EIBF Position Paper - Late Payment Regulation

Last 12th September, the European Commission presented a proposal for a Regulation to combat late payment in commercial transactions. The proposal will replace the current Directive by, among other changes, imposing a strict payment cap of 30 days between all Business-to-Business (B2B) transactions without flexibility or exception.

The **European and International Booksellers Federation** (**EIBF**) is the voice of booksellers in the European Union and globally. EIBF's members are national Booksellers Associations, who represent all kinds of book retailers, a majority of those being small and medium-sized independent and family-owned bookshops. As representatives of SME retailers, EIBF welcomes the proposal and its aim to address what is a serious issue for many businesses across Europe: late or even no payment for their services.

However, EIBF is concerned by its likely negative impact on the sector and **calls for the recognition of essential flexible payment terms for certain trade sectors working with slow-moving and seasonal goods, particularly the book sector**. EIBF stresses that <u>this proposal should not come at the expense of certain SMEs and their sectorial business models</u>, where *long* payments terms are **not** *late* payments and are both desirable and necessary for the sector's basic financial, logistical and operational structure. This is the case for the book sector, where long payment terms are essential to keep an optimal stock rotation throughout the year, while guaranteeing a healthy cash flow for bookshops and ensuring consumer needs are met.

Our position

There are several concerning points in the legislative proposal that may severely impact the bookselling trade, given its unique business model and the particular rotation and shelf life of a book as a cultural product. EIBF has gathered the key points that the proposal fails to consider:

- **One size does not fit all**

The current proposal addresses late payment in a one-dimensional manner: a power asymmetry between large *debtors*, who do not pay small *creditors* in time, causing many SMEs to become bankrupt.

It does not, however, consider other scenarios for some sectors and industries, including the book sector, where in most cases, bookshops are the smaller *debtors*, who rely on larger *creditors* to grant them with flexible payment terms in order to afford renewing their stock.

- **Sector specificities and particular business models need to be considered**

Europe's business landscape is diverse and complex, containing a plethora of business models that have been developed and perfected over decades, if not centuries, to provide the best range of services and goods to consumers. This is the case of the book sector, which works in a balanced way, where longer payment terms for bookshops allow for efficient stock purchasing and rotation, as well as sufficient cash flow throughout the year.

By not allowing any sectoral flexibility, but rather imposing the same rules for vastly different sectors working with different services and goods, this proposal fails to reflect the variety of business models across the European Union as well as their needs.

- **Flexible payment terms are an integrant part of the freedom to contract**

The proposal assures that the freedom of contract is preserved since parties can negotiate any payment term as long as it does not exceed 30 days. This affirmation fails to take into consideration just how important and integrant *flexible* payment terms are when it comes to contractual negotiations in certain sectors such as the book trade.

The bookselling sector has long organised itself on a solid ground of long payment terms, which are part of normal business negotiations and the result of bilateral agreements between booksellers and publishers. These terms are mutually beneficial to both parties, as well as consumers: they provide booksellers with flexibility to maintain a healthy cashflow and stock new books as soon as they are published.

Contractual freedom has always boosted healthy competition in the book trade, delivering mutually agreeable B2B contracts that have one common goal: bringing a wide offer of books to consumers.

- **Books are slow-moving and slow-selling products**

Apart from bestselling books, most books stay on bookshop shelves for 6 to 12 months, or even longer. This means that a bookshop's stock rotates (i.e., the entire stock is sold) less frequently than in other retail trades (on average every 3.43 months as opposed to the ideal 3 months) and, therefore, bookshops do not make an immediate profit on the books they stock. If one compares this to the average stock rotation in a supermarket, which is 15 days, the difference between a slow-moving product (book) in the bookselling trade and a sector with fast-moving products is evident. Payment and invoicing obligations should therefore also be differentiated.

Additionally, the book trade is largely dependent on two impactful sales periods where bookshops make the revenue that sustain them for the rest of the year: 'back to school season' and Christmas. For Christmas, books are usually ordered and delivered in October and paid for in January (i.e., payment terms of 90 days or more). This longer payment time is absolutely necessary for two reasons:

  - To allow the bookshop to accrue the necessary revenues needed to pay Christmas and previous stock invoices. Because of their low margins, bookshops are generally not in possession of enough funds to pay this sum in advance of Christmas sales.
  - To aid the distributor in avoiding logistical bottlenecks in the delivery of large quantities of books, the books are ordered as early as September or October.

- **Long payment is not late payment**

It is important to clarify that the aim of this proposal is to combat late or no payment. In the case of bookselling, there is no late payment, simply mutually agreed and desirable longer payment terms that are essential to maintain an efficient rotation cycle of books and a healthy cash flow for bookshops.

Bookselling is a low-margin trade, meaning that bookshops do not sit on large savings or funds. They rely on a balance of flexible and long-term payment terms, effective stock rotation and the possibility to return unsold books for credit to be able to keep a steady cash flow, while also afford to renew stock and meet consumer demand.

Given this unique balance, longer bilaterally negotiated and agreed payment terms within the book sector have been recognised as a priority across several European countries, including France and Spain.

- **Shorter payment terms mean less liquidity for bookshops**

The Regulation proposal states that a payment cap of 30 days on all B2B transactions would increase overall liquidity in the market. This may be true for some sectors, but it would have the **opposite effect** for the bookselling sector.

Because of the low profit margins on bookselling (1-3% on average), bookshops are generally not in possession of large funds or savings and rely entirely on the rotation of stock and income of book sales to pay their invoices. As the average book sells within 3.43 months, or 112 days, booksellers need to finance the interim period from paying the invoice to the point of sale (on average, roughly 30 days) on their own. Given that bookshops' funds are often low, this period is typically financed by bank loans. If payment terms are capped to 30 days, booksellers would need to finance the stock themselves for more than 75 days, which is impossible for most small bookshops.

To already assess the consequences of a 30-day cap, the main book distributor and invoicing entity in the Netherlands, Centraal Boekhuis (CB) conducted a simulation with 2022 sales. The simulation confirmed that such a cap would not only significantly limit purchasing capacity and working capital of physical bookshops by €38.2 million, but also interfere with the market, disproportionately benefitting online book retailers.

- **Uncertainty for trade outside EU**

The proposed Regulation would impose a great deal of legal uncertainty as to what rules apply in B2B transactions between EU businesses and those partners located outside of the EU, who are bound to have different legislation for payment terms and B2B transactions.

EIBF represents booksellers both in the EU and outside, including in the UK and Ireland, two countries which have a unique business relationship: Irish bookshops import many of their books from UK publishers. Having inconsistent legislation with diverging payment terms would impose a significant administrative burden on Irish bookshops, who need to familiarise themselves with two different legislations on commercial payments.

Our asks

For small business owners in the bookselling sector who **rely on flexible and long payment terms as an integral part of the business model**, a 30-day cap for invoice payment with no flexibility or exception would have catastrophic consequences. Taking the points presented above into consideration, and given the unique structure of the trade and the specificity of books as a slow-moving product, **EIBF asks for the book sector to be exempted from the Regulation's obligations.**