

SME Panel Consultation on Late Payments (August-November 2021) Preliminary Results

The SME Panel consultation on Late Payments was conducted in the framework of the 'Study on Building a responsible payment culture in the EU: Improving the effectiveness of the Late Payment Directive (2011/7/EU)', launched by the European Commission – DG GROW.

The consultation aimed at collecting information on four aspects:

- main features of payment conditions adopted by enterprises;
- enterprises' experience with unfair payment practices;
- enterprises' handling of disputes concerning payment delays; and
- enterprises' views regarding possible policy measures to combat late payments.

The consultation was conducted through the EU Survey portal and submitted to the Enterprise Europe Network (EEN) members. The link to the consultation was active since 13 August 2021 and was planned to remain open until 15 October 2021. However, to ensure the widest participation possible to all the EEN members the deadline to participate was extended until 15 November 2021.

The results of this consultation will contribute to the work of the ongoing Study mentioned above, due to be finalised in May 2022. The main objectives of this Study are:

1. Implement the specific actions listed in the SME Strategy (COM 2020 103) to strengthen the enforcement of the Late Payment Directive (Directive 2011/7/EU)
2. Address the specific requests of the European Parliament in its Resolution on the implementation of the Late Payment Directive of 17 January 2019¹
3. Identify appropriate additional measures to boost prompt payment in support of SMEs and thus contribute to more resilient supply chains.

More specifically the actions envisaged through this Study concern the following work areas:

- Fostering the use of e-invoicing, digital platforms (fintechs) and supply chain finance solutions in payments
- Facilitating access of SMEs to creditworthiness information of other businesses
- Reinforcing synergies between public procurement and late payment objectives.
- Facilitating the use of Alternative Dispute Resolution Mechanisms (ADR) and Mediation to solve payment disputes in commercial transactions
- Fostering SMEs entrepreneurs' education in credit management
- Identifying key requirements for the setting up of a "EU Observatory" of payment delays in commercial transactions

Profile of Respondents

The consultation targeted small and medium enterprises (SMEs) active in all sectors. However, the focus was set on payment conditions in business-to-business (B2B) transactions. Therefore, retail traders, as well as businesses mostly working directly with consumers and/or with public administrations, were excluded from the consultation. A total of **715 businesses participated in the exercise**.

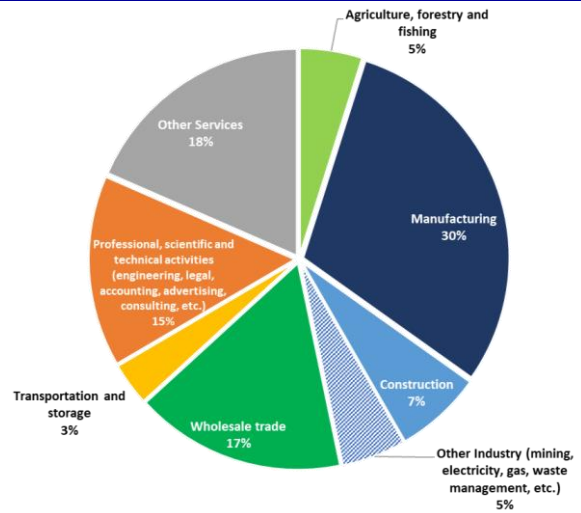
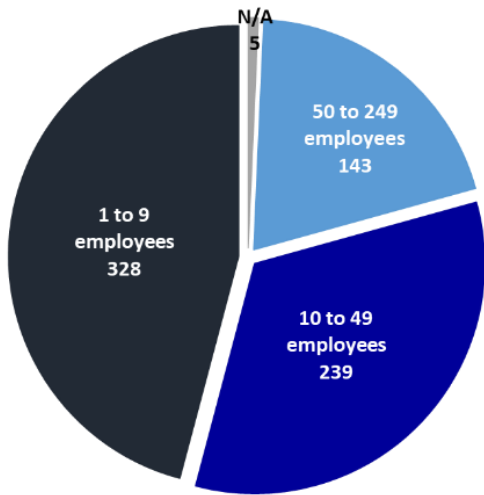
The majority of respondents and micro and small firms. Indeed, micro enterprises (with 1-9 employees) account for 46% of respondents while another 33% are small businesses (with 10 to 49 employees). The remaining 20% are medium-sized enterprises (with 50 to 249 employees).

Respondents come from a wide range of activities. Manufacturing is the most widely represented sector, accounting for 30% of respondents, followed by Other Services (which includes

¹ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0042_EN.html

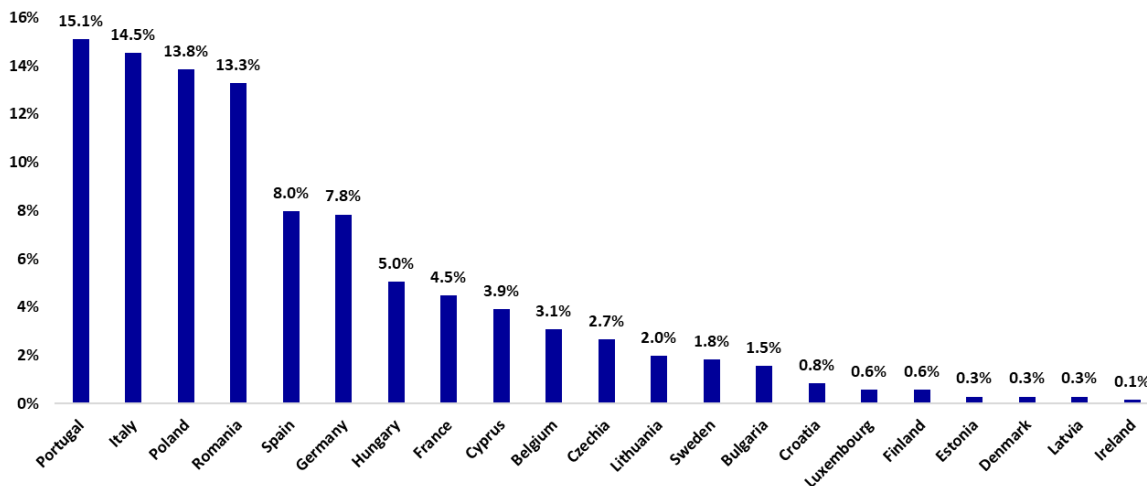
IT services) with 18%, Wholesale Trade with 18% and Professional Services with 15%. Construction accounts for 7% and all other sectors cumulatively account for 13% of respondents.

Business size **Business Sector**



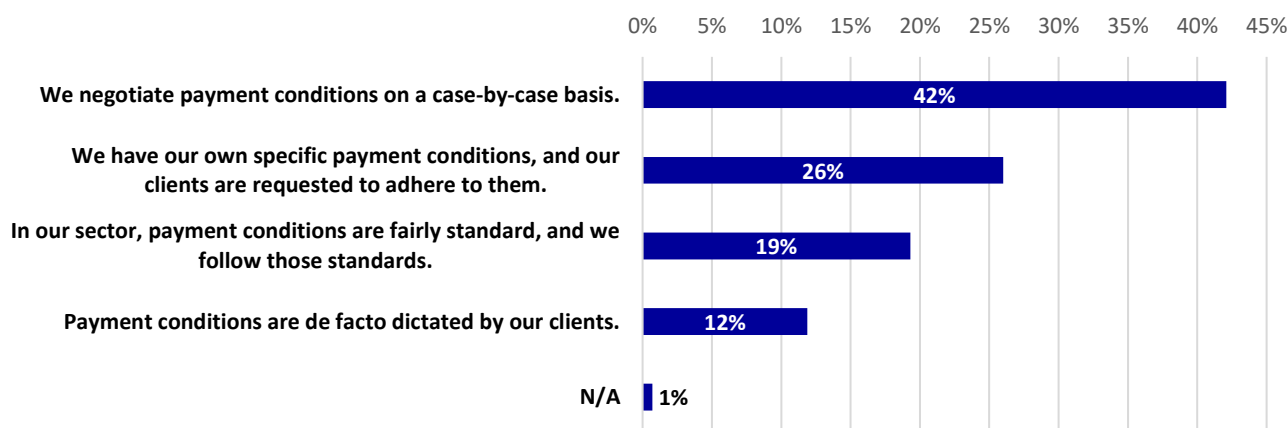
Nearly 60% of answers were received from four Member States, namely Portugal (15%), Italy (14%), Poland (14%) and Romania (13%). Other Member States with a significant share of respondents include Spain and Germany (8% each) followed by Hungary, France and Cyprus (4%-5% each). There were no replies from six Member States, Austria, Greece, Malta, The Netherlands, Slovakia and Slovenia. In general, the **geographical distribution of respondents reflects the severity of the late payment problem, although with significant exceptions** (e.g. Malta and Greece).

Geographical distribution



Payment Conditions

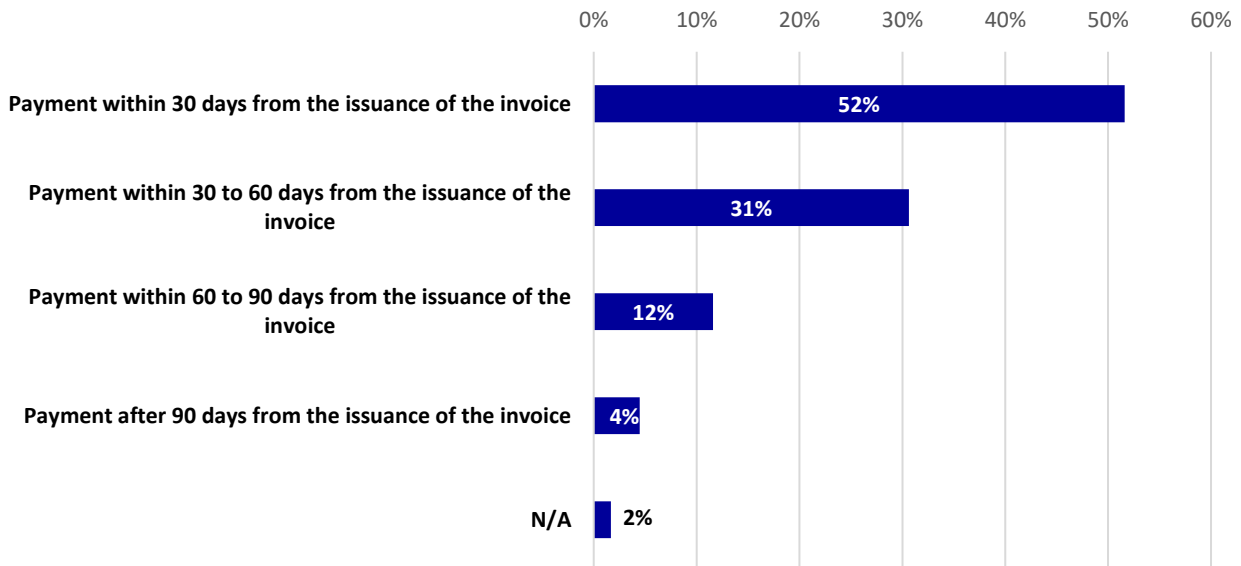
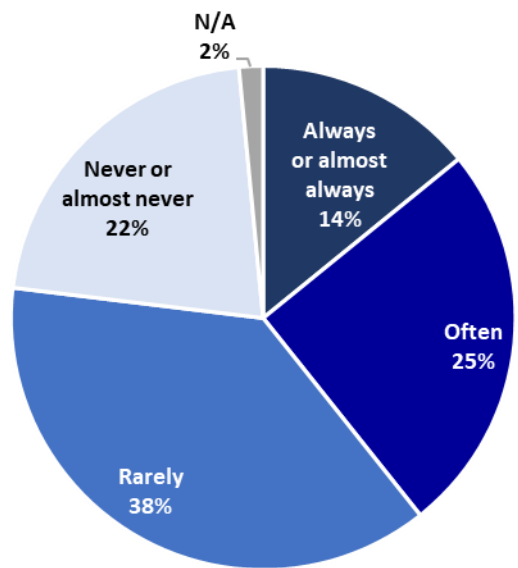
Respondents exert a varying degree of control on the way in which payment terms to their clients are set. One fifth tend to follow what is regarded the 'standard practice' in their sector, whereas one quarter have their own set of payment conditions that clients are supposed to adhere to. A flexible approach is adopted by 42% of respondents, with the negotiation of payment conditions on a case-by-case basis. Only 12% of respondents are in a clearly 'inferior' position, with the payment terms 'de facto dictated' by clients.



Advance payments are used to a varying degree. Advance payments (in full or partial) are a fairly common feature for two fifths of respondents ('Always or almost always' or 'Often') whereas a similar share of businesses declare to use them 'Rarely'. One fifth of respondent 'Never or almost never' rely on advance payments.

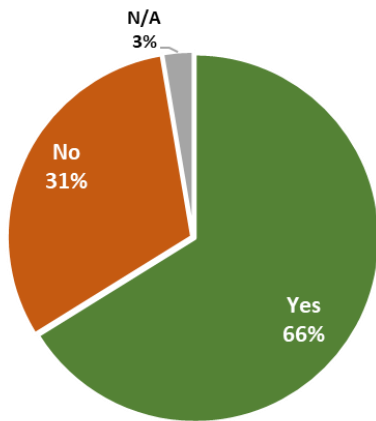
Leaving aside the amounts paid in advance, **the typical payment terms are only partly aligned with legislative provisions.** More than half of respondents (52%) require payment within 30 days from the issuance of invoice, in line with LPD. Less favourable payment conditions, i.e. 30 to 60 days from the issuance of the invoice, are practiced by nearly one third of the businesses taking part in the consultation. Longer payment conditions are used by one sixth of respondents, of which 12% normally refer to payment within 60 to 90 days from the issuance of the invoice, and 4% with payment after 90 days.

Advance Payments

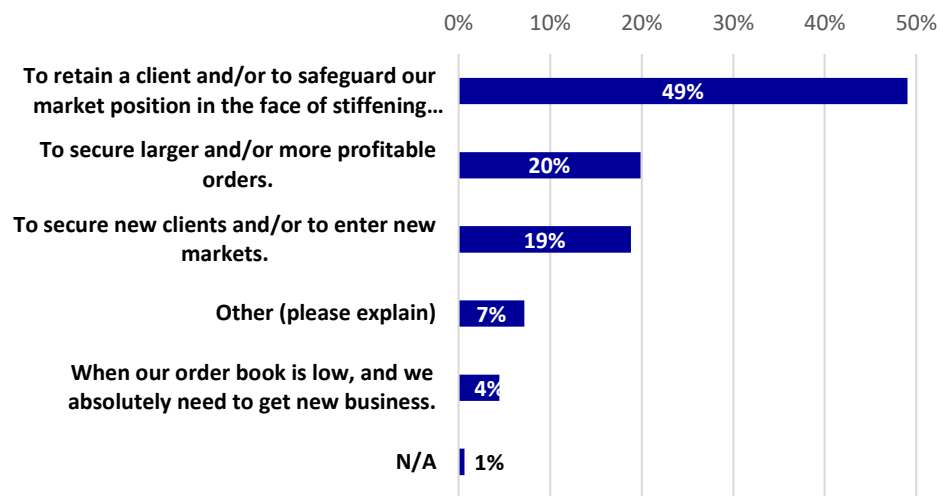


Typical payment terms can sometimes be lengthened for competitive reasons. Two thirds of respondents declared that under certain circumstances they would be willing to offer more generous payment terms, while the remaining third is not willing to derogate from typical terms. Of those willing to consider longer payment terms, about half would do so for 'defensive reasons', i.e. to retain a client and/or to safeguard their market position. In contrast, 40% of respondents are willing to use payment terms in an 'aggressive manner', i.e. in order to secure larger and/or profitable orders (20%) or to seize the opportunity of entering a new market and/or gaining new clients (19%). Only a tiny 4% declared to consider the lengthening of payment terms as a sort of 'last ditch attempt' to fill the order book.

Willingness to lengthen payment conditions



Reasons for lengthening payment conditions

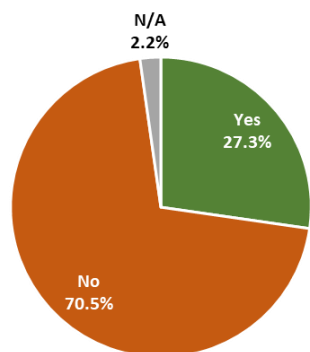


Unfair Payment Practices

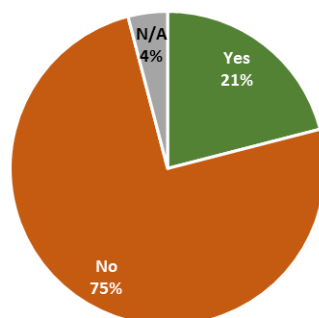
Unfair payment practices are reported by about one quarter of respondents, mainly smaller businesses. The problem more frequently mentioned, reported by 27% of respondents, is the attempt to retroactively re-negotiate some most commonly key contractual provisions (e.g. on price, quantity or quality of goods/services, delivery times, etc.) in order to postpone the payment beyond the agreed term. Deliberate delays in the acceptance of the services/goods are less common, being reported by 21% of respondents. Unfair payment practices are correlated with business size. Indeed, problems were reported by 35%-40% and micro and small enterprises, while only one quarter of medium-sized firms experienced problems.

Frequency of unfair payment practices

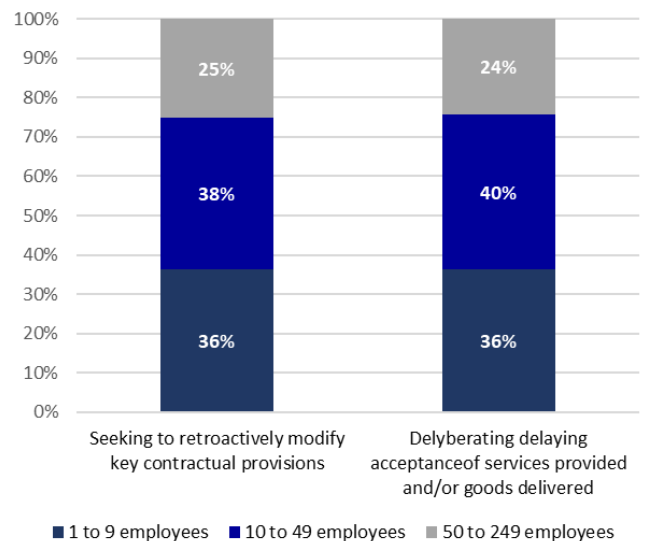
Retroactively modify key contractual provisions



Deliberately delaying the acceptance of services provided and/or of goods delivered

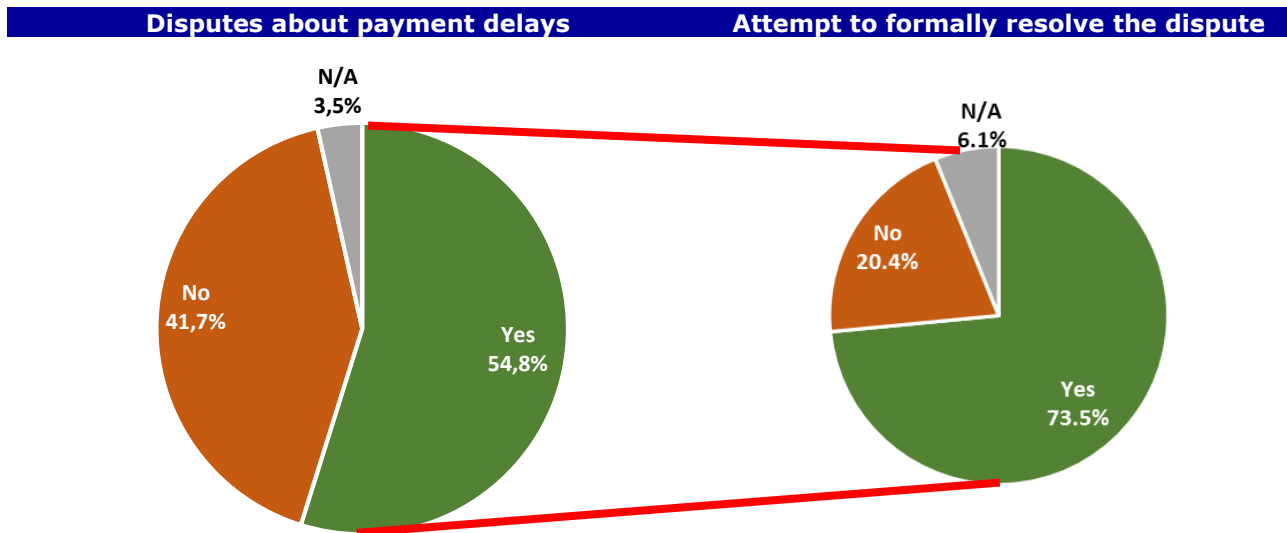


Unfair payment practices and business size

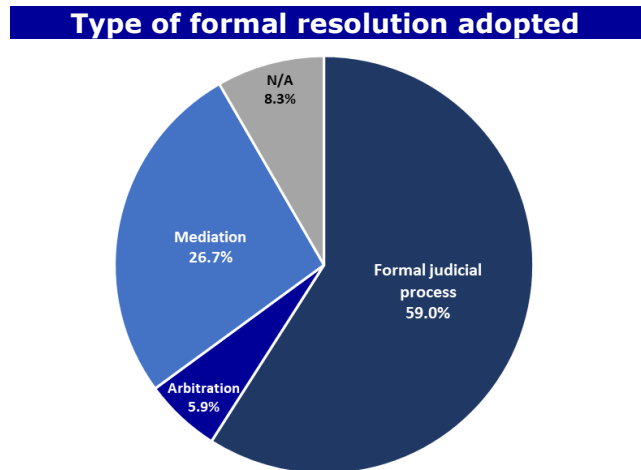


Disputes related to payment delays

The majority of respondents declared experiencing in the past disputes with other businesses regarding payment delays and a plurality tried to formally resolve these disputes. Overall, 55% had at least a dispute in the past. Of those firms, 75% tried to formally address the issues, whereas 20% decided not to proceed. The frequency of disputes is higher in Manufacturing, Construction and Other Industry, hovering around 70% – 75%. In the service sector, late payment disputes were experienced by 45% - 55% of those experiencing disputes, while the issue is less common in Agriculture (only 26%).

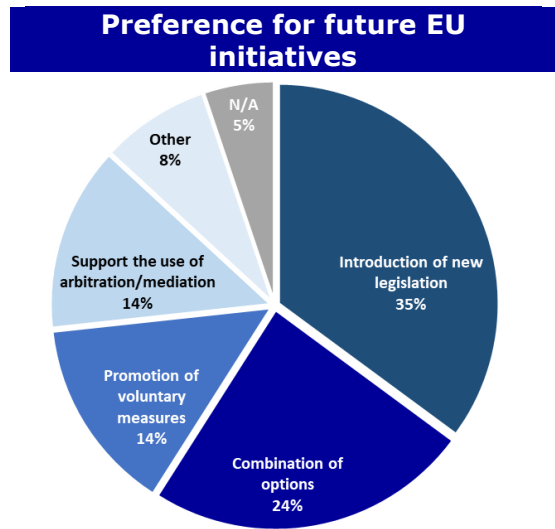


Going to court was the most common route for solving late payment disputes. In the case of the most recent dispute, 59% of respondents who tried to formally resolve the issue (declared initiating judicial proceeding. A significant minority (27%) declared relying on some form of mediation, whereas arbitration was used by only 6% relied on arbitration. Overall, considering all respondents (i.e. including those not experiencing late payment disputes and not seeking to formally address these disputes), only about 2% relied on arbitration and 11% turned to mediation



Policy Measures

Respondents generally support new interventions at the EU level to address the issue of late payments, although the emphasis of various measures shows some variations. Over one third favour the introduction of new legislation. The promotion of ADR/Mediation and of voluntary initiatives (e.g. prompt payment codes) are each supported by 14% of respondents. One quarter support a combination of two or three of the above measures, while 8% suggest other measures (ranging from the adoption of name and shame mechanisms to the banning of late payers from business activity altogether).



Finally, **respondents are generally in favour of the disclosure of information on payment behaviour in large companies' annual reports.** This can be inferred from the preferences expressed by respondents regarding a battery of proposed payment behaviour indicators, with a solid majority of respondents considering all of them as 'Very useful' or 'Somewhat useful'. In this context, the most favoured indicators are those related to the 'Standard contractual payment terms' (78% 'Very useful' or 'Somewhat useful') and the 'Average time to pay an invoice' (76%, 'Very useful' or 'Somewhat useful').

