
Late Payments in Poland: Economic and Legal Perspectives

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Abstract:

Purpose: The primary purpose of this paper is to carry out a legal and economic analysis of payment bottlenecks in Poland vs. its EU peers. From an economic perspective, the authors analyzed changes in late payments, checked whether overdue invoices become increasingly common, and looked at the losses from uncollected payments in selected EU countries compared against Poland. In turn, when it comes to the legal perspective, the analysis was focused on the evolution of the EU's legislative policy for late payments and on key challenges and problems related to policy implementation. Also, based on the example of the Polish legal system, this paper described the policy for combating late payment in commercial transactions.

Approach/methodology/design: This paper deals with measures in place in EU and national legal systems. The analysis relied on descriptive statistics methods, comparative methods, and legal and historical methods. The authors used the relevant legal acts, the literature on the subject and statistical reports.

Findings: While this study shows that overdue payments become less and less problematic in Europe, EU member countries strongly differ in the pace of that process and continue to incur considerable financial losses. Statistical data suggests that existing sanctions have failed to discourage fraudulent contractors, and the guaranteed means of legal protection for creditors have not contributed to tangible improvements in their actual situation.

Practical implications: These considerations could be of use in designing an active legislative policy geared towards enabling a true comprehensive protection against the impacts of late payments in commercial transactions.

Originality/value: This paper enhances and updates knowledge of legal and economic conditions for combating payment bottlenecks.

Keywords: Late payments, financial losses, legislation, EU, Poland.

JEL Classification: M21, K12, K33.

Paper Type: Research study.

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1. Introduction

Payment bottlenecks entail a series of severe complications for traders. Especially when a global economic crisis strikes, a timely and stable flow of and access to financial resources is of key importance for continuous and balanced operations of every enterprise. The buildup of late payments for the delivery of goods or services can often be the final nail in the coffin for the legal and economic existence of businesses, especially for small and medium ones.

The issue of payment bottlenecks, including without limitation their structure and causes, forms part of a complicated legal and economic matter with a measurable economic impact (D'Alfonso *et al.*, 2017; Franc-Dąbrowska, 2010; Masiukiewicz, 2016; Rogowski, 2019; Zawadzka, 2011). The greater is the number of market players and the stronger are the differences in their positions, the more severe are the impacts of growing payment delays. The lack of a timely payment to an entrepreneur with a specific market position could drive an increase in the risk of insolvency while giving rise to other adverse consequences of payment bottlenecks for other contractors with less market power. What also needs to be remembered is that after Poland joined the European Union, the problem of payment bottlenecks struggled with by Polish economic operators has considerably extended its cross-border nature. Moreover, in practice, the process itself of debt recovery in the domestic market is often prolonged and burdensome for the entrepreneurs. The need to restrain the detrimental yet common practice of non-timely payments has pushed the Community and national legislators to take specific steps focused on implementing efficient legal measures that adequately empower the creditors while effectively discouraging the debtors from continuing the practice of late payments. The Directive 2011/7/EU on combating late payment in commercial transactions (Directive, 2011) adopted by the European Parliament and the Council in 2011, and the Act on payment deadlines in commercial transactions adopted by the Polish legislator in 2013 (Act, 2013) should be regarded as the outcome of these efforts in the Community and domestic context, respectively.

The primary purpose of this paper is to carry out a legal and economic analysis of basic aspects of payment bottlenecks in Poland vs. its EU peers. The first part of this paper presents the outcomes of the analysis from an economic perspective which focuses on basic indicators of the process considered, i.e., the number of late payments, overdue invoices becoming more and more common, and the extent of losses from uncollected payments. The second part presents the legal aspects of the topic addressed in this paper. It shows the evolution of the EU's legislative policy for combating late payment in commercial transactions and the key challenges and problems involved in the implementation of Directive 2011/7/EU by Member States. Furthermore, based on the example of the Polish legal system, this part described the issues related to combating late payment in commercial transactions at the national level. The authors also provided a rationale for the need to reinforce and develop EU's legal standards at national level, illustrated by the example of the reform of the Polish legal system of July 19, 2019.

2. Economic Aspects of Late Payments in Commercial Transactions

The late 2000s saw a financial crisis which considerably slowed down the economy and deteriorated the financial standing of enterprises. Moreover, unstable market conditions related to a sluggish response to the financial crisis continue to adversely affect both the financial standing of enterprises and economic growth. The many threats to business stability include exceeding the payment deadlines in commercial transactions. Indeed, this has an exacerbating effect on liquidity problems, generates additional costs, reduces profits, makes companies lose their creditworthiness, and contributes to payment bottlenecks, i.e., the accumulation and transfer of debt between interrelated contractors. In an extreme situation, this could lead to corporate failures (Gołaś, 2015).

The importance of these problems for business stability is corroborated in periodic research by Intrum Justitia which found that between 2015 and 2020, delayed payments in European enterprises had the most severe effect on liquidity (33%), loss of incomes (29%), increase in interest costs (27%) and reduced capacity to develop (25%) (EPR, 2015-2020).

Generally, the analysis of consequences of late payments in Polish enterprises ends up with quite similar conclusions. However, in this case, the frequency of consequences indicated by respondents is clearly higher than in the total population of European countries surveyed by Intrum Justitia. Indeed, the adverse effects of delayed payments on liquidity, loss of incomes and reduced capacity to developed were indicated by 40%, 34% and 31% of Polish respondents, respectively (EPR, 2015-2020).

In the medium-term perspective, untimely payment generally becomes a less and less common issue in Europe. However, the pace of that evolution varies strongly between the countries. In some of them, the changes are so sluggish that a large group of economic operators continue to experience a deterioration in their financial standing and face related adverse processes; that problem also involves considerable financial losses (Cicirko, 2010; Czepukojć, 2016; Gołaś and Bieniasz 2014; Connell, 2014). This is explicitly reflected in the percentage of enterprises who report untimely payments.

According to statistics delivered by Atradius (Payment..., 2015-2020), delayed payments were reported by as much as 83-87% of European B2B enterprises in 2015–2019. A similar ratio was recorded in Poland in that period: 85-89% of B2B respondents claimed to struggle with late payments (Payment..., 2015-2020). However, as mentioned earlier, late payments are a problem that strongly differs in intensity across the European continent. This is confirmed by data in Table 1 which presents payment delays in the B2B sector of a fixed group of 21 EU countries (EU-21) covered by Intrum Justitia's research in each year from 2008 to 2020.

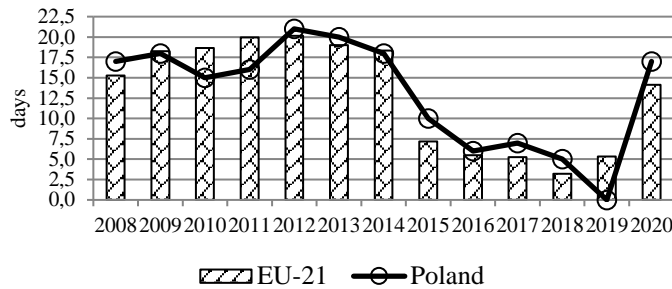
Table 1. Payment delays in the EU-21¹ B2B sector in 2008–2020 (days)

Years	UE-21 ²					Poland
	\bar{x}	Med	Max	Min	V (%)	
2008	15	16	33	6	45.3	17
			PT=33, GR=26, LV=20, IT=20, CZ=19, HU=19	DK=6, FI=6, DE=6, SW=7, AT=8, SK=8		
2009	18	18	35	7	41.9	18
			GR=35, PT=35, ES=26, LT=23, IE=22, IT=21	FI=7, AT=8, SW=8, DK=12, SK=13, EE=16		
2010	19	17	37	7	42.3	15
			PT=37, IT=30, GR=30, ES=28, IE=25, LT=24	FI=7, SW=8, DE=10, AT=11, DK=12		
2011	20	18	41	7	45.2	16
			PT=41, GR=35, IT=34, IE=30, ES=29, HU=22	FI=7, SW=8, DE=12, AT=12, DK=13, BE=15,		
2012	20	19	40	7	46.2	21
			PT=40, GR=40, IT=31, IE=31, ES=27, HU=22	FI=7, SW=7, DE=10, AT=11, DK=12, EE=15		
2013	19	17	43	6	49.4	20
			GR=43, PT=35, IT=31, IE=30, ES=25, LV=22	FI=6, SW=7, DE=9, DK=10, AT=12, CZ=14		
2014	18	16	41	6	47.5	18
			GR=41, PT=33, IE=29, IT=29, ES=23, LV=22	FI=6, SW=8, DK=9, DE=9, AT=13, FR=14		
2015	7	5	25	0	92.0	10
			IT=25, PT=21, ES=14, BE=13, FR=13, PL=10	DE=0, LV=0, LT=0, UK=3, AT=4, DK=4		
2016	5	4	20	0	100.1	6
			IT=20, PT=16, ES=12, GR=11, BE=10	IE=0, LV=0, LT=0, UK=0, DE=1, EE=2		
2017	5	5	20	0	88.5	7
			PT=20, GR=14, BE=8, IE=7, IT=7, PL=7	DE=0, HU=0, UK=1, AT=2, DK=2, EE=2		
2018	3	3	12	0	99.4	5
			PT=12, BE=9, IT=6, FI=5, HU=5, PL=5	DE=0, GR=0, IE=0, LV=0, SK=0		
2019	5	2	20	0	115.6	0
			NL=20, GR=19, PT=16, FR=10, ES=9, CZ=7	PL=0 , UK=0, AT=1, EE=1, DE=1, HU=1,		
2020	14	16	21	0	45.9	17
			ES=21, DK=20, DE=20, UK=19, PT=18, SW=18	IT=0, NL=0, BE=3, CZ=4		

¹Country codes: AT: Austria, BE: Belgium, CZ: Czech Republic, DE: Germany, DK: Denmark, EE: Estonia, ES: Spain, FI: Finland, FR: France, GR: Greece, HU: Hungary, IE: Ireland, IT: Italy, LT: Lithuania, LV: Latvia, NL: Netherlands, PL: Poland, PT: Portugal, SK: Slovakia, SE: Sweden, UK: United Kingdom.

² \bar{x} - mean, Med: median, Max: maximum, Min: minimum, V: coefficient of variation.

Source: Own study based on EPI (2007–2014) and EPR (2015–2020).

Figure 1. Payment delays in the EU-21 B2B sector in 2008–2020 (days)

Source: Own study.

When analyzing data in Table 1 and Figure 1, it can be noted that the average delay in payments in the EU-21 group became much shorter over the study period. The period 2008–2014 was marked by important payment delays which fell within a quite narrow interval of 15 to 20 days. In turn, subsequent years (until 2019) saw considerable improvements in that respect: the average delay in payments went down to 3–7 days over that period. However, that downward trend was stopped by the global pandemic which resulted in re-extending the delays in payments to a long interval of 14 days in 2020.

Generally, these changes followed a similar path in Poland, with payment delays recorded each year by domestic B2B enterprises being usually like the average level found in EU-21 countries. However, it can be noted that in Poland, too, the economic slowdown due to pandemic had a strong effect on payment times in commercial transactions. Indeed, in 2020, payment delays in the domestic B2B sector grew to as much as 17 days, which is longer than the EU-21 average.

Data in Table 1 also reveals that EU-21 countries strongly differ in payment delays they deal with. This is reflected by high (41.9–49.4%) and extremely high (88.5–115.6%) coefficients of variation (V) recorded in 2008–2014 and 2015–2019, respectively. Notable differences also emerge from the comparison of EU-21 countries with the longest and the shortest payment delays. These comparisons provide grounds for drawing a general conclusion that Southern European countries, i.e., Greece, Portugal, Spain, and Italy, were the most affected by untimely payment of commercial liabilities as they reported practically the longest delays throughout the study period. For instance, in 2008–2014 it was 26–43 days for Greek B2B enterprises, and 33–41 days, 22–29 days and 20–34 days for their Portuguese, Spanish and Italian peers, respectively. Although these countries, too, saw a reduction in payment delays over the study period, they continued to report the longest ones (significantly above the EU-21 average). Against this background, the timeliness of payments in Northern European countries was a definitely different experience. Indeed, such countries as Denmark, Finland or Sweden demonstrate extremely high levels of what can be

referred to as “payment morality.” The delays in paying the amounts due were either short or, in some years, non-existent.

In turn, when considering Polish B2B enterprises, it needs to be concluded that they, too, experienced considerable improvements in payment timeliness in commercial transactions. Indeed, payment delays became much shorter, reaching a level which does not considerably deviate from what is characteristic of the entire group of EU countries. However, just like in the EU-21, that trend suffered a strong reversal in 2020 because of the major economic slowdown due to global pandemic. Nevertheless, the trend recorded over the entire study period shows that Poland witnessed positive changes and a considerable reduction in untimely payment of commercial liabilities.

However, although quite clear, the symptoms of improvements towards timely payments in commercial transactions failed to discourage the intensity of other adverse processes, i.e., the number of overdue invoices and the extent of losses resulting from uncollected receivables (Table 2, Figures 2, 3). According to periodic research by Atradius (Payment..., 2015–2020), between 2013 and 2020 the percentage of overdue invoices in the B2B sector varied quite strongly across Europe (from 26.7% to 46.0%) and followed a consistent upward trend, except for 2018–2019. Consequently, the trend recorded over the entire study period (2013–2020) reflects a negative change and indicates that payment bottlenecks keep growing. Generally, similar conclusions can be drawn for Polish B2B enterprises. Although the percentage of overdue invoices (23.0%–44.0%) they reported in that period was slightly below the European average level, it followed a sharper upward trend. Indeed, the share of overdue invoices in Poland grew consistently until 2018 (39%). While a considerable drop (28.8%) was recorded in 2019, it did not announce any positive changes. In 2020, the share of overdue invoices in Poland grew to reach as much as 44%, a level comparable to that recorded for Europe as a whole (46%).

Table 2. *Overdue and uncollectible invoices in the B2B sector in 2013–2019.*

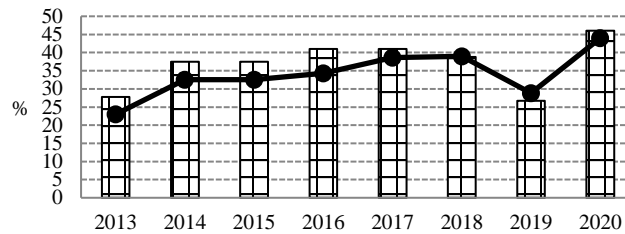
Specificatio	2013	2014	2015	2016	2017	2018	2019	2020
Overdue invoices (%)								
Europe as a	27.8	37.5	37.5	41.0	41.0	38.8	26.7	46.0
Poland	23.0	32.5	32.5	34.3	38.6	39.0	28.8	44.0
Uncollectible invoices (% of total receivables)								
Europe as a	1.7	1.5	1.3	1.3	1.2	1.2	1.7	6.5
Poland	2.3	1.3	1.1	1.2	1.0	1.0	1.8	6.0

Source: *Own study based on: Payment..., (2015–2020).*

The extent of losses due to uncollected payments did also not follow a positive trend in the analysis period; this is true both for Europe as a whole and for Poland (Table 2, Figure 3). In 2013, the share of uncollected payments in the B2B sector was 1.7% (in Europe) and 2.3% (in Poland); this is much more than in 2017–2018, a period where it went down to 1.2% (Europe) and 1.0% (Poland). However, that favorable trend was

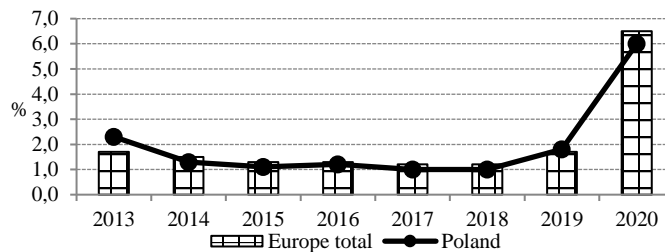
stopped in the next years. Both in Europe as a whole and in Poland, 2019 saw a sharp increase in the percentage of invoices written off as uncollectible in the B2B sector (1.7% and 1.9%). In 2020, as the global pandemic progressed, losses due to uncollectible receivables exceeded 6%.

Figure 2. Overdue invoices in the B2B sector in 2013-2019 (%)



Source: Own study.

Figure 3. Uncollectible invoices in the B2B sector in 2013–2019(%).



Source: Own study.

3. Legal Aspects of Late Payments in Commercial Transactions

3.1 Evolution of the EU's Legislative Policy for Combating Late Payment in Commercial Transactions

Since more than two decades, late commercial payments and payment bottlenecks have been topics of special interest to legislators at both EU and national level. That period witnessed the adoption of two subsequent Community directives. Consequently, each Member State has implemented numerous reforms designed to change the widespread negative payment practices in trade activities (Tot, 2013).

Every legal system demonstrates the same threats and legislative challenges involved in late payments and payment bottlenecks. This is due to universal problems related to unfair payment practices imposed by the largest market players; the risk of insolvability which particularly affects the SME sector and the progressing restriction of freedom of cross-border commercial transactions within the EU's single internal market. These issues are also faced by the Polish legislator whose legislative efforts

in late commercial payments have been directly inspired by the goals, tasks and instruments defined by the Union legislator over the last 20 years.

Over the last twenty years, in view of the adverse effects' payment bottlenecks have on the single market, the Community legislator has focused its essential legislative efforts on seeking new and improving existing legal instruments put in place to combat the bad practice of delays in commercial transactions. That goal was supposed to be attained by introducing a series of regulations designed to erode the position of the debtor, reinforce the creditor's guarantees and rights, and monitor the situation inside the EU (Bilotta, 2013).

The growing dimension of the problem of untimely payments by stronger contractors and the clear absence of effective legal measures of a proactive and protective nature are the reasons that encouraged Community authorities to implement more regulations to suppress that phenomenon and to reinforce the position of weaker players on the single market. These commitments and the growing awareness of the EU legislator were reflected by the adoption of two consecutive Directives from 2000 onwards.

The chronologically first act laying down standards for these matters was the Directive 2000/35/EC of the European Parliament and of the Council of June 29, 2000 on combating late payment in commercial transactions (Directive, 2000). It was the first European document of a binding nature which so clearly and categorically focused on the issue of late payments. The act imposes several implementation obligations on Member States, including (in Article 3) statutory late payment interest becoming automatically due and some improvements (Article 5) to the procedure for issuing enforcement instruments under the recovery procedure for unchallenged claims (Directive, 2000). However, the solutions proposed were of a fragmented and incidental nature which, according to statistical data, did not have any major impact on the dimension of the phenomenon itself of payment bottlenecks. When the aforesaid Directive was in force, there was progressive growth of adverse consequences of payment bottlenecks in commercial transactions, additionally fueled by the developing global economic crisis (Gołaś, 2015).

Admitting, in a way, own failure, the Community legislator extended the European legal system with the Directive 2011/7/EU of the European Parliament and of the Council of February 16, 2011 on combating late payment in commercial transactions (Directive, 2011), repealing the previously applicable one as of March 16, 2011 (hereinafter referred to as the Late Payments Directive (LPD)). Both the Parliament and the Council agreed that payment bottlenecks and the late payment practice, which is related to it, have a negative effect on the internal market, and that new legal measures need to be proposed with a broader and stronger impact. As set out in Article 1.1, the primary aim of the LPD is "to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market" (Directive, 2011). The Late Payments Directive enhanced the legal instruments previously proposed at European level, thereby extending the scope of implementation

obligations of Member States. Pursuant to Articles 3 and 4 thereof, the Union legislator requires the Member States to specify in their national legal systems inflexible deadlines which, if exceeded, automatically entitle the creditor to charge statutory interest for late payment (Directive, 2011). In the case of commercial B2B transactions, that contractual deadline should be no longer than 60 calendar days (Article 3.5) (Directive, 2011).

In turn, for commercial transactions (Article 4.3) where the debtor is a public authority, the deadline should not exceed 30 days, subject to certain exceptions (Directive, 2011). It follows from Article 6 that Member States are required to grant the creditors the statutory right to claim financial compensation for costs involved in recovering past due receivables (Directive, 2011). Moreover, Member States are required to combat unfair contractual practices relating to payment deadlines (Article 7), to guarantee the transparency and increase awareness of rights and obligations provided for in the Directive (Article 8), and to implement a fast and simple recovery procedure for unchallenged claims (Article 9) (Directive, 2011).

3.2 Key Challenges and Problems Related to the Implementation of Directive 2011/7/EU by Member States

As set out in Article 288 of the Treaty on the Functioning of the European Union, a directive is a type of a legal act which “shall be binding, as to the result to be achieved, upon each Member State [...], but shall leave to the national authorities the choice of form and methods” (Treaty, 2012). Consequently, the adoption of an EU directive imposes a complex political and legislative obligation on the Member States. Indeed, it should be noted that only a reasonable and coordinated legislative policy of all Member States will enable a fully effective achievement of the goal set out in any directive. Otherwise, a rough, tardy, or partial implementation of such directive at national level would considerably reduce the impact of the EU law and would prevent Community-level goals from being fully attained.

The above relationships and threats are also totally true for late payments, an issue which in the EU legislation is governed by directives. Hence, the efficiency of the policy of Community authorities in the area concerned remains largely dependent upon the legislative policy of all Member States. In this context, particular attention should be paid to official analyses and reports presented by EU authorities which allow to determine the current implementation progress of the Late Payments Directive in each state and, importantly, to identify ongoing challenges and problems facing the implementation process. This process of implementation is assessed based on five essential criteria, i.e., effectiveness, efficiency, coherence, relevance and EU added value (Report, 2016).

Published in 2016, the first report states that neither the LPD itself nor the rights implemented at national level as provided for therein did considerably contribute to reducing the late payments issue (Report, 2016). Despite the general mobilization of

national legislators, each country recorded only a small acceleration of payments. However, note while on multiple occasions, the entrepreneurs declared to be more aware of protective rights vested in new legislation (Report, 2016). Another finding is that nearly half of entrepreneurs deliberately waive these rights as they are afraid of destroying their business relationships. This could suggest the LPD has a limited impact on business behaviors in the unified market (Report, 2016).

An analysis carried out by the European Parliamentary Research Service in 2018 found the objectives set out in the LPD to be too ambitious (Tymowski, 2018). The author of the report explicitly points out to the discrepancy between legal provisions and common practice in which neither the most severe sanctions nor absolute rights conferred to creditors at national level are fully effective (Tymowski, 2018). The report notes that, in practice, the implementation of the LPD at national level contributed only to making entrepreneurs more aware of the importance of timely payments. However, this did not prevent the largest players from imposing their own conditions which often breach the standards provided for in the Directive (Tymowski, 2018). Another remark is that the limited effectiveness and efficiency of national judicial systems remains one of the major obstacles to implementation efforts. In that context, particular attention was paid to difficulties in the proper interpretation and use of the term “gross unfairness” in the process of defining legitimate limits of the contractual freedom in commercial transactions (Tymowski, 2018).

In turn, a report contracted by the Parliamentary Committee on the Internal Market and Consumer Protection (Comi, 2018) indicates the Member States against whom a procedure has been initiated for breaching the EU law due to improper implementation of the LPD. Such procedures have been initiated against Greece, Slovakia, Spain, and Italy (European Commission, 2017). The European Commission called on Greece to remedy an infringement in the form of a new legal regulation which revokes the creditors’ right to claim interest and compensation for payment delays; this was in direct breach of Articles 3, 4 and 6 of the LPD. In turn, Slovakia was called on to remedy an infringement in the form of excessive payment delays in the public health sector; this was in breach of Article 4.4 b) of the LPD setting the payment deadline to a maximum of 60 days. When it comes to Spain, it was criticized for a new legal regulation which resulted in a progressive extension of the basic 30-day payment deadline.

However, the most resolute measures were taken against the Italian Republic; in this case, the European Commission decided to bring an action before the Court of Justice of the European Union, leading to a judgment rendered on January 28, 2020 (Judgment, 2020). In 2014, the Commission initiated a procedure in response to numerous complaints from Italian entrepreneurs and entrepreneur associations claiming that public authorities fail to meet the 30-day or, as an exception, 60-day payment deadlines as defined in Article 4 of the LPD. Having examined the practice of Italian public authorities in 2014-2016, the Commission found that actual payment dates considerably and frequently exceeded the basic 30-day deadline.

Indeed, the average payment deadline for transactions concluded in 2016 was as long as 51 days (Judgment, 2020). These findings led the Commission to initiate a procedure before the Court of Justice. Under this procedure, the Court expressly stated that “by not ensuring that its public authorities effectively comply with the periods for payment prescribed in Article 4(3) and (4) of Directive 2011/7/EU, the Italian Republic has failed to fulfill its obligations under those provisions” (Judgment, 2020).

3.3 Combating Late Payments in Commercial Transactions at National Level: A Case Study of the Polish Legal System

When presenting the general characteristics of the Polish legislation adopted to combat payment delays in commercial transactions, it should be noted first of all that legal acts which have been in force over the last 20 years are actually an expression of how to implement the assumptions of the Community policy. Every national legal act regarding late payments which entered into force after 2000 can be viewed as an attempt to implement EU legislation. Seeing this dependency also allows to assess the national acts based on whether they meet the Community legislator’s expectations. In this context, having sole regard to the fact that two successive directives have been adopted within the last 20 years at Union law level whereas three successive directives have been adopted in the national legal system, it is fair to say that no sufficiently effective legal measures have been proposed so far which could reduce the negative practice. With certain caution, such a pessimistic forecast can be also put in the context of the last reform of July 19, 2019 (Act, 2019) which—although focused on combating the practice of late payments in many areas—will probably not contribute to a considerable reduction of this phenomenon due to the global crisis caused by COVID-19.

Before 2013, there were two subsequent acts in force in the Polish system which introduced certain legal instruments essentially designed to implement the Community assumptions provided for in Directive 2000/35/EC (Directive, 2000) – the Directive that is no longer in force. Considering the brief and succinct content of the first Act (of September 6, 2001) on payment deadlines in economic activities (Act, 2001), it is difficult to tell whether it was effective. It only empowered the creditor with the right to charge statutory interest from the 31st day following the delivery of a good or service. It can only be stated that the entry into force of the Act was widely criticized (Marquardt, 2002), and that the legal tools proposed therein encouraged the growing practice of circumventing the applicable regulations (Kwaśnicki, 2004).

The Act of June 12, 2003 on payment deadlines in commercial transactions (Act, 2003) was supposed to remedy these deficiencies. It entered into force as of January 1, 2004 and remained in force until the implementation of a new legal act in 2013. The adoption of the aforesaid act was an attempt to better align the national regulations with Directive 2000/35/EC (Directive, 2000). The act provided for a series of improvements, including by greatly extending the personal scope of protection and by defining the commercial transaction to which it was applicable (Kwaśnicki, 2004).

The act also brought other key changes, including with respect to judicial costs (exemption from court expenses) and to the civil-law procedure (order for payment), favoring the creditors when recovering their claims before the court (Staniek, 2004). Nevertheless, the aforesaid legal regulations—which are no longer in force—should be concluded to be of poor quality. This is because the instruments proposed therein proved to be ineffective and failed to affect the practice of late payments which gained more momentum due to the progressing economic crisis.

The new Act of March 8, 2013 on payment deadlines in commercial transactions (Act, 2013) has been in force in the Polish legal system from April 28, 2013. The essential form and content of this legal act accurately reflects the vectors and assumptions provided for in the currently binding Directive 2011/7/UE. The primary purpose of the Act is to establish a set of specific guarantees for the creditors to protect them against the adverse consequences of late payments, and to provide for adequate obligations to be met by unreliable debtors (Article 1) (Act, 2013). The Act also enforces its absolute applicability by indicating that any agreements which exclude or limit the creditor's rights or the debtor's obligations shall be automatically declared null and void (Article 13) (Act, 2013).

The provisions of the legal act in question are primarily intended for professional market players, i.e., the ample category of entrepreneurs and public bodies or units (Article 2) (Act, 2013). Hence, the regulations for payment deadlines in commercial transactions are activated in the case of economic relationships entered between entrepreneurs, between entrepreneurs and public units, and between public units. However, the provisions of the Act do not apply to transactions whose parties include a consumer acting outside the framework of economic activity (Biezuński, 2013). The scope of matters governed by the provisions of the Act includes commercial transactions, defined quite broadly as any case of paid delivery of goods or services between operators' subject thereto in relation to their activity (Article 4.1) (Act, 2013). When analyzing the Act, focus should be mainly placed on rights granted to creditors because this is where the key provisions that deal with late payments should be sought.

The provisions regarding interest chargeable by contractors are the most extensive ones. Indeed, the Acts empowers the creditors with two independent rights: to claim interest on receivables that have not yet matured (Article 5) (Act, 2013) and to claim interest on receivables past the due date (Articles 6 and 7) (Act, 2013). In the case of commercial transactions which provide for a payment deadline beyond 30 days, the creditor has the right to charge interest after the 30-day period following the delivery of goods or services (Article 5) (Act, 2013). The only condition that must be met (in addition to the goods or services being delivered) is the need to provide the debtor with an invoice that confirms the delivery of the goods or services concerned. This right is granted automatically (*ex lege*). The creditor has the right to charge interest until the actual payment day unless the payment claim becomes chargeable earlier.

The Act discussed above also intends to reduce the impact of the basic principle of civil law, i.e., the freedom of contract (Biežuński, 2013; Gołębiowski, 2015). The parties to a commercial transaction cannot freely set the payment deadline which, as a rule, cannot exceed 60 days following the day the invoice which confirms the delivery of goods or services concerned was served (Articles 7.2 and 8.2) (Act, 2013). If the debtor is a public body, the Act provides for a maximum deadline of 30 days (Article 8.2) (Act, 2013). Any contractual provision breaching the above statutory deadlines shall be null and void.

The Act in question also entitles the creditors to claim a specific financial compensation (in the amount of EUR 40) for costs incurred in recovering the receivable (Article 10) (Act, 2013) while not depriving them of the right to recover the actual costs if greater than the statutory amount. This right reflects the implementation of Article 6 of Directive 2011/7/EU to the national legal system.

3.4 The Need to Reinforce and Develop EU's Legal Standards at National Level: A Case Study of the Reform of the Polish Legal System of July 19, 2019

Based on the provisions of the 2013 Act cited above, it can be assumed that the Polish legislator have accurately implemented the provisions of Directive 2011/7/EU to the national legal system in all its key areas. The above can also be concluded from the absence of official disciplinary actions taken against Poland by the European Commission. It does not mean, however, that the Act has become an effective way of dealing with the problem of late payments in Poland. As mentioned by the Polish legislator in a 2019 opinion, the mechanisms proposed in the Act are “totally insufficient” because “they failed to prevent the persistent practice which consists in that operators who abuse their market position actually access loans in support of their activities by requiring the payment deadlines to be extended, or even by stopping making timely payments to SMEs” (Parliamentary Print, 2019).

The assessment of impacts of the Act form 2013, 6 years after it entered into force led the national legislator to the conclusion that the legal mechanisms proposed thus far continue not to have a significant impact on the common practice of late payment. In response to that, the decision was made to implement a broad reform, expressed by the adoption of the Act of July 19, 2019 on amending certain acts to reduce payment bottlenecks (Act, 2019) which entered into force as of January 1, 2020. The reform is a comprehensive approach to combating payment delays, not only by reinforcing the legal position of the creditors but also by placing a clearly greater responsibility on unreliable debtors. Importantly, a decision was also made to use the new Act as a framework for introducing some measures to the Polish legal system which go considerably beyond the general standards proposed by the EU legislator in Directive 2011/7/EU.

First, from January 1, 2020, a payment delay in commercial transactions entails measurable fiscal consequences for the creditor and debtor concerned; this is true for

both PIT (personal income tax) and CIT (corporate income tax). This is because pursuant to the act implementing the reform, a delayed payment can reduce the basis for the creditor's tax calculation. Conversely, when it comes to debtors, the tax basis is compulsorily increased with the value of the delayed payment (Articles 2 and 3) (Act, 2019). Hence, the late payment practice gives rise to certain fiscal consequences, too.

Secondly, any unjustified extension of payment deadlines, any infringement of the provisions of the 2013 Act on combating excessive payment delays in commercial transactions (Act, 2013) or any flagrant deviation from good commercial practices are deemed to be an act of unfair competition (Article 4) (Act, 2019). Extending the definition of an act of unfair competition reinforces the protection of creditors by providing them with a broader, guaranteed set of claims and protective measures. In this context, note also that the scope of the legislator's intervention in the freedom of contract has been enhanced. In the new legal setting, contractual clauses that either exclude or limit the creditor's rights or debtor's obligations related to late payments are null and void (Article 13) (Act, 2013). The same sanction shall be applied to any agreement circumventing the provisions of the Act.

Thirdly, the reform strengthens the mechanisms for monitoring the payment practices of the largest national economic operators. From January 1, 2020, corporate taxpayers who operate as tax capital groups or whose revenue exceeds the equivalent of EUR 50 million within a fiscal year are required to provide the Minister of Economy with reports on payment dates in commercial transactions effected in the previous year. The information delivered is supposed to include the value of pecuniary claims paid and received within up to 30 days, 60 days, 120 days and over 120 days. The operators covered are also required to report the value of non-received and unpaid pecuniary claims in the previous calendar year (Article 10.12) (Act, 2019).

Fourthly, the reform led to extending the Polish legal system with the formula for a separate procedure for excessive payment delays. The formula is based on the statutory ban on practices which constitute an extensive delay of payment in commercial transactions (Article 13b) (Act, 2013). As defined in the Act, a payment is excessively delayed if, for a specific operator, the total of unpaid pecuniary claims and pecuniary claims paid past the deadline is no less than PLN 2 million within 3 successive months.

The information on a suspected or likely excessive delay in payment can be reported by any operator and can be derived from fiscal data of the National Tax Administration. The procedure for excessive delays in payment is initiated *ex officio* and conducted by the President of the Office for Competition and Consumer Protection (UOKiK). It includes an inspection of activities of the debtor and of operators related to its activities. The operator inspected should deliver all documentation as and if needed and should collaborate with the inspectors. If the operator fails to cooperate or hampers the inspection, the President of UOKiK can

impose an administrative penalty in the amount of up to 5% of revenue from the previous fiscal year, however no more than EUR 50 million (newly added Article 13t) (Act, 2013). If an excessively delayed payment is discovered, the President of UOKiK imposes an administrative penalty on the operator concerned. The amount of the penalty depends on the number of pecuniary claims unpaid or paid past the deadline, the delay of each payment, and the amount of statutory interest on late payment. A unit penalty is applied for every case of a detected delay in payment in the period covered by the inspection (which can span over a maximum of the last two years). The amount of penalty, calculated with a dedicated formula, depends on the value of the delayed or unpaid pecuniary claim, the amount of statutory interest on late payment in commercial transactions, and the period between the due date and the late payment date or the last day of the procedure (Article 13v) (Act, 2013). If an excessive delay in payment is discovered once again in the case of the same operator, the penalty is increased by 50% (newly added Article 13v) (Act, 2013).

4. Conclusions

Over the last 20 years, the legislative policy both at EU and national levels has focused on seeking effective legal measures to discourage the common practice of late payments in commercial transactions. The fact that successive, increasingly extended reforms have been introduced in that regulatory area seems to prove that previously implemented legal mechanisms demonstrated poor effectiveness in combating negative market practices. Statistical data suggests that existing sanctions have failed to discourage fraudulent contractors, and the guaranteed legal means of protection for creditors have not contributed to tangible improvements in their actual situation.

Moreover, it seems reasonable to fear that the legal mechanisms in place are unable to exert a sufficient impact on stronger contractors who will continue to abuse their favorable market position to impose their conditions in commercial transactions. Indeed, it is difficult to rely solely on legal standards in changing what is a common business practice which affects many countries and consists in that market players prefer what provides them with financial benefits, irrespective of legal consequences, if any. Note also that the impact of legal instruments on business behavior becomes weaker especially at a time of economic instability and of abrupt market changes; one particularly symbolic example is the current situation surrounding the global COVID-19 pandemic. What also should be remembered is that in many countries, the failure to meet payment deadlines is an inherent part of market operations to such a point that not even the most stringent legal regulations can deter these common commercial practices.

However, these fears and concerns should not suggest that the law has no impact on late payments. Both EU and national legislators should be continuously expected to conduct an informed long-term legislative policy focused on combating adverse commercial practices. Such a policy should be consistently implemented and enhanced, leading to a common perception among unfair contactors that penalties are

unavoidable and providing the creditors with a true, guaranteed, and comprehensive protection against the negative consequences of late payments.

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