Position paper

9 November 2023

Proposal for a Late Payment Regulation – EuroCommerce views on the proposal and the Impact Assessment

Key messages

- EuroCommerce stands by a culture of prompt payment. Late payments (which negatively affect creditors' liquidity management) should not be confused with negotiations of payment terms agreed upon between contracting parties. Removing the possibility to negotiate payment terms restricts freedom of contract and will have numerous adverse effects that are not considered in the Impact Assessment of the European Commission.
- Restricting negotiation of payment terms poses real risks to the EU's economy and resilience, where the ripple effect will be felt most by EU consumers and SME businesses. Where businesses, particularly SMEs, will no longer be viable, their exit from the market will have an effect on local jobs and communities across the EU.
- The simple solution proposed by the Commission does not fit a complex problem. The result will disadvantage those that hold an inventory, favour online intermediaries over other business models, and undermine the value proposition of wholesalers and the support they give to their business customers.
- The Impact Assessment does not quantify the financial gap a strict 30-day payment term creates, which is estimated as upwards of €150 billion for retail and wholesale. This blind spot means that an assessment is not made of the availability of that finance in a market where business loan availability is plummeting and the cost of finance is high. It will also create market entry barriers, and deter the exploration of new business avenues, by increasing the upfront costs.
- The Impact Assessment does not analyse who will be the beneficiary of that liquidity relocation – whether they will be EU SMEs or non-EU players, including large ones.
- The Impact Assessment does not consider previous Commission policy and is inconsistent with previous warnings against reducing efficiencies and also, results in a weakening of bargaining position in relation to large (global) manufacturers, which could also affect consumer prices.
- The Impact Assessment does not consider the business model of retail and wholesale that operates with low margins, where the absorption of the extra cost of finance will be difficult, and the effect will be felt by consumers through higher prices and lower choice.
- There is no similar strict regime to the one proposed by the Commission, in the EU or abroad. This is not considered in the Impact Assessment nor fits with the current EU concerns about strategic autonomy.
- **We urge the Commission and the co-legislators to ensure that the problems are addressed or the proposal returned to the Commission for review**. We believe the proposal requires radical reconsideration that further consultation is carried out with stakeholders of all sizes to fully understand the complexity of supply chain relationships, the different business models, the practicability of the proposed solution, the extent to which non-EU suppliers stand to gain and if the proposal will bring added value to the EU economy.

1. Introduction – the proposal is an oversimplification and creates unintended consequences

1.1 EuroCommerce is concerned that the proposed Regulation poses real risks to the EU's economy and resilience, and that the ripple effect will be felt most by EU consumers and SMEs. Rather than focusing on addressing late payments (which have a negative effect on creditors' liquidity management), the draft regulation drastically restricts the freedom of parties to negotiate payment terms.

1.2 EuroCommerce represents the retail and wholesale sector in Europe. Retailers and wholesalers (99% of which are SMEs) employ more than 26 million people in the EU, equivalent to 1 in 7 of all jobs and are present in every region in Europe.[1]

1.3 This position paper contains an explanation of the specificities of retail and wholesale that were already recognised in the Commission's study in 2018[2]. It provides the data that completes the understanding of the operation of the value chain to enable a true assessment of the impact of the preferred option, including the sums that would be required to fill the financial gap, and the differences resulting from the consumer and customer-facing role of retail and wholesale.

1.4 It complements previous EuroCommerce position papers of 17 March 2023 and August 2023.

1.5 The data gaps in the Impact Assessment leave serious questions on whether the proposal is proportionate, particularly given the much wider consequences that it is set to cause compared to the benefits that it is considered it will bring.

1.6 **We urge the Commission and the co-legislators to ensure that the problems are addressed or the proposal returned to the Commission for review**.

1.7 In our view, this requires a radical reconsideration of the proposal ensuring that further consultation is carried out with stakeholders to fully understand the complexity of supply chain relationships, the different business models, the practicability of the proposed solution and the value to be created to the EU economy (considering the current proposal jeopardises the viability of EU retail and wholesale to the benefit of non-EU suppliers).

1.8 A thorough analysis is necessary that results in a minimisation of unintended effects on competitiveness, resilience, EU consumers and citizens, and territorial cohesion. This is a process that cannot be rushed given what is at stake.

2. A strict rule will remove efficiencies and undermines initiatives that are working in Member States

2.1 The Commission proposal is based on an oversimplified view that restricting payment terms would put an end to late payments. The confusion between late payments – which are a breach of contract- and payment terms negotiations – which are an essential part of the contract - overlooks the benefits of negotiations between parties that share a mutual interest in their business relationship.

2.2 Late payments should be addressed as they negatively affect creditors' financing management by creating unexpected liquidity mismatches and reduce trust among commercial parties. Negotiating payment terms, on the other hand, is a key element of commercial relations.

[1] Eurostat.

[2] *"In the retail sector, similar to the food and drink sector, legislation could differentiate payment terms by category of products allowing derogations with longer payment terms in sub-sectors where the stock rotation is particularly slow."*, page 85, Business-to-business transactions: a comparative analysis of legal measures -v- soft-law instruments for improving payment behaviour.

2.3 A one-size-fits-all approach of a strict 30-day cap removes the flexibility that the economy needs, overlooks sector specificities and could have severely damaging consequences. **It simply does not work.**

2.4 A strict cap with no exception was not the recommendation of the Fit for Future platform in 2021,[3] nor of a soon to be published Commission study on '*SMEs and High Inflation*'.[4] That study recognises that not all sectors experience a late payment problem to the same extent, with the retail ecosystem averaging collection periods below the thresholds established by the Late Payment Directive. As noted above,[5] the Commission's own study in 2018 acknowledged the specificities of retail and wholesale, recognising that legislation could differentiate terms by category of product.

2.5 The European Parliament's 2023 resolution of the state of the SME Union also called for a revision of late payment rules through a **balanced approach that preserves the freedom of contract**,[6] which the Commission's proposal does not do.

Specificities of retail and wholesale are not accounted for

2.6 Retail operates at the end of the chain. Unlike other parties in the chain - who have contracts with suppliers and customers – retailers have no contract with the end-user. A consumer may buy a product after a few days, weeks or months after it was delivered to retailers. Longer payment terms enable retailers to hold stock and make sufficient sales before paying back their suppliers.

2.7 Wholesalers, as creditors, provide supplier credits to their business customers in all sectors of the economy – retail, hospitality, pharmacies, and other industry sectors. Demand is difficult to predict and wholesalers support their retail customer by offering payment terms that suit their operations, especially for SME customers who struggle to get bank credit. For example, a tradesperson who can only feasibly complete one installation project at a time, but who may wish to order building materials in advance to secure continuous work can negotiate a payment term that helps him/her complete the job before paying back his/her supplier.

2.8 Wholesalers also negotiate conditions with their customers to be able to store products on behalf of such clients, due to the availability of space in their warehouses so that manufacturers can continue production all year around. For example, garden furniture can be produced and stored until there is a surge in demand when weather conditions improve. This will be impossible under a strict 30-day payment term.

2.9 A strict 30-day payment with no exception for all actors and sectors does not already exist in the EU[7], or elsewhere.[8] Certain Member States have adopted different maximum payment terms for relevant product groups such as toys, DIY, clothing, wine, consumer electronics, longer shelf-life food products, fragrances, etc.

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[3] Final opinion 2021_SBGR2_06 Late payments_fup_0.pdf (europa.eu)

[4] An almost final version of this study was presented to the Commission's SME Envoy on 29 September 2023.

[5] See footnote 2.

[6] https://www.europarl.europa.eu/doceo/document/TA-9-2023-0294_EN.html.

[7]https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive/eu-payment-observatory/observatory-documentation_en. Similarly, the forthcoming study on SMEs and High Inflation, Contract No. SI2.887424 by PPMi, Csil, CSES, as presented at the SME Envoy on 29 September 2023 only goes so far as to suggest that preventing late payments in B2B transactions should be tailored to different ecosystems. Even free market economies like the Netherlands and the UK recognise that there can be exceptions to strict payment term caps where it is fair to both businesses.

[8] Based on the examples set out in the Impact Assessment for B2B relationships, legislation applies in relationships with small suppliers (Australia, India, Turkey), is sector or product specific (Canada, New Zealand, UK, USA), increases transparency (New Zealand, the UK), refers to lower value contracts only (New Zealand), proposes voluntary standards (UK) or only has rules that tackle unfair trading practices (Japan).

2.10 A forthcoming study[9] on SMEs and inflation notes that maximum payment terms in retail should be differentiated by category of products - especially if those products have a long shelf life or are only sold seasonally – identifying certain examples (e.g. luxury items, seasonal equipment, DIY products) that typically take much longer to sell. Such an approach ensures that these products can access the market with reasonable conditions.

2.11 There are also practical differences, for example, where products may be sold on a consignment basis, where payments are made when a product is sold (e.g. fragrances).

2.12 More examples are set out in Annex 1.

Negotiating payment terms is not a burden and is in fact advantageous for businesses to spend time doing so

2.13 The Impact Assessment considers that reducing negotiation times would bring a benefit for 33% of SMEs.[10] This ignores the advantages and mutual benefits that can come from such negotiations and that large contracts are likely to be subject to more sophisticated negotiation.

2.14 The Impact Assessment assumes that payment terms are always imposed on parties.[11] However, the responses to question 16 of the public consultation also highlight when negotiations on payment terms can bring benefits.

2.15 Suppliers may have different arrangements with their buyers about payment terms, which are eliminated with a 30-day strict rule. This clause is part of the contractual agreement and affects the overall price. While some suppliers may continue to use shorter payment terms of less than 30 days in return for a lower price, other suppliers who would prefer to keep prices higher are no longer able to do so.

A one size fits all solution will favour large multinational suppliers and online marketplaces to the detriment of retailers and wholesalers, in particular SMEs

2.16 While the Impact Assessment assesses the imbalance of market power in the relationship large to small, it does not examine the relationships between large businesses. With no analysis of the nature of these relationships, the Impact Assessment misses the consideration of existing Commission policy and positions. These existing Commission policies take a contrary view on regulation of supply chain relationships.

[9] Forthcoming study on 'SMEs and High Inflation' preliminary results were shared at the SME Envoy meeting of 29 September 2023.
[10] Table 14 of the Impact Assessment, Paragraph 140 of the Impact Assessment
[11] Paragraph 152 of the Impact Assessment.

- In its technical report for the European Commission on unfair trading practices in the agri-food supply chain, economics professor Richard Sexton warned that, "*proscribing behaviours that are efficiency enhancing will reduce the surplus to a transaction and likely harm both parties to it.*"[12]
- Similarly, in the Communication, 'A European retail sector fit for the 21st Century'[13], it is stated, "*it is important not to prevent suppliers and retailers from mutually beneficial cooperation.*" It is also stated, as a best practice, "*If public authorities regulate practices to protect vulnerable operators, in accordance with the freedom of establishment, they should not prohibit those contractual practices between retailers and suppliers which are mutually beneficial.*"
- Further, in the Staff Working Document with underpinning evidence for the above Communication, it is stated, "*faithful cooperation between retailers and their suppliers is key for business success. Business models of both suppliers and retailers have evolved over time and there are many examples demonstrating that collaboration beyond a pure selling/purchasing relationship can be mutually beneficial, in particular in reaching efficiency gains. In addition, some academics refer to a 'rule of reason' regulatory approach which recognises that defining certain business-to-business practices as UTPs [unfair trading practices] instead of ordinary competitive behaviour intended to promote transaction efficiency, can reduce the surplus to a transaction and can harm both parties to it.*"[14]

2.17 Different scenarios (large creditor -v- large debtor, large creditor -v- small debtor, small creditor -v- large debtor and small creditor -v- small debtor) all have different dynamics and efficiencies. There are also multiple variables that will differ between sectors, which may depend on the number and size of the multiple actors in the value chain, the cost of raw materials etc.

2.18 Similarly, the combinations in wholesale are also complicated and have different dynamics depending on the size of the supplier, the size of the wholesaler and the size of the business customer, as well as the different variables that apply to the types of products they supply (food, construction materials, electrical installations, etc.). Wholesalers are overwhelmingly SMEs, and 91% are micro-businesses, many of whom are serving SMEs, entrepreneurs and tradespersons.

2.19 Retailers and wholesalers of all sizes make most of their transactions with name brands, who are often large global suppliers, in many sectors like clothing and apparel, sports, DIY, fragrances, toys, and consumer electronics. Limiting their ability to benefit from longer payment terms will entail massive transfers of liquidity for the benefit of these large suppliers. These suppliers of name brands are oftentimes highly profitable.

2.20 There is also little analysis over whether that transfer of liquidity will trickle down to the other actors in the supply chain. For example, it may be absorbed in delayed investment or paid to shareholders following the same conclusion drawn by the Commission previously: "*Regulating commercial transactions between such large players could reduce the pressure that large customers can exert on large manufacturers to reduce their margins and imply significant market disturbance because of their broad impact on the market and, ultimately, on consumer prices. Besides, it is not obvious that farmers or other parties higher up in the supply chain would benefit from a regulation of UTPs that would give large processors or manufacturers greater margins. A large manufacturer that would leverage a regulation of UTPs to pressurize the retailers to increase prices at which retailers buy from the manufacturer has no obligation or incentives and is unlikely to share with its own suppliers the extra benefits it would obtain from such regulation.*"[15]

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[12] Commission Staff Working Document SWD(2019) 92 Impact Assessment – Initiative to improve the food supply chain (unfair trading practices), paragraph 473.
[13] COM (2018) 219 final
[14] Commission Staff Working Document accompanying the Communication, Á European retail sector fit for the 21st Century', SWD(2018) 236 final
[15] Commission Staff Working Document SWD(2019) 92 Impact Assessment – Initiative to improve the food supply chain (unfair trading practices), Annex H.

2.21 The Impact Assessment also ignores the importance of supply chain collaboration. Consumers enjoy choice due to multiple brands and suppliers for one type of product.[16] This requires collaboration in the value chain, often with the common objective of increasing the total gains from a transaction. It is in the interest of firms, even those with strong bargaining power, to invest in the long-run viability of trading partners, ensuring them a fair share of the gains from a transaction[17] and, in the same vein, liquidity.

2.22 As noted above, restricting negotiations on payment terms will affect all other elements of negotiations, like prices. For example, there may be discounts that are granted to debtors who pay early, usually offered when payment is made in 30 days rather than 60 days. This negotiation is also something that can help a supplier win business. The Commission's approach would remove this incentive that has been negotiated between parties.

The Impact assessment has a partial consideration of administrative burden

2.23 While the Impact Assessment acknowledges that there will be a one-off adjustment to contract terms,[18] this seems a conservative estimate. Many retailers negotiate over 1,000 contracts a year with suppliers. It also does not seem to estimate the cost for businesses to update their accounting systems, including for those retailers that group invoices (for example, in Spain and Portugal) to make payments more efficient. Nor does it consider the increase in administrative burden that this creates, especially for SMEs.

2.24 If now retailers and wholesalers are still permitted to group invoices but must pay them within 30 days of the date of the first invoice, this will require changes to accounting systems that favours returning to dealing with invoices one-by-one, removing efficient systems that may have developed to make this more efficient.[19]

The analysis does not reflect sufficiently the need for legal certainty

2.25 The Impact Assessment notes the lex specialis for the agricultural and food sector in Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.[20] The usual rule is that in accordance with the principle *lex specialis derogat legi generali*, special provisions prevail over general rules in situations regulated by such special provisions.

2.26 This would imply that the revision of the rule for non-perishable goods would need to be revised through a revision of the Directive. Given that the call for evidence for the evaluation of the Unfair Trading Practices Directive has just been launched[21], the review of a lex specialis rule should fall to that review. This would enable an assessment of the lex specialis rule and enable the determination of whether it should remain.

2.27 It also would have permitted a more accurate quantification of the cost of refinancing as a result of a reduction in payment terms and could have helped understand if the liquidity needed to be found in the market or not.

[16] 'EuroCommerce 'Value of European Retail' factbook, 2020 VERF DRAFT full working document (eurocommerce.eu)

[17] Unfair trading practices in business-to-business relationships have been examined in detail in the context of the food supply chain. See: (PDF) Unfair trading practices in the food supply chain: A literature review on methodologies, impacts and regulatory aspects (researchgate.net) and Annex H: Economic impact of unfair trading practices regulations in the food supply chain (DG Competition) (EUR-Lex - 52018SC0092 - EN - EUR-Lex (europa.eu).

[18] Paragraph 287 of the Impact Assessment, which assesses the cost as, "*Businesses will need to bear the one-off adjustment cost of updating standard terms to reflect maximum payment terms and adjusted compensation fees (estimated at EUR 243 million)"*.

[19] For instance, Spanish legislation allows for the grouping of invoices in art. 4(4) Ley 3/2004, de 29 de diciembre.

[20] Paragraph 7 of the Impact Assessment.

[21] Agricultural & food supply chain – combating unfair trading practices (europa.eu)

3. The proposal creates a financing gap which will not be easy to fill

Bringing payment terms down to 30 days creates an enormous financing gap that will be difficult for the market to fill

3.1 The Impact Assessment analyses the potential for sector exceptions to a strict cap and concludes these could be addressed more adequately by sector-specific funding options from finance providers than by supplier credit. It also notes that sectors like wholesale and retail make sales for cash and are therefore better off. [22]

3.2 The analysis completely fails to take into consideration the benefits of mutually beneficial agreements among actors in the supply chain, the need to hold an inventory, the lack of a contract with the consumer, and the time it may take to sell products[23]. The assumption that supplier credit can be substituted by funding options from finance providers underestimates the size of re-financing necessary and its costs and availability (as explained below), especially at times when interest rates are rising and banking loans are plummeting. It is also unclear from the Impact Assessment what the assessment by financial services on the policy options were.

3.3 Refinancing of retail and wholesale alone would require a review of the multiple product lines that a single retailer or wholesaler has. This is an enormous task.

3.4 To quantify the liquidity transfers in retail[24], we used conservative estimates of current payment terms and share of inventory in different retail sectors and a 2023 turnover of retail totalling €2,600 billion.[25] This calculation gives us a required increase in working capital of €133 billion - excluding interest rates. Applying an interest rate ranging between 5 and 10% means that the net cost ranges from €7 to 14 billion. This has not been accounted for in the Impact Assessment.

3.5 The Impact Assessment lacks any analysis of the ability of the EU banking system to suddenly cover an additional €150 billion in business loans, for a purpose that has no return-on-investment for the loan recipients. It completely disregards the fact that banks will hesitate to give such loans to recipients active in sectors with margins considerably lower than the interest rates on the loans. It also disregards the fact that these loans might be more expensive than suppliers' loans.

3.6 The Impact Assessment further minimises the cost to debtors, considering the measure a one-off cost of dealing with the bank and recurring costs related to interest, with the assumption that it is likely to be cheaper than the implicit rate they are paying currently.[26] This is however only true for late payments, not for long payments, that dwarf late payments in size.

3.7 The assumption that this is business as usual in the context of their banking relationship also does not ring true, as up until now retailers have not sought to finance their working capital via their financial partners, which amongst other factors has differences in return on capital.[27]

It is questionable whether and at what cost this credit is available

3.8 The Impact Assessment makes the assumption that a creditor has weaker bargaining power, as the creditor's business risk is higher than a debtor's. This means that the interest rate banks require from the creditor is higher,[28] assuming therefore, that the cost of credit to fill debtors' financing gap will be lower.

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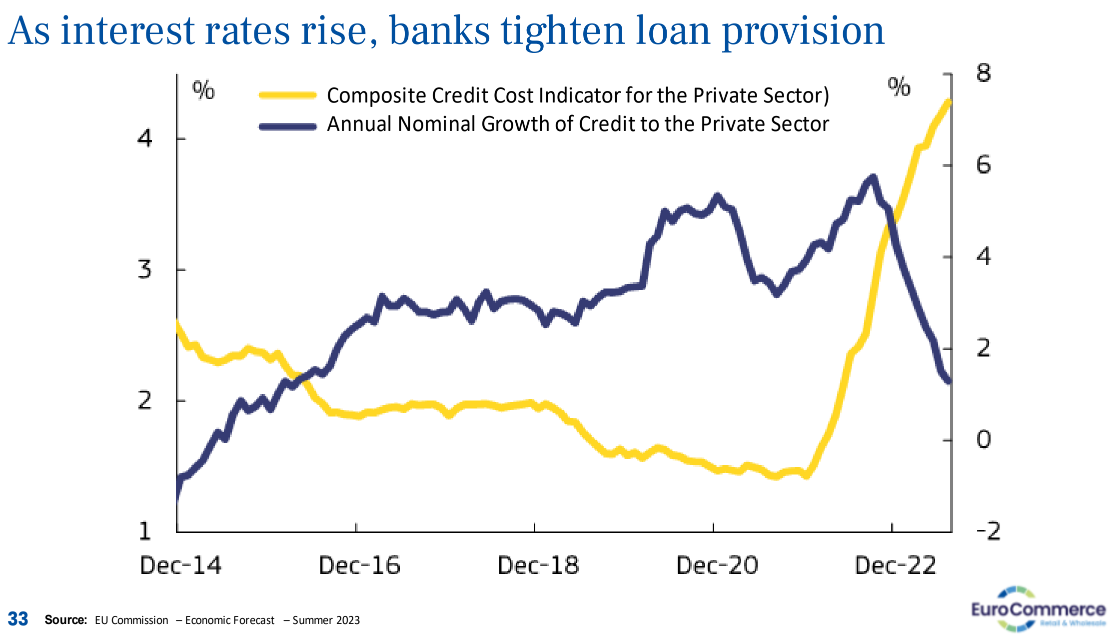
[22] Paragraph 146-148 of the Impact Assessment.
[23] The Impact assessment assumes that retail and wholesale are better off as sales in these sectors are made for cash; paragraph 148 of the Impact Assessment.
[24] The methodology of the calculation is explained in Annex 3
[25] Euromonitor data of retail turnover excluding sales tax and estimates of average payment terms per retail sub-sector based on input from surveyed companies.
[26] Table 14 of the Impact Assessment.
[27] Paragraph 271 of the Impact Assessment.
[28] Paragraph 41 of the Impact Assessment.

3.9 This assumption is not true for all creditors. Retailers and wholesalers buy from a mixture of sizes of suppliers. A large share of products sold in supermarkets are A-brands produced by large multinational suppliers that have significantly more bargaining power - not least because of their profit margins. SME retailers and SME wholesalers are also the customers of large multinational suppliers, who if they are able to get credit at all, certainly will not be given competitive rates. It also underestimates the impact of displacing suppliers' finance by banking finance. In the latter case, banks will assign their resources based on their own risk assessment, which might be penalised by a lower knowledge of the retail business than what the supplier has.

3.10 The Impact Assessment does not then consider further (a) whether the credit would be available; and (b) the likely cost of that credit. As interest rates have risen, the availability of funding is significantly decreasing. The attractiveness of providing finance for trade credit is limited as it offers a negative return on investment. There is little evidence that supports the conclusion that there will be no net cost and interest rates will be lower for debtors.



The situation is really uncertain for SMEs ; the result is very likely to be an increase in bankruptcies

3.11 With access to credit plummeting and its cost rising, restricting retailers and wholesalers', in particular SMEs, ability to enjoy flexibility with payment terms will be dramatic. The sector is starting to pay back their Covid loans and has been hit hard by the impact of high inflation, high energy costs and a severe cost of living crisis, resulting in lower sales and consumers delaying their purchases (see Economic annex).

3.12 As the traditional model of matching payment terms to cashflows exists in companies of all sizes, we doubt that the banking sector will provide the financing as claimed in the Impact Assessment. The Commission's own SME Relief Package notes that SMEs are expecting an imminent deterioration in the availability of all kinds of finance.[29] This is also confirmed by reports for instance in the Netherlands[30], and suggests this data should be collected to back the assumption that credit would be available.

[29] Survey on the Access to Finance of Enterprises: tighter financing conditions and an expected deterioration in the economic environment (europa.eu)
[30] https://fd.nl/bedrijfsleven/1492566/nederlandse-mkber-staakt-zoektocht-naar-financiering

The proposal will affect the SME suppliers who have a good relationship with the bank based on their contract with larger customers

3.13 Financial institutions currently offer better options for trade finance that are more suitable than solutions that are aimed to finance the whole business (which are the ones that retail and wholesale will need to seek from banks).

3.14 Retailers and wholesalers have found different solutions to guarantee payment to suppliers (e.g. bill of exchange payment, endorsable document on request, bank guarantee or credit insurance).

3.15 The system of reverse factoring, for example, enables a buyer to have flexible payments and allows the supplier to access credit under better conditions than those that they could obtain on their own. The supplier benefits from short payment times which improves its financial situation.

3.16 The Commission has acknowledged the recognition of many governments and authorities that reverse factoring offers a solution for late payments.[31] In addition, the Bank of Spain recommends the instrument to SMEs.[32] Therefore, the system cannot be absent of benefits for SME suppliers.

3.17 As explained in our previous position papers, in Spain, thanks to reverse factoring, most providers are collecting payment in less than 7 days from the acceptance of the invoice. Overall, the volume of reverse factoring is well above the volume of factoring (€93,540 million -v- €88,724 million), with an increase in reverse factoring in the last four years.

3.18 In the same way, the proposal of an entirely new approach effectively removes the choice of wholesalers to act as a financial intermediary for its business customer, as an alternative to more traditional finance or financing schemes. The strict 30-day payment term will stop wholesalers offering pre-financing to companies known as supplier credits with terms of up to 90 days for the entrepreneurial customer.

4. The proposal will make consumers worse-off, hitting them with higher prices and lower choice

4.1 We fundamentally disagree with the Impact Assessment’s conclusion that the proposal will not have a direct impact on consumers and that indirect effects may be a wider choice of products, reasonable prices and an improvement in consumer purchasing power as a consequence of the likely positive impact on employment or that the increased aggregate cashflow in the economy will enable enterprises to pass cost reductions to consumers. [33] [34]

The sector operates with low margins and has a limited capacity to absorb extra costs

4.2 Retail and wholesale have a limited capacity to absorb extra costs. Their business model is typically based on selling high volumes of goods with narrow margins[35] (1-3% in grocery retail, 4-6% on average in non-food retail). Soaring energy prices, rising operating costs, and shrinking consumer purchasing power have put more pressure on the margins of retailers and wholesalers, who are restrained from passing on the price to consumers and instead have absorbed certain costs, further reducing their margins.[36]

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[31] Study on supply chain finance - Publications Office of the EU (europa.eu).

[32] Pymes y autónomos - Cliente Bancario, Banco de España (bde.es)

[33] Paragraph 138 of the Impact Assessment.

[34] Paragraphs 166 and 412 of the Impact Assessment.

[35] Commission Staff Working Document, Co-creation of a transition pathway for a more resilient, digital and green retail ecosystem, SWD(2023) 283 final, Brussels, 27.7.2023

[36] Sweden: https://www.konj.se/download/18.6676cd7e184b91b518f77591/1671031379000/SpecialStudie_RUP.pdf Denmark: https://www.kfst.dk/pressemeddelelser/kfst/2023/20230303-danske-priser-har-generelt-fulgt-udlandets/; the Netherlands: https://www.rabobank.nl/kennis/d011366704-is-in-nederland-sprake-van-graaiflatie; Belgium:

The alternatives to seeking bank finance are not attractive, and will likely lead to higher prices and less choice

4.3 Absorbing costs linked to the various crises has already pushed the limit of what the sector can sustain. Further strain on cashflow linked to the Commission proposal ultimately will be for these costs to be passed on to consumers. This will mean **higher prices for consumers** at a time when many are already suffering from the cost-of-living crisis and looking to their governments for help. The Commission's forthcoming study on SMEs and High Inflation study[37] shows that the firms that cannot pass costs to consumers are affected by inflation in a worse manner than those that can.

4.4 Available alternatives to seeking bank finance reduce competitiveness and are likely to lead to **less choice of products and channels**. Retailers would need to switch to (a) a more costly and specialised just-in-time supplier; (b) a commission-agent structure; (c) buying in bulk to achieve more cost savings and (d) only selling 'bestseller' products. All options mean losing the efficiency of term negotiations, e.g. discounts for placing an order early.

- Option (a) is cost-prohibitive – especially for SMEs – given the low margins in the sector and the low number of just-in-time suppliers. Such an approach drives up most underlying costs for producers, losing efficiencies of scale and timing on the production side in acquiring raw materials, planning, production and logistics. It is also a business model that is far more complex and is far less shock-resilient. As a result, it has a high barrier to entry.
- Option (b) is very complex and burdensome.
- Option (c) can strain cashflow even more and would be counterproductive if storage is not available or the cost of storage exceeds any savings that could be made.
- Option (d) – offering only 'bestsellers' – leads to the same criticalities in consumer choice as Option (c).

4.5 Options (c) and (d) force retailers and wholesalers to limit their in-stock offering to the most popular products, thus limiting their ability to offer products (including niche or more innovative ones) that differentiate them from other stores. Some retailers will not be able to stock certain products, as suppliers require them to order minimum quantities. This also makes retailers vulnerable to online alternatives that offer wider choice and makes it more difficult to introduce new innovative products.

4.6 Many SME retailers are located in town centres and rural areas, which naturally have slower moving rotation. Their attractiveness will further diminish, leaving consumers fewer shops to choose from.

5. The impact will also be felt by citizens across the EU

5.1 The Impact Assessment estimates – without explaining why - that the policy options will not have a direct impact on EU citizens, but that the indirect effect will be positive through an improvement on consumer purchasing power as a consequence of the likely positive impact on employment.[38]

5.2 Retail and wholesale is the EU's first private employer. It offers 26 million jobs, so 1 in 7 of all jobs, geographically spread with retail in the top 3 industrial employers in 95% of Europe's regions. Retail plays an important social role for many people who have a harder time finding a (first) job, as 80% of the workforce has no tertiary education.

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https://economie.fgov.be/fr/publications/evolutions-des-prix-dans-la; Spain: https://www.cnmc.es/sites/default/files/4840416.pdf

[37] SMEs and High Inflation, contract SI2.887424, by PPMi Csil, CSES, as presented at the SME Envoy, 29 September 2023.

[38] Paragraph 138 of the Impact Assessment.

5.3 The sector supports millions more jobs in indirect employment amongst suppliers, service providers, and partners.

5.4 As set out in this position, the introduction of a strict cap will compromise the business viability and competitiveness of retailers and wholesalers. This will lead to a loss of jobs, many of which are local and provided outside of capital cities and affect local communities and rural areas.

5.5 It is not clear in the Impact Assessment whether the TIA necessity check[39] and requirements of better regulation tool 34[40] were carried out or considered.

5.6 As noted above, the effect of a strict payment term will be felt particularly in smaller towns or rural areas, where there is a naturally lower turnover of inventory. Strict payment terms disincentivise the holding of an inventory with the result being reduced choice (see above) and are likely to lead to more shops outside of big cities closing, moving or severely limiting their assortment. This will lead to a starker difference between affordability and choice in cities compared to other areas across the EU.

5.7 With increasing competition, especially from online intermediation services (ecommerce marketplaces), and the viability of particularly SME retailers in jeopardy, the resulting likely closures of shops will negatively impact the quality of life outside big cities across the EU.

5.8 The Commission has recognised the contribution of retail in rural areas, "*Retail, doctors, pharmacies, banks, post offices, public transport, childcare facilities and schools are essential to rural life and jobs, as well as to ensure no-one and no place is left behind"*. The Rural Pact also proposed shared goals for endorsement for a long-term Vision for EU's rural areas including, "*Lively places equipped with efficient, accessible and affordable public and private services, including cross border services, providing tailored solutions (such as transport, education, training, health and care, including long-term care, social life and retail business).*" [41]

5.9 Similarly, the new Leipzig Charter of 2020,[42] which inspires urban policy in Europe and beyond, recognises the need for proximity of retail, *"The retail sector in European cities is changing as a result of an increasing digitalisation in commerce. Staple goods and especially food, however, should be accessible locally to offer a good quality of life and to counterbalance the adverse effects of demographic change."*

5.10 With SME retailers less likely to be able to continue to provide choice and affordable prices, or able to withstand the competition from ecommerce marketplaces particularly as exploring new avenues of business are more risky, upholding the role of retail in the manner that the Commission's rural vision and the Member States charter recognises will be very difficult.

5.11 The proposal will also enhance barriers to entry for SMEs – making them less competitive than other larger businesses. For an entrepreneur who wishes to introduce a new line to their business, e.g. eco-friendly clothing or sustainably produced natural cosmetics, a 30-day payment term allows no time to build the business and creates higher risks if the experiment fails. This will act as a deterrent and impacts competitiveness, in comparison to other market players more able to take risks.

5.12 Similarly, the Impact Assessment fails to assess the market entry barriers for entrepreneurs who, for example, may wish to open a shop. Having to pay back all suppliers for all inventory within 30 days is a high barrier to start a business and leaves no buffer to an entrepreneur to build their business. It also requires a higher level of credit from the outset to pre-finance all the inventory. This increases risks, particularly failure and bankruptcy, as recognised in the Impact Assessment.

[39] https://tiatool.espon.eu/

[40] BRT-2023-Chapter 3-Identifying impacts in evaluations fitness checks and impact assessments.pdf (europa.eu)

[41] Commission Communication, A long-term Vision for the EU's Rural Areas - Towards stronger, connected, resilient and prosperous rural areas by 2040', COM(2021) 345 final.

[42] The new_leipzig_charter_en.pdf (europa.eu)

5.13 This could have a particularly significant impact as opening a store is one of the most common forms of SME activity as one in four of all EU SMEs are in retail and wholesale (including for women who are represented above EU averages in retail and wholesale trade, contributing to achieving Sustainable Development Goal 8 that the Impact Assessment does examine).

6. The impact will affect international competitiveness & economic resilience and deter investment in future competitiveness

6.1 As already set out above, a strict 30-day payment term favours large non-EU multinational (global) manufacturers.

6.2 While the Impact Assessment shows a convergence on payment terms globally, there is no similar strict regime to the one proposed by the Commission - including in the Netherlands,[43] that is often used as a counter argument. This includes the closest neighbours such as the UK or those that may be motivated to change payment terms to increase trade with the EU, meaning that imports will become more attractive. This is not considered in the Impact Assessment nor fits with the current EU concerns about strategic autonomy.

Restricting payment terms negotiation will affect investment decisions while retailers and wholesalers need to invest massively in the sector's transformation…

6.3 The Impact Assessment notes that unpredictable cashflow negatively affects investment decisions both by companies and providers of investment financing. It also acknowledges that shortages of cashflow can make it difficult to pay for operating expenses. The reasoning is that as most bank lenders will not grant long-term investment funding, riskier than short-term finance, when the risk related to a company's short-term operations is high.[44]

6.4 The Impact Assessment does not consider how this fact will affect the debtors who will need to seek additional finance to fill the gap (see section 4 above). The reason for this may be the belief that debtors would be withholding liquidity from the economy.[45] It is not clear from the Impact Assessment what data is the source for this conclusion.

6.5 For retail and wholesale, the publicly available indicators do not confirm this theory. When you look at 'working capital ratio' (also known as 'current ratio') - the most commonly used liquidity ratio as a benchmark - it paints a contrary view. Liquidity ratios are used by creditors and lenders when deciding whether to extend credit to a business. The 'current ratio' verifies the solvency of a business on its near-term ability to keep up with debt.

6.6 Making the sector search for liquidity by sector-specific funding options from finance providers does not consider the need for retail and wholesale to invest in transformation to remain competitive.

6.7 The size of the investment necessary for retail and wholesale to make the sustainability, digitalisation and skills transformation by 2030 is estimated to be €600 billion.[46] Removing the ability to negotiate means that retailers and wholesalers will have a reduced capability to invest in the sustainability, digital and skills transformation. As the Commission recognises, *EU companies tend to structurally invest less than in the United States, which can be a significant*

[43] The Dutch legislation only imposes a strict 30-day payment term for contracts with SMEs, leaving freedom of contract for the rest and sector-specific rules.
[44] Paragraph 713 of the Impact Assessment.
[45] Paragraph 28 of the Impact Assessment.
[46] McKinsey/EuroCommerce, 'Sustainability, Digitalisation, Skills: Transforming the EU retail & wholesale sector',

drawback for their long-term competitiveness"[47]. Currently, Europe is a global leader in retail with 24 European retailers among the top 50 global leaders[48], this is a difficult position to upkeep.

6.8 This reduction in the ability to invest is a lost opportunity for the EU. Retailers and wholesalers play an essential role in the lives of everyone and the European economy, serving as the link between manufacturers and 450 million consumers across Europe and generating 10% of the EU's GDP. Retail consumption has a multiplier effect on the economy: as consumers spend money with retailers, this money flows through the supply chain to manufacturers and other suppliers, indirectly supporting a huge number of companies and jobs.

6.9 The Commission itself recognises in the co-creation of a transition pathway for retail[49] the potential of retail and wholesale to accelerate digitalisation, advances to net zero, prioritising circularity and waste reduction and building and developing skills.[50] This impact will also extend to other ecosystems as the Commission recognises as well, "*given the important linkages between the retail ecosystem and other ecosystems, its competitiveness can trigger important (positive) spill-over effects for the whole economy*"[51].

…*with a negative impact on economic resilience/security*

6.10 Alongside the inability to invest, which undermines the EU's resilience and EU companies another indirect consequence of the 30-day strict payment term and its discouragement to hold stock, is the effect it will have on the EU's economic resilience.

6.11 A lesson learned for recent crisis is that holding stock helps manage peaks in supply and demand.[52] This is crucial when there are shocks (e.g. pandemics, war, climate events or force majeure). It also enables wholesalers to offer flexible terms through supplier credit so that a tradesperson can place an order in advance to match delivery with when it can be installed, knowing storage and flexibility on payment is available in case of delays.

6.12 There are further instances that are ignored, where the requirement to hold an inventory may come directly from legislation, for example under pharmaceutical legislation,[53] or indirectly, to enable businesses to offer repair a supply of spare parts will be needed to be kept on hand.[54] All of these instances will be put in jeopardy.

7. Conclusion

7.1 The Impact Assessment is based on the wrong assumption that a payment term beyond 30 days would be a hidden late payment. In practice, negotiating payment terms is essential. It provides flexibility that is necessary for the normal functioning of value chains, serve consumers with better prices and choice and supports the competitiveness of European businesses.

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[47] Commission Staff Working Document, Co-creation of a transition pathway for a more resilient, digital and green retail ecosystem, SWD(2023) 283 final, Brussels, 27.7.2023, see page 21.

[48] 2020 VERF DRAFT full working document (eurocommerce.eu)

[49] Commission Staff Working Document, Co-creation of a transition pathway for a more resilient, digital and green retail ecosystem, SWD(2023) 283 final, Brussels, 27.7.2023

[50] Transforming the retail and wholesale sector – Key measures to support Europe's largest private sector employer - EuroCommerce

[51] Commission Staff Working Document, Co-creation of a transition pathway for a more resilient, digital and green retail ecosystem, SWD(2023) 283 final, Brussels, 27.7.2023, see page 5.

[52] The Commission's forthcoming study on 'SMEs and High Inflation Costs' also suggests that having flexibility on payment terms will help SMEs weather shocks.

[53] Reform of the EU pharmaceutical legislation (europa.eu).

[54] The Commission's proposal on the Right to Repair will help consumers find suitable repair services through national matchmaking online repair platforms, in complement to what retailers and wholesalers may choose to offer themselves. For repair to be effective, the components for washing machines, washer-dryers, dishwashers, refrigeration, and vacuum cleaners, will be numerous and suppliers will need to be paid, while consumer interest and engagement may remain low. Alternatively, they will only be able to make repair available at a higher cost, if retailers and wholesalers who offer this service need to use just in time arrangements.

7.2 Retail and wholesale is characterised by commercial relationships between parties in the chain that are often established over a long period and can continue for a long period. Such relationships include regular and constant payments by buyers to suppliers during the course of the relationship.

7.3 Examples shared in this document explain why long or extended payment terms are necessary in commercial transactions. This is contrary to the conclusion in the Impact Assessment that, "*asking for long or extended payment terms is a latent demand for cash. These sources of finance are substitutes for normal trade credit and bank loans or overdrafts.*"[55] It also explains why there can be agreement on a long payment term contrary to the inclination in the Impact Assessment to assume that this is always unfair when examined from a creditor perspective.[56]

7.4 There are further concerns on the proposal beside the imposition of a strict 30-day cap, including around a network of national enforcers, the choice of a legal instrument such as a Regulation and the interference with national rules on verification periods and compatibility with national contract laws.

7.5 On this basis, we ask the co-legislators to substantially review the draft proposal and re-introduce the freedom to negotiate payment terms as a fundamental right.

[55] Paragraph 41 of the Impact Assessment.

[56] For example, footnote 52 of the Impact Assessment that quotes the foreword from the study, 'The Domino Effect: the impact of late payments', *Imagine walking into a shop, taking what you want up to the counter, and then, when the time comes to pay, saying 'thanks – but I think I'll just take these now and pay later', and casually walking out with your items*.'

Annex 1 – Examples of slow-moving, seasonal products

This is a **non-exhaustive list** of examples of slow-moving and seasonal products where negotiations on payment terms are necessary:

- **DIY products** may have a shelf life of 150 days and payment terms of up to 75 days.
- **Personal care.** For example, **fragrances** with payment terms up to 75 days with some products sold on a consignment basis with suppliers only paid when their products are sold.
- **Fashion.** For example, clothing where the autumn/winter collection may have negotiated payment terms of an average 90 days. Fashion items have long shelf life, with 45% of a collection sold over 90 days (e.g. October/November/December), 30% during sales in January, 15% is sold in February (50% off) and 10% over a longer period. Specialist stores (e.g. fancy dress).
- **Books.** While bestsellers have a short shelf life, others are much longer and may vary (e.g. with more sales at Christmas) and are particularly vulnerable to consumers switching to online sales.
- **Consumer electronics** (e.g. washing machines and other home electronic equipment, smartphones, gaming consoles)**.**
- **Non-perishable food** (e.g sunflower oil, salt,) or seasonal products (e.g. champagne, Christmas specialities like Turrón or Easter eggs).
- **Toys.** Sales may vary, with more sales at Christmas (with the collection being ordered months in advance).
- **Summer products (**e.g. garden furniture, beachwear).
- **Winter products (**e.g. ski equipment).
- **Expensive products** (e.g. jewellery).

Annex 2 – Wholesale examples

This is a **non-exhaustive list** of examples from the wholesale sector where negotiations on payment terms are beneficial:

Securing supplier and customer relationships

Negotiating payment terms enables wholesalers to build and secure supply and customer relationships and pre-finance businesses in the supply chain. Offering supplier credit, e.g., in building materials wholesaling, can give an entrepreneurial customer (e.g., crafts, trade, commerce, industry, restaurants and hotels) up to 90 days to pay for materials or enable traders and builders to serve their customers.

Wholesalers always also have a financing function as service providers, especially for small and medium-sized customers of downstream economic levels from retail, trade as well as the hotel and catering industry.

In the construction-related wholesale trade

The example of the installation of heat pumps illustrates the problems of the new regulation on late payment. A wholesaler sells three heat pumps for €80,000 each to a tradesperson (delivery time of 18 months). The tradesperson will install the heat pumps at his/her customers' premises but cannot install them within 30 days. For repair or maintenance, there must be a very precise schedule to be able to install and pay for these heat pumps. On a building site, there are often unforeseen changes, so schedules cannot be adhered to. With strict payment terms, tradespersons can no longer take the risk of installing high-priced products because it weakens their liquidity or leads to insolvency if the customer does not make his payment.

In textile wholesale

Buyers of regional sheep's wool from their own production in the textile industry would also face major financing problems due to a statutory payment period of 30 days. The use of regional wool is only just starting up again. It usually takes months until the wool has been collected, sorted, and washed by the shepherd. To ensure that there is always enough washed wool available for production, the stock must always be replenished. This long production route must be financed. However, the production company with high machine costs and storage costs for washed wool is quickly overburdened, as financing by banks is only available to a limited extent. In this case, too, extended payment agreements help to ensure continuous production.

In cash-and-carry and delivery wholesaling

The agreement of payment terms with suppliers is a crucial element of business negotiations in this industry, especially for goods that are sold over a long period of time, such as non-food items and especially seasonal items (e.g., items around Christmas & Easter). For such products, suppliers deliberately grant long payment periods because the products have to be delivered and stocked by retailers weeks and months before the corresponding holidays due to logistical and pro-duction constraints. The proposal would massively drain liquidity from the industry, which will lead to a significant increase in debt and a deterioration of financing conditions.

Wholesalers would be deprived of the possibility to grant their own business customers (predominantly SMEs) longer payment terms. This would particularly burden small restaurants and small food retailers (e.g., kiosks), as they rely on in-creasing their liquidity through longer payment terms. Due to the one-sided burden shifted to retailers, the proposal will have significant consequences for end consumers in terms of prices, product availability and choice, and thus will undoubtedly also have a negative impact on inflation in the EU.

In international commodity trading

In international commodity trading, the trader, in addition to arranging purchases and sales and logistics, also takes on the financing of transactions to a significant extent. This is particularly the case outside Europe, where payment terms of up to 90 days (in Asia, Africa, and the Middle East) or up to 120 days (in Latin America) are the rule rather than the exception.

This also strengthens the trade position if the supplier does not want to or is not able to offer longer payment terms for political, economic, or strategic reasons.

Limiting the payment term to 30 days is counterproductive in international trade because it would ensure that traders based in the EU, in contrast to competition outside the EU, would no longer be able to present the payment terms requested or required by the customer as an essential part of the business. This would lead to a substantial decline in business.

The planned application of this regulation also to transactions with customers outside the EU distorts competition in foreign trade for the reasons mentioned and threatens the existence of the company.

In recycling wholesale

Metal recycling companies grant their customers significantly longer payment terms - between 60 and 90 days. These customers are companies with a long production process such as steelworks, foundries, or forges. A payment term of 30 days is not economically justifiable for these companies.

In tyre wholesale

Seasonal products, such as summer and winter tyres, would be negatively affected by a rigid 30-day payment term. To be able to produce continuously, there is also a mutually beneficial agreement in the tyre trade. The producer of the tyres can ensure continuous production by delivering the finished tyres to the tyre wholesaler before the seasonal sale. The producer saves his storage space, the wholesaler can fill his warehouse. A longer payment term makes this possible so that the wholesaler can deliver to his customers on time for the start of the season.

In agricultural trade

Due to the broad definition of entrepreneur in the draft, farmers are also likely to fall within the scope of application. In agriculture, it is common to work with the instrument of the current account, as financial obligations often arise seasonally for all participants in the chain. By placing mutual claims in a current account relationship, liquidity bottlenecks can be bridged, more flexibility created, and bureaucracy reduced. With a mandatory 30-day payment period, this procedure - which is advantageous for all parties involved - could no longer be maintained. This could cause payment difficulties for all parties involved.

The contractual relationship between the farmer and the agricultural trader often represents years of cooperation based on trust. The farmer purchases the necessary inputs (seed, crop protection, fertiliser and, if necessary, feed) from the agricultural trader, usually in autumn to spring. Income is generated on the arable farm mainly through the sale of the harvest in summer, and through the direct payments from the Common Agricultural Policy at the end of the year. This means that the balance is negative for large parts of the year to the detriment of the farmer and is only balanced out by the sale of the harvest raw materials. The agricultural trader in turn sells the farmer's harvest to his contractual partners (mills, etc.). The payment to the farmer is entered in the current account at a time when the agricultural trader has not yet been paid by his customer. The farmer delivers grain on 1 August, the 30-day period ends on 30 August. However, the agricultural trader does not sell the goods until September, so it does not help him if his customers also have to pay after 30 days.

These processes are developed between the parties involved. Small and medium-sized agricultural trading companies in particular do not balance their accounts every month or every 30 days, especially since purchases and sales are not made every month. To comply with the obligation in the proposed regulation, balancing accounts monthly would be required and payments made, which could be a problem given the large amounts that would have to be paid. Irrespective that up to now, this was a mutually agreeable arrangement.

Annex 3 - Calculator

Cost of shifting payment terms to 30 days

Category	2023 Turnover in € million	Payments as % of Turnover	Current Average Payment Term	Nex Max Term	Term Reduction	Percentage financed via Loans	Percentage financed via New Equity	Average Interest Rate for Loan	Average Interest Rate for New Equity	Refinancing Need in million €	Yearly Interest in million €	interest 5%
Grocery (Fresh) All Channels	514.134,7	70%	30	30	0			5%	10%	0	0	-
Grocery (Non-Fresh) All Channels	771.202,1	70%	60	30	30			5%	10%	44.371	4.437	2.219
Apparel and Footwear Specialists	*207.075,5*	50%	75	30	45			5%	10%	12.765	1.276	638
Home Improvement and Gardening Stor	*171.148,5*	70%	75	30	45			5%	10%	14.770	1.477	739
Appliances and Electronics Specialists	*146.515,9*	70%	90	30	60			5%	10%	16.859	1.686	843
Optical Goods	*27.538,6*	50%	60	30	30			5%	10%	1.132	113	57
Beauty, Health and Personal Care	*84.168,7*	50%	60	30	30			5%	10%	3.459	346	173
Toys and Games	*30.532,3*	50%	75	30	45			5%	10%	1.882	188	94
Pet Care	*14.617,3*	50%	60	30	30			5%	10%	601	60	30
Pharmacies	*203.909,1*	50%	90	30	60			5%	10%	16.760	1.676	838
Homewares and Home Furnishing Store	*113.712,6*	50%	60	30	30			5%	10%	4.673	467	234
General Merchandise Stores	*59.352,4*	50%	60	30	30			5%	10%	2.439	244	122
Sports Goods Stores	*44.431,9*	50%	60	30	30			5%	10%	1.826	183	91
Jewellery and Watch Specialists	*22.276,0*	50%	90	30	60			5%	10%	1.831	183	92
Bags and Luggage Specialists	*10.015,4*	50%	60	30	30			5%	10%	412	41	21
Other Brick & Mortar	*86.568,5*	50%	60	30	30			5%	10%	3.558	356	178
Vending	*11.134,4*	50%	60	30	30			5%	10%	458	46	23
Other Direct Selling	*12.744,1*	50%	60	30	30			5%	10%	524	52	26
Other E-Commerce	*105.217,9*	50%	60	30	30			5%	10%	4.324	432	216
TOTAL	2.636.295,9									132.642	13.264	6.632

The calculator estimates the impact of changes in payment terms by looking at average payment terms across sub-sectors and by how much they will need to be reduced to get to 30 days (based on confidential data supplied by our members).

This is used to create a conservative estimate of the extra working capital if payment terms need to reduce from that current average to 30 days. Essentially for every day less a retailer has to pay back its suppliers, what extra working capital does it need? Bearing in mind that this is a very rough estimate as it assumes a retailer uses identical payment terms with all of its suppliers amongst other complexities (explained below).

The estimate is based on the assumption that retailers are paying a certain percentage of their turnover to suppliers. Therefore, taking Euromonitor data for the retail turnover per subsector and the average time taken to pay suppliers, it calculates the shortfall between money-in, and money-out if now everything needs to be paid at 30 days.

Then, using the likely interest rate that will need to be paid on the additional working capital that retailers were to borrow or would need to seek as new credit, it arrives at the estimate of 150 billion EUR.

The reality is likely to be much higher if you add in the complexity of arrangements that exist between retailers and their suppliers. This may include other elements that have been negotiated, such as discounts, or which may relate to the nature of the product (slow-moving, expensive, etc.), or vary depending on the size of the supplier, the volumes bought, and the relative negotiating strengths of the parties, or which result from the transposition of Directive (EU) 2019/633[57] that means the cost of reducing payment terms to 30 days in food are excluded.

It also does not consider additional variables that will be considered by a bank in granting a loan and the likely interest rate that will be based not just on the market, but also, the bank's assessment of the risk. Asking for money to just finance working capital will offer a negative return on investment as

[57] Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain [EUR-Lex - 32019L0633 - EN - EUR-Lex (europa.eu)]

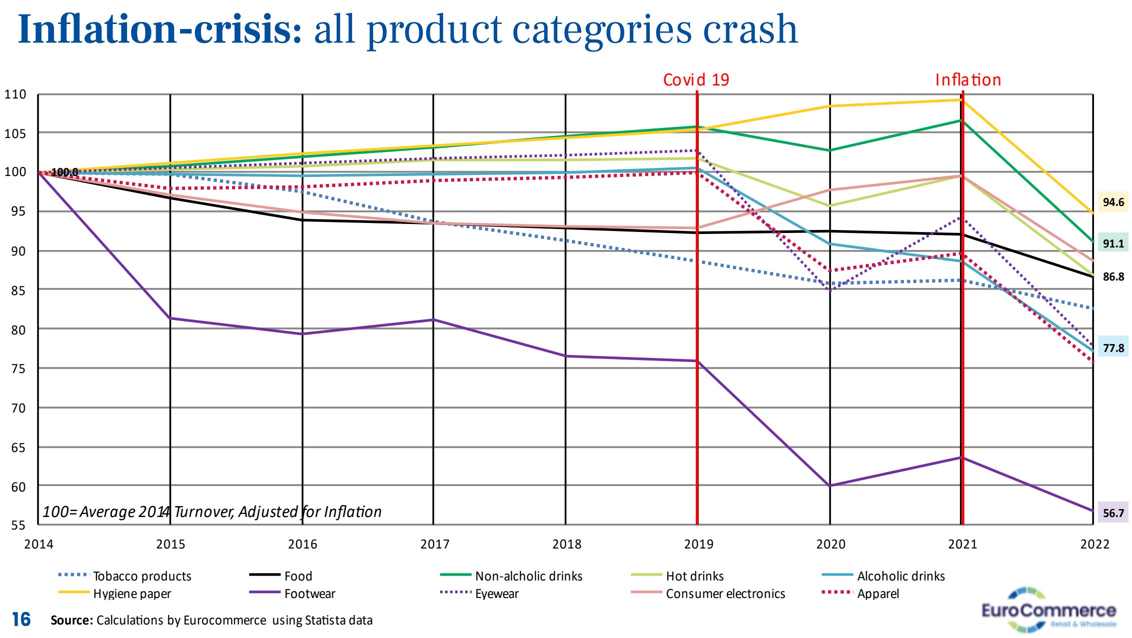
it increases costs but without a promise of a growth in sales (i.e. a return). This for example, may be more promising if the credit was being requested to invest in the development of a new digital sales channel. Similarly, the structural problems in retail such as the low margins gives bank no reassurance they can provide capital safely as there is no buffer, and for businesses particularly SMEs, who are not making much profit they will either be considered too small or too risky.

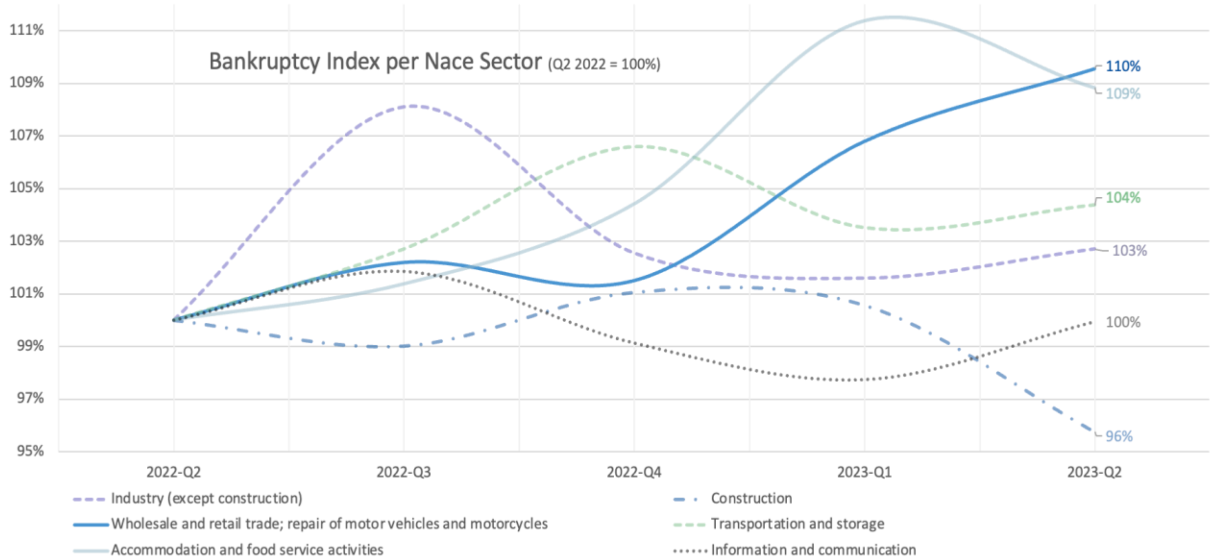
If you have any questions regarding this calculator, please contact our chief economist Anton Delbarre (delbarre@eurocommerce.eu).

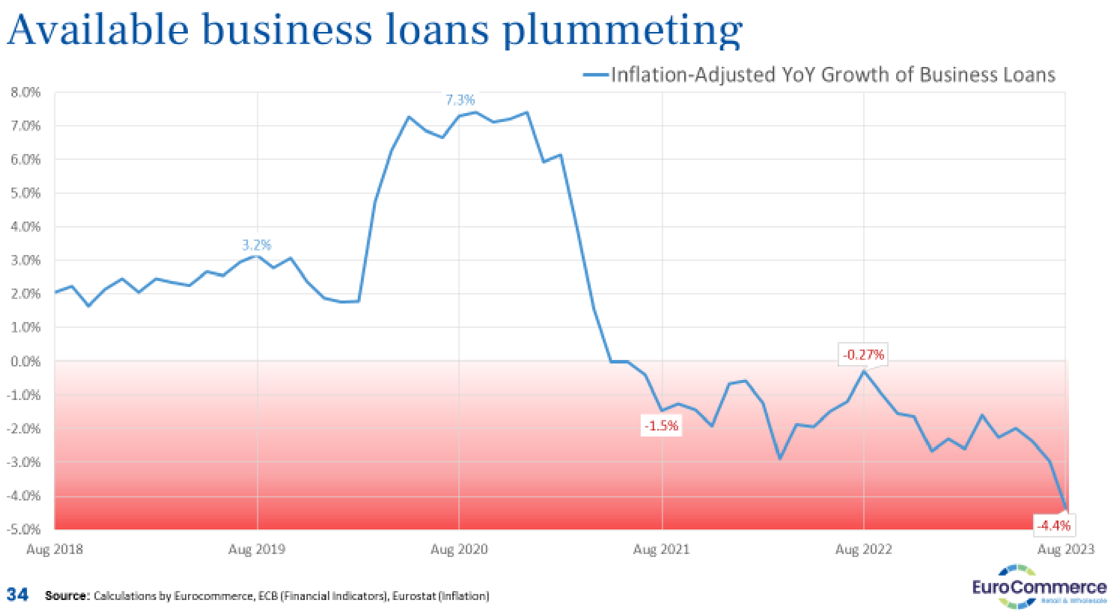
We are also working on calculations for the implications for wholesale.

Annex 4 – Economic overview

- The inflation crisis has had a huge negative impact on the sales volumes of all product categories in retail and wholesale.







- The Impact Assessment rightly acknowledges that debtors may still face a financing cost of tens of billions of euros per year,[58] but concludes that the effect is not a net cost as debtors are only avoiding the need for this financing by forcing its suppliers to cover the financing cost instead.[59]
- The Impact Assessment also states that the financing needed would likely be cheaper than the implicit rate suppliers are paying now.[60] This assumption is not backed up with any evidence or analysis. It again also conflates late payments with long payments.
- Whereas late payments often incur late fees higher than an equivalent bank loan, this is not the case for contractually agreed upon payment terms longer than 30 days. The lack of consideration of this second element in the Impact Assessment is a significant blind spot. Even when conservatively estimated (see below), this blind spot has a size of over €150 billion, rivalling the GDP of a country like Hungary and exceeding the GDP of 10 out of 27 EU Member States.
- According to the Impact Assessment each day of reduction of late payments saves beneficiary European companies €158 million[61]. That also means that if the impact on non-beneficiary companies exceeds that amount, the measure is not proportionate. The analysis however makes no estimate of the burden this would impose on non-beneficiaries, making it impossible to check the proportionality of the measure.
- With the amount of paperwork needed to offer a loan to an SME the same as a large business, and bearing in mind that refinancing will need to take place for the entire EU economy in one year, this raises a real question mark over whether finance will be available to SMEs and in time.

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Transparency Register ID: 84973761187-6

[58] Paragraph 161 of the Impact Assessment.
[59] Paragraph 161 of the Impact Assessment.
[60] Section 2.3 and 8.1.2 of the Impact Assessment.
[61] Paragraph 371 of the Impact Assessment.