PROPOSAL FOR A LATE PAYMENTS REGULATION
- COMMENTS OF INDEPENDENT RETAIL EUROPE -

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EXECUTIVE SUMMARY

Independent Retail Europe wishes to express its strong concerns about the Commission proposal for a Late Payments Regulation. **Although this proposal is presented as a mean to increase SME's financial resilience, it will actually achieve the exact opposite for SME retailers, as well as for any SME at the end of the supply chain (directly in contact with consumers).**

The Commission proposal to shorten payment terms to maximum 30 days in all circumstances, without derogation, and whatever the size of the buyer, would have the following impact:

- ➔ **It creates a massive shortage of liquidities for retailers (especially SME retailers), while they already have very low profit margins and liquidities;**
- ➔ **It favours large international suppliers to the detriment of SME retailers;**
- ➔ **It makes it impossible to find different mutually beneficial terms, based on individual circumstances or for particular goods;**
- ➔ **It undermines the competitiveness of EU suppliers, to the benefit of non-European suppliers;**
- ➔ **It will ultimately result in higher consumer prices and the progressive disappearance of small retailers.**

This position paper provides more details as to why this proposal will unavoidably lead to these impacts.

We call on the co-legislators to assess in depth the impact of this proposal and seriously reconsider the proposed universal 30 days payment term. This is particularly important, as 1 in 4 SMEs are retail and wholesale SMEs, while around a third of all SMEs are at the end of the supply chain (consumer-facing). They should not be sacrificed to the benefit of large suppliers from whom derive most of the products available in retail shops and used by other consumer-facing operators, and who already enjoy better profit margins and higher liquidities.

COMMENTS OF INDEPENDENT RETAIL EUROPE ON THE COMMISSION PROPOSAL FOR A LATE PAYMENTS REGULATION

On 11 September 2023, the European Commission presented its proposal for a Regulation to combat late payments in commercial transactions, repealing current Directive 2011/7/EU and replacing it with a Regulation. Currently, the Late Payments Directive allows for maximum payment terms of 60 days, if bilaterally agreed, that can be extended if agreed otherwise and provided it is not grossly unfair to the creditor. The Commission proposal is a shortening of payment terms to a maximum of 30 days in all commercial transactions (whatever the respective size of the parties, whatever the sector and without any possibility to derogate even if mutually beneficial) – as provided in article 3(1) of the proposal.

1) A universal 30 days maximum payment term creates major financial, fairness and competitiveness issues

a) Key economic and market conditions that influence payment terms with independent retailers

The retail sector is one of the most competitive sectors in the EU. It is a sector that is consistently characterised by very low profit margins: 2-3% in the food retail sector, 1-2% in Technical Consumer Goods, and similar low single-digit percentages in other segments. For any retailer, payments to suppliers represent the majority (60-70%) of the turnover of the shop.

Moreover, as manufacturers cannot deliver every shop every day/week, retailers need to acquire large stocks of products. Selling large quantities of products at once, allows manufacturers/suppliers to make huge savings on the logistics and costs for internal warehousing, while ensuring that consumers do not face shortage on the shelves of individual shops. **There is therefore an indefinite period of time between the time of transfer of ownership from the supplier to the retailer (delivery) and the sale of each individual product to the end consumer, which - depending on the product category - can be several days, months or years.** E.g. DIY products have an average stock rotation of 150 days, while more than half of textile products in a retail shops take more than 90 days to be sold. Similarly long 'shelf life' is common in other retail segments (e.g. Home appliances and Technical Consumer Goods often are 70-75 days in stock, toys are sold faster before Christmas but have a long shelf life the rest of the year, etc.).

The economic viability of an independent retail shop therefore entirely depends on the retailer's capacity to sell a large share of its stock before paying suppliers, as most products take several weeks or months to be sold (therefore being stored by retailers until they are sold). This is the prime reason why (large) suppliers/manufacturers agree to negotiate payment terms of 60 days or longer payment terms (even with independent SME retailers): it allows manufacturers to sell at once large quantities of products (removing risks of getting stuck with stocks), without having to organise costly frequent deliveries of small quantities of products and without having to bear the full costs of warehousing internally. For independent retailers, these terms are vitally important due to the difficulty to have sufficient liquidities to pay large stocks of products that will take several weeks/months to be sold (due to extremely low profit margins and as payment to suppliers make the great majority of their overall turnover).

By granting longer payment terms, suppliers with better refinancing conditions – such as large manufacturers (who enjoy large profit margins and easier access to bank financing) - can provide customers in a less advantageous situation (such as independent/SME retailers) with the liquidity that the latter would otherwise not be able to obtain at comparable conditions and need. For example, to be able to take the risk to offer new articles from the supplier without having to shoulder the corresponding pre-financing costs. This is a win-win situation.

Key elements determining the need to negotiate payment terms

- ➔ Retailers have extremely low profit margins, making liquidity extremely tight
- ➔ Retailers need to buy large stocks of products that take months to be sold.
- ➔ The viability of a retail shop is linked to its ability to sell a very large share of its stocks before paying suppliers, given retailers' extremely low profit margins.
- ➔ Longer payment terms allow manufacturers to save on the costs of internal warehousing and logistics and to reduce their risk of getting stuck with overstock when products do not sell as well as expected as it allows to sell large stocks to retailers long before any sale to the end consumer

materializes. They are a way to share part of the warehousing costs, and the risk of products that may not sell as well as expected (e.g. new products) which is largely borne by retailers.

b) A universal 30-days maximum payment terms will hit retailers' financial stability

The Commission proposal to shorten payment terms to maximum 30 days, in all circumstances, and without the possibility to negotiate mutually beneficial longer terms (even when the suppliers/manufacturers are large companies) would massively hit independent retailers' financial stability.

As mentioned above, due to the necessity to stock large quantities of products that will take months to be sold, it is essential for any retailer, and especially for independent/SME retailers, to be able to sell a significant share of its stocks before paying suppliers.

A reduction of payment terms to 30 days in all circumstances means that a very large share of the products bought by the retailer (and stored by retailers) will not have been sold to consumers at all when suppliers require payment.

Indeed, most independent retailers will not be able to sell faster their products to preserve their financial stability: selling faster means reducing prices, which is not affordable by retailers who already have extremely low profit margins. They would risk bankruptcy.

The result of a universal 30-days payment term will therefore require independent retailers to find new financing from banks to cover liquidity needs every year. **However, banks are extremely reluctant to finance independent/SME retailers because of their very low capacity to reimburse loans, which directly results from their very low profit margins.** Given that any new bank loan generates interests (currently at high levels) that increases operating costs and decreases further the already very low profit margins, we anticipate banks to massively refuse new loan requests (resulting from the Commission proposal) from independent (SME) retailers.

Examples of financing needs resulting from the Commission proposal

Example 1: a small retailer operating a DIY / home equipment shop (5 million € gross turnover - small company). Average stock of 150 days. Payment at 30 days (instead of 60) requires to find 300.000/350.000€ additional liquidities to pay the suppliers.

Example 2: a grocery shop with 20 million € of supplies of non-perishable food). A reduction of payment terms of 10 days lead to a need to find 547.000€ additional liquidities to pay suppliers.

We invite EU policy makers to put these new financing requirements in light of the existing very low profits margins of retailers.

As a result, the only way for independent retailers to cope with the need to pay faster their suppliers will be to raise prices (to raise their liquidity and pay the costs of new external financing such as bank loans). This will boost further current inflation, at a time where retailers already experience across Europe a sharp decrease in volume sold (as consumers already react to higher prices by cutting significantly on their shopping- even for products as fundamental as food).

Key impact of a universal 30-day payment term on independent retailers

- ➔ Major need for external refinancing of liquidities for retailers to pay suppliers – mostly (very) large manufacturers
- ➔ Banks will largely refuse new loan requests (to finance the Commission proposal) due to the very low profit margins of retailers and limited ability to repay extra loans and interests rates.
- ➔ New loans will further decrease the already very low profit margins of retailers – this is unsustainable.
- ➔ Most retailers will be forced to raise prices significantly to be able to pay suppliers faster (and repay new loans if/when granted) – those who cannot (due to competitive pressure) will face bankruptcy.

c) A 30-days term favours large international suppliers to the detriment of SME retailers

The Commission proposal to shorten payment terms to maximum 30 days (article 3) does not make any distinction between small and large buyers/sellers.

In the retail sector most of the turnover is generated by products supplied by large international manufacturers of branded products. E.g. in retail of electrical and electronical equipment, only 10% of the turnover is derived from products from European SME suppliers. Also in other segments of the retail sector, branded products from large companies account for most of the turnover and assortments in retail shops. **The Commission proposal will protect large suppliers as opposed to their SME clients**. SME retailers will be obliged to pay industry giants earlier (mostly products that have not been sold to consumers yet), while consumers will not buy products more rapidly in the shops. For instance, a small electronic equipment shop will be obliged to pay big global brands established in Europe within 30 days, even though it will take that shop much more time (70-75 days) to sell the products

This results in a massive transfer of liquidities from (very low profit margin) SME retailers to large international companies with high profit margins, strong market power and better access to finance. Given that 1 SME in 4 is in the retail sector, this can hardly be considered a pro-SME policy.

Key negative impacts of the Commission proposal

- ➔ Large manufacturers will be protected as opposed to their SME clients, whereas most of the products in retail shops are supplied by (very) large manufacturers operating globally;
- ➔ The Commission proposal creates a massive transfer of liquidities from SME retailers to large brand manufacturers already enjoying high profit margins, high liquidities and easier access to external financing.

d) It makes it impossible to find different mutually beneficial terms, based on individual circumstances

As mentioned above, the average shelf life of products in a retail shop is much longer than the 30 days proposed by the Commission (and for many types of goods even longer than the 60 days currently in place). The Commission proposal to abolish the possibility to derogate from the maximum payment terms – even when the seller is a large company with no risk of having to accept unfavourable terms – makes it impossible to find different terms that are mutually beneficial.

For instance, and as mentioned above, large suppliers often oblige small retailers to order minimum quantities of goods, as it is too costly to organise more frequent deliveries of smaller quantities to individual retailers. Moreover, delivery of larger quantities at once allows manufacturers to cut on warehousing costs, as the costs of having enough stocks to meet everyday consumer demand is passed on to retailers. The bi-lateral negotiation of longer payment terms allows both parties to share part of these costs. This will not be possible anymore with the Commission proposal, even when the supplier is a large company with strong bargaining/market power and therefore does not face any risk of unfairness in the negotiations.

Key negative impact of the Commission proposal

➔ It prevents parties from negotiating terms that uniquely meet the constraints in the sector or with regard to a certain product in terms of average shelf-life, costs of warehousing and deliveries.

e) It undermines the competitiveness of EU suppliers to the benefit of non-European suppliers

The maximum 30-days payment terms proposed by the Commission only applies for intra-EU transactions. As per EU and International contract law, if one party is in the EU and the other not, parties can choose another applicable law as to their contractual relation.

Currently many large manufacturers not established in the EU have payment terms much longer than the 30 days foreseen in the Commission proposal. For instance, large suppliers in Asia often propose standard 90-days payment terms. The Commission proposal to shorten maximum payment terms to 30 days will therefore **induce retailers to substitute their supply from EU companies to non-EU companies, given the importance of payment terms for the economic viability of a retail shop.** In the Technical Consumer Goods, home appliances, home equipment and DIY segments, non-EU suppliers already represent an important share of retailers' assortments. In all segments of the retail sector where non-European suppliers offer good alternatives, the Commission proposal will create a major incentive to replace European suppliers with non-EU suppliers.

Key negative impact of the Commission proposal

➔ It will induce retailers to change suppliers in favour of non-EU manufacturers. E.g. Asian suppliers offer 90 days standard payment terms.

2) The extension of the scope of the Late Payment Directive to food products circumvents the Commission's legal obligations under the UTP Directive

The Commission proposes to extend the 30-day term to the supply of non-perishable food products which are currently regulated differently (max 60 days) under the Unfair Trading Practices (UTP) Directive (article 3 para 1 (a)).

This extension of the scope circumvents the legal obligation that the co-legislator placed on the Commission to evaluate the effect of the UTP Directive (in a report to be published in November 2025) **before** proposing any change (article 12 of the UTP Directive).

This mandatory evaluation has not been carried out yet. The extension of the scope of the late payment legislation to areas regulated differently by the UTP Directive will create major disruptions (see previous section) that were not assessed (despite a clear legal obligation to do so), especially as the UTP Directive was not applicable to very large suppliers (contrary to the Commission proposal on late payments). This is all the more unacceptable as the UTP Directive only started to apply 2 years ago.

Key negative impact of the Commission proposal

- ➔ The imposition of a 30 days term on contracts for the supply of non-perishable food is in breach of the obligation placed by co-legislators on the Commission under article 12 of the UTP Directive;
- ➔ The UTP Directive mandated the Commission to first assess the impact of its rules in a report foreseen for 2025 (including payment terms) before changing them. The UTP has only been applicable since 2 years.
- ➔ Crucially, the UTP Directive did not apply to large suppliers above a certain threshold, and grants 60 days maximum terms for non-perishable foods.

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*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.
Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 417.800 independent retailers, who manage more than 753.500 sales outlets, with a combined retail turnover of more than 1,320 billion euros and generating a combined wholesale turnover of 513 billion euros. This represents a total employment of more than 6.500.000 persons.

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