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FoodServiceEurope Position on the revision of the Late Payments Directive

About FoodServiceEurope

FoodServiceEurope represents the European contract catering sector at the EU level. It brings together 10 National Member Associations, as well as four Associate Member companies, which together represent a significant share of the EU market.

Contract catering encompasses food and ancillary services provided to people working or living in communities – private and public undertakings, schools, universities, hospitals, retirement homes and prisons – under the terms of a contract with the client communities. It is a unique part of the food system and differs significantly from other forms of food service, as services are provided on the premises of the contracting party, which awards contracts through procurement tenders.

With an annual turnover of around €25 billion, the sector's 600,000-strong workforce delivers approximately 6 billion meals each year to workers, civil servants, pupils, students, hospital patients and care home residents in the EU.

Recommendations

FoodServiceEurope welcomes the opportunity to provide our position on the revision of the existing Directive on late payments. Late payments, in particular by national and local public authorities, continue to be a very serious problem for our industry. While the situation diverges substantially across Member States, in national markets payment terms from public authorities can reach up to 200 days, creating serious burdens in terms of cash flow for catering companies.

Moreover, Directive (EU) 2019/633 on unfair trading practices in the food supply chain introduces stricter payment terms for contract catering companies with their suppliers but does not afford equivalent payment requirements for their customers as Directive 2019/633 applies only to the sale of food products and does not cover food services. Moreover, as final users of contract catering services often belong to vulnerable groups, such as children in schools, the elderly in retirement homes, patients in hospitals and people in prisons, the option of terminating a service provision for undue late payments is thus in many cases not even available to the companies that may be bound by public service obligations.

FoodServiceEurope thus welcomes the following elements of the Commission proposal and asks the Council and Parliament to uphold them in the ongoing legislative process:

- ❖ **Stricter payment conditions for public authorities**, most notably, the removal of the possibility for healthcare and public authorities carrying out economic activities to contractually agree payments of up to 60 days.
- ❖ **A fixed 30-day payment term limit in B2B transactions** as this would address the asymmetry, unique for the contract catering sector, introduced by the UTP Directive with regards to payment terms. Nevertheless, in order to preserve contractual freedom, it is important that no additional elements of a contract are mandated by legislation.
- ❖ **Provisions on automatic, and non-waivable, entitlement to interest for late payment** and the increased €50 minimum as compensation for recovery costs.
- ❖ **The setting up of dedicated enforcement authorities** to monitor and ensure the application of the rules. However, it is important that authorities operate objectively and guarantee maximum confidentiality when treating commercially sensitive information, without imposing further reporting obligations, other administrative burdens, or supervision fees on companies. Moreover, trade associations should also be allowed to submit complaints to the enforcement authorities on behalf of their members.
- ❖ **The choice of a Regulation, as opposed to a Directive**, to harmonize the current patchwork of diverging requirements across Member States.