalent of more than 20 days of business. Source: « Délais de paiement et solde du crédit interentreprises de 1990 à 2006 », in *Bulletin de la Banque de France*, n. 168, décembre 2007, p. 81.

<sup>32</sup> See, for example, Petersen M. and Rajan R.G., "Trade Credit: Theories and Evidence" (1996-06-01), NBER Working Paper No. W5602, <http://ssrn.com/abstract=225540>; Wilson N, Summers B., "Trade Credit terms offered by Small Firms: Survey Evidence and Empirical Analysis", *Journal of Business Finance & Accounting*, 2002, Vol. 29 (3&4), p. 317; Pike R. and Sang Cheng N., "Credit Management:

- (2) **SMEs often rely on a limited number of clients:** the vulnerability of SMEs is accentuated by their narrow client spread and the resulting overreliance on specific client activity to maintain revenue streams<sup>33</sup>. SMEs are often reliant on only a handful of clients for a large proportion of turnover and this in turn leads to clients abusing their position by imposing very long payment periods in contracts and/or paying late.
- (3) **The administrative costs of pursuing debts are disproportionately high for SMEs,** as they typically have neither specialized staff nor enough time to properly manage outstanding claims. For example, an average SME in Great Britain spends 2.5 hours a week chasing late payments<sup>34</sup>.

<b>Table 1.8: Impact of late payments on enterprises: some examples</b>
The Hoche report shows that for 8% of respondents, late payments impact directly and significantly on their survival chances while another 49% of respondents considered that late payments have an impact on their survival chances.
A study in 10 Member States points out that 76% of all economic operators' cash flow has been affected by late payment <sup>35</sup> .
Another survey <sup>36</sup> showed that the profitability of 39% of British firms had been hit by late payment. A third (30% of British companies had been unable to pay their own bills on time as a result of late payment which had also forced almost one in five companies (18% to delay the expansion of their business .
Other research <sup>37</sup> showed that almost a fifth of SMEs (19% now employ a dedicated person to chase up late payments – losing an average of 17 working days a year to this task .
For 31% of EBTP respondents, late payment slows down the growth of their business and for 28%, it affects their productivity. Late payment has a negative effect on investment for 22% of EBTP respondents and for 13% of them, it threatens the survival of their business. Late payment does not affect the business of 18% of EBTP respondents.
Managing cash flow is still perceived as an obstacle to success by almost half of SME employers, according to a survey. Over half of the respondents who reported cash flow to be an obstacle cited late payment as being a key concern. 56% cited late payment from businesses. Possibly because of the size of unpaid invoices, late payment by businesses was more commonly cited as the biggest challenge in cash flow terms (30 per cent, compared to 13 per cent citing late payment from individuals) <sup>38</sup> .

From a macroeconomic perspective, late payment has a detrimental effect where it requires economic operators to take out loans at a higher interest rate than the late paying customers.

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An examination of Policy Choices, Practices and Late Payment in UK Companies”, Journal of Business Finance & Accounting, 2001, Vol. 28, 7&8, p. 1013; Wagenvoort R., “Are finance constraints hindering the growth of SMEs in Europe?” in: Europe's changing financial landscape: The financing of small and medium-sized enterprises, EIB Papers Volume 08. n°2/2003.

<sup>33</sup> Howorth C. and Reber B., “Habitual late payment of trade credit: an empirical examination of UK small firms”, Managerial and Decision Economics, 2003, Vol. 24, 6-7, according to which a concentrated supplier base is shown to be positively associated with late payment. Their case studies provide evidence that this is because increased knowledge of suppliers' credit management procedures is used to pay late without penalties.

<sup>34</sup> Source: Bacs Payment Schemes Limited (Bacs), 2007.

<sup>35</sup> Study on Credit Management Practice in 10 European Economies, commissioned by Euler Hermes, 2006.

<sup>36</sup> Research published on August 2007 by Creditsafe: <http://www1.creditsafeuk.com/?id=975&cid=1110>.

<sup>37</sup> Research conducted in 2007 by Bacs Payment Schemes Ltd.: <http://www.bacs.co.uk/Bacs/Businesses/SME/Useful+tools/Late+payment+tips/Late+payment+tips.htm>

<sup>38</sup> BERR, Department for Business, Enterprise & Regulatory Reform, The Annual Survey of Small Businesses' Opinions 2006/07 (ASBS 2006/07), URN 07/389.

### 2.3.2. *Debtor companies and public authorities paying late get free trade credit*

When a business pays its suppliers on time and clients pay on time, its debts and credits are broadly in balance. But when, for instance, suppliers are paid within 30 days and clients only pay within 90 days, the resulting imbalance requires to be financed. Paying late is sometimes considered as a means of refinancing as opposed to applying for bank loans<sup>39</sup>. Trade credit is the single most important source of external finance for firms. It appears on every balance sheet and represents more than one half of businesses' short term liabilities and a third of all firms' total liabilities in most OECD countries. For example, £18.6 billion is owed in outstanding (but not necessarily late) payments to Britain's SMEs in 2008 – a leap of £2.6 billion compared with the year before. The average amount owed to an SME at any one time is £30,000<sup>40</sup>.

There is strong evidence that trade credit is used to alleviate credit constraints whereby firms insure each other against liquidity shocks, especially since suppliers continue to extend trade credit to firms that already defaulted on a payment in the past. Small, liquidity-strapped firms with little access to outside finance seem to pass liquidity shocks on to their suppliers by defaulting on trade credit<sup>41</sup>. If the supplier is also small and short of liquidity and cannot raise fresh funds on short notice, a substantial portion of the shock is likely to be passed on further down the trade credit chain<sup>42</sup>.

### 2.3.3. *Late payments have a negative impact on intra-community trade.*

In most Member States, businesses perceive selling goods and services to businesses and authorities in another Member States as entailing a higher risk of late payment:

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<sup>39</sup> Cunat V., "Trade Credit: Suppliers as Debt Collectors and Insurance Providers", Universitat Pompeu Fabra & Financial Markets Group (LSE), May 2005; *SMES under threat from late payments*, Intrum Justitia, 2005, p. 13; Russo P.F. and Leva L., "The use of trade credit in Italy: how important are the financial motives", Bank of Italy, Working Paper No 496, June 2004; See table 3.10 in Annex 3. Research commissioned by the Banker's Automated Clearing Services (Bacs) - 2008.

<sup>40</sup> Peel M. J., Wilson N. and Howorth C., "Late Payment and Credit Management in the Small Firm Sector: Some Empirical Evidence", *International Small Business Journal*, 2000, 18, p. 17.

<sup>42</sup> Boissay F. and Gropp R., "Trade credit defaults and liquidity provision by firms", ECB Working Paper No 753, May 2007.



<b>Table 1.9: Terms of payment vs. actual payment in 11 Member States (number of days - 2007)</b>							
Member State of establishment	Domestic trade			Non-domestic trade			Differences in actual delays
	Terms of payment	Actual payment period	Actual delay	Terms of payment	Actual payment period	Actual delay	
Austria	28	30	2	28	41	13	<b>11</b>
Belgium	35	41	6	35	45	10	<b>4</b>
Czech Republic	26	32	6	26	34	18	<b>12</b>
France	46	56	10	46	60	14	<b>4</b>
Germany	26	31	5	26	46	20	<b>15</b>
Hungary	29	36	7	29	38	9	<b>2</b>
Italy	81	80	-1	81	66	-15	<b>-14</b>
Poland	23	30	7	23	26	3	<b>-4</b>
Romania	30	32	2	30	28	-2	<b>-4</b>
Slovakia	26	31	5	26	32	6	<b>1</b>
United Kingdom	35	41	6	35	46	11	<b>5</b>

*Source : Atradius Payment Practices Barometer – Winter 2007 and May 2008*

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. A buyer's inability or unwillingness to pay on time is one of the major commercial risks in cross-border trade risk management, in particular for SMEs<sup>43</sup>. 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<sup>44</sup>. The reverse side of this asymmetric information is that 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 caused by late payment diminishes with distance. Late payment affects the business reputation of debtors much more when the creditor is established in the same Member State. Businesses that pay their invoices promptly usually focus more on good business relationships, tending to value the maintenance of relationships with their suppliers and the company's reputation as important.

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. Economic studies show that with uncertainty about the repayment of trade credit the output level of a profit-maximising firm is below the level where there is revenue certainty<sup>45</sup>. As a result, trade credit insurance and other instruments coping

<sup>43</sup> According to the Business Credit Index of April 2008, published by the Credit Management Research Centre ([http://www.cmrc.co.uk/surveys/business\\_credit\\_index/index.html](http://www.cmrc.co.uk/surveys/business_credit_index/index.html)), medium sized firms indicate an overdue period of 26 days for payment by non-domestic customers and an average payment delay of 21 days for domestic sales; the COFACE UK Export Survey 2007 ([http://www.cmrc.co.uk/surveys/export\\_survey/](http://www.cmrc.co.uk/surveys/export_survey/)) indicates 27 overdue days for sales by UK companies to other EU Member States.

<sup>44</sup> Portes R. and Rey H. "The Determinants of Cross-Border Equity Flows", Département et Laboratoire d'Economie Théorique et Appliquée de l'Ecole Normale Supérieure, Document N° 2001-08; Smith J.K., "Trade Credit and Informational Asymmetry", The Journal of Finance, Vol. 42, No. 4 (Sep., 1987), pp. 863-872.

<sup>45</sup> Funatsu, H., "Export Credit Insurance", Journal of Risk and Insurance, 1986, 53, 4, 680-92.

with trade risk management are often used in cross-border trade. These instruments reduce revenue uncertainty but they increase production costs due to insurance premiums, factoring, buying information from agencies, using collecting agencies, bank guarantees etc. The cost of some of these services may absorb an important fraction of the profit margin, in particular of small enterprises.

The alternative to instruments coping with cross-border trade risk management is in-house risk management. This either requires extra working capital to cope with uncertainty about the payment of the commercial debt, or obliges the supplier to charge higher prices to cover the payment risk. In the worst case, the supplier will refrain from selling his products or services in another Member State. In addition, due to the cross-border element, the administrative costs of sending reminders and contacting debtors are higher when the debtor is established in another Member State.

<b>Table 1.10: Impact of late payments on intra-EU trade: some examples</b>
A survey performed in late 2004 in the UK found that payment issues remained a deterrent to intra EU trade <sup>46</sup> . The issue of late payment has a bearing on the decisions of 46% of companies surveyed when they consider working with companies from other countries of the EU.
In another survey <sup>47</sup> , more than 9000 companies interviewed in 22 European countries had indicated that payment uncertainty was seen as the major obstacle to cross-border trade.

#### **2.4. How is the problem likely to develop?**

The regulatory landscape applicable to the payment process and claims to obtain payment for commercial transactions in cross-border cases within the EU is being reshaped by new EU rules that recently entered into force or will soon apply. They are set out in detail in annex 4. The former will improve the speed and the efficiency of the payment process while the latter create new possibilities for judicial and extra-judicial claims for the recovery of outstanding payments for cross-border commercial transactions in the EU. The measures on judicial and extra-judicial claims are only expected to have a minor impact on late payment in commercial transactions. Their impact is more downstream in the process, i.e. when creditors consider that litigation is the most appropriate method for obtaining payment which, by definition, will be late.

#### **2.5. Legal basis**

Late payment can be an important impediment to intra-EU trade, especially for products and services to be sold in Member States where payment delays frequently occur (see section 2.3). The absence or ineffectiveness of national rules combating late payment could therefore unfairly protect national economic operators against products and services coming from other Member States. Failure by a Member State to act or take sufficient action to prevent obstacles to the free movement of goods or services originating in other Member States caused by late payment by private individuals or national authorities is just as damaging to intra-Community trade as a positive trade-restrictive act.

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<sup>46</sup> Credit Management Research Centre, 2004, [http://www.payontime.co.uk/news/update\\_advice.html](http://www.payontime.co.uk/news/update_advice.html).  
<sup>47</sup> Intrum Justitia, European Payment Index 2004.

Therefore, the objective of ensuring the functioning of the internal market by reducing obstacles to intra-EU trade arising from late payment cannot be sufficiently achieved by Member States. It is therefore appropriate in accordance with the principle of subsidiarity, by reason of its scale and effects, to achieve it at Community level.

The fact that late payment in commercial transactions is still an impediment to intra-Community trade means that any legislative proposal would have to be based on Article 95 of the Treaty, which is the legal basis of existing Directive 2000/35/EC. Non-legislative action would be based on Article 211 of the Treaty. The proportionality of the options will be assessed later in this report.

### 3. OBJECTIVES

#### 3.1. General objectives

Any Community initiative aiming at tackling the issue of late payment must ultimately:

- Be conducive to the achievement of the broader and overarching competitiveness goals enshrined in the renewed **Lisbon Partnership for Growth and Jobs**<sup>48</sup>, i.e. that Europe should become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth, creating more and better jobs, and developing greater social and regional cohesion;
- Significantly reduce administrative burdens on business, promote their cash flow and help more people to become entrepreneurs, in accordance with the principles of the **Small Business Act**<sup>49</sup>, in which the facilitation of SMEs' access to finance and the development of a legal and business environment supportive to timely payments in commercial transactions is earmarked as one of the 10 principles to guide the conception and implementation of SME policies both at EU and Member State level.
- Facilitate the smooth functioning and the completion of the **internal market** via the elimination of related barriers to cross-border commercial transactions. In its vision for the 21<sup>st</sup> century single market, the Commission emphasized the need for a strong, innovative and competitive internal market<sup>50</sup>. The Single Market review<sup>51</sup> announced that the Commission would examine a range of initiatives to foster the right conditions for small and medium-sized businesses and to improve framework conditions for businesses.

Such initiative would also provide an important impetus to overcome the current economic crisis by contributing to the implementation of the **European Economic**

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<sup>48</sup> Commission Communication: Working together for growth and jobs. A new start of the Lisbon strategy, COM(2005)24.

<sup>49</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, COM(2008)394final of 25 June 2008.

<sup>50</sup> COM(2007) 60, 21.2.2007.

<sup>51</sup> Commission Communication: A single market for 21st century Europe, COM(2007) 724 final.

**Recovery Plan**<sup>52</sup> and promoting businesses' cash flow in order to reinforce the competitiveness of European enterprises in the long term.

### **3.2. Specific objectives**

Any future policy should provide economic operators involved in commercial transactions with a business environment that promotes the timely payment of commercial debts whereby:

- The competitiveness of European businesses, in particular SMEs is improved by a substantial reduction in late payments for commercial transactions within the EU and by a reduction of excessively long periods of payment, in particular by public authorities;
- The discouraging effect of late payment in cross-border commercial transactions is reduced.

### **3.3. Operational objectives**

Concretely, this translates into the following twin operational objectives:

- (1) Confront debtors with measures that successfully discourage them from paying late or from requiring excessively long contractual payment periods; and
- (2) Provide creditors with measures that enable them to fully and effectively exercise their rights when paid late.

## **4. POLICY OPTIONS**

### **4.1. Overview of policy options - Subsidiarity and proportionality**

It should be noted that, for some important aspects of the three first problem causes set out in section 2.2, the EU does not necessarily have the power to act. Certain problems related to the structure of national or regional markets should be dealt with by Member States while, as regards the business cycle, most of the economic policy levers are in the hands of the Member States so that no overall solution for all problem causes can be found at EU level. In addition, certain options had to be discarded at an early stage for the reasons set out in Annex 5.

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<sup>52</sup> COM(2008)800, 26.11.2008.

<b>Table 1.11: Overview of all policy options</b>			
<b>Problem causes</b>	<b>(1) Discarded options (see Annex 5)</b>	<b>(2) Non-legislative options</b>	<b>(3) Legislative options</b>
2.2.1: the market structure		- <u>Option 2a</u> : the organisation of awareness raising activities targeted at businesses - <u>Option 2b</u> : the organisation of awareness raising activities targeted at SME organisations	- <u>Option 3a</u> : Full harmonisation of payment periods
2.2.2: the business cycle			
2.2.3: access to finance and budgetary constraints	- The creation of a European Fund aimed at providing finance to SMEs.		- <u>Option 3a</u> : Full harmonisation of payment periods
2.2.4: the internal organisation of creditors and debtors	- A new programme to enhance SME capabilities; - Promoting the use of Escrow Facilities (non-legislative option); - Promoting the use of securities (non-legislative option); - Developing and Promoting Credit and Financial Management Programmes (non-legislative option).	- <u>Option 2c</u> : the publication of information on bad debtors; - <u>Option 2a</u> : the organisation of awareness raising activities targeted at businesses - <u>Option 2b</u> : the organisation of awareness raising activities targeted at SME organisations	- <u>Option 3f</u> : Strengthen the role of representing organisations - <u>Option 3g</u> : Encourage timely payment by compulsory information of debtors
2.2.5: The absence of effective and efficient remedies	- Repeal of the Directive; - Exempt income in the form of late payment interest from VAT.		- <u>Option 3b</u> : Increase of the statutory interest rate - <u>Option 3c</u> : Abolition of the threshold of €5 - <u>Option 3d</u> : introduction of a “Late Payment Fee” - <u>Option 3e</u> : introduction of the “Late Payment Compensation”

Consequently, this impact assessment will concentrate primarily on the problem causes on which the EU has the right to act. The legislative options are predicated on the principle that the EU should only legislate to the extent necessary. Regarding the nature and the extent of Community action, the options leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. Well established national arrangements and the organisation and working of Member States' legal systems should be respected. None of the options is exclusive.

Table 1.12: Overview of policy options subjected to an in-depth impact analysis			
Operational objective	(1) Baseline: No change (see annex 4)	(2) Non-legislative options	(3) Legislative options
Provide creditors with measures that enable them to fully and effectively exercise their rights when paid late.	<ul style="list-style-type: none"> <li>- SEPA will improve efficiency of payments</li> <li>- Debt collection agencies will benefit from Services Directive 2006/23/EC</li> <li>- Access to alternative dispute resolution will be improved by Directive 2008/52/EC</li> </ul>	<ul style="list-style-type: none"> <li>- <u>Option 2a</u>: the organisation of awareness raising activities targeted at businesses</li> <li>- <u>Option 2b</u>: the organisation of awareness raising activities targeted at SME organisations</li> </ul>	<ul style="list-style-type: none"> <li>- <u>Option 3a</u>: Full harmonisation of payment periods</li> <li>- <u>Option 3b</u>: Increase of the statutory interest rate</li> <li>- <u>Option 3c</u>: Abolition of the threshold of €5</li> <li>- <u>Option 3d</u>: introduction of a “Late Payment Fee”</li> </ul>
Confront debtors with measures that successfully discourage them from paying late or from requiring excessively long contractual payment periods.	<ul style="list-style-type: none"> <li>- Regulation 1896/2006 on European order for payment procedure</li> <li>- Regulation 805/2004 creating a European Enforcement Order for uncontested claims</li> <li>- Regulation (EC) No 44/2001 on judgments in civil and commercial matters</li> </ul>	<ul style="list-style-type: none"> <li>- <u>Option 2c</u>: the publication of information on bad debtors</li> </ul>	<ul style="list-style-type: none"> <li>- <u>Option 3e</u>: introduction of the “Late Payment Compensation”</li> <li>- <u>Option 3f</u>: Strengthen the role of representing organisations</li> <li>- <u>Option 3g</u>: Encourage timely payment by compulsory information of debtors</li> </ul>

## 4.2. Baseline option: no policy change

The baseline option consists of the measures outlined in section 2.4 and annex 4. They only relate to the payment process and claims to obtain payment for commercial transactions in cross-border cases within the EU. Consequently, **any further policy options should only focus on measures encouraging timely payment**, without considering the technical aspects of the payment process or late payment made following debt collection measures by third parties, alternative dispute resolution or judicial proceedings.

## 4.3. Non-legislative options

### 4.3.1. Option 2a: The organisation of awareness raising activities targeted at businesses

Despite certain weaknesses of the Directive, its provisions could be disseminated to a wider audience of economic operators so that they can fully grasp its potential benefits.

This could be done in the first place through guides and specific websites specifically addressed to economic operators and other stakeholders like SME organisations. A dedicated section on late payment could, for example, be included in the SME portal<sup>53</sup> and on the Your Europe–Business Portal<sup>54</sup>. Other more tailor-made awareness raising activities, like conferences and seminars, could complement the guides and websites and could be organised in cooperation with the Enterprise Europe Network<sup>55</sup>. Awareness-raising activities should also cover national debt

<sup>53</sup> [http://www.enterprise-europe-network.ec.europa.eu/index\\_en.htm](http://www.enterprise-europe-network.ec.europa.eu/index_en.htm)

<sup>54</sup> [http://ec.europa.eu/enterprise/sme/index\\_en.htm](http://ec.europa.eu/enterprise/sme/index_en.htm)

<sup>55</sup> [http://ec.europa.eu/youreurope/business/index\\_en.htm](http://ec.europa.eu/youreurope/business/index_en.htm)

settlement procedures. Finally, exchange of best practice between Member States could be promoted.

4.3.2. *Option 2b: The organisation of awareness-raising activities targeted at organisations representing SMEs*

The Directive provides for the possibility for organisations representing SME's to take action with regard to unfair clauses. Until now, there are very few indications that these representative organisations have actually fully exploited this possibility which could be highlighted in awareness-raising activities specifically targeting SME representative organisations. These would aim to prevent the inclusion of grossly unfair clauses in future contracts through, inter alia, the application of competition rules to cases of unfair contract clauses and excessive use of dominance by large customers. They should also cover codes of best practice that identify abusive practices and unfair terms.

4.3.3. *Option 2c: Publication of information on bad debtors*

Detailed information on the identity of bad debtors is currently not made publicly available by companies. Under this option, companies would publish (either voluntarily or by law) detailed information on bad debtors in their annual returns, so that regular late payers could become more easily identifiable<sup>56</sup>.

#### **4.4. Legislative options**

4.4.1. *Option 3a: Full harmonisation of payment periods*

Under this option, payment periods together with the calculation and timing of interest chargeable on late payment would be harmonised in all contracts to protect the weaker party during contract negotiation and in contracts with public authorities. A maximum payment period of 30 days (corresponding to the “default period” under the current Directive) would apply to commercial contracts across Member States. This option presupposes that current rules on interest for late payment are maintained.

4.4.2. *Option 3b: increasing the “margin” interest rate*

The objective of this measure would be to compensate the creditor while creating an incentive for the debtor to change behaviour, resulting in improvements to payment practice. It would involve a substantial increase in the “margin” interest rate for late payment above the 7% currently in force. For the purposes of this assessment, it is proposed that the rate introduced be the ECB rate plus a “margin” interest rate of 12%.

4.4.3. *Option 3c: the abolition of the threshold of €5*

The Directive specifies that Member States may exclude claims for interest of less than €5. A stronger deterrent effect would be achieved if, in all cases, the interest

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<sup>56</sup> This option does not address the transparency of debtors' assets in the European Union in the framework of the enforcement of judicial decisions in the European Union, about which the Commission published a Green Paper COM(2008)128 on 6.3.2008.

could be imposed on the first day of a payment becomes overdue. Therefore, the threshold of €5 would be repealed under this option.

#### 4.4.4. *Option 3d: the introduction of a “Late Payment Fee”*

This option introduces a fixed “Late Payment Fee” for the recovery of administrative costs and compensation for internal costs incurred due to late payment. This minimum fee would be cumulated with interest for late payment and would become payable automatically from the first day after payment becomes overdue:

<b>Table 1.13: Late Payment Fee (option 3d)</b>	
<b>Amount of late payment</b>	<b>Fixed minimum amount to be paid by the creditor</b>
Not exceeding €1000	<b>€40</b>
Exceeding €1000	<b>€70</b>

These amounts are slightly progressive since more important debts usually require more attention and corresponding credit management time, and a more formal approach to cash collection (formal reminders, legal counselling, etc). For higher amounts of late payment, senior management levels and/or external accountants, debt collection services or solicitors are more likely to be involved.

#### 4.4.5. *Option 3e: the introduction of a “Late Payment Compensation”*

A sufficiently high financial compensation for the recovery costs related to late payment can be a serious discouragement, in particular for smaller debts. Under this option, the compensation would amount to 1% of the amount due in order to recover the costs of involving senior management levels and/or external accountants, debt collection services or solicitors. This compensation would also be cumulated with the interest for late payment. It could be increased in case of further delays.

#### 4.4.6. *Option 3f: Strengthen the role of representative organisations*

At the moment, in the Directive the role of organisations officially recognised as, or having a legitimate interest in, representing SMEs is fairly limited: they may take action before the courts or before competent administrative bodies under national law on the grounds that contractual terms drawn up for general use are grossly unfair within the meaning of Article 3(3), so that appropriate and effective measures are taken to prevent the continued use of such terms<sup>57</sup>.

Under this option, representative organisations would also be entitled to claim payment of invoices that should have been paid and all related amounts (e.g. interest for late payment) through a representative action. This would be an action brought by a representative organisation on behalf of businesses who are not themselves party to the action, and aimed at obtaining damages for the individual harm caused to the interests of all those represented (and not the representative entity itself). It would be left to the Member States to set criteria to define which organisations would qualify but these could include professional associations, public authorities specifically responsible for SME protection, chambers of commerce and industry, etc.

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<sup>57</sup> See Annex 7.



## 5. ANALYSIS OF IMPACTS

All quantitative data about payment delays used in this impact assessment are based on different types of surveys and interviews. Surveys usually collect information on the perception of late payment as a problem and trends in the number and value of accounts paid on time. The data collected could potentially suffer from selection bias or respondents' bias towards the subject whereby, for example, respondents consider that payments following a contested claim or a judgement are also late payments. Businesses that are sensitive to the payment behaviour of their customers are more likely to indicate that payments are "late" than businesses that have the financial strength to absorb some variations in payment times and/or anticipate actual payment behaviour. Despite all efforts, there are no hard scientific data based on a detailed analysis of all payments made by and to a reliable sample of economic operators throughout the EU.

Moreover, the Directive is an optional instrument for economic operators in so far as it does not oblige them to claim interest for late payment. The directive also operates in a field where many other factors could influence the payment performance in B2B transactions<sup>58</sup>. The regulatory landscape applicable to the payment process and judicial claims to obtain payment for commercial transactions in cross-border cases within the EU is being reshaped by new EU rules that recently entered into force or will soon apply. It is hard to account for interconnection and spill-over effects in the baseline scenario. Thus, it is only possible to provide indicative quantitative estimates of the possible economic and social impacts of any given option. Therefore, the analysis is mainly qualitative. It should be noted that none of the options would have an environmental impact or third country implications.

Some causes of problems where the EU does not have the power to act will nevertheless influence the uptake of certain options. The market structure and the position of an economic operator in a market will determine to a large extent his willingness to take action against a late paying debtor and to run the risk of damaging a business relationship which might be worth several thousand Euros. There are many other similar individual factors which will all be neutralised whenever possible during this impact assessment. For the same reason, it was impossible to identify direct social impacts.

The policy options are assessed in the light of the baseline option in terms of their effectiveness<sup>59</sup>, efficiency<sup>60</sup> and consistency<sup>61</sup>

### 5.1. Option 1: baseline option

The base-line option comprises a number of **recently adopted measures that will quicken the payment process and introduce new means of pursuing judicial and extra-judicial claims** for the recovery of outstanding payments for commercial

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<sup>58</sup> See Table 3.11 in Annex 3.

<sup>59</sup> The extent to which options can be expected to achieve the objectives of the proposal.

<sup>60</sup> The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

<sup>61</sup> The extent to which options are likely to limit trade-offs across the economic, social, and environmental domain.

transactions in cross-border cases within the EU. An important side-effect of these measures is their possible positive influence on the payment attitude of debtors.

It should however be noted that these measures will have **no impact on late payments for which no debt collection by third parties, alternative dispute resolution or judicial proceedings are initiated.**

Moreover, the **ambiguity arising from certain provisions of the Directive will not be fixed** under this option. Examples of unclear, inextricable or unmanageable provisions that remain unsolved under this option include the calculation of the applicable interest rate, the nature and extent of “retention of title”, the types of commercial transactions covered by the Directive, the definition of “relevant recovery costs” and the possibility of compound interest.

## 5.2. Option 2a (non-legislative): The organisation of awareness raising activities targeted at businesses

The **main advantage** of awareness-raising activities resides in their flexibility and the scope for active participation by all stakeholders.

Since awareness is not the most important impediment to claiming interest for late payment, the most important **inconvenience** of this option is its very minimal efficiency. Experience shows that these activities can take several years and thus tie up substantial resources, certainly when they should reach (new) businesses in all 27 Member States. Moreover, following the transposition of Directive 2000/35/EC, national authorities and representative organisations have already organised, and are still organising, numerous awareness-raising activities targeted at businesses, especially SME’s. There is a significant risk that any future similar activities will also fail to reach an important part of this specific target audience. It is highly likely that the audience reached will remain fairly small: about 13% of EBTP respondents and 11% of IPM respondents never claim interest for late payment due to unawareness about the right to claim interest.

Another negative aspect of this option is its very limited effectiveness: awareness-raising activities would only address a few of the problems set out above. Many problems are inherent in the text of the Directive and awareness-raising cannot resolve these. Any attempted clarification of its provisions would have no binding value, which would add an element of uncertainty. Awareness-raising and informal guidelines have only de facto, but no legal, force. Legal force may, however, be required in critical cases. Moreover, this option would have no impact on any other parties than enterprises.

Table 1.14: Summary of impacts of option 2a	
Effectiveness	<b>No:</b> no impact on debtors and minimal impact on creditors
Efficiency	<b>No:</b> requires too many resources for a very uncertain result.
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

## 5.3. Option 2b (non-legislative): The organisation of awareness raising activities targeted at organisations representing SMEs

The possibility for organisations representing SME’s to take action with regard to unfair clauses could be highlighted in awareness raising actions that specifically

target these organisations. The **advantage of this option** is the flexibility of these awareness raising activities and the possibility of an active participation by all stakeholders, combined, with the fairly limited number of these organisations throughout the EU. Therefore, it should be fairly easy to reach them. It is estimated that the cost for the Commission would amount to €300,000 per year.

However, there are several **important uncertainties regarding the effectiveness of this option**. A prerequisite for these awareness raising actions is that Member States have put in place, in the interests of creditors and of competitors, adequate and effective means to prevent the continued use of terms which are grossly unfair (Article 3(4)). The success of this option depends on an active participation of the competent authorities in Member States responsible for the implementation of these adequate and effective means. In addition, awareness raising activities do not solve the fundamental problem of the limited role of representative organisations laid down in the Directive. Their role, as laid down in the Directive, does not concern ongoing contracts. This limitation may discourage businesses from reporting grossly unfair clauses to the representative organisations. In addition, these organisations may refrain from taking action in cases where they represent both suppliers and clients in a particular sector and where they may be faced with an internal conflict of interests.

<b>Table 1.15: Summary of impacts of option 2b</b>	
Effectiveness	<b>No:</b> objectives are unlikely to be achieved.
Efficiency	<b>Yes:</b> fairly low budgetary cost for the EU. No other costs.
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

#### **5.4. Option 2c (non-legislative): Publication of information on bad debtors**

The publication of detailed figures about bad debtors in the accounts receivable would certainly constitute **valuable information for other businesses**, including credit reference organisations. This option would enable creditors to identify potential debtors in a way that does not directly threaten their commercial relationship with them. Such publication could warn other economic operators of the risks of doing business with persistent late payers. This would enable companies to focus time in negotiating contracts with “higher risk customers”, as part of a risk based strategy. It could also help reduce the number of grossly unfair clauses in contracts. The additional element of **“naming and shaming” of persistent late payers** under this option would provide an incentive to companies to maintain their reputation by ensuring that they pay their accounts on time. Similarly, the measure would facilitate the consolidation of publicly available information on poor-paying public institutions and industry sectors and would thus provide valuable information for organisations lobbying government and industries for better performance as regards payment times.

There seems to be more support for this preventive measure from large companies than smaller companies. The measure could have a considerable impact on major companies if they believed that their reputations could be damaged by adverse publicity. It could become an issue of public interest, as part of overall social responsibility.

However, this option creates more problems than it would solve:

- There are many practical drawbacks. Firstly, the quality of reporting on disputed cases and cases in which a business went through a short difficult period needs particular attention. Secondly, businesses with a high number of invoices may appear to have paid a larger number of invoices late, even though the actual proportion of its total is low. Thirdly, many businesses, and especially SME's, may be reluctant to “name and shame” individual creditors for business relationship reasons or out of fear of possible claims for damages for unjustified reporting. Fourthly, this option could oblige businesses to disclose commercially sensitive information about their business relations or their cost components. Fifthly, the onus of reporting and dealing with the issue of late payments would rest more heavily on small companies which, in most cases, are the victims of the late payments and not the perpetrators<sup>62</sup>. This at a time when strenuous efforts are being made under our Better Regulation policies to *reduce* the burden of corporate reporting requirements on SMEs.
- The information would be scattered in thousands of annual accounts and would therefore not be easily accessible to other enterprises, except credit rating agencies. That implies that economic operators would have to use credit rating agencies to obtain information on the payment performance of possible clients. The alternative would be the appointment by every Member States of a body to gather information on bad debtors and make this information publicly available. This would generate extra-costs for the Member States. Considering that the development of a national database would cost a minimum of €3 million per Member State and that maintenance and updating as well the preparation and dissemination of guidelines, plus the provision of training to tax services and accountants would at least amount to €500,000 per year per Member State, the total cost for the entire EU could easily amount to €90 million or more during the start-up phase. Moreover, this measure would require legislative changes in national accounting rules. Substantial national differences between the implementation of these measures within the Member States could call into question the reliability of the data in case of cross-border commercial transactions.
- Above all, the additional administrative cost for many, especially small, businesses would be disproportionately high. The administrative effort to consolidate the information from myriad small accounts would be very burdensome for businesses since they would be obliged to gather information during the entire year to give a real picture of which companies were the worst offenders in late payment. The estimated administrative costs to companies of meeting the reporting requirements are summarised in the next table. The bulk of these costs would be borne by SMEs rather than by the large companies who are generally considered to be the root of the problem.

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<sup>62</sup> This type of measure was also assessed by the Irish authorities: [http://www.entemp.ie/publications/enterprise/2007/THIRDPROGRESSREPORT\(FINALVersionof10December2007\).pdf](http://www.entemp.ie/publications/enterprise/2007/THIRDPROGRESSREPORT(FINALVersionof10December2007).pdf). They came to the conclusion that it seems likely that small companies would derive significantly less benefit from such a provision than may have been envisaged in the beginning. This report calls into question the balance between that benefit and the potential adverse impacts that would be associated with implementation of the measure, including the additional regulatory burden for those companies that would be required to file the information specified in their annual accounts.

<b>Table 1.16: Costs to companies from reporting requirements</b>		
	<b>All 27 EU MS</b>	
	<b>SME</b>	<b>Large</b>
Number of companies	23,000,000	41,000
Hours per undertaking on retrieving information	20	30
Hours per external for checking and adjusting	10	15
<b>Total costs (€m)</b>	<b>25,300,000,000</b>	<b>86,100,000</b>

The impacts of this option can be summarised as follows:

<b>Table 1.17: Summary of impacts of option 2c</b>	
Effectiveness	<b>Doubtful:</b> possible preventive effect on creditors but many practical drawbacks for its implementation
Efficiency	<b>No:</b> very high administrative costs for businesses.
Consistency	<b>Yes:</b> trade-offs across other domains could be not identified.

## 5.5. Option 3a (legislative): Harmonisation of payment periods

At first glance, **the advantages of this option are numerous**. Harmonised payment periods would put an end to the practice of circumventing the current rules combating late payment by contracts containing very long payment periods. This option would also prevent the inclusion of grossly unfair contractual payment terms in contracts. By introducing standard payment periods, the measure would address the inherent lack of understanding and expertise (especially on the part of SMEs) in identifying grossly unfair contractual clauses and contesting them before entering into a contract.

Moreover, some argue that harmonised payment periods would promote (quicker) contracts between undertakings in different Member States. It would also encourage enterprises to participate in public procurement procedures in other Member States. The potential costs associated with a loss of contractual freedom could be offset by the reduction in administrative costs in applying European law. The costs presently incurred in cross border trade include duplicating documents for different legal systems and consulting legal experts for advice. More than 67% of EBTP respondents and almost 80% of IPM respondents support this possibility.

### 5.5.1. Option 3a/1: The harmonisation of payment periods between economic operators

Analysis of a possible harmonisation of payment periods between economic operators reveals that it would have many drawbacks and could be contrary to the principles of proportionality and subsidiarity:

- This option may not be very effective in reality. Late payment would be a breach of contract which would not necessarily be acted on by the creditor out of fear of damaging the commercial relationship with the client, or due to the administrative burden of claiming interest, insufficient resources (in particular of SMEs) or lack of knowledge how to calculate late payment interest. A breach of contract does not necessarily mean that expenses incurred in suing the debtor can be recovered. Even where there is a clear breach of contract, chasing late paying clients or charging interests for late payments generate administrative costs that many businesses wish to avoid. Moreover, the current rules define late payment already

as “exceeding the contractual or statutory period of payment” (Article 2(2) of the Directive) meaning that all late payments are a consequence of a breach of contract.

- The payment period is typically one of the negotiable items of a contract. It is a part of trade credit between enterprises<sup>63</sup> which, as such, does not necessarily constitute a problem for the creditor as long as he knows when he can expect payment. It is important to bear in mind that trade credit, i.e. the granting to a customer by a supplier of goods or services of a deferral in the time to pay, is a major competitive tool for many small businesses<sup>64</sup>. Most commercial transactions are made on credit terms and trade credit is an important source of funding for small businesses. Studies show that small firms extend trade credit more aggressively than medium and large firms. This behaviour even occurs in those firms in financial distress. Larger firms, with better access to alternative internal and external financing and with a lower cost, use less credit from suppliers. Moreover, firms with higher growth opportunities use more trade credit for financing sales growth<sup>65</sup>.

<b>Table 1.18: Trade Credit as a component of business strategy</b>	
Market signalling and Differentiation	Credit acts as an implicit guarantee of product quality. Available credit terms provide a ‘quality signal’ to potential buyers. Offering credit may be a key factor that differentiates one supplier among competing suppliers.
Customer Loyalty & Information	Trade credit can be used to ‘tie-in’ customers and encourage repeat purchase i.e. ‘building relationships’. Extending credit generates potentially useful information on customers.
Price Discrimination & Price competition	Offering credit terms provides more opportunities for varying effective price to buyers with different elasticities of demand or different credit risk. Credit terms can be an important element of price competition and the ‘marketing-mix’ in competitive markets
Cost Leadership	Offering a package of both product and finance that is cheaper than a buyer negotiating with two parties (supplier & financier) may generate profitable sales. The supplier may generate profit from both activities - profit margin on the product; (premium) interest on the finance.
Managing Uncertainties	Using and extending trade credit can be used to reduce the uncertainties in trading relationships and minimise ‘transaction costs’. To make money available, firms have to convert liquid assets into cash. The costs for doing this may be greater if conversion is frequent and/or for small amounts, consequently firms have a demand for precautionary cash balances. Trade credit reduces the need for this, particularly where there is uncertainty in the trade exchange. It can therefore help the firm develop an environment

<sup>63</sup> Summers B. and Wilson N., “Trade credit and customer relationships”, *Managerial and Decision Economics*, 2003, Vol. 24, 6-7; See also Ng C.K., Smith J.K. and Smith R.L., “Evidence on the Determinants of Credit Terms Used in Interfirm Trade”, *The Journal of Finance*, 1999, Vol. 54, 3, p. 1109.

<sup>64</sup> Wilson N., Le Duc L.T. and Wetherhill P., "Trade Credit and Monetary Policy in the UK: An Empirical Investigation" (December 2004). Available at SSRN: <http://ssrn.com/abstract=675630>; Rodríguez-Rodríguez O.M., “Trade Credit in Small and Medium Size Firms: An Application of the System Estimator With Panel Data”, *Small Business Economics*, 2006., Vol. 27, 2-3.

<sup>65</sup> Garcia-Teruel P.J. and Martinez-Solano P., “A dynamic perspective on the determinants of accounts payable”, Department of Management and Finance, Faculty of Economics and Business, University of Murcia (Spain), October 2006.

	conducive to innovation.
<i>Source: Wilson N., "An Investigation into Payment Trends and Behaviour in the UK: 1997-2007", Department for Business, Enterprise &amp; Regulatory Reform and CMRC, 2008.</i>	

- The rules combating late payment do not yet fully harmonise national laws but rather focus on compliance with some minimum requirements that apply across the EU. Currently, businesses are not obliged to apply these rules and to claim their rights. This fundamental principle would be dropped for a more compulsory approach that would deprive economic operators of a valuable commercial element. Furthermore, many businesses will try to circumvent these rules by slicing a limited number of contractual payments into a much higher number of contractual payments which will increase the administrative burden for businesses.
- The adjustment and compliance costs of this option could be considerable for enterprises. They would be obliged to adapt their new contracts to the harmonised provisions. This may significantly alter some companies' cash flows both positively and negatively where they have been used to dealing with contractual provisions involving long payment periods<sup>66</sup>. It is important to recognise that many of these negotiated elements are part of the competitive process by which buyers and sellers interact so that the benefits stemming from freedom of negotiation may compensate for the costs related to barriers to trade and other problems already explained (i.e. lack of expertise on negotiation, time, etc.). Moreover, establishing statutory contract periods and terms within contracts means a loss of contractual freedom by removing the ability of companies to compete through payment periods offered to clients. This could in turn put more pressure on other aspects of contract negotiation where larger companies can still exercise significant influence over small company suppliers, the most obvious being price. Debtors might also negotiate different payment terms and payment by instalments in response to a harmonisation of payment periods.

It is difficult to quantify precisely the costs and benefits of this option since a number of factors are too uncertain to be calculated, e.g. the potential loss in turnover, the contract negotiation costs, the financial consequences of reduced trade credit, etc. Tables 3.20 to 3.27 in Annex 3 show scenario calculations for a harmonization of payment terms to 30 days across the board with 4 different scenarios: a baseline scenario (current payment terms and late payment patterns), an optimum scenario (reduction of payment terms to 30 days maximum and no late payment, i.e. effective payment equal to payment term), a realistic scenario (reduction of payment terms to 30 days maximum and a proportional reduction of late payment whereby late payment expressed in days represents the same proportion to the contractual payment term than in the baseline scenario) and a worst scenario (reduction payment terms to 30 days but without a reduction of effective payment delays).

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<sup>66</sup> See Table 3.12 in Annex 3.

<b>Table 1.19: scenario calculations for B2B regarding the proposal of harmonization of payment terms to 30 days across the board - Net effect (in mio EURO - gains +, loss -)</b>				
	Baseline scenario (Table 3.21)	Optimum scenario (Table 3.23)	Realistic scenario (Table 3.25)	Worst scenario (Table 3.27)
Belgium	-2,682.4	4,749.2	2,563.9	-1,446.8
Bulgaria	--	--	--	--
Czech Rep.	-1,557.0	1,562.7	0.0	0.0
Denmark	-762.9	689.3	0.0	0.0
Germany	-7,389.0	7,461.5	0.0	0.0
Estonia	-138.4	51.6	0.0	0.0
Ireland	-1,549.7	2,683.1	1,485.4	-767.8
Greece	-1,906.7	8,088.9	7,391.9	-3,963.7
Spain	-8,518.5	41,204.1	37,662.1	-22,933.2
France	-13,264.7	35,122.0	26,931.9	-15,780.5
Italy	-14,369.5	54,861.8	48,434.9	-27,344.9
Cyprus	-163.2	479.3	405.0	-212.3
Latvia	-275.3	--	0.0	0.0
Lithuania	-317.9	328.1	12.7	-6.0
Luxembourg	--	--	--	--
Hungary	-2,105.3	1,666.7	0.0	0.0
Malta	--	--	--	--
Netherlands	-3,565.9	2,574.9	0.0	0.0
Austria	-1,161.7	727.4	0.0	0.0
Poland	-3,404.3	3,355.4	0.0	0.0
Portugal	-2,694.0	4,730.7	2,988.0	-1,394.8
Romania	--	--	--	--
Slovenia	--	--	--	--
Slovakia	-184.3	218.8	40.4	-23.0
Finland	-529.6	0.0	0.0	0.0
Sweden	-1,160.0	664.0	0.0	0.0
U.K.	-17,219.0	21,531.5	5,878.4	-3,101.6
<b>Total</b>	<b>-84,919.2</b>	<b>192,750.9</b>	<b>133,794.6</b>	<b>-76,974.7</b>
Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and Eurostat turnover figures				

Table 1.19 shows that the potential benefits of this option would be very impressive under the optimum and realistic scenario, and that the situation would slightly improve in the worst scenario. The probability of the optimum scenario is, however, very low.

In any event, it is certain that the harmonisation of payment periods for commercial transactions would undermine the possibility for smaller firms to receive trade credit from their suppliers, in particular during a period of monetary contraction.



Consequently, the impact of this option would be negative for those European businesses using trade credit, especially for SMEs<sup>67</sup>.

Table 1.20: Summary of impacts of option 3a/1	
Effectiveness	<b>Yes:</b> likely to lead to less late payments
Efficiency	<b>No:</b> Considerable compliance and adjustment costs.
Consistency	<b>No:</b> loss of contractual freedom by removing the ability of companies to compete through payment periods offered to clients. This could in turn put more pressure on other aspects of contract negotiation where larger companies can still exercise significant influence over small company suppliers

5.5.2. *Option 3a/2: the harmonisation of the periods for payment by national authorities to economic operators*

A possible harmonisation of payment periods by national authorities to economic operators reveals that it **would not have any of the drawbacks set out in section 5.5.1:**

- The fear of damaging the commercial relationship with the client should not exist in contracts concluded with national authorities. The risk that a claim for interest for late payment would have a negative effect on the chance of winning a new contract in another procurement process is minimal. The public procurement directives<sup>68</sup> and the national rules on procurement procedures below the threshold already provide a number of procedural guarantees protecting economic operators from negative attitudes of the awarding authority. For the public contracts that are not, or are only partially, covered by the Directive, the principles of equal treatment and non-discrimination on grounds of nationality imply an obligation of transparency which, according to the case-law of the Court of Justice, “consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed.”
- Only in very exceptional cases is the payment period one of the negotiable items of a contract awarded by a public authority. The competitive advantages of trade credit between enterprises do not apply to contracts concluded by public authorities.
- The budgetary impact for national authorities would remain fairly limited compared with the additional liquidity that earlier payment by public authorities would generate for businesses. Public authorities can obtain financing at much more attractive conditions than private undertakings. It is estimated that this option would cost public authorities 7.25 billion euro but that the additional

<sup>67</sup> For similar reasons, the Irish authorities also came to the conclusion that possible advantages of this idea are very much outweighed by the significant disadvantages that could arise, that it is a disproportionate response to the issue of late payments. See <http://www.entemp.ie/enterprise/smes/publications.htm>.

<sup>68</sup> Directive 2004/17/EC of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1–113) and Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114–240). These directives do not concern the content of the contract or its performance.

liquidity for businesses would amount to 179.11 billion euro<sup>69</sup>. Assuming that this measure will be effective and that national authorities will pay within the legal deadline, the actual amount spent on procurement would not increase but, for some Member States, payment may have to take place earlier in the year. This could have an effect on the scheduling of cash expenditure for Member States in which payment periods for public authorities exceed 30 days. According to Table 3.3, there would be no - or a negligible - impact on cash management for most public authorities in 19 Member States. Some public authorities in the 8 remaining Member States would have to change their cash management practices and they would lose bank interest for the period between the current payment date and the future payment date or, in case of late payment, they would have to pay interest for late payment. Nevertheless, it is safe to assume that mismatches between the timing of payments and the availability of cash might result in conditions of temporary cash surpluses or temporary cash shortfalls for public authorities if they fail to implement active daily cash management. Member States with complex expenditure approval processes may have to eliminate duplication of responsibilities of multiple players involved in intermediate handling. In the absence of any reliable scientific data on the actual payment practices of public authorities, it is impossible to estimate the budgetary impact of this option.

- This option should not entail any adjustment and compliance costs for economic operators.
- The effectiveness of this option will depend upon the willingness of businesses to enforce their rights and upon a sufficiently high sanction in case of late payment. Where private debtors might heavily damage their commercial or professional reputation by paying late and lose the trust of their creditors in long-term commercial relationships, public authorities are in a more comfortable position since reputation and long-term trust are less important factors when authorities procure goods and services. Furthermore, the feeling of impunity may arise within public authorities due to the slowness and prohibitive cost of legal procedures to claim payment against public authorities, the greater availability of legal resources, less legal possibilities to seize public property and the non-deterrent rate of the statutory interest.

<b>Table 1.21: Summary of impacts of option 3a/2</b>	
Effectiveness	<b>Yes:</b> fear of damaging the commercial relationship with the client should not exist in contracts concluded with national authorities. Moreover, the payment period is normally not a negotiable item of a contract awarded by a public authority. However, a sufficiently high sanction in case of late payment needs to be foreseen.
Efficiency	<b>Yes:</b> budgetary impact for national authorities would remain fairly limited compared with the additional liquidity that earlier payment by public authorities would generate for businesses.
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

<sup>69</sup> See Tables 3.15, 3.16 and 3.17 in Annex 3. It should be noted that these estimates are made on the basis of the figures in Tables 3.1 to 3.6 and Table 3.14 which are based on surveys. Therefore, it is possible that public authorities pay their major invoices on time and postpone payment for smaller invoices, or vice versa.

## 5.6. Option 3b (legislative): increasing the “margin” interest rate

This option has many **positive aspects**. Increasing the “margin” interest rate for late payment from 7% to 12% would certainly constitute a strong deterrent for debtors, as well as a strong incentive for creditors. The impact on trade credit would be negligible since creditors would still be entitled to fix a payment period in line with the trade credit they are prepared to grant to their client. However, there is a risk that some companies could take advantage of their unequal negotiating power and force smaller businesses to consent to longer payment periods to avoid paying interest for late payment.

Obviously, this option could have a strong impact on businesses and authorities paying late systematically. In order to avoid the negative financial consequences of late payments, they would have to pay on time, seek bank credit or start negotiating a longer payment period that could be accepted by both parties. However, a linear increase of the “margin” interest rate would have a linear impact on claims for late payment so that the deterrent effect of this measure might be bigger for late payment due to larger businesses. Considering that larger businesses are usually more familiar with charging interest which is often higher than the statutory rate, they would probably be the main beneficiaries of this option. Assuming that smaller businesses usually invoice smaller amounts, this option would hardly have any effect on them, in particular in the light of their narrow client spread and the resulting over-reliance on specific client activity to maintain revenue streams.

Debt collection agencies would benefit by collecting interest on the overdue debts of their clients along with some collection costs and could pass this benefit onto their clients in the form of lower commission rates. Factoring agencies can apply interest charges on the trade debts of the debtor and collect the interest. Other parties dealing with debt collection would equally benefit.

Although, at first sight, this option seems to present many positive sides, the **negative aspects of this option** need to be highlighted. The effectiveness and the efficiency of this option are doubtful:

- During the public consultations, stakeholders seemed to be satisfied with the current “margin” interest rate. 61% of EBPT respondents and 59% of IPM respondents took the view that the current rate is reasonable and proportionate to encourage timely payment. This may be due to the fact that, in the case of a late payment, the usual response for 22% of EBTP respondents and 30% of IPM respondents is to postpone their own payments to their creditors. The “pass-on” effect of late payments can turn creditors into debtors. Given that all businesses are creditors and debtors at the same time, stakeholders may have answered this part of the EBTP and IPM questionnaires as debtors rather than creditors.
- Businesses are already entitled to negotiate a higher interest rate in the contract or to include a higher rate in their commercial conditions. The current “margin” interest rate is only a minimum interest rate so creditors may deviate from that rate and charge a higher interest rate for late payment.
- The current rules allow Member States to provide for a higher minimum “margin” rate in their national legislation.

- This option could strengthen the position of bigger or more powerful businesses. Some experts argue that interest for late payment reinforces the bargaining position of firms that ask for a discount for early payment. These firms consider that, if interest can be charged for late payment, an equivalent discount should be given for early payment. One possible further issue with the current statutory interest rate is that this was set with a view to ‘compensating’ small businesses based on their average cost of capital. However the same rate applies to large businesses which generally have a much lower cost of capital. Therefore, one could argue that large businesses are ‘more than compensated’ and in fact have an incentive to enforce interest penalties. This is particularly the case if they are less fearful of losing business by applying penalties<sup>70</sup>.
- Businesses working with pre-printed invoices would have to bear a fairly small amount of adjustment costs when they amended their general commercial conditions to adapt to this option. It is reasonable to believe that these costs would be quickly recovered by more timely payments and by interest on late payment paid by debtors.

Table 1.22: Summary of impacts of option 3b	
Effectiveness	<b>Doubtful:</b> stakeholders seem to be satisfied with the current “margin” interest rate. Businesses are already entitled to negotiate a higher interest rate in the contract or to include a higher rate in their commercial conditions. The current rules allow Member States to provide for a higher minimum “margin” rate in their national legislation.
Efficiency	<b>Doubtful:</b> this option could strengthen the position of bigger or more powerful businesses since it would reinforce the bargaining position of firms that ask for a discount for early payment.
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

### 5.7. Option 3c (legislative): the abolition of the threshold

The **positive side** of the repeal of the possibility that claims for interest of less than €5 could be excluded would certainly clear a hurdle for claiming interests for late payments, in particular for SMEs. If, for example, the interest rate  $I$  is 11% per annum non compounded and the amount  $A$  owed is 1,000 Euros, the number of days overdue  $N$  before the creditor can claim interest is, according to the current rules:  $N = 5 \times 365 / (A \times I) = 17$  (16.59) days. By repealing this threshold, this creditor could seek interest for late payments 16 days earlier than nowadays in this case. The higher the amount, the shorter this period will be. If one assumes that SME’s are more likely to invoice smaller amounts than major companies, this threshold would hit SME’s first. This option is particularly effective for claiming interest for late payment in smaller transactions where interest amounts to only a small sum.

On the **negative side**, it is fair to assume that this option, if adopted independently from any other measure, is unlikely to encourage creditors to seek the payment of interests of less than €5. The cost of establishing the invoice charging the interest will be higher than the amount of the interest, thus making it uneconomical to collect. It is therefore doubtful whether this option would have any effect on a stand-alone basis.

<sup>70</sup> Wilson N., “An Investigation into Payment Trends and Behaviour in the UK: 1997-2007”, Department for Business, Enterprise & Regulatory Reform and CMRC, 2008.

Although this option would not have any negative impact on creditors, its impact on debtors may not be clearly perceivable. The abolition of the threshold could have a pedagogic effect but would be unlikely to result into short-term attitude changes. More importantly, debtors know that only very few creditors will start court proceedings for such an amount of less than €5 so that some debtors could simply decide to disregard this invoice and fail to pay the interests. One should also keep in mind that it is not excluded that, in practice, larger companies would benefit proportionally more than smaller companies from this option, since they are often in a better position to charge interest than smaller operators, given the differences in buyer/supply power in the supply chain.

<b>Table 1.23: Summary of impacts of option 3c</b>	
Effectiveness	<b>Yes</b> for small transactions if accompanied by other measures that would make it economical to collect the outstanding amounts..
Efficiency	<b>Yes</b> , especially for SMEs. No budgetary, transaction and compliance costs could be identified.
Consistency	<b>Yes</b> : trade-offs across other domains could be identified.

### 5.8. Option 3d (legislative): the introduction of a “Late Payment Fee”

As it stands, the transaction costs for charging interest by means of an invoice can hardly be recovered:

<b>Table 1.24: Provisions for recovery costs in Member States</b>	
Austria	The losing party in a court case will be responsible for the legal costs of court action, including the fees of lawyers as determined by the “Rechtsanwaltstarifgesetz”.
Belgium	The losing party in a court case will be responsible for the legal costs of court action, including the fees of lawyers within the limits laid down by the law of 21 April 2007 and the royal decree of 26 October 2007.
Czech Republic	Costs for legal representation paid as a lump sum (usually according to value of suit). Hourly fees of lawyers paid in full in high value cases, but if low value, full costs may not be awarded
Spain	All recovery costs up to 15% of the amount of the debt if debt exceeds €30,000. If it is less than €30,000, maximum is the value of the debt
Finland	Judges decide on recovery costs and creditors can claim all. However, debtors will pay maximum of €192 to €302 depending on size and nature of debt (This limit can be set aside in exceptional circumstances). Median amount awarded in 2005 was €220
Ireland	If the debt is less than €1,000, recovery payment is €40. If less than €10,000 the amount is €70 and if more than €10,000 it rises to €100. However, the amount of recovery costs in cases of late payment must be stated in the contract
Malta	Reasonable compensation costs can be recovered for all recovery costs
United Kingdom	Compensation costs of £40 are payable on debts of less than £1,000, £70 on debts of less than £10,000 and £100 for debts of more than £10,000
Germany	As a general rule, the loser in a court case will be responsible for the legal costs of court action, but the judge decides whether out-of-court costs and the fees of lawyers can be claimed.
Poland	Losing party pays costs in legal cases which can vary from €25 to €25,000
Portugal	Judges rarely award costs over and above court costs. Debts of more than €3,740 require representation by a lawyer
Sweden	All recovery costs can be claimed but maximum payable is €100
France	Recovery costs are only payable as a result of court proceedings
Slovakia	Reasonable compensation is payable for all relevant recovery costs

The purpose of the “Late Payment Fee” would be to provide an instant deterrent to the debtor and an incentive on the part of the creditor to claim interest, if it is assumed the fee will exceed any costs (e.g. invoicing, accounting and administration costs) placed on the creditor when charging interest. Setting the correct fee is important in this respect, if the effectiveness of the measure is to be maximised. A fixed fee charged on a relatively small debt is proportionally going to have a much larger impact than in relation to much larger transactions.

The **principal advantage** of this option is that it would permit businesses to recover the transaction costs of charging interest for late payments so that only purely commercial arguments would prevent creditors from charging interest. Under this option, the cost of creating the invoice charging the interest would be recovered together with the amount of the interest, so that it becomes economical to collect interest. These costs are redistributive in nature<sup>71</sup>.

Assuming that the cost C of sending reminder or dunning letters to a debtor is 20 Euros (including special tracking postage/return receipt letter, labour cost, equipment etc), that the interest rate I is 11% per annum non compounded and that the debt amount A is €1,000, the number of days N before an overdue payment starts to compensate a creditor is currently:  $N = C \times 365 / (A \times I) = 67$  (66.36) days. As it stands, only after 67 days of overdue payment it becomes economically interesting to apply the current legal provisions on late payment. Under this option, the creditor would not have to wait until it becomes economically interesting to charge interests. He would have an immediate incentive to charge interest for a late payment as the administrative burden and the cost of invoicing the client would not be higher than the compensation provided by the law. More than 69% of the IPM respondents are in favour of this fee.

For many smaller transactions, interest amounts to only a small sum, thus the making it uneconomical to collect, particularly when the risk of damaging a business relationship is considered. A larger fixed fee would be a more effective instrument for companies dealing in smaller transactions. A fixed amount may therefore compensate a business for the administrative cost related with late payment, but to the competitive advantage of SMEs dealing in smaller transactions. Debt collection agencies and other third parties dealing with debt collection as well as factoring agencies would benefit from this option.

This option could give rise to some **minor adjustment cost** for businesses working with pre-printed invoices. Since the “Late Payment Fee” would be optional and businesses would not be obliged to amend their general commercial conditions, one may assume that the adjustment costs would be recovered very quickly.

<b>Table 1.25: Summary of impacts of option 3d</b>	
Effectiveness	<b>Yes:</b> it would permit businesses to recover the transaction costs of charging interest for late payments so that only purely commercial arguments would prevent creditors from charging interest.
Efficiency	<b>Yes.</b> Costs (mainly transaction costs) are redistributive. No budgetary or compliance costs.
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

<sup>71</sup> See Table 3.19 in Annex 3.

### 5.9. Option 3e (legislative): the introduction of a “Late Payment Compensation”

The alternative to the previous option is a fixed financial compensation of 1% of the outstanding amount for the recovery costs related to late payment. This compensation would also be cumulated with the interests for late payment and could even be increased in case of substantial delays. The **advantage** of this option is its strong deterrent effect on debtors proportional to the size of the claim. The compensation costs incurred by the debtor for paying late in all circumstances would exceed the savings that he would otherwise obtain from free trade-credit. It could encourage the use of debt collection agencies, factoring agencies and other third parties dealing with debt collection since businesses would be able to recover part of the commission or fees to be paid to these agencies and other third parties..

One of the **drawbacks** is the fact that, for many smaller transactions, a compensation of 1% amounts to only a small sum, thus the making it uneconomical to collect, particularly when the risk of damaging a business relationship is considered. In addition, larger companies benefit proportionally more than smaller companies from a “Late Payment Compensation” as they can obtain lower interest rates on loans from financial institutions than SMEs and are often in a better position to charge interest than smaller operators, given the differences in buyer/supply power in the supply chain. A flat rate may therefore compensate the company for late payment, but to the competitive disadvantage of SMEs that are dealing in smaller transactions.

This option could give rise to some minor adjustment cost for businesses working with pre-printed invoices.

Table 1.26: Summary of impacts of option 3e	
Effectiveness	<b>Yes:</b> strong deterrent effect on debtors proportional to the size of the claim since the costs incurred by the debtor would exceed the savings that he would otherwise obtain from free trade-credit.
Efficiency	<b>Yes.</b> Costs (mainly transaction costs) are redistributive. No budgetary or compliance costs.
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

### 5.10. Option 3f (legislative): Extending the role of representing organisations

Several Member States reserve certain legal activities to a particular legal profession, for example the provision of legal advice (reserved to lawyers)<sup>72</sup>. In particular, according to Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of the freedom to provide services, judicial activities and representing clients before public authorities should be pursued in any given Member State under the obligations laid down for lawyers established in that State. However, this provision only applies to cross-border activities by lawyers as defined in the Directive. Consequently, it does not apply to representative organizations. Moreover, organisations representing SMEs do not represent clients but only their members so that, unlike lawyers, they do not operate in a competitive environment. In addition, representation by a lawyer or another legal professional is not mandatory for claimants within the framework of Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure.

<sup>72</sup> For an overview, see [http://ec.europa.eu/civiljustice/case\\_to\\_court/case\\_to\\_court\\_ec\\_en.htm](http://ec.europa.eu/civiljustice/case_to_court/case_to_court_ec_en.htm).

The **advantage** of this option is that smaller businesses with insufficient resources would neither have to bear the cost and financial risks of bringing an action nor spend management time on chasing the late payment. It could be helpful for enterprises having insufficient resources to take action against the debtor or lacking the knowledge how to calculate late payment interest. It would also improve access to justice for smaller businesses for which litigation for late payment constitutes a major hurdle. Moreover, the mere possibility of having to face litigation could encourage debtors to pay smaller creditors within the agreed or legal deadline.

This option presupposes that measures are taken to reduce the cost of bringing an action and the associated financial risks. Any action taken by a representative organisation involves administrative costs in preparing the file, court fees, possibly lawyers' fees and, if the action is brought in another Member State, translation costs. Therefore, the impact of this option depends to a large extent on the implementation of options 3c, 3d and 3e.

This **negative side** of this option is the lack of effectiveness. The problem of insufficient resources would, at least partly, be shifted to organisations representing SMEs which may not have the human or financial resources to cope with the administrative charges and the financial risks of litigation on late payment. A representative organisation may not have the resources to simultaneously handle several actions related to distinct late payment cases and may decide to prioritise its action. A very important stumbling block is that the organisation may be prevented from bringing an action because of an internal conflict of interest, for example when a business association has as members both the creditors and the debtor. Finally, it is possible that the interests of certain groups of businesses are not represented by any organisation (e.g. SMEs active in a new market with no trade association).

<b>Table 1.27: Summary of impacts of option 3f</b>	
Effectiveness	<b>Doubtful:</b> these organisations may not have the resources to cope with the administrative charges and the financial risks of litigation on late payment. They may also be prevented from bringing an action because of a conflict of interest, for example when the organisation has as members both the creditors and the debtor.
Efficiency	<b>Yes</b> if measures are taken to reduce the cost of bringing an action and the associated financial risks (options 3c, 3d and 3e).
Consistency	<b>Yes:</b> trade-offs across other domains could not be identified.

## 6. COMPARING THE OPTIONS

### 6.1. General comparison

Considering the availability of several forms of intervention, comparison of the options should concentrate on those limiting the EU institutions' involvement to what is necessary to achieve the objectives of the Treaties. The form of Community action should be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement.

It is also important to keep in mind that the current rules (baseline option) do not aim at full harmonisation of national laws but at compliance with some minimum requirements that apply across the EU. With the exception of option 3a, **businesses are not obliged to apply these rules and to claim their rights**. Whether they do depends above all on the commercial and financial strategy of each of the operators



concerned in the light of the economic conditions in the various markets. In addition, Member States and enterprises may lay down more stringent provisions. This combination creates an important element of uncertainty about the take-up by economic operators of any of the options except 3a.

Assessment of the results of this comparison of the policy options with respect to the baseline option in terms of their effectiveness<sup>73</sup>, efficiency<sup>74</sup> and consistency<sup>75</sup> shows the following results:

<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Consistency</b>
<b>Option 2a</b> (non-legislative): The organisation of awareness-raising activities targeted at businesses	<b>No:</b> no impact on debtors and minimal impact on creditors	<b>No:</b> requires too many resources for a very uncertain result.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 2b</b> (non-legislative): The organisation of awareness-raising activities targeted at organisations representing SMEs	<b>No:</b> objectives are unlikely to be achieved.	<b>Yes:</b> fairly low budgetary cost for the EU. No other costs.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 2c</b> (non-legislative): Publication of information on bad debtors	<b>Doubtful:</b> possible preventive effect on creditors but many practical drawbacks for its implementation	<b>No:</b> very high administrative costs for businesses.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 3a/1</b> (legislative): Harmonisation of payment periods between businesses	<b>Yes:</b> likely to lead to less late payments	<b>No:</b> Considerable compliance and adjustment costs.	<b>No:</b> loss of contractual freedom by removing the ability of companies to compete through payment periods offered to clients. This could in turn put more pressure on other aspects of contract negotiation where larger companies can still exercise significant influence over small company suppliers
<b>Option 3a/2</b> (legislative): Harmonisation	<b>Yes:</b> fear of damaging the commercial relationship with the	<b>Yes:</b> budgetary impact for national authorities would remain fairly	<b>Yes:</b> trade-offs across other domains could not be identified.

<sup>73</sup> The extent to which options can be expected to achieve the objectives of the proposal.

<sup>74</sup> The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

<sup>75</sup> The extent to which options are likely to limit trade-offs across the economic, social, and environmental domain.

of periods for payment by public authorities to businesses	client should not exist in contracts concluded with national authorities. Moreover, the payment period is normally not a negotiable item of a contract awarded by a public authority. However, a sufficiently high sanction in case of late payment needs to be foreseen.	limited compared with the additional liquidity that earlier payment by public authorities would generate for businesses.	
<b>Option 3b</b> (legislative): increasing the “margin” interest rate	<b>Doubtful:</b> stakeholders seem to be satisfied with the current “margin” interest rate. Businesses are already entitled to negotiate a higher interest rate in the contract or to include a higher rate in their commercial conditions. The current rules allow Member States to provide for a higher minimum “margin” rate in their national legislation.	<b>Doubtful:</b> this option could strengthen the position of bigger or more powerful businesses since it would reinforce the bargaining position of firms that ask for a discount for early payment.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 3c</b> (legislative): the abolition of the €5 threshold	<b>Yes</b> for small transactions if accompanied by other measures that would make it economical to collect the outstanding amounts.	<b>Yes,</b> especially for SMEs. No budgetary, transaction and compliance costs could be identified.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 3d</b> (legislative): the introduction of a “Late Payment Fee”	<b>Yes:</b> it would permit businesses to recover the transaction costs of charging interest for late payments so that only purely commercial arguments would prevent creditors from charging interest.	<b>Yes.</b> Costs (mainly transaction costs) are redistributive. No budgetary or compliance costs.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 3e</b> (legislative): the introduction of a “Late Payment Compensation”	<b>Yes:</b> strong deterrent effect on debtors proportional to the size of the claim since the costs incurred by the debtor would exceed the savings that he would otherwise obtain from free trade-credit.	<b>Yes.</b> Costs (mainly transaction costs) are redistributive. No budgetary or compliance costs.	<b>Yes:</b> trade-offs across other domains could not be identified.
<b>Option 3f</b> (legislative): Extending the role of representative organisations	<b>Doubtful:</b> these organisations may not have the resources to cope with the administrative charges and the financial risks of litigation on late	<b>Yes</b> if measures are taken to reduce the cost of bringing an action and the associated financial risks (options 3c, 3d and 3e).	<b>Yes:</b> trade-offs across other domains could not be identified.

	payment. They may also be prevented from bringing an action because of a conflict of interest, for example when the organisation has as members both the creditors and the debtor.		
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## 6.2. Ranking the options

The above impact analysis shows that, as regards B2B transactions, options 3a/2, 3c, 3d and 3e meet the criteria of effectiveness, efficiency and consistency. The other options fail in respect of at least one criterion:

<b>Table 1.29: Ranking the options</b>			
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Consistency</b>
<b>RECOMMENDED CHOICE</b>			
<b>Option 3a/2</b> (legislative): Harmonisation of periods for payment by public authorities to businesses	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Option 3e</b> (legislative): the introduction of a “Late Payment Compensation”	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Option 3c</b> (legislative): the abolition of the €5 threshold	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Option 3d</b> (legislative): the introduction of a “Late Payment Fee”	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>OPTIONS WHICH ARE NOT RECOMMENDED</b>			
<b>Option 3b</b> (legislative): increasing the “margin” interest rate	<b>Doubtful</b>	<b>Doubtful</b>	<b>Yes</b>
<b>Option 3f</b> (legislative): Extending the role of representative organisations	<b>Doubtful</b>	<b>Yes</b>	<b>Yes</b>
<b>Option 3a/1</b> (legislative): Harmonisation of payment periods between businesses	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>Option 2a</b> (non-legislative): The organisation of awareness raising activities targeted at businesses	<b>No</b>	<b>No</b>	<b>Yes</b>
<b>Option 2b</b> (non-legislative): The organisation of awareness raising activities targeted at organisations representing SMEs	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Option 2c</b> (non-legislative): Publication of information on bad debtors	<b>Doubtful</b>	<b>No</b>	<b>Yes</b>

Considering that none of the options is mutually exclusive and that their optional nature for businesses allows them to choose the most appropriate tool in the light of the late payment at hand, it is suggested that options 3a/2, 3c, 3d and 3e be taken together as a single package of measures.

### 6.3. Administrative cost

The only option likely to impose significant administrative costs<sup>76</sup> on business is option 2c. A rough indication of these costs can be found in table 1.16.

## 7. MONITORING AND EVALUATION

The organisation of a reliable monitoring and evaluation scheme for the combination of options 3a/2, 3c, 3d and 3e is complicated by the principle that the rules laid down in the Directive should not have a compulsory effect on businesses, i.e. businesses should 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<sup>77</sup>.

During a period of economic growth, enterprises benefit from better cash inflow which, at least partly, can be used for paying more promptly.

Nevertheless, monitoring and evaluation could be organised primarily by reference to the information and data set out in annexes 1, 2 and 3 (partly) which could be used as indicators for the achievement of the objectives. The organisation of new, similar surveys is recommended to compare the behaviour of creditors before and after implementation of the options.

Furthermore, Member States would play a stronger role in the implementation of the directive if options 3a/2, 3c, 3d and 3e were to be retained. National authorities could provide information on the implementation of these options in a report that would be sent to the Commission at three-year intervals.

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<sup>76</sup> Administrative costs are defined as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties.

<sup>77</sup> See for example Baum C, Caglayan M. and Ozkan N., "The Impact of Macroeconomic Uncertainty on Trade Credit for Non-Financial Firms", Boston College, Economics Department, Working Papers in Economics, 2003; Lovea I, Preveb L. and Sarria-Allende V., "Trade credit and bank credit: Evidence from recent financial crises", *Journal of Financial Economics*, Volume 83, Issue 2, February 2007, pages 453-469; Bossay F., "Credit chains and the propagation of financial distress", ECB Working Paper No 573, January 2006.

## 8. ANNEXES

### 8.1. Annex 1: Results of the I.P.M. consultation of interested parties

Consultation from 29 May 2008 to 31 August 2008 on Your Voice on Europa. 510 Responses were received.

#### a) Identity

<b>1a. Are you replying as a:</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Company	361	70.8%	70.8%
Representative organisation	83	16.3%	16.3%
Other interested party	59	11.6%	11.6%
Public authority	7	1.4%	1.4%

<b>1b. What is the size of your company (number of employees)?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
0 – 9	134	37.1%	26.3%
10 – 49	101	28%	19.8
50 – 249	64	17.7%	12.5%
250+	62	17.2%	12.2%

<b>2. What is your country of residence?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records 510)</b>	<b>% of total number records (510)</b>
Italy	81	15.9%	15.9%
Germany	77	15.1%	15.1%
United Kingdom	76	14.9%	14.9%
Greece	56	11%	11%
Belgium	53	10.4%	10.4%
Portugal	35	6.9%	6.9%
Spain	25	4.9%	4.9%
Ireland	20	3.9%	3.9%
Austria	14	2.7%	2.7%
France	13	2.5%	2.5%
Cyprus	13	2.5%	2.5%
Other	12	2.4%	2.4%
Czech Republic	7	1.4%	1.4%
Netherlands	7	1.4%	1.4%
Sweden	5	1%	1%
Denmark	4	0.8%	0.8%
Poland	3	0.6%	0.6%
Finland	3	0.6%	0.6%
Bulgaria	2	0.4%	0.4%
Slovenia	2	0.4%	0.4%
Hungary	1	0.2%	0.2%
Malta	1	0.2%	0.2%
Estonia	0	0%	0%
Latvia	0	0%	0%
Lithuania	0	0%	0%
Luxembourg	0	0%	0%
Romania	0	0%	0%
Slovakia	0	0%	0%

## b) Problems and effects

<b>3. Have you experienced problems with other businesses paying you later than you require in your normal terms of business? <i>single choice reply</i></b>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
Seldom (1-25% of your invoices to other businesses)	112	31%	22%
Quite often (26-50% of your invoices to other businesses)	93	25.8%	18.2%
Often (51%-75% of your invoices to other businesses)	85	23.5%	16.7%
Very often (more than 75% of your invoices to other businesses)	62	17.2%	12.2%
Never	9	2.5%	1.8%

<b>4. Have you experienced problems with public authorities paying you later than you require them to in your normal terms of business? <i>single choice reply</i></b>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
Very often (more than 75% of your invoices to public authorities)	138	38.2%	27.1%
Seldom (1-25% of your invoices to public authorities)	84	23.3%	16.5%
Never	55	15.2%	10.8%
Often (51%-75% of your invoices to public authorities)	52	14.4%	10.2%
Quite often (26-50% of your invoices to public authorities)	32	8.9%	6.3%

<b>5. What has been the effect of late payment on your business? <i>multiple choices reply</i></b>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
It takes up too much management time and valuable working hours	239	66.2%	46.9%
Our business needs bank credit	204	56.5%	40%
It slows down the growth of our business	182	50.4%	35.7%
It has a negative effect on investment	136	37.7%	26.7%
It affects the productivity of the business	135	37.4%	26.5%
It threatens the survival of our business	129	35.7%	25.3%
It discourages us from engaging in public procurement contracts	84	23.3%	16.5%
It discourages us from engaging in cross-border transactions	29	8%	5.7%
It does not really affect our business	27	7.5%	5.3%
Other	6	1.7%	1.2%
Don't know	4	1.1%	0.8%
Does not apply	3	0.8%	0.6%

<b>6. What is your usual response in case of late payment? <i>multiple choices reply</i></b>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
We contact the client personally	307	85%	60.2%
Our business pays our creditors late in turn	109	30.2%	21.4%
Our lawyers contact the client	94	26%	18.4%
We are patient and only react after a long time	84	23.3%	16.5%
A debt collecting agency contacts the client	47	13%	9.2%
Other	17	4.7%	3.3%
Does not apply	4	1.1%	0.8%
Don't know	3	0.8%	0.6%

### c) Interest

<b>7a. Do you claim interest for late payment?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
Never	144	39.9%	28.2%
Seldom	123	34.1%	24.1%
Frequently	39	10.8%	7.6%
Always	34	9.4%	6.7%
Very often	15	4.2%	2.9%
Don't know	6	1.7%	1.2%

<b>7b. Why do you never claim interest?</b> <i>multiple choices reply</i>	<b>Number of requested records</b>	<b>Requested records (144)</b>	<b>% of total number records (361)</b>
Out of fear that the customer would be lost	84	58.3%	23.3%
It is too complicated to claim interest	69	47.9%	19.1%
Competitors never claim interest for late payments	54	37.5%	15%
Unawareness of the right to charge interest for late payment	17	11.8%	4.7%
The interest rate is unknown	11	7.6%	3%
Interest is considered as taxable revenue	7	4.9%	1.9%
Don't know	5	3.5%	1.4%

<b>7c. Why do you seldom claim interest?</b> <i>multiple choices reply</i>	<b>Number of requested records</b>	<b>Requested records (123)</b>	<b>% of total number records (361)</b>
Out of fear that the customer would be lost	85	69.1%	23.5%
It is too complicated to claim interest	54	43.9%	15%
Competitors never claim interest for late payments	27	22%	7.5%
Unawareness of the right to charge interest for late payment	5	4.1%	1.4%
Interest is considered as taxable revenue	4	3.3%	1.1%
Don't know	4	3.3%	1.1%
The interest rate is unknown	3	2.4%	0.8%

<b>8a. The laws on late payment in the EU currently specify that a creditor may claim an interest rate of approximately 11 % in case of late payment. In your view, is that interest rate reasonable and proportionate to encourage timely payment in commercial transactions?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Yes	301	59%	59%
No	172	33.7%	33.7%
Don't know	37	7.3%	7.3%

<b>8b. If you think it is unreasonable or disproportionate, is it:</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Too low	330	64.7%	64.7%
Too high	180	35.3%	35.3%

<b>8c. What would be a more appropriate total interest rate for late payment?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (330)</b>	<b>% of total number records (510)</b>
12 to 14%	105	31.8%	20.6%
15 to 19%	92	27.9%	18%
20 to 24%	63	19.1%	12.4%
No opinion	40	12.1%	7.8%
30% or higher	17	5.2%	3.3%
25 to 29%	13	3.9%	2.5%

<b>8d. What would be a more appropriate total interest rate for late payment?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (180)</b>	<b>% of total number records (510)</b>
10%	65	36.1%	12.7%
8%	35	19.4%	6.9%
7% or lower	35	19.4%	6.9%
No Opinion	27	15%	5.3%
9%	18	10%	3.5%

<b>9. Do you apply the interest rate of 11 % for late payment in your general commercial and payment conditions?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
No, I don't apply an interest rate at all	204	56.5%	40%
Yes	74	20.5%	14.5%
No, I apply another interest rate.	64	17.7%	12.5%
Don't know	19	5.3%	3.7%

<b>10. During the last 5 years, did you sign a contract (providing services and/or goods) in which the other party refused to insert a clause on interest for late payment, or which specified an interest rate lower than 11%?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (361)</b>	<b>% of total number records (510)</b>
Never	144	39.9%	28.2%
Seldom	64	17.7%	12.5%
Don't know	57	15.8%	11.2%
Very often	54	15%	10.6%
Frequently	42	11.6%	8.2%



#### d) Action

<b>11. An idea is to introduce in the European Union a “late payment fee”, i.e. an automatic minimum amount based on the size of the debt, in addition to an interest rate of approximately 11%. Do you think such a 'late payment fee' would be useful? <i>single choice reply</i></b>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Yes	251	49.2%	49.2%
Yes, but only as an alternative to the interest rate for late payment	103	20.2%	20.2%
No, current rules are sufficient	78	15.3%	15.3%
No, an increase of the interest rate would be more efficient	53	10.4%	10.4%
Don't know	25	4.9%	4.9%

<b>12. Sometimes major companies systematically refuse to pay the full amount for reasons not envisaged in the contract or they systematically pay well after the deadline in the invoice. Do you think it would be useful if organisations representing SMEs were entitled to take action on behalf of the SME before a case is referred to court (e.g. mediation) or during court proceedings? <i>single choice reply</i></b>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Yes	374	73.3%	73.3%
No	79	15.5%	15.5%
No opinion	57	11.2%	11.2%

<b>13a. Interest for late payment is only due after the contractually agreed payment period. Do you think that a maximum period for making payments between businesses or between businesses and public authorities fixed at European level would be useful? <i>single choice reply</i></b>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Yes	407	79.8%	79.8%
No	103	20.2%	20.2%

<b>13b. Why do you <u>not</u> consider such an EU maximum period useful? <i>multiple choices reply</i></b>	<b>Number of requested records</b>	<b>Requested records (103)</b>	<b>% of total number records (510)</b>
Contractual freedom of businesses should not be restricted or regulated	72	69.9%	14.1%
It is impossible to provide for a maximum period that would fit all enterprises	63	61.2%	12.4%
It is much better to provide for efficient sanctions	20	19.4%	3.9%
Other	0	0%	0%

<b>13c. How long should that maximum period be?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (407)</b>	<b>% of total number records (510)</b>
30 days	206	50.6%	40.4%
45 days	106	26%	20.8%
20 days	69	17%	13.5%
Other	26	6.4%	5.1%

<b>14a. Is it necessary to provide for a specific regime favouring micro and small enterprises in case of late payment?</b> <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (510)</b>	<b>% of total number records (510)</b>
Yes	288	56.5%	56.5%
No	143	28%	28%
Don't know	79	15.5%	15.5%

<b>14b. What kind of measures should such a regime include?</b>			
1) Fixing a much higher interest rate for late payment to SMEs than the one fixed in the laws on late payment in the EU <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (288)</b>	<b>% of total number records (510)</b>
Yes	168	58.3%	32.9%
No	82	28.5%	16.1%
Don't know	38	13.2%	7.5%

2) Enable representative organisations to take action in name of a business <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (288)</b>	<b>% of total number records (510)</b>
Yes	222	77.1%	43.5%
No	36	12.5%	7.1%
Don't know	30	10.4%	5.9%

3) Labelling systematic late payment to SMEs as an unfair business practice <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (288)</b>	<b>% of total number records (510)</b>
Yes	241	83.7%	47.3%
Don't know	29	10.1%	5.7%
No	18	6.2%	3.5%

4) Other measure <i>single choice reply</i>	<b>Number of requested records</b>	<b>Requested records (288)</b>	<b>% of total number records (510)</b>
Don't know	148	51.4%	29%
Yes	89	30.9%	17.5%
No	51	17.7%	10%

## 8.2. Annex 2: Results of the EBTP consultation of interested parties

Consultation from 13 May 2008 till 20 June 2008 - 408 responses

<b>Table 2.1: Number of employees in your company</b>	
0	4,9%
1-9	22,5%
10-49	24,3%
50-249	21,8%
250-499	7,6%
500 +	18,9%

<b>Table 2.2: Main sector of activity</b>	
C - Mining/Quarrying	1,5%
D – Manufacturing	24,3%
E - Electricity, gas and water supply	3,9%
F – Construction	7,4%
G - Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods	13,5%
H - Hotels, restaurants and bars	2,7%
I - Transport, storage and communication	12,7%
J - Financial intermediation	7,6%
K - Real estate, renting and business activities	15,7%
N - Health and social work	2,5%
O - Other community, social and personal service activities	8,3%

<b>Table 2.3: Apart from your country, in how many countries of the European Union do you regularly sell products and services?</b>	
None	41,2%
1	9,1%
2-3	17,4%
4-5	8,8%
more than 5	23,5%

<b>Table 2.4: EBTP respondents having a problem with other businesses paying later than they require them to in your normal terms of business</b>	
Seldom (1-25% of your invoices to other businesses)	42.3%
Frequently (26-50% of your invoices to other businesses)	27.9%
Often (51%-75% of your invoices to other businesses)	15.7%
Very often (more than 75% of your invoices to other businesses)	11.2%
Never	1.9%
Does not apply	1.1%

<b>Table 2.5: EBTP respondents having a problem with public authorities paying later than they require them to in your normal terms of business</b>	
Seldom (1-25% of your invoices to public authorities)	36.2%
Does not apply	21.0%
Frequently (26-50% of your invoices to public authorities)	12.8%
Very often (more than 75% of your invoices to public authorities)	12.5%
Often (51%-75% of your invoices to public authorities)	9.0%
Never	8.5%

<b>Table 2.6: What has been the effect of late payment on your business? (Tick all that apply)</b>	
It takes up too much management time and valuable working hours	67.0%
Our business needs a bank credit	38.3%
It slows down the growth of our business	31.4%
It affects the productivity of the business	28.7%
It has a negative effect on investment	22.9%
It does not really affect our business	18.4%
It threatens the survival of our business	13.6%
Discourages from engaging in public procurement contracts	13.0%
It discourages from engaging in cross-border transactions	7.4%
Does not apply	3.7%
Other	1.9%
Don't know	0.3%

<b>Table 2.7: What is your usual response in case of late payment? (Tick all that apply)</b>	
We contact the client personally	87.5%
Our business pays late in turn to our creditors	22.9%
Our lawyers contact the client	22.3%
A debt collecting agency contacts the client	17.3%
We stay patient and only react after a long time	16.0%
Other	4.5%
Does not apply	2.1%
Don't know	0%

<b>Table 2.8: Do you claim interest for late payment?</b>	
Seldom	44.7%
Never	29.5%
Frequently	10.9%
Very often	7.2%
Always	6.9%
Don't know	0.8%

<b>Table 2.9: Why do you seldom claim interest? (Tick all that apply)</b>	
Out of fear that the customer would be lost	60.1%
It is too complicated to claim interest	45.2%
Competitors never claim interest for late payments	23.8%
Late interest is considered as revenue, even when it is not paid	14.9%
The interest rate is unknown	4.2%
Unawareness about the right to charge interest for late payment	4.2%
Don't know	0.6%

<b>Table 2.10: Why do you never claim interest? (Tick all that apply)</b>	
Out of fear that the customer would be lost	68.5%
It is too complicated to claim interest	45.9%
Competitors never claim interest for late payments	28.8%
Late interest is considered as revenue, even when it is paid	13.5%
Unawareness about the right to charge interest for late payment	13.5%
The interest rate is unknown	7.2%
Don't know	5.4%

<b>Table 2.11: The laws on late payment in the EU specify that a creditor may claim an interest rate of currently approximately 11 % in case of late payment. In your view, is that interest rate reasonable and proportionate to encourage timely payment of your invoices?</b>	
Yes	61.4%
No	25.0%
Don't know	13.6%

<b>Table 2.12: Is this interest rate</b>	
Too low	68.1%
Too high	31.9%

<b>Table 2.13: What would be a more appropriate total interest rate for late payment?</b>	
7% or lower	73.3%
8%	13.3%
10%	6.7%
9%	3.3%
No opinion	3.3%

<b>Table 2.14: What would be a more appropriate interest rate?</b>	
15 to 19 %	35.9%
20 to 24%	26.6%
30 % or higher	23.4%
25 to 29%	7.8%
12 to 14 %	4.7%
No opinion	1.6%

<b>Table 2.15: Do you apply the interest rate of 11 % for late payment in your general commercial and payment conditions?</b>	
No, I don't apply an interest rate at all.	42.8%
No, I apply another interest rate.	30.1%
Yes	20.2%
Don't know	6.9%

<b>Table 2.16: An idea is to introduce in the European Union a "late payment fee", i.e. an automatic minimum amount based on the size of the debt, in addition to an interest rate of approximately 11%. Do you think such a 'late payment fee' would be useful?</b>	
Yes	35.4%
No, current rules are sufficient	21.3%
Yes, but only as an alternative to the interest rate for late payment	18.9%
No, an increase of the interest rate would be more efficient	12.5%
Don't know	12.0%

<b>Table 2.17: Were you obliged, during the last 5 years, to sign a contract (providing services and/or goods) in which the other party refused to insert a clause on interest for late payment, or which specified an interest rate lower than 11%?</b>	
Never	43.6%
Seldom	23.1%
Frequently	13.8%
Don't know	12.0%
Very often	7.4%

<b>Table 2.18: It happens that major companies grant themselves a discount on the price by systematically refusing to pay the full amount for reasons that were not envisaged in the contract. Do you think it would be useful if organisations representing SMEs were entitled to take action on behalf of the SME before a case is handled in court (e.g. intermediation) or during the court case?</b>	
Yes	64.1%
No	18.1%
No opinion	17.8%

**Table 2.19: Practices occur whereby companies or national authorities systematically pay well after the deadline in the invoice. Do you think it would be useful if organisations representing SMEs could take action on behalf of the SME before a case is handled in court (e.g. intermediation) or during the court case?**

Yes	71.8%
No	16.2%
No opinion	12.0%

**Table 2.20: Interest for late payment is only due after the contractually agreed payment period. Do you think that a maximum period for making payments between businesses or between public authorities and businesses fixed at European level would be useful?**

Yes	67.6%
No	32.4%

**Table 2.21: What should, in your view, the maximum period be, taking into account the payments your company receives and pays itself?**

30 days	53.5%
45 days	20.1%
20 days	16.1%
Other	10.2%

**Table 2.22: Why do you not consider such an EU maximum period useful? (Tick all that apply)**

Contractual freedom of businesses should not be restricted or regulated	73.0%
It is impossible to provide for a maximum period that would fit all enterprises	54.9%
It is much better to provide for efficient sanctions	23.0%
Other	4.9%

**Table 2.23: Is it necessary to provide for a specific and more favourable regime for micro and small enterprises in case of late payment?**

Yes	47.6%
No	35.6%
Don't know	16.8%

<b>Table 2.24: What kind of measures should such a regime include?</b>	
<b>1) Fixing a much higher interest rate for late payment to SMEs than the one fixed in the laws on late payment in the EU</b>	
No	50.3%
Yes	40.2%
Don't know	9.5%
<b>2) Enable representative organisations to take action in name of a business</b>	
Yes	76.5%
No	14.5%
Don't know	8.9%
<b>3) Labelling systematic late payment to SMEs as an unfair business practice</b>	
Yes	88.8%
No	8.9%
Don't know	2.2%
<b>4) Other measure</b>	
Don't know	23.5%
Yes	17.3%
No	6.7%



### 8.3. Annex 3: The causes and the size of the problem: facts and figures

**Table 3.1: Assertions on the causes of late payment**

There are a range and complexity of motives for businesses both extending and receiving trade credit. Therefore, late payment is likely to derive from multiple and often complex causes. In the diagram below, the main themes associated with likely causes of late payments are summarised.

1. **The Market Structure:** The ‘popular’ view of the causes of late payment asserted that business customers that have a dominant position in the market vis-à-vis suppliers are able to leverage their own cash-flow and profits by taking extended trade credit from the supply-base. Clearly this behaviour is more likely in market structures where there exist dominant buyers with very competitive supply chains. The buyer has bargaining power arising from its ability to select from a range of potential suppliers and is able to dictate the credit terms/periods from suppliers and/or take extended credit (pay late) when it is advantageous to do so without fear of a loss of supply. Bargaining may manifest itself by the buyer insisting on longer credit periods than the supplier might wish to extend and/or discounts on the invoice values. Moreover, buyers with bargaining power may insist on high standards of delivery, after-sales service and invoicing providing much scope for disputing invoices and, in consequence, extending the credit period. Bargaining power occurs where the buyer is a large company and the supply-chain is composed of many small competitive businesses or where the market structure is one of imperfect competition. However dominance is not necessarily a function of the relative sizes of businesses. There are many other types of customer-supplier relationships where the customer may have a strong bargaining position relative to the supplier related to product type rather than size of order/business. For instance a supplier is vulnerable if the nature of the product/service being supplied involves investing a lot of time and effort in securing a sale with a customer (specific investment) and/or needs repeat business to make the relationship profitable. Industry where there are contractors and subcontractors (e.g. construction sector; software and IT provision) appear to be bedevilled by late payment problems. Typically a contractor waits to be paid before being in a position to pay subcontractors. In the latter case both the market structure and the complex nature of the product/service precipitate the late payment problem. [...] Of course, small businesses with low profit margins are more sensitive to late payments and its impact on cash-flow than larger more profitable companies.

2. One could assert that late payment is a function of **poor business and credit management practice**. Where there is scope for disputing the quality of the supplier’s products/services, after-sales service then the customer is likely to do so and withhold payment until satisfied. This may be perceived as valid practice by the customer but as late payment by the supplier. A particular issue surrounds credit management practice and the establishment of the terms of trade prior to the sale. As will be demonstrated later many small businesses extend credit to customers without establishing the credit terms in advance with the customer or without even specifying a payment date. Clearly this gives rise to possible disputes surrounding the due date and precipitates uncertainty about the timing of cash-inflows. Good credit management practice would ensure that credit terms, credit limits and credit periods are clearly established with the customer prior to any trade and that goods or services and invoices are supplied as pre-agreed. The supplier should endeavour to credit check the customer and establish the financial health, risk and creditworthiness of the customer. Disputes should be identified and resolved quickly and ‘excuses’ for payment delays minimised or eliminated. Should late payment still arise then it is likely that the customer is itself inefficient, acting strategically and/or is in some unanticipated (short or long term) financial difficulty. Of course, the risks of doing business dictate that the supplier cannot anticipate all eventualities but should take all reasonable steps to minimise payment risks. Unfortunately when a supplier makes the ‘lending decision’ to supply to a customer on trade credit terms it is difficult to ascertain how much trade credit the customer has received from other suppliers at any point in time and therefore establish whether the customer will have enough cash to repay on the due date. Moreover, customers that do not manage their own working capital well may not always have cash resources available to pay creditors as debt fall due. Indeed financial and working capital practice (or lack of) has often been cited as being a major reason for late payments between businesses.

The reality of the competitive process is that businesses will establish and fail due to changes in technology, product innovations and management mistakes and inefficiencies. Businesses on the path to failure will typically begin to struggle with cash-flow and financing and the servicing of

debt. Often trade creditors will not be a priority in the pecking order of creditors as the business attempts to stay afloat. Firms in financial difficulty often stretch their creditors in order to alleviate cash-flow problems. Thus businesses in financial distress will be late payers and businesses that continue to supply will run the increased risk of slow or non-payment from these customers. Particularly, as alluded to above, if the customer has increased the amount of credit it has received from other trade suppliers. Moreover it can often be the case that a business will fail quickly without showing obvious signs of financial distress and the trade suppliers continues supplying on credit terms when the banks have started to withdraw funding.

3. Clearly **the macro-economic climate** will have a bearing on the number of business failures as the economy moves through cycles. Likewise we would expect to see late payments and bad debts increasing as the economy moves into a through recession. Subsets of small businesses that overtrade as the economy moves into growth are potential late payers.

4. **Access to finance**: A further assertion has been that small and growing businesses can get into difficulties with cash-flow and payment when they have difficulty raising institutional and bank finance. Businesses that are undercapitalised or inappropriately financed have a constant battle with cash-flow. CMRC [Credit Management Research Centre, Leeds University Business School] research identified that small, growing businesses and particularly those that service export markets can be periodically starved of cash and struggle to pay creditors. In an empirical study of the demand for trade credit by small UK firms, CMRC found strong evidence of a financing demand for trade credit. The paper surmised that small firms, which pay trade credit liabilities late, appear to do so when they have reached their limit on short-term bank finance. These 'credit rationed' firms were typically growing and export oriented.

Source: Wilson N., “An Investigation into Payment Trends and Behaviour in the UK: 1997-2007”, Department for Business, Enterprise & Regulatory Reform and CMRC, 2008. See <http://berr.ecgroup.net/Publications/BetterBusinessFramework/Finance.aspx>

## Assertions: Causes of Late Payment

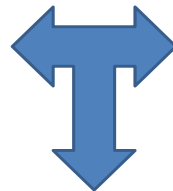
### Competition and Bargaining Power

#### Market Structure

- Imperfect competition
- Bargaining power
- Dominant Buyers/competitive suppliers
- 'fair trading'
- Sub-contracting
- Competitive process

### Management and Customer Service

- Financial management practice
- Credit management practice
- Product and Service Quality
- After-sales service



### Macro and Financial Environment

#### Commercial and B2B Lending

- Flow of commercial finance/credit
- Monetary policy
- Flow and nature of credit information
- Credit Rationing (transitory/permanent)
- Capital Structure (bank/trade credit)

#### Business Cycle and Monetary Conditions

##### Business Cycle Upturn/Downturn

- over-trading
- under capitalised businesses
- inappropriate financing
- export growth/finance
- product life-cycles/innovation

##### Business Cycle Downturn

- tight lending/interest rates
- financial distress and insolvency
- creditors in the pecking order

**Table 3.2: Evolution of payment periods for SMEs<sup>78</sup> in 7 Member States (number of days - 2003-2007)**

	2003			2004			2005		
	Theoretical payment deadline	Actual delay	Actual payment period	Theoretical payment deadline	Actual delay	Actual payment period	Theoretical payment deadline	Actual delay	Actual payment period
Germany	25	12	37	27	13	40	33	19	52
Belgium	44	23	67	42	16	58	42	20	62
Spain	78	10	88	82	9	91	54	13	67
France	53	15	68	52	15	67	52	13	65
Italy	74	19	93	70	16	86	74	27	101
Portugal	53	45	98	47	35	82	45	38	83
U.K.	36	18	54	35	10	45	33	18	51

	2006			2007		
	Theoretical payment deadline	Actual delay	Actual payment period	Theoretical payment deadline	Actual delay	Actual payment period
Germany	32	13	45	27	15	42
Belgium	43	19	62	43	17	60
Spain	63	18	81	61	12	73
France	52	14	66	52	14	66
Italy	72	21	93	73	21	94
Portugal	56	38	94	61	38	99
U.K.	34	15	49	30	13	43

Source : Eurofactor, Baromètres 2006, 2007 and 2008

<sup>78</sup>

In this case, 3000 SMEs from 6 to 500 employees in 7 EU Member States, essentially involved in B2B transactions.

<b>Table 3.3: Payment duration in Member States</b>				
	Average payment term	Average payment term	Average payment	Average payment
	in days	in days	duration in days	duration in days
	B2B	Public authorities	B2B	Public authorities
	(2008)	(2008)	(2008)	(2008)
Belgium	37.0	49.0	50.0	75.0
Bulgaria	--	--	--	--
Czech Republic	30.0	23.0	49.0	33.0
Denmark	29.4	27.5	35.5	35.8
Germany	30.0	25.0	36.0	40.0
Estonia	20.7	15.3	35.5	19.8
Ireland	39.1	36.4	57.5	50.7
Greece	84.0	95.0	110.0	157.0
Spain	73.0	103.0	89.0	144.0
France	49.0	57.0	65.0	71.0
Italy	68.0	95.0	88.0	135.0
Cyprus	67.2	55.4	95.8	72.4
Latvia	21.5	20.1	41.5	31.3
Lithuania	30.3	30.0	46.2	39.8
Luxembourg	--	--	--	--
Hungary	26.0	30.0	45.0	55.0
Malta	--	--	--	--
Netherlands	26.1	27.2	40.0	46.0
Austria	27.0	27.0	35.0	47.0
Poland	29.7	27.7	46.8	47.9
Portugal	47.1	57.4	80.1	137.8
Romania	--	--	--	--
Slovenia	--	--	--	--
Slovakia	31.0	28.0	39.0	35.0
Finland	21.0	20.0	27.0	24.0
Sweden	27.0	28.0	34.0	35.0
United Kingdom	33.2	30.0	51.0	48.0

Source : Intrum Justitia, European Payment Index 2008

<b>Table 3.4: Which measures do you take to protect your company from bad debt?</b>			
Credit insurance (commercial)	30%	Cash on delivery	3%
Advance payment	17%	Guarantees	4%
Active collection procedures (internal)	13%	Retention of title	2%
External collection services	11%	Factoring	1%
Letter of Credit (ILC)	6%	Attorney, Bailiff, lawyer	2%
Credit check	4%	Bill of exchange	1%

Source : Atradius Payment Practices Barometer – Winter 2007

<b>Table 3.5: Payment delays in Member States</b>			
	Average payment delay in	Average payment delay in	Average payment delay in
	days	days	days
	B2B	Public authorities	B2B + Public authorities
	(2008)	(2008)	(2007)
Belgium	13.0	26.0	15.3
Bulgaria	--	--	--

Czech Republic	19.0	10.0	25.0
Denmark	6.1	8.3	7.2
Germany	16.0	15.0	15.5
Estonia	14.8	4.5	8.5
Ireland	18.4	14.3	14.3
Greece	26.0	62.0	27.4
Spain	16.0	41.0	15.2
France	16.0	14.0	14.3
Italy	20.0	40.0	23.9
Cyprus	28.6	17.0	32.4
Latvia	20.0	11.2	11.9
Lithuania	15.9	9.8	14.9
Luxembourg	--	--	--
Hungary	19.0	25.0	16.3
Malta	--	--	--
Netherlands	13.9	18.8	13.2
Austria	8.0	20.0	16.0
Poland	17.1	20.2	17.1
Portugal	33.0	80.4	39.9
Romania	--	--	--
Slovenia	--	--	--
Slovakia	8.0	7.0	20.1
Finland	6.0	4.0	6.0
Sweden	7.0	7.0	6.9
United Kingdom	17.8	18.0	17.6

Source : Intrum Justitia, European Payment Index 2008

<b>Table 3.6: Payment delays in Member States</b>			
		Average payment delays in days (2007)	Average payment delays in days (2007)
Belgium	16.2	Ireland	19.6
Germany	9.4	Netherlands	11.7
Spain	14.8	Portugal	24.1
France	12.2	United Kingdom	13.6
Italy	12.6		

Source : Altares, Les comportements de paiement des entreprises en Europe, Bilan 2007

<b>Table 3.7: Value of turnover paid late by Member States (€m)</b>								
	Turnover (€m)		Days delay	Adjustment factor for days delay	Adjustment factor for volume of turnover		Value turnover paid late (€m, rounded)	
	SME	Large			SMEs	Large	SMEs	Large
<b>BE</b>	175,534	129,806	13	0.81	0.04	0.04	32,507	20,616
<b>CZ</b>	57,706	42,674	19	1.19	0.01	0.01	15,619	9,906
<b>DK</b>	95,614	70,706	6	0.38	0.02	0.02	8,308	5,269
<b>DE</b>	949,861	702,419	16	1.00	0.19	0.19	216,497	137,306
<b>EE</b>	7,243	5,357	15	0.93	0.00	0.00	1,527	969
<b>IE</b>	74,608	55,172	18	1.15	0.01	0.01	19,556	12,403
<b>EL</b>	64,226	47,494	26	1.63	0.01	0.01	23,788	15,087
<b>ES</b>	453,925	335,675	16	1.00	0.09	0.09	103,461	65,617
<b>FR</b>	738,835	546,365	16	1.00	0.15	0.15	168,399	106,801

<b>IT</b>	621,249	459,411	20	1.25	0.12	0.12	176,997	112,255
<b>CY</b>	5,070	3,750	29	1.79	0.00	0.00	2,066	1,310
<b>LV</b>	7,243	5,357	20	1.25	0.00	0.00	2,064	1,309
<b>LT</b>	9,417	6,963	16	0.99	0.00	0.00	2,133	1,353
<b>HU</b>	52,636	38,924	19	1.19	0.01	0.01	14,246	9,035
<b>NL</b>	251,590	186,050	14	0.87	0.05	0.05	49,817	31,595
<b>AT</b>	111,550	82,490	8	0.50	0.02	0.02	12,712	8,062
<b>PL</b>	124,105	91,775	17	1.07	0.02	0.02	30,231	19,173
<b>PT</b>	73,883	54,637	33	2.06	0.01	0.01	34,732	22,028
<b>SK</b>	18,109	13,391	8	0.50	0.00	0.00	2,064	1,309
<b>FI</b>	73,401	54,279	6	0.38	0.01	0.01	6,274	3,979
<b>SE</b>	134,729	99,631	7	0.44	0.03	0.03	13,435	8,521
<b>UK</b>	805,716	595,824	18	1.11	0.16	0.16	204,302	129,572
<b>Total</b>	<b>4,906,249</b>	<b>3,628,151</b>	<b>16</b>	<b>Baseline</b>	<b>-</b>	<b>-</b>	<b>1,140,734</b>	<b>723,474</b>

Source: RPA Study.

Sources of Data:

- Turnover B2B: Eurostat

- Days delay: private survey.

Countries not figuring in Table due to lack of data: BG, LU, MT, RO, SI.

<b>Table 3.8: Value of turnover against which interest is claimed (€m)</b>				
<b>MS</b>	<b>Turnover paid late</b>		<b>Value of turnover paid late against which interest is claimed</b>	
	<b>SME</b>	<b>Large</b>	<b>SME</b>	<b>Large</b>
<b>BE</b>	22,755	20,616	3,072	3,760
<b>CZ</b>	10,933	9,906	1,476	1,807
<b>DK</b>	5,816	5,269	785	961
<b>DE</b>	151,548	137,306	20,459	25,043
<b>EE</b>	1,069	969	144	177
<b>IE</b>	13,689	12,403	1,848	2,262
<b>EL</b>	16,651	15,087	2,248	2,752
<b>ES</b>	72,422	65,617	9,777	11,968
<b>FR</b>	117,879	106,801	15,914	19,479
<b>IT</b>	123,898	112,255	16,726	20,474
<b>CY</b>	1,446	1,310	195	239
<b>LV</b>	1,445	1,309	195	239
<b>LT</b>	1,493	1,353	202	247
<b>HU</b>	9,973	9,035	1,346	1,648
<b>NL</b>	34,872	31,595	4,708	5,762
<b>AT</b>	8,899	8,062	1,201	1,470
<b>PL</b>	21,162	19,173	2,857	3,497
<b>PT</b>	24,313	22,028	3,282	4,018
<b>SK</b>	1,445	1,309	195	239
<b>FI</b>	4,392	3,979	593	726
<b>SE</b>	9,404	8,521	1,270	1,554
<b>UK</b>	143,012	129,572	19,307	23,632
<b>Total</b>	<b>798,514</b>	<b>723,474</b>	<b>107,799</b>	<b>131,952</b>

Source: RPA Study.

Note:

The figures for turnover paid late to SMEs have been adjusted downwards from those in Table 37 on the assumption that 30% of the turnover paid late would not have generated €5 in interest and might therefore either not be eligible for late payment interest under national legislation, or not worthwhile. The responses from a questionnaire on claims for late payment interest have been used to calculate an average claim rate for all companies. The average claim rate for SMEs is 13.5% of all late payments and the equivalent rate for large companies is 18.24%. Applying these average claim rates to the total turnover paid late to SMEs and large companies produces the results given in this table.

<b>Table 3.9: Value of late payment interest successfully claimed (€m)</b>		
<b>MS</b>	<b>SMEs</b>	<b>Large Companies</b>
<b>BE</b>	3.88	4.22
<b>CZ</b>	2.72	2.97
<b>DK</b>	0.76	0.83
<b>DE</b>	34.67	37.78
<b>EE</b>	0.21	0.23
<b>IE</b>	3.30	3.60
<b>EL</b>	6.19	6.74
<b>ES</b>	15.19	16.55
<b>FR</b>	24.72	26.93
<b>IT</b>	32.48	35.39
<b>CY</b>	0.54	0.59
<b>LV</b>	0.38	0.41
<b>LT</b>	0.31	0.34
<b>HU</b>	2.82	3.07
<b>NL</b>	6.35	6.92
<b>AT</b>	1.02	1.11
<b>PL</b>	5.28	5.76
<b>PT</b>	10.52	11.46
<b>FI</b>	0.35	0.38
<b>SE</b>	0.94	1.03
<b>UK</b>	39.43	42.96
<b>Total</b>	<b>192</b>	<b>209</b>

Source: RPA Study.

Note:

Although the estimates given in table 3.8 represent the amounts being claimed, not all claims are successful. Companies responding to the questionnaire indicated that for SMEs only 32% on average of the above claims for interest were indeed successful, with the figure for large companies being 29% of claims. Applying these percentages to the figures in Table 3.8 to late payment interest rates and average delays in payments provides the basis for calculating the value of interest successfully claimed, presented in this table.



**Table 3.10: Value of bank loans to SMEs to finance late payments (€m)**

	<b>Turnover Value on which late payments has been claimed successfully by SMEs</b>	<b>Days credit taken</b>	<b>% of companies financing late payments by bank loans</b>	<b>Bank interest rate</b>	<b>Cost of credit to cover late payments</b>
<b>BE</b>	990	13	58.5%	9%	1.9
<b>CZ</b>	475	19	58.5%	9%	1.3
<b>DK</b>	253	6	58.5%	9%	0.2
<b>DE</b>	6,591	16	58.5%	9%	15.2
<b>EE</b>	46	15	58.5%	9%	99.3
<b>IE</b>	595	18	58.5%	9%	1.6
<b>EL</b>	724	26	58.5%	9%	2.7
<b>ES</b>	3,150	16	58.5%	9%	7.3
<b>FR</b>	5,127	16	58.5%	9%	11.8
<b>IT</b>	5,388	20	58.5%	9%	15.5
<b>CY</b>	63	29	58.5%	9%	0.3
<b>LV</b>	63	20	58.5%	9%	0.3
<b>LT</b>	65	16	58.5%	9%	0.1
<b>HU</b>	434	19	58.5%	9%	1.1
<b>NL</b>	1,517	14	58.5%	9%	3.0
<b>AT</b>	387	8	58.5%	9%	0.4
<b>PL</b>	920	17	58.5%	9%	2.3
<b>PT</b>	1,057	33	58.5%	9%	5.0
<b>SK</b>	63	8	58.5%	9%	0.7
<b>FI</b>	191	6	58.5%	9%	0.2
<b>SE</b>	409	7	58.5%	9%	0.4
<b>UK</b>	6,220	18	58.5%	9%	16.0
<b>Total</b>	<b>34,728</b>				<b>86.8</b>

Source: RPA Study.

Note:

It is argued that small firms often have higher financing costs relative to large companies as they do not hold such strong bargaining positions when applying for finance to banks. Table 3.10 uses the turnover value on which late payments has been claimed successfully by SMEs to provide estimates for the value of finance that is required by SMEs from banks to finance late payments. Considering that an online consultation revealed that 58.5% of respondents said that they resorted to bank finance to cover late payments, this figure (an overestimate for the total amount of late payments financed through bank loans since it is unlikely that these respondents would have covered ALL late payments through bank loans) was used to estimate the value of credit together with an assumed bank loan rate of 9% for SMEs and an assumption that the length of the loans taken are equivalent to the average days delay on payment in each Member State.

<b>Table 3.11: Percentage of late payments owed by different sectors</b>								
Percentage of late payments	0	10	25	50	75	90	100	NA
<b>Public sector</b>								
Large comp %	22.2	22.2	12.7	7.9	14.3	9.5	3.2	7.9
Small comp %	13.8	13.2	10.1	5.7	13.2	22.0	8.2	13.8
<b>Private sector</b>								
Large comp %	4.8	20.6	14.3	7.9	11.1	15.9	17.5	7.9
Small comp %	3.8	21.4	17.0	7.5	9.4	10.1	20.8	10.1
Source: RPA Study. The first column of this table indicates, for example, that 22.2% of the large responding economic operators and 13.8% of the small respondents received all payments by public authorities on time. It also shows that 4.8% of the large responding economic operators and 3.8% of the small respondents never experience late payment by private businesses. The last column of this table indicates that all payments made by public authorities were late for 3.2% of the large responding economic operators and 8.2% of the small respondents. 17.5% of the large responding economic operators and 20.8% of the small respondents are always paid late by private businesses.								

<b>Table 3.12: Option 3a/1: Potential direct costs of contract renegotiation for companies in 10 Member States with agreed terms &gt;30 days (€m)</b>			
	<b>SMEs</b>	<b>Large</b>	<b>Total</b>
Total number of companies in countries where average agreed payment period is >30 days	10,673,617	17,845	10,691,462
25% of companies holding contracts with >30 day payment terms renegotiate 1 contract	2,668,404	4,461	2,672,865
15% of companies holding contracts with >30 days payment terms renegotiate 1 contract	1,601,043	2,677	1,603,719
Costs of contract renegotiation	€ 5,000	€ 5,000	
<b>Total direct costs of changes to contracts - 25% companies</b>	<b>13,342</b>	<b>22</b>	<b>13,364</b>
<b>Total direct costs of changes to contracts - 15% companies</b>	<b>8,005</b>	<b>13</b>	<b>8,019</b>
Source: RPA Study.			
<u>Note:</u>			
This table provides estimates of what the one-off transitional costs of contract renegotiation might be, assuming that 25% of companies holding contracts with greater than 30 day payment periods may seek to renegotiate one contract or that 15% of such companies would seek to renegotiate one contract (based on 20% of companies believing that this measure would have an impact on their business according to a survey). Note that it is assumed that on average only one contract would be renegotiated per company to take into account the fact that a large proportion of contracts are likely to be of a short duration or are completed within weeks or months of any new harmonised contract terms entering into use. Furthermore, it has been assumed that the average costs of familiarisation and renegotiating contracts for these companies would be €5,000 to allow for the time and expenses of both the buyer and supplier (costs of senior management time, legal costs, etc); obviously, the actual costs of familiarisation and negotiations may be minor in some cases and far higher in others (e.g. where considerable legal input is required to the negotiations).			

**Table 3.13: Option 3a/2: Public procurement by Member States (billion €)**

<i>Member State</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Belgium	40.58	42.54	45.42	49.27	46.78
Czech Rep.	n/a	n/a	22.65	20.46	30.23
Denmark	33.29	34.50	32.33	29.61	31.99
Germany	366.04	371.46	348.86	364.16	375.47
Estonia	n/a	n/a	1.26	2.11	2.30
Ireland	16.73	16.97	17.90	20.79	22.45
Greece	21.12	22.18	19.31	18.78	19.64
Spain	93.56	100.54	116.17	126.88	142.88
France	235.76	247.89	282.19	303.80	319.64
Italy	147.79	162.75	209.65	204.12	212.66
Cyprus	n/a	n/a	1.54	1.53	1.73
Latvia	n/a	n/a	1.98	2.15	2.63
Lithuania	n/a	n/a	2.34	2.70	3.91
Luxembourg	3.57	3.73	4.62	4.16	4.59
Hungary	n/a	n/a	16.11	16.33	19.41
Malta	n/a	n/a	0.61	0.77	0.77
Netherlands	98.94	104.41	116.12	123.60	136.06
Austria	35.16	36.06	39.44	45.13	44.02
Poland	n/a	n/a	32.24	38.97	50.17
Portugal	16.86	17.65	22.70	23.23	23.99
Slovenia	n/a	n/a	4.77	4.08	6.01
Slovakia	n/a	n/a	7.75	8.76	11.40
Finland	22.55	23.99	25.52	25.62	27.14
Sweden	50.19	51.60	50.60	52.86	56.65
UK	282.52	281.20	309.14	313.13	351.38
<b>Total</b>	<b>1,464.65</b>	<b>1,517.46</b>	<b>1,731.23</b>	<b>1,802.97</b>	<b>1,943.92</b>

Source: RPA Study.

Note:

The above figures are derived from national accounts. Since 2004, the value of contribution of the Utilities to these totals is extrapolated either from data in the harmonised Input/Output tables available from Eurostat, or from the latest available company annual reports. This change has been explained in more detail elsewhere. For this reason data from 2004 and after is not strictly comparable with 2003 or earlier data. It should also be noted that National Accounts figures for 2005 and earlier years may have been revised since this indicator was last issued.

**Table 3.14: Option 3a/2: Payment duration (public authorities to businesses)**

Member State	Average payment term in days	Average payment duration in days	Payment duration: number of days exceeding 30 days	Member State	Average payment term in days	Average payment duration in days	Payment duration: number of days exceeding 30 days
Belgium	49.0	75.0	45.0	Lithuania	30.0	39.8	9.8
Bulgaria	--	--	--	Luxembourg	--	--	--
Czech Rep.	23.0	33.0	3.0	Hungary	30.0	55.0	25.0
Denmark	27.5	35.8	5.8	Malta	--	--	--
Germany	25.0	40.0	10.0	Netherlands	27.2	46.0	16.0
Estonia	15.3	19.8	-10.2	Austria	27.0	47.0	17.0
Ireland	36.4	50.7	20.7	Poland	27.7	47.9	17.9
Greece	95.0	157.0	127.0	Portugal	57.4	137.8	107.8
Spain	103.0	144.0	114.0	Romania	--	--	--
France	57.0	71.0	41.0	Slovenia	--	--	--
Italy	95.0	135.0	105.0	Slovakia	28.0	35.0	5.0
Cyprus	55.4	72.4	42.4	Finland	20.0	24.0	-6
Latvia	20.1	31.3	1.3	Sweden	28.0	35.0	5
				U.K.	30.0	48.0	18.0

Source: Tables 3.3 and 3.5

**Table 3.15: Option 3a/2: Impact of maximum period of 30 days for payments by public authorities to businesses (procurement expenditure)  
Scenario on the basis of average number of days of earlier payment**

	Average number of days of earlier payment	Annual effective interest rate	Budgetary cost in billion euro for public authorities (1)	Additional liquidity to companies in billion euro (1)	Budgetary cost in billion euro for public authorities (2)	Additional liquidity to companies in billion euro (2)
Belgium	45	4	0.231	5.8	0.24	6.03
Bulgaria	--	8	--	--	--	--
Czech Rep.	3	4.3	0.011	0.2	0.02	0.40
Denmark	5.8	3.7	0.019	0.5	0.02	0.50
Germany	10	3.2	0.329	10.3	0.37	11.51
Estonia	0	(7.2)	0.0	0.0	0.00	0.00
Ireland	20.7	4.4	0.056	1.3	0.08	1.82
Greece	127	5.2	0.355	6.8	0.36	7.01
Spain	114	4	1.785	44.6	2.47	61.85
France	41	3.6	1.293	35.9	1.57	43.54
Italy	105	4.5	2.753	61.2	2.81	62.50
Cyprus	42.4	4.5	0.009	0.2	0.01	0.24
Latvia	1.3	(10.3)	0.001	0.0	0.00	0.01
Lithuania	9.8	(9)	0.009	0.1	0.02	0.25
Luxembourg	--	4	--	--	--	--
Hungary	25	7.9	0.105	1.3	0.14	1.78
Malta	--	4.5	--	--	--	--
Netherlands	16	3.8	0.227	6.0	0.29	7.64
Austria	17	4	0.082	2.1	0.10	2.43
Poland	17.9	5.7	0.140	2.5	0.29	5.14
Portugal	107.8	4.1	0.290	7.1	0.32	7.71
Romania	--	(14)	--	--	--	--
Slovenia	--	4.5	--	--	--	--
Slovakia	5	4.7	0.007	0.2	0.01	0.29
Finland	0	3.9	0.0	0.0	0.00	0.00
Sweden	5	2.8	0.022	0.8	0.03	0.92
U.K.	18	3.6	0.624	17.3	0.76	21.13
<b>Total</b>			<b>8.3</b>	<b>204.1</b>	<b>9.9</b>	<b>242.7</b>

Source: European Commission ECFIN. Annual effective interest rate is long term interest and short term (proxied) for Member States between brackets. Average number of days of earlier payment based on the average payment duration set out in Table 3.14.

(1) Procurement figures for 2006 – See Table 3.13.

(2) Procurement figures for 2009, assuming similar annual growth in the period 2006-2009 as in 2004-2006.

**Table 3.16: Option 3a/2: Impact of maximum period of 30 days for payments by public authorities to businesses (procurement expenditure)**  
**Scenario on the basis of the reduction of the average payment term**

	Reduction of average payment term	Annual effective interest rate	Budgetary cost in billion euro for public authorities (1)	Additional liquidity to companies in billion euro (1)	Budgetary cost in billion euro for public authorities (2)	Additional liquidity to companies in billion euro (2)
Belgium	19	4	0.097	2.4	0.10	2.55
Bulgaria	--	8	--	--	--	--
Czech Rep.	0	4.3	0	0	0	0
Denmark	0	3.7	0	0	0	0
Germany	0	3.2	0	0	0	0
Estonia	0	(7.2)	0	0	0	0
Ireland	6.4	4.4	0.017	0.4	0.02	0.56
Greece	65	5.2	0.182	3.5	0.19	3.59
Spain	73	4	1.143	28.6	1.58	39.61
France	27	3.6	0.851	23.6	1.03	28.67
Italy	65	4.5	1.704	37.9	1.74	38.69
Cyprus	25.4	4.5	0.005	0.1	0.01	0.14
Latvia	0	(10.3)	0	0	0	0
Lithuania	0	(9)	0	0	0	0
Luxembourg	--	4	--	--	--	--
Hungary	0	7.9	0	0	0	0
Malta	--	4.5	--	--	--	--
Netherlands	0	3.8	0	0	0	0
Austria	0	4	0	0	0	0
Poland	0	5.7	0	0	0	0
Portugal	27.4	4.1	0.074	1.8	0.08	1.96
Romania	--	(14)	--	--	--	--
Slovenia	--	4.5	--	--	--	--
Slovakia	0	4.7	0	0	0	0
Finland	0	3.9	0	0	0	0
Sweden	0	2.8	0	0	0	0
U.K.	0	3.6	0	0	0	0
<b>Total</b>			<b>4.1</b>	<b>98.3</b>	<b>4.8</b>	<b>115.8</b>

Source: European Commission ECFIN. Annual effective interest rate is long term interest and short term (proxied) for Member States between brackets. Reduction of average payment term based on the average payment term set out in Table 3.14.

(1) Procurement figures for 2006 – See Table 3.13.

(2) Procurement figures for 2009, assuming similar annual growth in the period 2006-2009 as in 2004-2006.

**Table 3.17: Option 3a/2: Impact of maximum period of 30 days for payments by public authorities to businesses (procurement expenditure for 2009) – Average scenario**

	Scenario Table 3.15		Scenario Table 3.16		Average scenario	
	Budgetary cost in billion euro for public authorities	Additional liquidity to companies in billion euro	Budgetary cost in billion euro for public authorities	Additional liquidity to companies in billion euro	Budgetary cost in billion euro for public authorities	Additional liquidity to companies in billion euro
Belgium	0.24	6.03	0.10	2.55	<b>0.17</b>	<b>4.29</b>
Bulgaria	--	--	--	--	--	--
Czech Rep.	0.02	0.40	0.00	0.00	<b>0.01</b>	<b>0.20</b>
Denmark	0.02	0.50	0.00	0.00	<b>0.01</b>	<b>0.25</b>
Germany	0.37	11.51	0.00	0.00	<b>0.18</b>	<b>5.84</b>
Estonia	0.00	0.00	0.00	0.00	<b>0.00</b>	<b>0.00</b>
Ireland	0.08	1.82	0.02	0.56	<b>0.05</b>	<b>1.19</b>
Greece	0.36	7.01	0.19	3.59	<b>0.27</b>	<b>5.30</b>
Spain	2.47	61.85	1.58	39.61	<b>2.03</b>	<b>50.73</b>
France	1.57	43.54	1.03	28.67	<b>1.30</b>	<b>36.10</b>
Italy	2.81	62.50	1.74	38.69	<b>2.22</b>	<b>50.59</b>
Cyprus	0.01	0.24	0.01	0.14	<b>0.01</b>	<b>0.19</b>
Latvia	0.00	0.01	0.00	0.00	<b>0.00</b>	<b>0.00</b>
Lithuania	0.02	0.25	0.00	0.00	<b>0.00</b>	<b>0.00</b>
Luxembourg	--	--	--	--	--	--
Hungary	0.14	1.78	0.00	0.00	<b>0.07</b>	<b>0.89</b>
Malta	--	--	--	--	--	--
Netherlands	0.29	7.64	0.00	0.00	<b>0.14</b>	<b>3.82</b>
Austria	0.10	2.43	0.00	0.00	<b>0.05</b>	<b>1.21</b>
Poland	0.29	5.14	0.00	0.00	<b>0.14</b>	<b>2.57</b>
Portugal	0.32	7.71	0.08	1.96	<b>0.20</b>	<b>4.83</b>
Romania	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--
Slovakia	0.01	0.29	0.00	0.00	<b>0.01</b>	<b>0.14</b>
Finland	0.00	0.00	0.00	0.00	<b>0.00</b>	<b>0.00</b>
Sweden	0.03	0.92	0.00	0.00	<b>0.01</b>	<b>0.46</b>
U.K.	0.76	21.13	0.00	0.00	<b>0.38</b>	<b>10.56</b>
<b>Total</b>	<b>9.9</b>	<b>242.7</b>	<b>4.8</b>	<b>115.8</b>	<b>7.25</b>	<b>179.11</b>

Source: Tables 3.15 and 3.16, based on estimated procurement figures for 2009, assuming similar annual growth in the period 2006-2009 as in 2004-2006.

**Table 3.18: Option 3b: Interest successfully claimed at different average rates of claim made (@current late payment interest rates) / €m**

	Ave. rate of claim = 13.5%	Ave. rate of claim = 18.25%	Ave. rate of claim = 18.5%	Ave. rate of claim = 23.2%	Ave. rate of claim = 23.5%	Ave. rate of claim = 28.25%
	<b>SME</b>	<b>Large</b>	<b>SME</b>	<b>Large</b>	<b>SME</b>	<b>Large</b>
BE	3.9	4.2	5.3	5.4	6.7	6.5
CZ	2.7	3.0	3.7	3.8	4.7	4.6
DK	0.8	0.8	1.0	1.1	1.3	1.3
DE	34.7	37.8	47.5	48.1	60.4	58.5
EE	0.2	0.2	0.3	0.3	0.4	0.4
IE	3.3	3.6	4.5	4.6	5.7	5.6
EL	6.2	6.7	8.5	8.6	10.8	10.4
ES	15.2	16.5	20.8	21.1	26.4	25.6
FR	24.7	26.9	33.9	34.3	43.0	41.7
IT	32.5	35.4	44.5	45.1	56.5	54.8
CY	0.5	0.6	0.7	0.8	0.9	0.9
LV	0.4	0.4	0.5	0.5	0.7	0.6
LT	0.3	0.3	0.4	0.4	0.5	0.5
HU	2.8	3.1	3.9	3.9	4.9	4.8
NL	6.4	6.9	8.7	8.8	11.1	10.7
AT	1.0	1.1	1.4	1.4	1.8	1.7
PL	5.3	5.8	7.2	7.3	9.2	8.9
PT	10.5	11.5	14.4	14.6	18.3	17.7
FI	0.3	0.4	0.5	0.5	0.6	0.6
SE	0.9	1.0	1.3	1.3	1.6	1.6
UK	39.4	43.0	54.0	54.7	68.6	66.5
<b>Total</b>	192.1	209.3	263.2	266.6	334.3	324.0

Source: RPA Study.

Note:

If interest rates would be increased, costs to debtors are likely to increase as a result of the higher interest payments on late payments. This table establishes an estimate for the value of late payment interest successfully claimed by companies in 21 Member States at the prevailing interest rates, on the basis of a number of scenarios based on different higher levels of late payment interest and based on different assumptions regarding the willingness of creditor companies to make claims for late payment interest from their debtor customers. These figures have then been adjusted to produce predictions of the interest successfully claimed at a range of interest rates and with differing levels of average claim rate. Any changes in the amount of interest successfully claimed as a result of imposing more punitive late payment interest rates, whilst representing a cost to debtors, will also represent an equal benefit to creditors. Therefore, the overall net change in costs would be zero, with the measure effecting a change in distribution rather than an increase or decrease in costs.

However, this scenario is quite optimistic since the fear of damaging commercial relationship may still refrain many economic operators from claiming interest.



**Table 3.19: Option 3d: Costs of imposing flat late payment fees on debtors**

Average invoice value (SME)/€	No. of invoices paid late per annum (SMEs) (millions)	Late payment fee costs /€million			
		@ €100	@ €200	@ €300	@ €400
2,000	17	1,736	3,473	5,209	6,946
1,000	35	3,473	6,946	10,418	13,891
500	69	6,946	13,891	20,837	27,782
Average invoice value (Large)/€	No. of invoices paid late per annum (Large) (millions)				
15,000	3	252	505	757	1,009
10,000	4	378	757	1,135	1,514
5,000	8	757	1,514	2,270	3,027

Source: RPA Study.

Note:

In the absence of a scientifically reliable indication of the number of successful claims for late payment interest, an assumption is made on the average size of an invoice across all transactions of €1,000 for SMEs and for €10,000 for large companies. These figures are used to estimate the number of transactions which are paid late as follows:

Number of transactions paid late =

$$\frac{\text{Turnover paid late and successfully claimed}}{\text{Average invoice size (€10,000 or €1,000)}}$$

Applying this formula results in figures of approximately 17 million invoices paid late for SMEs and 3.8 million invoices paid late for large companies.

The introduction of a Late Payment Fee would imply that debtors would incur these fees in cases where the creditor is successful in claiming late payments. A range of potential fees is included in this table which set out the potential costs of imposing a flat late payment fee in the countries covered by the analysis. It also considers variations in the number of transactions that end up in successful claims for late payment interest by analysing different average levels of invoice value to provide some costs for different levels of late payment fee.

Based on the above, the introduction of a flat rate fee for late payments, due on day 1 after the expiry of the agreed or default payment period might lead to costs ranging from €3.5bn to €13.9bn for SMEs debtors (assuming that the average invoice size is €1,000) and from €378 million to €1.5bn for large debtor companies (assuming that the average invoice size is €10,000). Since these costs will be incurred by the debtor and paid over to the creditor, the net effect is only one of redistribution, with the exception of any administrative costs (likely to be small) incurred by the creditor in claiming the fee.

**Table 3.20: Baseline scenario: Current payment terms and late payment patterns (B2B)**

	Payment terms and patterns		Negative impact late payment: costs due to late av. effective payment (late payment interest rate, table 1.1) in mio. Euro, based on turnover year 2006			Positive impact late payment : value of late payment interest successfully claimed (table 3.9))		
	Average payment term (in days)	Average effective payment (in days)	TOTAL	SME	Large companies	TOTAL	SME	Large companies
Belgium	37,0	50,0	2,690.5	1,636.8	1,053.7	8,1	3,9	4,2
Bulgaria	--	--	--	--	--	--	--	--
Czech Rep.	30,0	49,0	1,562.7	922.7	639.9	5,7	2,7	3,0
Denmark	29,4	35,5	764.5	512.3	252.2	1,6	0,8	0,8
Germany	30,0	36,0	7,461.5	3,552.7	3,908.8	72,5	34,7	37,8
Estonia	20,7	35,5	138.8	113.5	25.4	0,4	0,2	0,2
Ireland	39,1	57,5	1,556.6	879.4	677.3	6,9	3,3	3,6
Greece	84,0	110,0	1,919.6	1,509.3	410.3	12,9	6,2	6,7
Spain	73,0	89,0	8,550.2	5,739.3	2,810.9	31,7	15,2	16,6
France	49,0	65,0	13,316.4	7,406.9	5,909.5	51,7	24,7	26,9
Italy	68,0	88,0	14,437.3	10,239.7	4,197.7	67,9	32,5	35,4
Cyprus	67,2	95,8	164.3	140.3	24.0	1,1	0,5	0,6
Latvia	21,5	41,5	276.1	219.9	56.2	0,8	0,4	0,4
Lithuania	30,3	46,2	318.5	206.6	111.9	0,7	0,3	0,3
Luxembourg	--	--	--	--	--	--	--	--
Hungary	26,0	45,0	2,111.2	1,241.1	870.1	5,9	2,8	3,1
Malta	--	--	--	--	--	--	--	--
Netherlands	26,1	40,0	3,579.1	2,231.9	1,347.2	13,3	6,4	6,9
Austria	27,0	35,0	1,163.8	738.5	425.3	2,1	1,0	1,1
Poland	29,7	46,8	3,415.3	2,020.5	1,394.8	11,0	5,3	5,8
Portugal	47,1	80,1	2,716.0	1,916.5	799.5	22,0	10,5	11,5
Romania	--	--	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--	--	--
Slovakia	31,0	39,0	184.3	91.1	93.2	--	--	--
Finland	21,0	27,0	530.4	254.0	276.4	0,7	0,4	0,4
Sweden	27,0	34,0	1,162.0	649.9	512.1	2,0	0,9	1,0
U.K.	33,2	51,0	17,301.4	8,397.8	8,903.6	82,4	39,4	43,0
<b>Total</b>			<b>85,320.5</b>	<b>50,620.4</b>	<b>34,700.1</b>	<b>401,3</b>	<b>192,1</b>	<b>209,3</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

**Table 3.21: Baseline scenario: Current payment terms and late payment patterns (B2B)  
Net effect of negative and positive impacts of Table 3.20 (in mio EURO)**

	TOTAL	SME	Large companies
Belgium	-2,682.4	-1,632.9	-1,049.4
Bulgaria	--	--	--
Czech Rep.	-1,557.0	-920.0	-637.0
Denmark	-762.9	-511.6	-251.3
Germany	-7,389.0	-3,518.0	-3,871.0
Estonia	-138.4	-113.2	-25.2
Ireland	-1,549.7	-876.1	-673.7
Greece	-1,906.7	-1,503.1	-403.6
Spain	-8,518.5	-5,724.1	-2,794.4
France	-13,264.7	-7,382.1	-5,882.6
Italy	-14,369.5	-10,207.2	-4,162.3
Cyprus	-163.2	-139.7	-23.4
Latvia	-275.3	-219.5	-55.8
Lithuania	-317.9	-206.3	-111.5
Luxembourg	--	--	--
Hungary	-2,105.3	-1,238.3	-867.1
Malta	--	--	--
Netherlands	-3,565.9	-2,225.5	-1,340.3
Austria	-1,161.7	-737.5	-424.2
Poland	-3,404.3	-2,015.2	-1,389.1
Portugal	-2,694.0	-1,905.9	-788.0
Romania	--	--	--
Slovenia	--	--	--
Slovakia	-184.3	-91.1	-93.2
Finland	-529.6	-253.6	-276.0
Sweden	-1,160.0	-648.9	-511.1
U.K.	-17,219.0	-8,358.4	-8,860.7
<b>Total</b>	<b>-84,919.2</b>	<b>-50,428.4</b>	<b>-34,490.9</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

**Table 3.22: Optimum scenario: Reduction Payment terms to 30 days maximum, no longer late payment (effective payment equal to payment term) (B2B)**

	Impact added liquidity due to reduction of payment terms (effective interest rates, see table 3.15 and 3.16)			Impact added liquidity due to improved payment behaviour (late payment interest rates – Table 1.1)			Net effect (in mio EURO, gains +, loss -)		
	TOTAL	SME	Large companies	TOTAL	SME	Large companies	TOTAL	SME	Large companies
Belgium	610.0	371.1	238.9	4,139.2	2,518.2	1,621.0	4,749.2	2,889.2	1,859.9
Bulgaria	--	--	--	--	--	--	--	--	--
Czech Rep.	--	--	--	1,562.7	922.7	639.9	1,562.7	922.7	639.9
Denmark	--	--	--	689.3	461.9	227.4	689.3	461.9	227.4
Germany	--	--	--	7,461.5	3,552.7	3,908.8	7,461.5	3,552.7	3,908.8
Estonia	--	--	--	51.6	42.2	9.4	51.6	42.2	9.4
Ireland	356.6	201.4	155.1	2,326.5	1,314.3	1,012.2	2,683.1	1,515.7	1,167.4
Greece	2,182.3	1,715.8	466.5	5 906.6	4,644.0	1,262.6	8,088.9	6,359.8	1,729.1
Spain	9,675.2	6,494.5	3,180.8	31 528.9	21,163.7	10,365.2	41,204.1	27,658.2	13,546.0
France	5,992.4	3,333.1	2,659.3	29,129.6	16,202.5	12,927.1	35,122.0	19,535.6	15,586.4
Italy	12,993.6	9,215.7	3,777.9	41,868.2	29,695.0	12,173.2	54,861.8	38,910.7	15,951.1
Cyprus	101.2	86.4	14.8	378.0	322.7	55.3	479.3	409.1	70.1
Latvia	--	--	--	158.7	126.4	32.3	--	--	--
Lithuania	3.6	2.3	1.2	324.5	210.5	114.0	328.1	212.8	115.2
Luxembourg	--	--	--	--	--	--	--	--	--
Hungary	--	--	--	1,666.7	979.8	686.9	1,666.7	979.8	686.9
Malta	--	--	--	--	--	--	--	--	--
Netherlands	--	--	--	2,574.9	1,605.7	969.2	2,574.9	1,605.7	969.2
Austria	--	--	--	727.4	461.5	265.8	727.4	461.5	265.8
Poland	--	--	--	3,355.4	1,985.0	1,370.4	3,355.4	1,985.0	1,370.4
Portugal	607,4	428,6	178,8	4,123.3	2,909.5	1,213.8	4,730.7	3,338.1	1,392.6
Romania	--	--	--	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--	--	--	--
Slovakia	11.4	5.6	5.8	207.4	102.5	104.9	218.8	108.1	110.6
Finland	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Sweden	--	--	--	664.0	371.3	292.7	664.0	371.3	292.7
U.K.	1,119.7	543.5	576.2	20,411.8	9,907.5	10,504.3	21,531.5	10,451.0	11,080.5
<b>Total</b>	<b>33,653.4</b>	<b>22,398.1</b>	<b>11,255.3</b>	<b>159,256.2</b>	<b>99,499.8</b>	<b>59,756.4</b>	<b>192,750.9</b>	<b>121,771.4</b>	<b>70,979.5</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

**Table 3.23: Optimum scenario: Reduction Payment terms to 30 days maximum, no longer late payment (effective payment equal to payment term) (B2B)  
Total net effect vs. Baseline Scenario (in mio EURO)**

	TOTAL	SME	Large companies
Belgium	2,066.8	1,256.3	810.5
Bulgaria	--	--	--
Czech Rep.	5.7	2.7	3.0
Denmark	-73.6	-49.6	-24.0
Germany	72.4	34.7	37.8
Estonia	-86.8	-71.1	-15.7
Ireland	1,133.3	639.6	493.7
Greece	6,182.2	4,856.7	1,325.5
Spain	32,685.7	21,934.1	10,751.6
France	21,857.2	12,153.4	9,703.8
Italy	40,492.4	28,703.5	11,788.8
Cyprus	316.1	269.4	46.7
Latvia	--	--	--
Lithuania	10.2	6.5	3.7
Luxembourg	--	--	--
Hungary	-438.6	-258.5	-180.1
Malta	--	--	--
Netherlands	-990.9	-619.9	-371.1
Austria	-434.3	-275.9	-158.4
Poland	-48.9	-30.2	-18.7
Portugal	2,036.7	1,432.2	604.5
Romania	--	--	--
Slovenia	--	--	--
Slovakia	34.4	17.0	17.4
Finland	-529.6	-253.6	-276.0
Sweden	-496.0	-277.6	-218.5
U.K.	4,312.5	2,092.6	2,219.8
<b>Total</b>	<b>107,831.6</b>	<b>71,343.0</b>	<b>36,488.6</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

**Table 3.24: Realistic scenario: Reduction Payment terms to 30 days maximum, proportional reduction of late payment (effective payment equal to payment term) (B2B)**

	Impact added liquidity due to reduction of payment terms (effective interest rates, see table 3.15 and 3.16)			Impact added liquidity due to improved payment behaviour (late payment interest rates)			Impact due to loss of interests successfully claimed by late payment (table 3.9 "interest successfully claimed"), proportional to $\Delta$ payment delay		
	TOTAL	SME	Large companies	TOTAL	SME	Large companies	TOTAL	SME	Large companies
Belgium	610.0	371.1	238.9	1,957.7	1,191.0	766.7	3.8	1.8	2.0
Bulgaria	--	--	--	--	--	--	--	--	--
Czech Rep.	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Denmark	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Germany	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Estonia	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Ireland	356.6	201.4	155.1	1,132.1	639.6	492.6	3.4	1.6	1.8
Greece	2,182.3	1,715.8	466.5	5,221.0	4,104.9	1,116.0	11.4	5.5	6.0
Spain	9,675.2	6,494.5	3,180.8	28,015.1	18,805.1	9,210.0	28.2	13.5	14.7
France	5,992.4	3,333.1	2,659.3	20,976.7	11,667.7	9,309.0	37.2	17.8	19.4
Italy	12,993.6	9,215.7	3,777.9	35,498.8	25,177.5	10,321.3	57.5	27.5	30.0
Cyprus	101.2	86.4	14.8	304.7	260.1	44.6	0.9	0.4	0.5
Latvia	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	3.6	2.3	1.2	9,2	5,9	3,2	0.0	0.0	0.0
Luxembourg	--	--	--	--	--	--	--	--	--
Hungary	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Malta	--	--	--	--	--	--	--	--	--
Netherlands	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Austria	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Poland	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
Portugal	607.4	428.6	178.8	2,393.4	1,688.9	704.5	12.8	6.1	6.7
Romania	--	--	--	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--	--	--	--
Slovakia	11.4	5.6	5.8	29.0	14.3	14.7	--	--	--
Finland	--	--	--	0.0	0.0	0.0	--	--	--
Sweden	--	--	--	0.0	0.0	0.0	0.0	0.0	0.0
U.K.	1,119.7	543.5	576.2	4,778.0	2,319.1	2,458.8	19.3	9.2	10.1
<b>Total</b>	<b>33,653.4</b>	<b>22,398.1</b>	<b>11,255.3</b>	<b>100,315.7</b>	<b>65,874.2</b>	<b>34,441.5</b>	<b>174.5</b>	<b>83.5</b>	<b>91.0</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

**Table 3.25: Realistic scenario: Reduction Payment terms to 30 days maximum, proportional reduction of late payment (effective payment equal to payment term) (B2B) Net effects**

	Net effect (in mio EURO, gains +, loss -) on the basis of Table 3.24			Total net effect vs. Baseline Scenario (in mio EURO)		
	TOTAL	SME	Large companies	TOTAL	SME	Large companies
Belgium	2,563.9	1,560.3	1,003.6	-118.5	-72.6	-45.9
Bulgaria	--	--	--	--	--	--
Czech Rep.	0.0	0.0	0.0	-1,557.0	-920.0	-637.0
Denmark	0.0	0.0	0.0	-762.9	-511.6	-251.3
Germany	0.0	0.0	0.0	-7,389.0	-3,518.0	-3,871.0
Estonia	0.0	0.0	0.0	-138.4	-113.2	-25.2
Ireland	1,485.4	839.4	646.0	-64.4	-36.7	-27.7
Greece	7,391.9	5,815.3	1,576.6	5,485.2	4,312.2	1,173.0
Spain	37,662.1	25,286.1	12,376.1	29,143.7	19,561.9	9,581.7
France	26,931.9	14,983.0	11,948.9	13,667.2	7,600.8	6,066.3
Italy	48,434.9	34,365.7	14,069.2	34,065.4	24,158.5	9,906.9
Cyprus	405.0	346.1	58.9	241.8	206.4	35.5
Latvia	0.0	0.0	0.0	-275.3	-219.5	-55.8
Lithuania	12.7	8.2	4.5	-305.2	-198.1	-107.1
Luxembourg	--	--	--	--	--	--
Hungary	0.0	0.0	0.0	-2,105.3	-1,238.3	-867.1
Malta	--	--	--	--	--	--
Netherlands	0.0	0.0	0.0	-3,565.9	-2,225.5	-1,340.3
Austria	0.0	0.0	0.0	-1,161.7	-737.5	-424.2
Poland	0.0	0.0	0.0	-3,404.3	-2,015.2	-1,389.1
Portugal	2,988.0	2,111.3	876.7	294.1	205.4	88.7
Romania	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--
Slovakia	40.4	20.0	20.4	-144.0	-71.2	-72.8
Finland	0.0	0.0	0.0	-529.6	-253.6	-276.0
Sweden	0.0	0.0	0.0	-1,160.0	-648.9	-511.1
U.K.	5,878.4	2,853.4	3,025.0	-11,340.6	-5,505.0	-5,835.7
<b>Total</b>	<b>133,794.6</b>	<b>88,188.7</b>	<b>45,605.9</b>	<b>48,875.4</b>	<b>37,760.4</b>	<b>11,115.0</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

**Table 3.26: Worst scenario: Reduction Payment terms to 30 days, no reduction effective payment delay (B2B)**

	Impact late payment: additional costs due to late av. effective payment vs. payment term (late payment interest rates) in mio. Euro, based on turnover			Impact due to increase of interests successfully claimed by late payment (table 3.9 "interest successfully claimed"), proportional to $\Delta$ payment delay			Net effect (in mio EURO, gains +, loss -)		
	TOTAL	SME	Large companies	TOTAL	SME	Large companies	TOTAL	SME	Large companies
Belgium	1,448.7	881.4	567.4	1.9	0.9	1.0	-1,446.8	-880.4	-566.4
Bulgaria	--	--	--	--	--	--	--	--	--
Czech Rep.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Denmark	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Germany	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Estonia	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Ireland	769.9	434.9	335.0	2.1	1.0	1.1	-767.8	-433.9	-333.9
Greece	3,986.9	3,134.7	852.3	23.3	11.1	12.1	-3,963.7	-3,123.5	-840.1
Spain	22,978.7	15,424.4	7,554.3	45.5	21.8	23.7	-22,933.2	-15,402.6	-7,530.6
France	15,813.2	8,795.6	7,017.6	32.7	15.7	17.1	-15,780.5	-8,780.0	-7,000.5
Italy	27,430.9	19,455.4	7,975.6	86,0	41,1	44,8	-27 344.9	-19 414.2	-7 930.7
Cyprus	213.7	182.4	31.3	1.4	0.7	0.7	-212.3	-181.8	-30.5
Latvia	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Lithuania	6.0	3.9	2.1	0.0	0.0	0.0	-6.0	-3.9	-2.1
Luxembourg	--	--	--	--	--	--	--	--	--
Hungary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Malta	--	--	--	--	--	--	--	--	--
Netherlands	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Austria	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Poland	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Portugal	1,407.4	993.1	414.3	12.5	6.0	6.5	-1,394.8	-987.1	-407.8
Romania	--	--	--	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--	--	--	--
Slovakia	23.0	11.4	11.7	--	--	--	-23.0	-11.4	-11.7
Finland	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sweden	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
U.K.	3,110.4	1,509.7	1,600.7	8,8	4,2	4,6	-3,101.6	-1,505.5	-1,596.1
<b>Total</b>	<b>77,188.8</b>	<b>50,826.8</b>	<b>26,362.0</b>	<b>214.2</b>	<b>102.5</b>	<b>111.7</b>	<b>-76,974.7</b>	<b>-50,724.4</b>	<b>-26,250.3</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28



**Table 3.27: Worst scenario: Reduction Payment terms to 30 days, no reduction effective payment delay (B2B) - Net effects**

	Total net effect vs. Baseline Scenario (in mio EURO)			<i>Baseline scenario: net effect (in mio EURO) – Table 3.21</i>		
	TOTAL	SME	Large companies	<i>TOTAL</i>	<i>SME</i>	<i>Large companies</i>
Belgium	-4,129.2	-2,513.4	-1,615.8	-2,682.4	-1,632.9	-1,049.4
Bulgaria	--	--	--	--	--	--
Czech Rep.	-1,557.0	-920.0	-637.0	-1,557.0	-920.0	-637.0
Denmark	-762.9	-511.6	-251.3	-762.9	-511.6	-251.3
Germany	-7,389.0	-3,518.0	-3,871.0	-7,389.0	-3,518.0	-3,871.0
Estonia	-138.4	-113.2	-25.2	-138.4	-113.2	-25.2
Ireland	-2,317.5	-1,310.0	-1,007.6	-1,549.7	-876.1	-673.7
Greece	-5,870.4	-4,626.6	-1,243.7	-1,906.7	-1,503.1	-403.6
Spain	-31,451.7	-21,126.7	-10,324.9	-8,518.5	-5,724.1	-2,794.4
France	-29,045.2	-16,162.1	-12,883.1	-13,264.7	-7,382.1	-5,882.6
Italy	-41,714.4	-29,621.4	-12,093.0	-14,369.5	-10,207.2	-4,162.3
Cyprus	-375.5	-321.5	-54.0	-163.2	-139.7	-23.4
Latvia	-275.3	-219.5	-55.8	-275.3	-219.5	-55.8
Lithuania	-323.9	-210.2	-113.7	-317.9	-206.3	-111.5
Luxembourg	--	--	--	--	--	--
Hungary	-2,105.3	-1,238.3	-867.1	-2,105.3	-1,238.3	-867.1
Malta	--	--	--	--	--	--
Netherlands	-3,565.9	-2,225.5	-1,340.3	-3,565.9	-2,225.5	-1,340.3
Austria	-1,161.7	-737.5	-424.2	-1,161.7	-737.5	-424.2
Poland	-3,404.3	-2,015.2	-1,389.1	-3,404.3	-2,015.2	-1,389.1
Portugal	-4,088.8	-2,893.0	-1,195.8	-2,694.0	-1,905.9	-788.0
Romania	--	--	--	--	--	--
Slovenia	--	--	--	--	--	--
Slovakia	-207.4	-102.5	-104.9	-184.3	-91.1	-93.2
Finland	-529.6	-253.6	-276.0	-529.6	-253.6	-276.0
Sweden	-1,160.0	-648.9	-511.1	-1,160.0	-648.9	-511.1
U.K.	-20,320.6	-9,863.9	-10,456.7	-17,219.0	-8,358.4	-8,860.7
<b>Total</b>	<b>-161,893.9</b>	<b>-101,152.7</b>	<b>-60,741.2</b>	<b>-84,919.2</b>	<b>-50,428.4</b>	<b>-34,490.9</b>

Source : European Commission, DG ECFIN on the basis of average payment terms in days (table 3.3), and turnover table 3.28

<b>Table 3.28: Turnover 2006 (in mio EURO)<sup>1</sup></b>				
	<b>Turnover total</b>	<b>SME</b>	<b>large companies</b>	<b><sup>1</sup> comments rf. NACE 1.1</b>
Belgium	795,158	483,750	311,409	excl. C
Bulgaria	61,857	40,931	20,926	2005
Czech Rep.	324,538	191,637	132,900	
Denmark	435,662	291,953	143,709	excl.C and E40
Germany	4,322,906	2,058,297	2,264,609	
Estonia	36,043	29,454	6,589	excl.CA and H
Ireland	325,043	183,619	141,423	excl.E40
Greece	283,671	223,033	60,638	excl.C
Spain	2,053,175	1,378,189	674,986	
France	3,197,686	1,778,620	1,419,066	
Italy	2,773,486	1,967,092	806,393	
Cyprus	22,073	18,844	3,229	excl.E
Latvia	38,756	30,870	7,886	excl.CA
Lithuania	48,074	31,188	16,886	excl.I62 and K70
Luxembourg	74,393	43,865	30,528	excl. E40 and I
Hungary	238,573	140,246	98,327	excl.C
Malta	-	-	-	
Netherlands	989,307	616,919	372,388	2005, excl.C and E40
Austria	505,692	320,883	184,809	excl. C and E41
Poland	595,103	352,061	243,042	
Portugal	316,212	223,129	93,083	excl.C and E41
Romania	175,821	103,672	72,150	
Slovenia	67,334	42,630	24,704	excl.C
Slovakia	88,531	43,762	44,769	
Finland	339,627	162,632	176,995	excl. C
Sweden	605,897	338,852	267,045	
U.K.	3,547,762	1,722,018	1,825,744	

#### 8.4. Annex 4: Detailed description of the baseline option

- (1) Actual payment periods should shorten, on the one hand, with the establishment of the Single Euro Payments Area (SEPA)<sup>79</sup> which will make all electronic payments across the eurozone as easy as domestic payments within one country and, on the other, through e-Invoicing between business partners<sup>80</sup>. E-Invoicing will become a fundamental part of an efficient financial supply chain, linking the internal processes of enterprises to payment systems.
- (2) Many hurdles for litigation in cross-border cases concerning uncontested pecuniary claims will be cleared by Regulation (EC) No 1896/2006 creating a European order for payment procedure which applies from 12 December 2008, except in Denmark. This regulation simplifies, speeds up and reduces the costs of litigation in such cross-border cases by creating a European order for payment procedure. The new payment procedure also applies to cases in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court. When the application for a European order for payment fulfils the requirements of the regulation and when the claim appears to be founded, as soon as possible and normally within 30 days of the lodging of the application, the competent court issues a European order for payment. European orders for payment are recognised throughout the Member States without any intermediate proceedings in the Member State of enforcement.
- (3) Regulation (EC) No 805/2004 creating a European enforcement Order for uncontested claims puts in place a system whereby a judgment certified as a European enforcement order in the Member State of origin must be recognised and enforced in the other Member States (except Denmark) without the need for a declaration of enforceability and without any possibility of opposing its recognition. Moreover, a judgment certified as a European enforcement order is enforced under the same conditions as a judgment handed down in the Member State of enforcement. This regulation applies from 21 October 2005.
- (4) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishes a European Small Claims Procedure intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States. This Regulation also eliminates the intermediate proceedings

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<sup>79</sup> Directive 2007/64/EC on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC will complete an EU-wide single market for payments and provides, amongst others, the necessary legal framework for the SEPA. Moreover, Regulation (EC) No 2560/2001 on cross-border payments in euro eliminates the difference of price between cross-border and national payments.

<sup>80</sup> Directive 2001/115/EC of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax already requires Member States, since 1<sup>st</sup> January 2004, to recognise the validity of electronic invoices and allow cross-border electronic invoicing and electronic storage.

necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure. This Regulation applies, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements.

- (5) Certain differences between national rules governing jurisdiction and recognition of judgments in civil and commercial matters hampered the sound operation of the internal market. These differences were eliminated with the entry into force of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters which unifies the rules on conflicts of jurisdiction and simplifies the formalities with a view to promoting the rapid and simple recognition and enforcement of judgments from Member States bound by the Regulation.
- (6) Many obstacles to the services rendered by debt collection agencies will be lifted by Directive 2006/123/EC on services in the internal market. Debt recovery services which are carried out by service providers outside the context of judicial procedures will fully enjoy the benefits of the directive so that economic operators will have a broader choice of debt collection agencies. Only the recovery of debts by recourse to judicial proceedings is included in the additional derogations from the freedom to provide services, laid down in Article 17 of the Directive.
- (7) Access to alternative dispute resolution will be improved and simplified in all Member States except Denmark by Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. Its objective is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes. The directive will apply to cross-border disputes.
- (8) Economic operators claiming late payment of invoices and/or interest for late payment before a court can be legal or natural persons. Natural persons submitting such claim in a cross-border dispute are entitled, under very strict conditions, to receive appropriate legal aid in accordance with the conditions laid down in Council Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.
- (9) Finally, collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator are governed by Council regulation (EC) No 1346/2000 on insolvency proceedings to prevent the transfer of assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).

## 8.5. Annex 5: Options discarded at an early stage

Options	Reasons
<p><b>Repeal of the Directive</b></p>	<p><b>The Directive reflects the general principle that payment of interest constitutes a compensation for borrowed capital.</b> The payment of interest for late payment is a logical consequence of this principle.</p> <p><b>Risk of fragmentation of the internal market:</b> If the Directive is repealed, it is likely that, over time, statutory interest rates for late payment would vary widely within the EU or would not even be applied so that it would become increasingly unattractive to sell products and services in Member States with a very low (or no) statutory interest rate. The types of statutory interest would also vary between Member States, some of which would opt for simple interest while others would opt for compound interest, possibly combined with other measures. There is no doubt that the repeal of the Directive would worsen the situation in the medium and long term. It would also lead to fragmentation of the internal market.</p> <p><b>The Directive guarantees that interest can be charged.</b> However, charging interest for late payment is only a possibility and not an obligation under the Directive. It is therefore important that this possibility exists throughout the EU to give creditors useful tools to encourage payment for goods and services on time. Many enterprises have included this possibility in their contracts or general commercial conditions. 38% of IPM respondents and more than 50% of EBTP respondents apply the statutory interest rate or another interest rate in their general commercial and payment conditions, while 42% of EBTP respondents and 56% of IPM respondents do not apply an interest rate at all.</p> <p>About 25% of IPM and EBTP respondents frequently or always claim interest for late payment, often successfully: figures indicate that, despite the weaknesses of the Directive, <b>interest for late payment is still an effective instrument</b> for obtaining compensation for late payment.</p> <p>Furthermore, not a single stakeholder requested or suggested the repeal of the Directive.</p>
<p><b>The creation of a European Fund aimed at providing finance to SMEs</b></p>	<p>Some sources suggested the creation of a European Fund aimed at providing finance to SMEs at no cost and based on accounts receivable. The fund would be financed through penalties levied on large companies or public institutions that systematically pay late. The fund would give SMEs access to late payment financing, and would be responsible for recouping payment penalties from the relevant large companies or public institutions.</p> <p>However, such a fund would give rise to a <b>large amount of red tape and additional bureaucracy</b>, as mechanisms would have to be implemented to prevent fraud. The measure would involve significant administrative expenditure and might involve complex and lengthy procedures for verifying entitlement. The potential for fraudulent claims on the fund is high. Moreover, it could even send the wrong</p>

	<p>signal to economic operators, the very existence of a fund backing up failing late payers could encourage companies to pay late systematically or even to postpone payment for an indefinite period. Furthermore such a EU-wide instrument would also raise thorny issues with regard to subsidiarity. Therefore, this option failed to meet the proportionality principle.</p>
<p><b>A new programme to enhance SME capabilities</b></p>	<p>Another possibility was the development of a programme to enhance SME capabilities in evaluating clients and managing account receivables. Such a programme could include measures to promote debt collection, factoring and credit insurance for SME's.</p> <p>However, besides national and local programmes specifically targeted at SME's, <b>a number of European funding programmes are already available to small and medium-sized enterprises:</b> the Competitiveness and Innovation Framework Programme (CIP) , the European Regional Development Fund , the European Social Fund , the Joint European Resources for Micro and Medium Enterprises (JEREMIE) Programme and the European Investment Fund (EIF) . In addition, the European Bank for Reconstruction and Development (EBRD) currently offers a EU/EBRD SME Finance Facility, which is aimed at supporting the development of SMEs in the new EU Member States and the EU Accession Countries. These measures consist of:</p> <ul style="list-style-type: none"> <li>- an SME Finance Facility (SMEFF): The objective of the SMEFF is to encourage banks, leasing companies and investment funds to expand and maintain long-term financing of SME operations in the new Member States and certain applicant countries. The SMEFF is managed by the EIB, EBRD, CEB and KfW and consists of two so-called 'windows': a loan window providing credit lines from the IFIs combined with incentives for the participating lending institutions, and an equity window providing equity capital.</li> <li>- A High Growth and Innovative SME Facility (GIF): The GIF is managed by the EIF on behalf of the European Commission and is part of the Competitiveness and Innovation Framework Programme, 2007-2013 (CIP). It comprises two 'windows': <ol style="list-style-type: none"> <li>1. GIF 1, which promotes early-stage (seed and start-up) investments through specialised Venture Capital Funds. These provide capital to innovative SMEs and co-invest in funds and other investment vehicles promoted by business angel networks.</li> <li>2. GIF 2, which promotes expansion-stage investments through specialised risk capital funds providing equity or quasi-equity for innovative SMEs with high-growth potential.</li> </ol> </li> <li>- An SME Guarantee Facility (SMEGF): Also part of the CIP and managed by the EIF, the SMEGF has four 'windows': a loan window providing debt financing via loans or leasing; a microcredit window providing guarantees for funds which gives loans of smaller amounts and grants to partially offset high administrative costs; an equity window providing guarantees for equity or quasi-equity fund investments in SMEs; and a securitisation window providing securitisation of SME debt-finance portfolios.</li> </ul>

	<p>- A Capacity Building Scheme (CBS): Again under the CIP, the CBS has two parts: a partnership action, which focuses on finance for eco-innovation; and a seed capital action managed by the EIF, which provides grants to venture capital funds to cover in part their start-up costs and for the long-term recruitment of staff with specific investment or technology expertise.</p> <p>Furthermore, <b>most companies seem to assess the creditworthiness of their business customers before signing contracts.</b> According to a survey organised for the RPA Report, almost 64% of companies actually check creditworthiness while a slightly higher percentage of big companies (75% of large companies responding) than smaller companies (59% of the smaller companies) do so. Only 13% of companies responded that they did not check creditworthiness. In general, the percentage of smaller companies not checking creditworthiness was higher at 17% than for larger companies (1.6%). Most respondents confirmed that they have pre-set and readily identifiable strategies in place for managing credit and payment issues (with a higher percentage of larger companies having such strategies in place than smaller companies). See also the table at the bottom of this annex.</p> <p><b>Many businesses already use the services offered by debt collection, factoring and credit insurance organisations which are service providers operating on a commercial basis.</b> Debt collection agencies are commercial organisations which collect debts on behalf of a creditor for a commission or buy a debt from the creditor at a discounted price. Factoring agencies are commercial organisations (factors) providing short-term finance based on purchase of the client's account receivables at a discount. This transaction can mean the factor assuming the risk for late payment or non-payment (non-recourse factoring) or not assuming such risks (recourse factoring). Credit insurers are commercial organisations offering for a fee to cover credit risk from delivery of a good or service.</p> <p>Debt collection, factoring and credit insurance organisations will benefit from the different instruments set out under the base-line option. In particular, the implementation of Directive 2006/123/EC on services in the internal market will allow them to explore new markets. The promotion of such commercial activities by a European initiative might be inappropriate and could have a distorting effect on competition in that field.</p> <p>Thus, this option does not meet the proportionality requirement and was discarded.</p>
<p><b>Exempt income in the form of late payment interest from VAT</b></p>	<p>Currently, Member States vary in the way they consider late payment as a cost to businesses in terms of reduced cash flow and the calculation of their tax liabilities. If a company does charge late payment interest to its debtors, this is often considered business income, sometimes from the moment when it is actually invoiced; this includes subjecting the interest charged to Value Added Tax (VAT) from the moment when it is charged, even though no funds have actually been received. As a result, the value of monies received from any interest that might eventually be recovered will be reduced by tax payments. This measure</p>

	<p>would require harmonisation of VAT legislation to exempt interest for late payment from VAT in all Member States.</p> <p>It is estimated that SMEs and large companies would save approximately €37 million and €40 million respectively if Member States did not charge VAT on late payment interest. These amounts would be lost revenue to Member State governments.</p> <p>This option only focuses on the creditor and does not have any effect in encouraging late payers to pay on time. Nevertheless, <b>the risk of fraud would be very considerable</b>. This option might create a VAT-loophole, whereby companies would designate other forms of income and payments as “late payment interest” purely to avoid paying VAT on them. Therefore, this option does not meet the proportionality requirement and was discarded.</p>
<p><b>Promoting the use of Escrow Facilities (non-legislative option)</b></p>	<p>An escrow facility involves a deposit of funds, a deed or other instrument to a third, trustworthy party acting as an intermediary in the transaction. The intermediary receives and holds payment and notifies the seller or provider to deliver the products or render the service. Once the intermediary receives the invoice from the creditor and the acceptance from the debtor, the intermediary forwards the payment to the creditor.</p> <p>Escrow facilities avoid the problems of late payment since funds are deposited by a debtor (who can obviously pay for the goods) with a third party and the creditor is assured that their customer will be able to pay on time, as soon as the goods have been delivered (and approved). It protects the debtor from having to accept faulty goods, as no money is transferred until the debtor is satisfied with the goods. It also protects the creditor in that cash flow problems stemming from late payments are avoided. The advantage of an escrow facility for SMEs with credit management problems would be to guarantee funds on delivery of goods/services and to reduce the amount of financial management for creditors (as these are managed by the escrow facility). It is not an appropriate system, however, for companies that rely on trade-credit to do business. Currently, escrow facilities are rarely used in B2B transactions by SMEs within Europe, but are becoming more commonly used in consumer-based transactions and for new technologies, such as in software source code licensing, databases, industrial designs, and government initiatives for key-escrow encryption. Larger enterprises occasionally use escrow facilities for transactions where guarantees for payments on delivery of services are required or for large, high-risk overseas contracts where the reliability of the buyer or seller is highly uncertain or unknown. In certain Member States, escrow facilities are used for property exchange transactions. There is currently little evidence of intra-EU trading between SMEs utilising escrow facilities.</p> <p>Escrow facilities are already available in almost all Member States but are currently not widely used, particularly by SMEs. The latter indicated in consultation that <b>escrow facilities are considered too complicated, the cost is too high and there is no legal protection of the funds</b> whilst with the third party, so if the escrow company were to declare bankruptcy, then the funds would be lost. Moreover, <b>SMEs</b></p>



	<p><b>which rely on trade-credit transactions and with fewer funds to commit to escrow-type arrangements may end up not being able to compete with larger companies</b> which are more likely to be able to pay on delivery (i.e. large companies could benefit more than smaller SMEs and public services). Similarly, large retailers may prefer not to use escrow as they would lose trade-credit from their extended payment periods, and may not be able to base orders on sales. Suppliers would benefit from escrow as their risk would be reduced, but they may lose customers if they insist on escrow facilities which favour them, rather than the debtors. In addition, some interested parties cited the lack of comprehensive credit risk reports as another obstacle to increased uptake: if a potential customer has a low credit risk, paying for escrow services would be an unnecessary cost.</p> <p>For these reasons, this option did not meet the proportionality requirement and was discarded.</p>
<p><b>Promoting the use of securities (non-legislative option)</b></p>	<p>The timely payment of invoices could be guaranteed by a security given by the debtor. A security interest on goods entitles the creditor to satisfy his outstanding claim from the charged goods to the exclusion of other creditors of the borrower. Hence a security interest gives the secured creditor a right of preferential satisfaction from the goods charged with the security interest. Nowadays, various indirect techniques are usually employed. In some Member States, the rules on sales provide the seller with a statutory right of preferred satisfaction.</p> <p>Securities for commercial transactions exist already in all Member States. In most Member States, the seller must make his own arrangements. Since the transfer of ownership in the goods is subject to the agreement of the parties, the seller may retain his ownership in them until he has received the full purchase price, as laid down in the Directive. If the seller himself is using credit to finance his credit sales, the lender can usually be secured by transferring to him the seller's retained ownership. Under modern economic conditions it is rarely feasible to deprive the debtor of charged goods. Frequently the goods are not even in the debtor's possession, especially in the case of commercial transactions. In these instances the debtor must be allowed to dispose of the goods while the security interest is maintained. A number of legal systems, however, do not yet recognize the legitimate interests of both parties in this situation. They prohibit any disposition by the debtor and may not acknowledge a security interest in goods that remain in his possession for the purposes of resale.</p> <p><b>The rules to be followed in enforcing a security interest differ considerably from Member State to Member State and even within a Member State according to the type of security interest involved.</b> Very often the creditor in a commercial transaction must sell the charged goods by public sale; occasionally he is permitted to acquire the charged goods himself. The rules on security interests are still strongly national in character. National laws differ from one another in their priority rules, either between competing charges or between voluntary and legal charges, and between categories of creditors. Conflicts may arise in the case of cross-border secured transactions in terms of recognition, efficacy and enforcement which may lead to an increased risk and higher costs for creditors. Moreover, a cross-border</p>

secured transaction may involve either contractual or proprietary issues so that different national laws could apply to different aspects of the same case. The profitability of such transactions depends not only on the risk of the transaction per se but also on factors such as language barriers, national legal formalities, taxes, enforcement and priority rules that may differ from Member State to Member State and involve extra risks in certain cases. From the debtor's point of view, a transaction that would be cheaper in absolute terms if it were concluded with a creditor in another Member State may become more expensive because of these factors (see Di Luigi C., "Divergences of Security and Property Law in the European Union: The Need for Action", J.B.L. 6, 2008, pp. 526-549; Drobnig U., Snijders H.J., Zippo E.-J, Divergences of Property Law: An Obstacle To The Internal Market?, European Law Publishers, 2006). Finally, securities always involve additional cost. For all these reasons, **SMEs relying on trade-credit transactions may end up not being able to compete with larger companies** which are more likely to be able to pay on delivery (i.e. large companies could benefit more than smaller SMEs and public services).

These factors lead to the conclusion that the promotion of such securities did not meet the proportionality and subsidiarity requirements.

One of the most frequently used securities in international sales transactions is where the seller insists on payment by **letter of credit**. A letter of credit is essentially an authorization made by a buyer to his agent (usually a bank) to make payment to a seller. The letter of credit is often used when there is a substantial time lag between the dispatch of goods by a seller and their receipt by the buyer. The seller, having sent the goods off, has fulfilled his part of the contract and seeks payment. The buyer, not having received the goods and being unable to inspect them, will be reluctant to pay. To overcome this difficulty, the buyer and seller arrange to have intermediaries operating in each of the two countries involved make settlement. The buyer instructs his bank to issue a letter of credit authorizing payment to be made to the seller when the latter's part of the contract has been fulfilled (usually when the seller has dispatched the correct quantity of suitable goods). The buyer's bank (the "issuing" bank) ascertains whether or not this has been done by obtaining the cooperation of a bank in the seller's country. This bank (the "corresponding" bank), having inspected all the relevant documents of title and bills of lading to ensure that the seller has performed the contract, makes payment to the seller, often by means of a bill of exchange or other credit device. The document of title, bills of lading, and so forth are then mailed to the buyer. The buyer then reimburses his bank, which in turn reimburses the corresponding bank for making payment to the seller. In 1933 the International Chamber of Commerce in Paris published the Uniform Customs and Practice for Documentary Credits, which was revised several times. The latest revision was approved by the Banking Commission of the ICC at its meeting in Paris on 25 October 2006. This latest version, called the UCP600, formally commenced on 1 July 2007 (see <http://www.iccwbo.org/>). It has been adopted by banks and by banking associations in almost all countries of the world. Therefore, there is no further need to promote letters of credit.

	<p>Consequently, this option did not meet the proportionality requirement and was discarded.</p>
<p><b>Developing and Promoting Credit and Financial Management Programmes (non-legislative option)</b></p>	<p>SMEs currently with poor practices could benefit from an improved ability to manage cash flows and to manage finance requirements more generally. This should improve their profitability and hence increase the potential for growth. Training and support may also make it more likely that SMEs are able to apply the principles of the late payment directive. For example, three quarters of the 1,476 businesses surveyed by <a href="http://www.payontime.co.uk">www.payontime.co.uk</a> admitted that they were unable to calculate the interest due to them from late payments. This means that many SMEs are not benefiting from the legislation designed to protect them.</p> <p>In order to help SMEs with limited resources and staff to spend time on administrative and legal issues, programmes could be developed aimed at enhancing SME capabilities in evaluating clients and in account receivables management. Such programmes could provide training and advice on issues and systems for:</p> <ul style="list-style-type: none"> <li>- accountancy and financial management to improve individuals abilities to prepare and monitor accounting information, with including a discussion on the IT tools and systems available;</li> <li>- how to develop a credit management strategy, what its function is and who should be responsible;</li> <li>- setting up payment collection processes and ensuring that they provide timely information on late payments, performance against targets, etc. (including information on the available IT tools);</li> <li>- negotiating contracts, agreeing payment terms, addressing retention of title issues, and explaining payment procedures to suppliers;</li> <li>- how to calculate late payment interest and to apply other provisions of the Directive, including a discussion on intra-EU trade;</li> <li>- the advantages and disadvantages of different financing alternatives, including the use of bank loans and other service such as factoring;</li> <li>- how to undertake credit checks and to monitor customer payment performance; and</li> <li>- how to manage debt recovery, including the development of collection strategies, details of the tools available, taking legal action, garnishment of accounts, etc.</li> </ul> <p>The services currently being offered by representative organisations and credit and service providers vary considerably across countries, with some providing free or affordable and readily accessible advice and others giving no business support to members. However, it is understood that many of the ‘free services’ have hidden costs, such as charges for credit worthiness checks, sending of invoices and calculating interest on a late payment; or advice may involve a referral to professional consultants/advisors who charge for their services. It is therefore difficult to determine the likely costs to SMEs of increasing access to business management support. The costs will depend on what form the support takes. For example, schemes might include free guides on credit management, a website with credit management and debt recovery information or a national seminar programme on credit management.</p> <p>At one end of the spectrum, there may be value in expanding programmes such as that being operated by the EU/EBRD to all EU MS where there appear to be significant late payment problems due to</p>

inadequate financing being made available by financial institutions. Increased technical assistance to banks to increase the rate of lending to SMEs could help break the cycle of companies relying on 'trade credit'; in addition, the increase in skills within financial institutions may transfer through to an increased skill base within their SME clients.

More direct programmes could expand on those already in use. For example, in Estonia, electronic banking systems are well established and many banks provide options for "Economic Resource Planning", such as management of cash flow and invoices. The IT solutions themselves are free, but customers pay to use the services. The price depends on the volume of use, but is about 3EKK (about €0.20) to send out an e-invoice – making a payment is free. Compare this with the cost of out-sourcing credit and financing to a large corporation such as PriceWaterhouseCoopers, which may come as a fixed price or be a proportion of a company's total turnover for a year. Other services come in the form of guides for credit management such as Croner's Guide to Credit Management at around £700 (€910). Free programmes aimed at SMEs can also be found on the internet, such as the SME Toolkit which offers software, business forms, training, etc to SMEs, covering topics such as accounting and finance (including credit and collections), financial management, business planning, etc. The divergence between what is currently offered and what could be offered is thus enormous.

In the UK, account receivables management and commercial development are seen more as an issue of awareness, education and training, as opposed to a lack of available technology. For example, the Institute of Credit Management (ICM), SME representative organisations (e.g. FPB), regional business development authorities, and banks, including other lending institutions and the centralised business support hub - Business Link – website, are known to provide or promote training and education in these areas.

Information on the annual funding received by Business Link provides an indication of the potential magnitude of the costs that could be involved in MS organisations providing free business advice to SMEs. The budget for the UK Business Link network in 2003 was around £300 million (roughly €390 million), with approximately £27million (€35 million) funded by the EU (including under the Single Regeneration budget). This budget covered all services provided (website, local centres, advice and training, etc. covering issues ranging from regulation to export to innovation), not just those related to financial management. The services provided by Business Link are free, but it is clear that many issues involve referral to consultants who may then charge the user. This figure of €390 million compares to €204 billion in late payments to UK SMEs and translates into an investment by the funding organisations of around €245 (£196) per SME company in terms of providing free advisory services.

It is impossible to identify any basis for calculating the costs of developing and promoting credit and finance management programmes for EU-wide roll out. Therefore, the Business Link funding figure is used here to provide an indication of possible levels of expenditure.

If it is assumed that only 10% of this actual expenditure figure related to credit and financial management services, and that this level of

	<p>investment per SME company (i.e. €25 per company) was made in the 10 countries with the worst late payment problems, this would translate into costs of around €0.26 billion; or if such a programme of support was rolled out across all 27 MS, it would cost around €0.48 billion, roughly 0.04% of the total value of late payments to SMEs across the EU.</p> <p>This figure is high compared to the total EU budget for the Enterprise Europe Network –aimed at helping SMEs develop their innovation potential - which is €320 million over 7 years. It is therefore likely that the funding of any support programme in relation to late payments would be at a lower level than this, or at least no higher.</p> <p>To put these figures into perspective, the on-line survey found that smaller companies are willing to pay for improved credit and finance management systems (24% for SMEs as opposed to 9% for larger companies). However, an equal number of SMEs is not willing to pay (22%). The results of the survey suggest that those SMEs who would be willing to pay would generally pay up to &lt;€2,500, but that interest wanes as the price increases beyond this. In contrast, 10% of larger companies would be willing to pay &lt;€5,000 for these services.</p> <p>The weakness of this option is that it addresses the problem of late payments indirectly. The willingness of creditor companies to actually charge late payment interest may not necessarily increase. It also requires voluntary up-take by SMEs and it would be difficult to monitor its impact. Furthermore, many Member States already have programmes in place so that care would need to be taken to ensure that advice is consistent across such programmes. Programmes involving a charge or involving referral to external and paid advisory services may deter SMEs .</p> <p>Therefore, this option did not meet the proportionality requirement and was discarded.</p>
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<b>Table concerning the discarded option “A new programme to enhance SME capabilities” Protection against payment risks: does your company take deliberate steps in order to protect itself from bad debt?</b>		
	<b>Yes</b>	<b>No</b>
<b>Overall</b>	<b>65%</b>	<b>35%</b>
Germany	72%	28%
Belgium	66%	34%
France	74%	26%
Italy	53%	47%
The Netherlands	65%	35%
U.K.	60%	40%
<i>Source : Altradius Payment Practices Barometer – Winter 2007</i>		

## 8.6. Annex 6: overview of the jurisprudence of the Court of Justice about the Directive

Article of the Directive	Case references	Analysis of the Court of Justice
<p><b>Article 3(1)(e):</b> The creditor is entitled to claim reasonable compensation from the debtor for all relevant <b>recovery costs</b> incurred through the latter's late payment.</p>	<p>Judgment of 10 March 2005</p> <p>QDQ Media SA v Alejandro Omedas Lechan</p> <p>Case C-235/03</p>	<p>In a case which relates to a dispute between individuals, where it is not possible on the basis of national law to include, in the calculation of the costs which an individual who owes a business debt might be ordered to pay, the expenses arising from representation by an <i>abogado</i> or <i>procurador</i> of the creditor in judicial proceedings for the recovery of that debt, Directive 2000/35 cannot of itself serve as the basis for the inclusion of such expenses, since a directive cannot of itself impose obligations on an individual and cannot be relied on against an individual.</p>
<p><b>Article 3(1)(c)(ii):</b> The creditor is entitled to interest for late payment to the extent that he has not <b>received the amount due on time</b>, unless the debtor is not responsible for the delay.</p>	<p>Judgment of the Court of 3 April 2008</p> <p>01051 Telecom GmbH v Deutsche Telekom AG</p> <p>Case C-306/06.</p>	<p>It is explicit in the wording of that provision that a debtor's payment is regarded as late, for the purposes of entitlement to interest for late payment, where the creditor does not have the sum owed at his disposal on the due date. In the case of payment by bank transfer, only the crediting of the amount due to the creditor's account will enable him to have that sum at his disposal.</p> <p>Article 3(1)(c)(ii) is to be interpreted as meaning that it requires, in order that a payment by bank transfer may avoid or put an end to the application of interest for late payment, that the sum due be credited to the account of the creditor within the period for payment.</p>
<p><b>Article 3(2):</b> 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.</p>	<p>Judgment of the Court of 11 December 2008</p> <p>Commission of the European Communities v Kingdom of Spain</p> <p>Case C-380/06</p>	<p>As is clear from Article 3(1)(a) of Directive 2000/35, the parties are generally free to fix in their contract the date or the period for payment. It is therefore only in the absence of a relevant contractual clause that the statutory period of 30 days prescribed by Article 3(1)(b) of that directive must apply.</p> <p>Article 3(2) of Directive 2000/35 then allows the Member States to extend that 30-day period, but makes that possibility subject to a twofold condition. First, the option must be limited to certain categories of contracts. Second, with regard to the duration of the derogating period, it may be extended to a maximum of 60 days, if the parties are prohibited from derogating from this by contract or on condition that a mandatory interest rate that substantially exceeds the statutory rate is applicable.</p> <p>Article 3(2) of Directive 2000/35 governs exclusively the possibility afforded to Member States of fixing, in certain limited cases, a statutory period exceeding the 30-day period applicable in the absence of a contractual clause on the date or the period of payment. In other words, only where the parties are silent on the matter does the situation fall within the scope of Article 3(2) of that directive.</p>

<p><b>Article 4(1):</b> The seller retains title to goods until they are fully paid for if a <b>retention of title</b> clause has been expressly agreed between the buyer and the seller before the delivery of the goods.</p>	<p>Judgment of the Court of 26 October 2006</p> <p>Commission of the European Communities v Italian Republic</p> <p>Case C-302/05.</p>	<p>In view of the wording of Article 4(1) of Directive 2000/35 and the purpose of that directive, it cannot be inferred from that provision that it is intended to affect any rules other than those which expressly provide, firstly, that it is possible for the seller and the buyer expressly to agree a retention of title clause before the goods are delivered and, secondly, that it is possible for the seller to retain title to the goods until they have been paid for in full.</p> <p>Accordingly, the national rules which concern the enforceability of retention of title clauses against third parties, whose rights are not affected by Directive 2000/35, are still governed exclusively by the national legal orders of the Member States.</p>
<p><b>Article 5(1):</b> Member States shall ensure that an <b>enforceable title</b> 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.</p>	<p>Judgment of the Court of 11 September 2008</p> <p>Caffaro Srl v Azienda Unità Sanitaria Locale RM/C</p> <p>Case C-265/07.</p>	<p>As regards the recovery procedures for unchallenged claims, the directive harmonises only the period within which an enforceable title can be obtained, but does not govern forced execution procedures, which remain subject to the national law of the Member States.</p> <p>Directive 2000/35/EC is to be interpreted as not precluding a national provision [...] pursuant to which a creditor in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority.</p>

**8.7. Annex 7: Transposition of Article 3(5) (organizations representing SMEs) and Article 6(3)(c) (threshold of €5)**

Member State	Threshold	Representing organizations
Belgium	no	Possibility exists under national law, but the role of representative organizations is strictly limited to asking the court to grant an injunction against contractual terms drawn up for general use on the ground they are grossly unfair.
Bulgaria	no	
Czech Republic	no	
Denmark	no	
Germany	no	
Estonia	no	
Ireland	yes	
Greece	no	
Spain	no	
France	<b>no (but usually appears in contracts)</b>	
Italy	yes	Possibility exists under national law, but the role of representative organizations is strictly limited to asking the court to grant an injunction against contractual terms drawn up for general use on the ground they are grossly unfair.
Cyprus	no	
Latvia	no	
Lithuania	yes	
Luxembourg	no	
Hungary	no	
Malta	yes	
Netherlands	no	
Austria	no	
Poland	no	
Portugal	no	Possibility exists under national law, but the role of representing organizations is strictly limited to asking the court to grant an injunction against contractual terms drawn up for general use on the ground they are grossly unfair.
Romania	no	
Slovenia	no	
Slovakia	no	
Finland	no	
Sweden	no	
United Kingdom	no	



## 8.8. Annex 8: the SME test

<p><b>a) Consultation with SMEs representatives</b></p>	<ul style="list-style-type: none"> <li>• The options were discussed at the regular meeting between the SME Envoy and SME organisations on 22 October 2008. The discussion focused on the causes of late payment, the role of business organisations in informing SMEs, the need to clarify the rules so that businesses understand them, and on the possibility to extend the coverage of the directive to business – customer relations (currently only business to business transactions).</li> <li>• The European Business Test Panel (EBTP) was consulted. See Annex 2. Stakeholders were also consulted through the I.P.M. consultation, the results of which are shown in Annex 1.</li> <li>• The consultation period for the I.P.M. consultation was extended from 8 to almost 12 weeks in order to allow SME organisation to consult their members, considering also that they often have to translate and explain legislative proposals for their members.</li> </ul>
<p><b>b) Preliminary assessment of businesses likely to be affected:</b> during this stage, it should be established whether SMEs are among the affected population. If the preliminary assessment leads to the conclusion that SMEs are amongst the affected parties, the initial presumption is that costs fall disproportionately on small businesses.</p>	<p>See sections 2.2.1, 2.3.1, 2.3.3 and Tables 3.1 and 3.2 in Annex 3.</p>
<p><b>c) Measurement of the impact on SMEs</b></p>	<p>The distribution of the potential costs and benefits of the proposals (policy options) over the businesses size, differentiating between SMEs and large enterprises is analysed in the light of the SME's competitiveness (section 3.2) in sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10 and in chapter 6. Cost and impacts identified for SMEs were compared with those of large enterprises.</p>
<p><b>d) Assess alternative options and mitigating measures</b></p>	<p>At the end of the impact assessment, there was no indication that the selected options might result in a disproportionate burden for SMEs. Consequently, there is no element showing the need for SME specific measures in order to ensure compliance with the proportionality principle.</p>