



15 October 2012

Andy Harrison,
Policy and Strategy Team
Enterprise Directorate
Department for Business, Innovation & Skills;
1 Victoria Street
London
SW1H 0ET

Email andy.harrison@bis.gov.uk

Dear Mr Harrison

**RESPONSE OF THE INSTITUTE OF CREDIT MANAGEMENT TO:
DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS – IMPLEMENTING
DIRECTIVE 2011/7/EU ON COMBATING LATE PAYMENT IN COMMERCIAL
TRANSACTIONS**

The Institute of Credit Management is the largest professional credit management organisation in Europe. Its members hold important, credit-related appointments throughout industry and commerce, and we feel it appropriate to comment on this consultation.

The issues of late payment, and activity to drive prompt payment and educate businesses in better managing their cashflow, are core to the Institute, and our collaboration with BIS has seen some notable successes. We are happy to continue that collaboration and assist BIS in any way we can in promoting awareness of the new legislation when the directive is transposed, and in continuing efforts to change the culture across business in the UK.

We have consulted our members and are pleased to attach our response to the questions contained within the consultation.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully

Glen Bullivant
Chair of Technical Committee

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Institute of Credit Management

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Directive 2011/7/EU on Combating Late Payment in Commercial Transactions: consultation. Response form

The closing date for this consultation is **19 October 2012**

Name: Mr Philip King

Organisation (if applicable): Institute of Credit Management

Address: The Water Mill, Station Road, South Luffenham, Oakham, Leicestershire, LE15 8NB

Please return completed forms to:

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Please tick a box that best describes you as a respondent from the list of options below:

<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Question 1

1. (Article 4 para b) Should UK public sector payment terms involving healthcare or where the public authority carries out economic activities of an industrial or commercial nature by offering goods or services on the market, be extended beyond 30 calendar days to up to 60 days?

Government feels that adopting this measure would be a retrograde step, and would significantly weaken current UK practice of paying within 30 days.

Comments:

No, the terms in these circumstances should not be extended beyond 30 calendar days. Introducing exceptions will create a climate of confusion when the intention of the Directive is to achieve consistency and uniformity.

2. To transpose (implement) the Directive should we should repeal the existing Late Payment of Commercial Debts (Interest) Act 1998 and replace it with secondary legislation (statutory instruments) or amend the Late Payment of Commercial Debts (Interest) Act 1998?

Comments:

We see little benefit in repealing the existing legislation and believe its amendment is the most appropriate way of dealing with transposition. Although awareness and use of the current legislation is inadequate, repealing would be a retrograde step.

3. Compensation for recovery costs (Article 6): The current Late Payment of Commercial Debts (Interest) Act 1998, suggests a fixed charge of £40, £70 or £100 depending on the size of the debt (under £1,000, under £10,000, and higher) as compensation for recovering costs. The revised directive propose a creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of €40, as compensation for recovery costs, plus additional costs incurred. Should the three tiered approach be retained or changed to a minimum compensation?

Comments:

The three-tiered approach should be retained since it is clear, already recognised, and simple to implement. We would lobby strenuously against any attempt to reduce the level of charges, and believe they should be a) increased to better reflect the costs involved in internal collection activity, and b) index-linked and automatically upgraded on an annual basis.

We do not believe the current levels adequately reflect the costs incurred in chasing late payment, particularly if external assistance is used, and would therefore urge Government to ensure that the provisions in Article 6, paragraph 3 are specifically outlined so that debtors are aware of their entitlement “to obtain responsible compensation from the debtor for any recovery costs exceeding that fixed sum and incurred due to the debtor’s late payment. This could include expenses incurred, inter alia, in instructing a lawyer or employing a debt collection agency”.

4. (Article 12 para 4) If the Directive is transposed (implemented) on 16 March 2013, our proposal is to exclude contracts concluded before 16 March 2013 from being subject to the Directive, given the changes introduced are not sufficiently substantive to warrant retrospective application and that retrospective application will incur a costly process of contract review – is this the correct choice?

Comments:

We support the proposal to exclude contracts concluded before 16 March 2013 and believe it is the correct choice.

5. An Impact Assessment is shown at Annex 3 of the consultation document that also includes a number of question that we would be grateful for you to answer:

IA Q1: Do you have any further evidence about problems created by late payments, particularly where this potentially impacts on business survival/insolvency?¹

No quantitative evidence but substantial anecdotal evidence of the impact of late payment on levels of company failure.

IA Q2: Do you have any further evidence about the incidence or magnitude of write-offs associated with late payment debts?²

No quantitative evidence but it is clear that the older a debt becomes, the greater the likelihood of it being written off. Late payment contributes to this likelihood.

IA Q3: Do you have any further evidence about the incidence of firms chasing late payments outside of existing legislation?³

No quantitative evidence but anecdotally, some suppliers are getting better at incorporating late payment interest and penalties within their contractually agreed terms and conditions. This becomes less prevalent as the size of the customer increases, due to the ability to impose their own trading terms and conditions.

IA Q4: Do the assumptions underpinning the above estimates of costs and benefits seem sensible? Do you have any evidence that could help to refine these estimates?⁴

The assumptions seem generally sensible.

¹ See page 5 of the Impact Assessment

² See page 5 of the Impact Assessment

³ See page 11 of the Impact Assessment

⁴ See page 11 of the Impact Assessment

IA Q6: Do you agree with the assumptions in the above calculations? Do you have any further evidence that could help to refine the estimates about the potential reduction in administrative costs associated with chasing late payments?⁵

We agree with the assumptions and do not have any further evidence. However, particularly for small businesses where the owner/director is involved in chasing late payments, the effect on sales and other business activity which has to be foregone should be borne in mind.

IA Q5: Do you agree with the assumptions in the above calculations? Do you have any further evidence that could help to refine the estimates about the potential reduction in write-offs?⁶

We agree with the assumptions and have no further evidence regarding write-offs.

Do you have any other comments that might aid the consultation process as a whole?

The issues of late payment, and activity to drive prompt payment and educate businesses in better managing their cashflow, are core to the Institute, and our collaboration with BIS has seen some notable successes. We are happy to continue that collaboration and assist BIS in any way we can in promoting awareness of the new legislation when the directive is transposed, and in continuing efforts to change the culture across business in the UK.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

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⁵ See page 12 of the Impact Assessment

⁶ See page 13 of the Impact Assessment