

## MedTech Europe Feedback on the Late Payments Directive

Brussels, 17 March 2023

MedTech Europe welcomes the opportunity to comment on the Late Payments Directive, and before anything else would like to stress that in principle it is an essential piece of legislation for the effective functioning of the internal market. However, as it currently stands the Medical Technology sector believes that important improvements are needed to enhance compliance with its provisions.

### Proposals

**Improve enforcement** – Overall the current enforcement of the Late Payments directive is lacking, especially when state institutions are responsible for the late payment. Options to allow community level action to redress late payments by member states themselves should be explored.

**Clarify the invoicing process** – There should be a clear set of criteria that an invoice should meet at which point there could be no further discussion about the validity of the invoice, or delays in the review of acceptance of an invoice.

**Transparency in late payments** – An information system for reporting late payments would enhance the overall system as it would both allow for a clear assessment of the situation but also allow businesses to make informed decisions when dealing with known late payers.

**Support for SMEs** – In particular for SMEs, once the debt is delayed by more than 60 days there should be a mechanism allowing for that debt to be transferred to a form of debt bank that would effectively pay the outstanding debt to the SME and then collect the debt from the late payer.

**No waiving of debt or haircuts** – Once a debt has been accrued, it is due. Mechanisms which aim to enforce forms of haircuts, waiving of debts, or incomplete payments of the debt should not be allowed. If the payment of a debt is only partial then the balance remains due.

**Deferring VAT Payments** – The option to defer payment of VAT on invoices which have not yet been paid should be considered as not only does late payments right now result in a lack of revenue but in addition companies are expected to pay VAT based on invoices, even if the invoices are outstanding.

### Background

As key suppliers to healthcare systems across Europe the Medtech Sector has had a comprehensive view of the application and failures of the late payments directive. It is an unfortunate reality that at various points

healthcare systems find themselves in difficult financial situations leading to payment delays which can be substantial in some cases being well over a year, even with the application of the Late Payments Directive.

This has a negative impact on the sector, which is effectively being asked in such situations to finance certain healthcare systems due to deferred payments. This is a burden for all companies but in particular for SMEs which may be much more dependent on payments from a given customer to remain financially viable and are less able to absorb the financial impact of late payments.

We have also seen during the years various approaches by member states to defer payments. In some cases, invoices are not accepted for months, even after services have been rendered which is used as a justification for the delays or invoices are revised resetting the clock on the timing for late payments. More troubling, we are starting to see requirements in public procurement which prohibit the transferring of debt due to late payment – something that is always done at a loss for suppliers but which at times is the only option for some companies to remain financially viable.

In general our experience has been that the Late Payments Directive is well intentioned but lacks in enforcement power and that in some cases member states are reticent to enforce the directive when they themselves are the late payers.

## **About MedTech Europe**

MedTech Europe is the European trade association for the medical technology industry including diagnostics, medical devices and digital health. Our members are national, European and multinational companies as well as a network of national medical technology associations who research, develop, manufacture, distribute and supply health-related technologies, services and solutions.

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