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The Danish Government's response to the Commission's call for evidence and public consultation on the revision of the Late Payments Directive

1. General remarks

The government supports the goal of promoting a culture of prompt payment. The tools used to promote a culture with prompt payment should be suitable and necessary and not excessive in relation to the objective sought to be achieved. We are positive regarding the digitization of business reporting tools, including payment solutions and e-invoicing infrastructure. This can support the digital transition of European businesses through allowing for innovation of business models and the easing of internal processes.

2. Follow a light touch approach. Make a clear distinction between late payment in breach of contract and long payment terms based on contractual agreement.

Flexibility allowed by freedom of contract has its own value. This is part of the reason why the current directive also protects the interest of businesses to agree on terms most suitable for their business models. The problem of late payment is also easily misinterpreted to cover all payments later than 60 days, regardless of whether they are agreed fairly between businesses or in breach of contract. A recent study from the JRC contributes to blurring the distinction by estimating the economic impact of payments within a fixed period and thereby measuring fair contracts as part of the problem.¹

¹ European Commission, Joint Research Centre, Ferrara, A., Ferraresi, M., Assessing the economic impact of faster payments in B2B commercial transactions : final report, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2760/219348>

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We suggest that the Commission makes clear distinction between late payment contract breaches versus long payment agreements in analytic works and when solutions are presented in the impact assessment. To avoid risk of over-regulation, we also encourage the Commission to follow a light touch approach, making sure any further intervention is proportionate to the available evidence.

3. Promote shorter payment terms in sectorial agreements or standard contracts instead of setting maximum payment terms.

Promotion of fair payment terms and practices should be balanced with respect for freedom of contract. Contracts are a result of negotiation and competition on many factors. Contract flexibility is a necessary driver for innovative business models, because SME needs vary in sectors and individually. For these reasons, setting maximum payment terms risks weakening the bargaining position of SMEs regarding their needs apart from short term liquidity.² As a result, less flexibility in payment terms is likely to result in less favourable price negotiations for SMEs.

We urge the Commission to explore alternatives to setting maximum payment terms. A possible solution is instead to promote sectorial agreements between representatives of business sectors where an issue is identified. The agreements could set standard terms within each sector, including payment terms. The terms should not be binding, but information about the agreements should be publicly promoted to help SMEs leverage them as a baseline in their individual contract negotiations.

4. Unleash the potential of e-invoicing and digital bookkeeping

Many businesses, especially SMEs, struggle to keep up with their bookkeeping. This includes maintaining the necessary overview related to making payments on time. In this context, wider use of e-invoicing has opened possibilities to simplify bookkeeping processes, minimizing burdens, leading to more accurate and timely handling of payments. From a compliance perspective, e-invoicing and digital bookkeeping can also create a basis for improved transparency on payment terms and performance as well as data-driven targeting of interventions.

² For example, an SME might negotiate for a long term of termination to ensure continuous income in difficult times and be willing to accept long payment terms in return if that allows the counterpart to stick to a good price, resulting in a better result long-term.

In Denmark, e-invoicing has resulted in considerable cost savings on administration and more reliable data since it became mandatory in B2G (business-to-government) transactions in 2011. Other Member States, including Italy and Poland, have already made e-invoicing mandatory in B2B (business-to-business) transactions, which has enabled more timely payments, helping to reduce their VAT gaps further. The VAT in the Digital Age (ViDA) proposal's aim to make a move to real-time digital reporting based on e-invoicing for businesses that operate cross-borders in the EU underscores the fact that the EU is leaning into e-invoicing.³

We urge the Commission to consider these developments closely to unleash their potential towards faster payment practices, while being mindful of the instances where the possible lifted burdens do not match the costs associated with implementing the new infrastructures (i.e. micro businesses). In particular, we would like to highlight the following benefits and preconditions:

- ***Enable more systematic payments, automatic charge of interests as well as easier debt collection***

Many businesses simply forget to pay, to charge interest or to send reminders when payments are not made on time. However, adoption of e-invoicing practices as well as available digital bookkeeping systems can make this easy. Overviews of payments can be automatically generated for management purposes, and individual transactions can be handled mostly automatically.

We suggest looking into the available solutions for e-invoicing and digital bookkeeping and encourage further adoption, as the technology is ready for widespread use and can greatly reduce the number of unintentionally late payments.

- ***Improve transparency of payment performance***

Some businesses intentionally pay late to improve their own cashflow, which may be systematically or ad-hoc, for example to counteract the effects of another business paying late. Fortunately, e-invoicing has an added benefit of improving transparency on payment performance, as it provides data that can be used by businesses to inform their actions. For example, some systems for digital bookkeeping already utilize the available data to inform the creditors with a 'red flag' on known late payers.

³ More information on the ViDA Proposal here: https://taxation-customs.ec.europa.eu/taxation-1/value-added-tax-vat/vat-digital-age_en

We therefore also suggest considering that wider use of e-invoicing and digital bookkeeping would further enable aggregation of high-quality structured data to inform future intervention.

- ***Avoid fragmentation of requirements.***

EU can play an important role towards avoiding fragmentation, as different requirements for e-invoicing emerge across member states and risk undercutting the benefits. A common European standard for e-invoicing can become a positive driver for the roll-out of e-invoicing in general. It is important, that standards and not mandatory European solutions or platforms become the drivers, as European countries should be allowed to create the technical solutions that best fit their needs. The ViDA proposal already aims towards a European standard on e-invoicing.

We remind the Commission that measures regarding e-invoicing and digital bookkeeping should be closely coordinated with DG TAXUD and Tax authorities in the member states. In our view, a European standard should build on PEPPOL (Pan European Public Procurement Online) which is widely supported across 18 countries in Europe as the method of delivery of e-invoices to the public sector

5. Consider the necessity of an increase in the rate of interest

In Denmark, the interest rate level is aligned across the area that the directive regulates and other areas such as the consumer area. As we consider it essential, we urge the Commission to take into consideration that the interest rate level in the area of the directive should be in reasonable proportion to interest rate level in other areas.

6. Fines or other criminal sanctions

In principal, Denmark regards imposition of fines or other criminal sanctions on natural and legal persons as a matter for the courts. Furthermore, the Danish constitution does not allow for fines to be imposed by administrative authorities. In the Danish legal system, imposition of criminal fines is only to be done by the courts. Therefore, we urge the Commission to take into consideration that rules regarding fines or other criminal sanctions should be composed with respect for the national legal systems.