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19 february 2024

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| to | **Anna CAVAZZINI, Chair**<br>**Committee on the Internal Market and Consumer Protection**<br>**European Parliament** |
| | **Andrus ANSIP, Vice-Chair**<br>**Committee on the Internal Market and Consumer Protection**<br>**European Parliament** |
| | **Maria GRAPINI, Vice-Chair**<br>**Committee on the Internal Market and Consumer Protection**<br>**European Parliament** |
| | **Tomislav SOKOL, Vice-Chair**<br>**Committee on the Internal Market and Consumer Protection**<br>**European Parliament** |
| | **Maria-Manuel LEITÃO-MARQUES, Vice-Chair**<br>**Committee on the Internal Market and Consumer Protection**<br>**European Parliament** |
| **Ref:** | **Late Payment Regulation Proposal** |

Dear Ms. Cavazzini,

On behalf of the American Chamber of Commerce in Romania (AmCham Romania), through our Trade Legislation Task Force, we present the point of view of our community regarding the new Late Payment Regulation.

With over 550 members, AmCham Romania is one of the most important and active professional business associations in Romania, whose mission is to facilitate an open dialogue between decision-makers and the business community. AmCham is committed to support the development of efficient and balanced competition policies and legislation and to advocate for an attractive investment climate while observing the level-playing field, transparency and predictability principles.

The proposed Late Payment Regulation aims to help small and medium-sized enterprises (SMEs) with payments, but it could also affect transactions involving large companies, possibly making it harder for both SMEs and large businesses to use supply chain financing. However, exempting large company transactions could provide more flexibility without changing the proposal's main goals. This exemption would align with

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existing rules that promote fair contracts while protecting suppliers in the food and agriculture industry. Using the definitions of 'big companies' already in EU law could make implementing this exemption easier.

Additionally, the proposal doesn't seem to address supply chain finance or similar financing structures. We underline the need for clarity on how the regulation applies to supply chain finance and whether exemptions could allow longer payment terms. Preserving the freedom to negotiate is crucial in business relationships, especially when both parties have equal power. Finding a balance between contract freedom and the proposal's goals is important, and exempting large-to-large company transactions could help achieve that balance. While the Commission suggests allowing negotiations up to 30 days, this might limit flexibility and hinder benefits like discounts or longer terms supported by supply chain financing. It could also lead to renegotiating existing contracts, adding unnecessary burdens without benefiting anyone.

**Consistent application of rules**

Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (the Unfair Trading Practices Directive) recognizes differences in the size of operators across the supply chain and bargaining power. It also provides for a dynamic approach based on the relative size of the supplier and the buyer in terms of annual turnover to provide better protection against unfair trading practices for operators that need it most. We propose the same approach to be considered for those big-to-big transactions as has been applied in the Unfair Trading Practices Directive. Such an approach would allow for the consistent application of rules but also ensure that SMEs remain protected in commercial transactions.

**Late payment vs long payment terms**

It should be recognized that a shift to shorter payment terms doesn't automatically guarantee prompt payment. The overall goal of the Proposal is to foster a culture of prompt payment, but it's worth noting that long payment terms aren't necessarily considered late payment. When agreed upon freely, longer terms can help parties manage cash flow and distribute risks along the supply chain. Despite existing directives and national laws stipulating payment within certain timeframes, prompt payment still isn't consistently achieved. Late payment constitutes a breach of contract and existing regulations, so providing SMEs with the necessary skills and knowledge for enforcement and dispute resolution may be more effective in promoting prompt payment culture than imposing a universal cap on all companies. Including an exemption for large-to-large transactions in the final regulation wouldn't harm SMEs, as they would still be protected under its terms.

**Other considerations**

Buyers often offer their suppliers longer payment terms to improve their own cash flow. While the specific timeframes can vary by industry, some agreements may extend credit up to 120 or even 180 days. If the proposed regulation is implemented as is, parties to such agreements would need to reduce the payment terms to comply with the new rules, potentially from 120 days to just 30 days.

To offset the financial impact and maintain the current arrangements, buyers would need to renegotiate all existing contracts, possibly by requesting additional discounts, price reductions, or other concessions from

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their suppliers. This would not only add to the administrative burden for businesses but also lead to increased costs as companies strive to secure additional liquidity to meet the new payment terms. These increased administrative burdens, coupled with the potential reduction in market liquidity as local providers scale back or withdraw financial offerings, could drive buyers and suppliers to seek alternative solutions outside the EU.

Such a shift could diminish market competitiveness, compel parties to pursue alternative and potentially costlier financing options, and ultimately raise costs for consumers both within and outside the EU. Small and medium-sized enterprise (SME) sellers, in particular, rely heavily on such financing solutions to effectively manage their own supply chain operations. Without adequate access to these financial resources, their cash flow could suffer more than the intended positive effects of the directive. It's essential to carefully assess the value of existing market solutions in conjunction with the proposed changes to late payment regulations in the EU.

**Level playing field internationally**

The proposed 30-day restriction of payment days could be detrimental to the competitiveness of EU suppliers and buyers operating outside the EU. Typically, payment terms are longer in an international setting, which means that restricting payment terms might lead to a competitive disadvantage for companies operating from within the EU. While freedom of contract would be maintained in business to-business transactions outside the EU, EU-based companies operating internationally would be pushed to require shorter payment terms, making them less attractive compared to non-EU suppliers.

**Why exempt supply chain finance**

We underline the need for clarity regarding supply chain financing and that the proposal doesn't include provisions to accommodate it, potentially limiting access to financing for companies struggling to find alternative funding. Similar concerns arise in the trade credit insurance sector, where policies are sold directly to businesses and banks to manage credit risk. Restricting the ability to negotiate extended payment terms could disproportionately affect industries with complex supply chains and prolonged capital cycles, particularly SMEs. Even SMEs benefit from extended payment terms when they are the debtor and align with their specific needs, especially in sectors with lengthy production cycles and intricate global supply chains.

Imposing a uniform 30-day limit on payment terms could create a funding gap, exacerbating challenges faced by businesses in these sectors. Supply chain finance reduces financing costs and enhances efficiency for both sellers and buyers by disintermediating transactions. Buyers approve suppliers' invoices for financing by a bank, ensuring uninterrupted supply flow and supporting working capital needs. Co-legislators should clarify the role of supply chain financing in the proposal, allowing buyers and suppliers to negotiate longer payment terms when utilizing supply chain finance.

While the proposal aims to improve payment practices and enhance competitiveness, it risks hindering beneficial tools like supply chain financing, which offer flexibility for buyers and assurance for sellers, benefiting companies of all sizes. It's important to recognize that flexible payment terms aren't necessarily an abuse of power. Additionally, the proposal captures transactions between large businesses that are outside the intended

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scope of supporting SMEs. Larger businesses are better equipped to manage risks associated with long payment terms and would be more efficient if granted flexibility in dealings with other large enterprises. By incorporating the suggested exemptions and clarifications, the regulation can be optimized for businesses of all sizes, enhancing Europe's economic competitiveness.

Sincerely yours,

Mihaela Stancu
Chair of the Trade Legislation Task Force
Member of the AmCham Board