March 2020
Economic & Legal Commission

EUROPEAN CONSTRUCTION INDUSTRY FEDERATION

Topic: Late Payment Directive

Brief description and main aims:

In February 2011, the EU adopted Directive 2011/7/EU on combating late payment in commercial transactions. The background of the Directive is that most goods and services are supplied on a deferred basis, i.e. the supplier gives the client time to pay the incoive. Although the goods are delivered and the services performed, many corresponding invoices are paid well after the deadline which negatively affects the liquidity and complicates the financial management of undertakings. Many SMEs go even bankrupt due to late payment. One of the main elements of the Directive is to entitle creditors to interests for late payments. Furthermore, the Directive addresses the length of payment terms with the aim of preventing the abuse of contractual freedom to the detriment of the creditor. As late payment is an issue in both business-to-business and public authority to businesses relations, both kinds of entities are targeted by the legislation. Regarding public authorities, slightly different rules are applied since they benefit from more secure, predictable and continuous revenue streams than companies and obtain financing at more attractive conditions.

The Directive was to be transposed into national law by March 2013. Since then, several assessments have been carried out revealing that the impact of the Directive has been limited so far. The issue of late payment figures in the European Commission's SME Strategy from March 2020. According to this document, the Commission will support the Member States in enforcing the Directive by setting up monitoring and better enforcelent tools and exploring the feasibility of alternative resolution/mediation mechanisms for SMEs.

Why FIEC is dealing with this topic:

The construction sector is particularly affected by late payments, mostly due to its value chain characteristics and its high level of conflictuality.

Construction companies are particularly vulnerable to late payment as they usually have the obligation to perform the construction at their own expenses (material, machinery, personnel) before getting paid. The low profit margins in the sector are aggravating the problem and make companies vulnerable to cash flow difficulties. Late payment can thus endanger the mere existence of a construction company. A positive cash flow is essential to ensure the daily functioning of the company, expand, invest and embark on new projects.

Especially SMEs are affected by late payments but also large contractors suffer from late payment by its private or public clients. In fact, public authorities often pay later than private actors. It is thus among FIEC's core priorities to make public authorities subject to stricter rules. They often have a dominant market position and fix the purchasing conditions. Late payment by public authorities triggers a "snowball effect" for the entire value chain to the detriment of main contractors and subcontractors. Moreover, lengthy verification periods cause problems to the sector as they come in addition to the payment period and are often used to artificially delay the payment.

Actions and key dates:

16/02/2011 – Adoption of the Directive
16/03/2013 – Deadline for the transposition into national law
26/08/2016 – Report on the implementation of the Directive
06/2018 – European Commission's Studyon business-to-business transactions
01/2019 – FIEC participates in informal consultation
01/2019 – European Parliament Own-Initiative Report
13/03/2019 – European Commission's Presentation at the ECO PLEN Meeting
21/10/2019 – European Commission's Reflection Day on Late Payment
03/2020 – FIEC contributes to the European Commission's Report on Late Payment in the Construction Sector