# Executive Summary

**This Analytical Report is part of the European Construction Sector Observatory (ECSO) project run on behalf of the European Commission. This Analytical Report aims to better understand, through national case studies, some of the main causes of late payment, and how policies and instruments are tackling this issue. The report also provides a set of lessons learnt for policy-makers on how to address the problem across European Union Member States (MS).**

While unfair long payment terms and late payment affect the entire European economy, the construction sector seems to be suffering the most from late payment issues across the European Union (EU). This Analytical Report, hence, looks at quantitative indicators of late payment in the construction sector of five European countries, i.e. France, Ireland, Italy, Spain and the United Kingdom. Moreover, the report illustrates specific policy responses to the late payment issues across the EU Member States. The approach and methodology of this Analytical Report were tailored to the (limited) statistical data available at the EU level regarding the impacts of late payment in the construction sector. It builds on information and data available at the time of writing obtained from EU and national sources.

## State of play and impact of late payment

**The differences in payment behaviours jeopardise the proper functioning of the European Market and are increasingly threatening micro, small and medium-sized companies (SMEs).** This is especially true in construction. Construction is experiencing the longest payment duration among the different EU economic sectors, reaching up to a 72-day duration in 2016. In order to shorten payment terms and eliminate late payment, the European Union adopted Directive 2000/35/EC on Combating Late Payment in Commercial Transactions in June 2000. However, over a decade after the adoption of this Directive, late payment practices were still profoundly affecting the European economy. In response to the problem, the EC adopted Directive 2011/7/EU on Late Payment, replacing the 2000/35/EC Directive.

> **Directive 2011/7/EU on Late Payment aimed to modernise and to strengthen Directive 2000/35/EC on Combating Late Payment in Commercial Transactions, by making late payment less attractive for debtors, or by compensating the creditors for late payment practices. Directive 2011/7/EU focuses on five main provisions: payments deadlines, statutory interests and flat-rate compensation, enforceable title, the favourability principal for the creditor and finally, provisions on unfair payment practices and clauses.**

**The regulatory framework, developed by the transposition of Directive 2011/7/EU, has raised awareness of late payment issues among the EU MS.** However, the current legislation does not oblige, nor set a defined methodology for the gathering of data on payment durations. Moreover, many creditors still chose not to enforce their rights in order to preserve their business relationships. As a result, more and more institutions and associations are calling on the development of a modernised and more enforceable directive to combat late payment practices in the EU.

**Country-specific analysis reveals that late payment practices remain widespread in business relationships in the construction sector.** Furthermore, public authorities in the construction sector tend to have longer-than-average payment terms. Despite late payments having major potential impacts on creditors, a positive trend in the reduction of the duration of payment delays was observed between 2010 and 2017.

## Causes of late payment

**The nature and characteristics of the construction industry contribute to unfair long payment terms and the high number of late payments in the sector.** More fundamentally, the causes of late payment are often linked directly to the behaviour of construction enterprises, and in some cases public authorities working with construction companies.

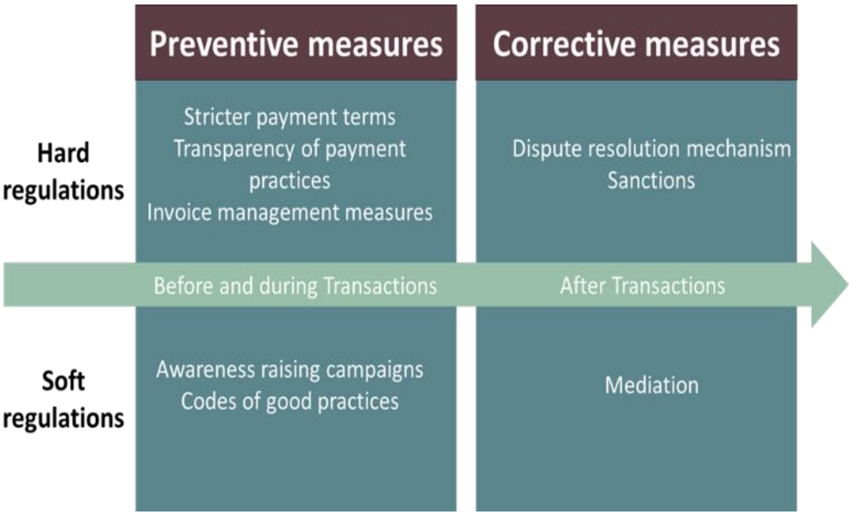
**The nature and configuration of the construction supply chain influences the extent and impact of unfair long payment terms and late payments in the sector.** Not only is the supply chain fragmented, but its power imbalance—among businesses themselves, and between PAs and businesses—plays a role in contributing to late payments. Unfair long payment terms and late payments are not merely a legal and formal issue, but also a result of informal and unfair business practices.

> **To tackle effectively the payment delays in the construction sector, authorities and economic operators should consider the complex power dynamics in the supply chain. This may lead to further questions, such as: what type of public interventions could effectively shift the power imbalance in the supply chain? How to incentivise companies and PAs to pay on time? At which level should such a public intervention take place – EU or EU MS (or both)?**

## Policy initiatives

**This Analytical Report specifically looks at policies that focus on late payment in the construction sector in the selected set of countries.** A combination of preventive and corrective measures, as well as hard and soft regulations, are commonly used in the analysed European countries to tackle late payment in the construction sector.

**Some EU MS have implemented construction-specific preventive policies and instruments**, indicating that unfair long payment terms and late payment in the construction sector are a matter of concern for policy-makers.




| Countries | Hard regulations | | | | Soft regulations | |
|---|---|---|---|---|---|---|
| | Stricter regulations | Transparency of payment practice | Invoice management practice | Dispute resolution system & sanctions | Awareness-raising activities | Codes of good practices |
| **Spain** | | | | | √ | |
| **France** | | √ | √ | √ | √ | |
| **Ireland** | √ | | | √ | | |
| **Italy** | | | | | | √ |
| **United Kingdom** | √ | √ | √ | √ | √ | √ |

**Policy-makers often opt for a dual approach regarding preventive measures. The aim is to improve the effectiveness of using both soft and hard regulations simultaneously.** Soft regulations – awareness-raising campaigns and codes of good practices—are relatively common and easier to set up than hard regulations. In many cases, these initiatives can either support or provide a foundation for the implementation of hard regulations. It is important to point out that while soft regulations can be led by construction associations, hard regulations are developed solely by governments (often with pressure from the sector). It is therefore imperative to ensure a level of coordination and coherence while implementing such a dual approach.

**Corrective measures such as dispute resolution mechanisms – from mediation to adjudication, arbitration and litigation— are complex processes that are used as a last resort.** Businesses, sometimes encouraged by regulations, increasingly favour mediation over adjudication, and adjudication over arbitration and litigation because they take less time and resources while preserving existing business relationships. Arbitration and court litigation are the most severe method to fight late payments and are often reserved for disputes that amount to a significant sum of money.

> **Soft and hard corrective measures mutually reinforce each other. However, there is evidence that dispute resolution mechanisms are sparsely used by construction stakeholders, due to the fear of harming business relationships with more powerful actors, no matter if these are main contractors or public and private clients. Therefore, more needs to be done to provide additional and practical dispute resolution mechanisms to the construction sector.**

## Lessons Learnt

**There are two principle observations made from the analysis in this report: the need for more data that is regular and consistent, and for more coordination among policies and between public and private sector actors.** Firstly, developing data collection, analysis and harmonisation (across the EU MS) on unfair long payment terms and late payments in the construction sector will better inform the design and implementation of unfair long payment terms and late payment policies and instruments. So far, data on late payments from B2B and PA2B in the construction sector is relatively scarce (especially on the impacts of late payments) and scattered (collected by different public and private organisations, sometimes following a different methodology). Secondly, public procurement and late payment policies need to be coherent and complementary to each other. Public procurement can act as an incentive for companies to improve their payment practices and behaviours, by rewarding good payers. Thus, coordination between policy-makers and construction sector initiatives is an important aspect that will help maximise impact on unfair long payment terms and late payments.

**The EC developed several initiatives tackling late payments, including Directive 2000/35/EC and Directive 2011/7/EU.** The latter helped set up a comprehensive regulatory framework at the EU and EU MS levels, emphasising the value of an EU approach to late payment. In addition, the EC also uses indirect policies, such as the EU Directive on Public Procurement to challenge the issue of late payments. While its impact on late payment has not been assessed, public procurement regulations provide incentives to influence the payment behaviour of construction companies. In addition, Directive 2014/24/EU gives subcontractors the opportunity to claim payment from the contracting authority directly.

**Some EU MS went beyond implementing general cross-sectoral long and late payment policies and instruments by putting in place specific tools to tackle unfair long payment terms and late payment in the construction sector specifically.** They used cross-sectoral policies and adapted them to the construction industry and its supply-chain characteristics. Most of the analysed policies and instruments focus on preventive measures and combine both hard and soft regulations. It is further proof that these are not mutually exclusive but rather complementary. Soft regulations include awareness-raising campaigns and codes of good practices that can be led by either the policy-makers or the construction associations.

Corrective measures, developed by policy-makers, consist of mediation (soft regulation), dispute resolution mechanisms (hard regulation) and sanctions (hard regulation). Preventive hard regulations include stricter or shorter payment terms; electronic invoicing systems and Project Bank Accounts; and payment performance reporting.

**Closer monitoring and reporting of payment behaviour in the construction sector, accompanied by potential sanctions, also seem to be an effective mechanism to tackle late payments.** As the construction sector is particularly affected by late payments, it may be beneficial to set up a multi-stakeholder platform to exchange information and good practices at EU level. Such a platform could be a sub-group of the existing European Late Payment Expert Group and could include public authorities and construction associations. The link with the Late Payment Expert Group would ensure a regular exchange of information about other sectoral practices that could be relevant for the construction sector. The sub-group could provide and share insight about possible preventive and corrective measures for late payments, and guidance to implement them through either soft or hard regulations, or both.