Department of Enterprise, Trade and Employment
via email
accesstofinance@enterprise.gov.ie

Date: 13th November 2023

Dear Sir/Madam,

RE: Late Payment in Commercial Transactions- Public Consultation

1.0 INTRODUCTION

County Kildare Chamber is the business organisation in Kildare, proactively working to identify and progress developments that are facilitative of economic and sustainable growth. Representing an employer base of 400 businesses and over 42,000 employees across the county, County Kildare Chamber is the largest business organisation in the mid-east region of Ireland.

Given the significant breadth and depth of our membership, and our representation on various bodies at local and national level, County Kildare Chamber constitutes the representative voice for business in Kildare.

2.0 SUBMISSION

As we look towards the next decade, Ireland and our businesses are facing a multitude of challenges, from decarbonisation, digitalisation, and wider economic and political unrest. County Kildare Chamber is pleased to be able to contribute to this conversation on the strategic direction of Enterprise Policy in Ireland in the years to come.

In 2022 nearly half of SMEs in Ireland believed the issue of late payments had worsened for them over the past 12 months, directly effecting cash flow & trade and causing additional cost in hours chasing outstanding debts.[1]

[1] Asset Finance and Invoice Finance Solutions | Close Brothers Commercial Finance (closecommercialfinance.ie)

Research by Close Brothers Commercial Finance found that in Ireland, 35% of businesses surveyed that have been impacted reported they were owed between €21,000 and €40,000 while a quarter (26%) said they were owed more than €40,000.

Late payments have either led to problems with managing cash flow (62%), significantly impacted businesses' ability to trade (34%) or required companies to spend time chasing debts (20%), and half of the 900 businesses surveyed (51%) said difficulty created by delayed invoices had not improved. This is despite the introduction of the Late Payment Directive in 2011, so it is timely that we now take a whole of view appraisal of this regime and the proposed Regulation from the European Commission.

With our Small- Medium Enterprises continuing to come under sustained pressure with increased to the minimum wage, a new public holiday, increases in sick pay and pension auto-enrolment to name a few, it is vital they are protected from extreme tardiness of payment for a service or goods.

Overall, the Chamber welcomes the introduction of this regulation, which we believe should create a more harmonised and fairer business environment for all, as it has been acknowledged that the 2011 directive did not have any major impact on payment behaviour. However, we do have a number of concerns we wish to raise below.

1. In commercial transactions, a maximum payment period of 30 days from the date of the receipt of the invoice or an equivalent request for payment, provided that the goods or services have been received. This will apply business to business and between businesses and public authorities. The Proposed Regulation states that "the payment period shall not exceed 30 calendar days, from the date of the receipt of the invoice or an equivalent request for payment by the debtor, provided that the debtor has received the goods or services". Noting that pursuant to the Proposed Regulation, late payment interest arises automatically, the Chamber have concerns with the payment period being calculated by reference to the date of receipt of the relevant invoice, as this is conceivably hard to determine, and we envisage this will lead to confusion.
2. Removal of the right for contracting parties to agree to extended payment terms as long as doing so is not "grossly unfair" to the creditor (i.e. the supplier). There may be many reasons why the parties want payment terms in excess of 30 days. For instance, a creditor might send goods to a debtor, with an agreement that ownership and responsibility for the goods shift to the debtor at the departure point. However, the goods may take 90 days to reach the destination, and the debtor prefers not to make payment until the goods arrive. Presumably, this will no longer be achievable and so title and risk will have to be transferred later, resulting in higher costs for the creditor (e.g. insurance premium) and the creditor having to hold the goods as inventory on its balance sheet for longer, which may be unfavourable.
3. Late payment interest will be automatically payable by debtors on overdue amounts and there is a prohibition on contracting parties agreeing to waive late payment interest.

> Recognising that accumulated late payment interest cannot be waived, if a business neglects to collect or pay this interest due to operational inconvenience or its seemingly minor amount, the unpaid interest obligation could persist indefinitely. This situation leads to undisclosed obligations that are unlikely to be reflected in a debtor's financial statements. Uniquely, there are few financial liabilities arising from contracts that cannot be reduced or waived through mutual agreement. It is crucial to thoroughly assess and acknowledge the implications of this scenario.

County Kildare Chamber understand that the purpose of the Proposed Regulation is to reduce the length of time it takes for creditors to be paid and penalise debtors who pay late. We believe the proposed objective is to be commended, however, we have concerns about whether the full impact of the proposed Regulation on creditors has been thoroughly examined.

3.0 CONCLUSION

As we approach the challenges of the next decade, County Kildare Chamber is actively engaging in discussions concerning the strategic direction of enterprise policy in Ireland.

Late payments have continued to plague Irish businesses, affecting cash flow, trade, and adding costs in efforts to recover outstanding debts. Despite the introduction of the Late Payment Directive in 2011, the issue remains pervasive, prompting the need for a comprehensive review of the existing regime and the proposed Regulation from the European Commission.

While we appreciate the intention behind the Proposed Regulation to create a fairer business environment and expedite creditor payments, we have concerns about its potential implications. The stipulation of a maximum payment period of 30 days from the date of invoice receipt poses challenges in practical implementation, leading to potential confusion. Additionally, the removal of the flexibility for contracting parties to agree on extended payment terms, even for valid reasons, could result in higher costs and unfavourable financial implications for creditors.

Furthermore, the automatic accrual of late payment interest with no option for waiver creates a perpetual obligation for businesses, potentially undisclosed in financial statements. This unique situation, where few financial liabilities cannot be reduced or waived through mutual agreement, warrants careful consideration.

While we acknowledge the commendable objective of the Proposed Regulation, we urge a thorough examination of its impact on creditors. It is essential to strike a balance between encouraging timely payments and ensuring fair treatment for businesses, considering the complexities of commercial transactions and the diverse needs of enterprises in Ireland.

County Kildare Chamber remains committed to contributing meaningfully to this crucial conversation on behalf of our local businesses. We look forward to working with the Department of Enterprise, Trade and Employment to deliver a successful outcome for Kildare and the country, and we are available at all times for consultation, discussion and support.

Yours faithfully,

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Sinéad Ronan
Public Affairs Manager
County Kildare Chamber
www.countykildarechamber.ie
045 894074