Ms Ursula Von der Leyen
President of the European Commission

Mr Charles Michel
President of the European Council

Ms Roberta Metsola
President of the European Parliament

By e-mail

8 November 2023

Draft regulation on late payments – impact on the economy

Dear Presidents,

We are extremely concerned over the Commission draft regulation on late payments, which brings all payment terms for business-to-business and business-to-government transactions to a maximum of 30 days. We urgently ask the Council and the European Parliament as co-legislators and the Commission, to reconsider the proposal and its proportionality, and restore freedom of negotiation as a fundamental right.

Released on 12 September, as part of the SME relief package, the proposal aims at combating late payments – payments occurring in breach of the agreement made by the parties in a commercial relationship – by stopping payment terms being negotiated by the parties. This drastic reduction restricts mutually negotiated payment terms, limiting them to 30 days, making no contribution to combating late payment. Instead, it would severely restrict business' freedom of contract and result in a loss of efficiency, capacity to invest and create a massive financial gap whose impact has not been fully assessed.

A one-size-fits-all all approach is disproportionate. It will increase prices in the EU, reduce consumer choice, hinder the flexibility of value chains, favour large suppliers, and undermine the competitiveness of EU based businesses against imports and online intermediaries based outside the EU and will have wider effects on the EU economy and society.

Payment terms are an essential part of contract negotiations. They are often confused with late payment in the public discourse, meaning that the flexibility they offer benefits consumers and SMEs is not understood, nor how they support EU open strategic autonomy.

The Commission's impact assessment has not assessed the amount of re-financing necessary, examined the business models[1], who stands to gain from that transfer of liquidity, nor considered the ripple effect this will have on the economy if payment terms are limited. Our conservative estimate is that the market will need to fill a financing gap for retail and wholesale in the range of 100 to 150 billion euros[2] at a time when the availability of credit is slowing and interest rates are rising.

This will be a huge problem for large companies and their own credit ratings. But even worse, it will hurt the millions of SMEs that contribute to our local communities. As a sector hard hit by several years of crisis, including restrictive measures on access to stores and city centers during Covid, increased competition from digital players, consumers trading down, higher costs of operations and rent resulting from high inflation, skyrocketing costs of energy and disruptions in supply chains, this will push many to the edge. Not least, it leaves no room for investment in the digital, sustainability and skills transformation that we estimate, for our sector only, is in the range of up to €600bn by 2030[3].

More than ever, we need legislation that is high quality, coherent, and practicable to support our sector's transformation. This, given our significant footprint in the economy and society[4], will help the EU achieve its own digital, sustainability and resilience objectives.

We urge your institutions to give this proposal due consideration, avoid rushing this through the decision-making process and restore freedom of contract.

We thank you for your consideration and look forward to discussing this with your services.

Yours sincerely,

Juan Manuel Morales
President

[1] The specificities of the retail and wholesale sector were recognised in the Commission 2018 study, page 85, Business-to-business transactions: a comparative analysis of legal measures -v- soft-law instruments for improving payment behaviour

[2] Our calculations are further explained in the Annex to this letter.

[3] Sustainability, Digitalisation, Skills: Transforming the EU retail and wholesale sector Transforming the EU Retail & Wholesale Sector - EuroCommerce

[4] Retail and wholesale is one in five businesses and one in four SMEs in Europe. We are Europe's first private employer providing jobs to 26 million Europeans and are a key contributor to local communities throughout the EU.

ANNEX – 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[5] 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 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.

[5] 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)