



Statement of ZDB on the EU Commission's Proposal for a Regulation on combating late payment in commercial transactions

A) Article 3: Payment periods

I. Section 1

We welcome the introduction of a uniform payment period of in principle 30 calendar days in the business-to-business sector (B2B) as well as between contracting authorities and companies (G2B). It is important, that the possibility for member states to set shorter payment periods remains unchanged. According to the current draft, this is the case. § 308 no. 1a) BGB (German Civil Code) includes on the basis of the current possibility a regulation, that a payment period of more than 30 days after receipt of the consideration or, if the debtor receives an invoice or equivalent payment schedule after receipt of the consideration, more than 30 days after receipt of this invoice or payment schedule, is unreasonable in cases of doubt.

II. Sections 2 and 3

It is important for the construction industry to ensure that the existing procedure of acceptance or verification in national law will also remain unchanged. The draft only provides such procedures in exceptional cases, when it is absolutely necessary due to the special nature of the goods or services.

In the further legislative process, it must therefore be clarified, that an acceptance procedure within the meaning of this provision is absolutely necessary for construction or work contracts.

The draft regulates a maximum period of 30 calendar days for the procedure of acceptance or verification. In this respect, it is also important, that shorter procedure of acceptance or verification remain possible under national law. In national law, § 308 no. 1b) BGB currently contains a procedure of acceptance of more than 15 days after receipt of the consideration to be unreasonable in case of doubt.

B) Article 4: Payments to subcontractors in public procurement

This Article proposes a new provision that main contractors must prove to contracting authorities or clients within the meaning of the relevant Directives the forwarding of payments in the supply chain to their direct subcontractors. This proof must be submitted to the contracting authority before or at the latest together with the request for payment. Only construction companies are obliged to do so, no other economic operators.

We reject this regulation entirely.

On the one hand, this obligation would produce more bureaucracy. A main contractor would have to report his payments to direct subcontractors in an understandable way to the contracting authority. This information would then have to be evaluated by the contracting authority in a second step. This alone would contradict the aim of accelerating payments in business transactions.

Furthermore, there may be legitimate reasons why a main contractor does not pay or does not pay in full to his direct subcontractor. In this context, defects should be mentioned in particular. Main contractors would therefore sometimes have to justify extensively to their clients why payments have not been made in individual cases before they could send them payment requests.

Moreover, it is not comprehensible why only construction companies should be covered by this regulation. Late payments exist in many sectors of the economy.

Finally, the draft explanatory memorandum to Art. 4 also contradicts such an obligation to provide evidence. It explains that the new provision is intended to support the transfer of payments in the supply chain for public construction contracts. However, there can only be a transfer if the contracting authority has first paid its main contractor. Only then further payments can be made to subcontractors. The regulation therefore also has structural deficits.

C) Article 5: Interest for late payment

In section 6, default interest shall start either from the date of receipt of the invoice or an equivalent request for payment by the debtor or from the date of receipt of the goods or services by the debtor. This contradicts the previously applicable understanding that default interest can only be claimed from the occurrence of the default. Therefore, the payment period must have expired before default interest can be claimed from this date. The regulation should therefore be adjusted accordingly.

D) Article 7: Payment schedules

The draft currently includes only instalment payments. However, this contradicts recital number 19 of the draft, which includes the possibility of advance payments. From our point of view, it is necessary to include advance payments. A short period of at best 21 calendar days would lead to faster payments. Once again, it must be ensured that member states are allowed to adopt stricter rules to the detriment of clients.

E) Articles 13 - 15: Enforcement authorities, powers, complaints and confidentiality

Under these new provisions, member states have to designate national authorities responsible for the enforcement of the Regulation. Specific powers of the enforcement authorities are also regulated. These include, for example, the request for information, unannounced on-site inspections and the ordering of payments by the debtor to the creditor. There will also be the power to impose fines and other sanctions as well as interim injunctions or to initiate proceedings in this regard. In addition, a right of appeal by creditors to the enforcement authorities of the member states is to be introduced, which can also be exercised by

certain organisations. Finally, at the request of the complainant, his identity should be kept confidential.

We reject all provisions of Articles 13 - 15 entirely.

On the one hand, the issue of timely payments is a topic that is assigned to civil law. Without reason, according to the draft, a separate administrative structure is to be entrusted with the enforcement of timely payments. However, we cannot see a sufficient connection to the civil law issue of late payment. We therefore reject the mixing of public law and civil law.

Moreover, there is no need for these regulations. According to § 286 section 3, sentence 1. half-sentence 1 of the BGB, a debtor of a claim for payment is in default at the latest if he does not make payment within 30 days of the due date and receipt of an invoice or equivalent payment schedule. The default interest then payable is an important instrument for the creditor to induce the debtor to pay. Moreover, there is comprehensive legal protection in favour of the debtor, which he can use in case of non-payment.

Finally, the implementation of the above-mentioned regulations would cause more bureaucracy, which, according to unanimous opinion, should be reduced and not increased.

F) Article 16: Alternative dispute resolution

According to the draft, member states shall encourage the use of effective and independent alternative dispute resolution mechanisms for the settlement of disputes between debtors and creditors. It is important to note, that alternative dispute resolution remains voluntary.

Based on the above explanations, the reference to Articles 13 - 15 in section 1 must also be deleted.