Ministry of Economic Affairs and Climate Policy of the Netherlands

Explanatory paper – Description and effects of recent Dutch national law on 30-day payment terms for large companies to SMEs

March 2024

This explanatory paper aims to provide insight in a recent Dutch national law on payment terms, in light of the ongoing negotiations about the proposal for a Late Payment Regulation. The Dutch law that came into force in July 2022, focuses on reducing the imbalance of power in trade relationships between large companies and SMEs, as advised by the Fit for Future Platform. By introducing a maximum payment term of 30 days for transactions from large companies to SMEs, the Dutch national law aims to achieve this goal. Initial results show that the new Dutch law is effective and leads to a minimal administrative burden for SMEs.

On 12 September 2023, the Commission published a proposal for a Regulation on combating late payment in commercial transactions. In order to prevent late payments and protect Small and Medium-sized Enterprises (SMEs), the Commission proposes a maximum 30 day payment term for all commercial transactions.

The Netherlands argues for a more focused approach with a maximum payment term of 30 days for large companies in relation to SMEs. As the Fit for Future Platform opinion on the Late Payment Directive[1] pointed out, trade relationships between large companies and SMEs are defined by an imbalance of power. This leads to SMEs making concessions on their prices to achieve a reasonable payment term; SMEs having to accept a long payment term in order to receive a reasonable price, and SMEs making concessions on their prices and accept a long payment term. These unequal power dynamics were reflected in the recent report by the EU Payment Observatory, demonstrating that in a significant majority of the EU Member States[2], larger companies have the lowest proportion of on-time payments.[3] The Fit for Future Platform therefore advised to explore the possibility of tightening the payment term for transactions from large businesses to SMEs to 30 days.

In that regard, EU Member States can benefit from the experience of the Netherlands, where a national law entered into force in July 2022, introducing a strict maximum term for transactions from large companies to SMEs. This paper provides further explanation of the Dutch law and its initial effects.

Description of the Dutch law

Already under the current Directive, the Netherlands adopted more stringent national legislation to protect SMEs against long payment terms. In 2017, a maximum of 60

[1] Fit for Future Platform Opinion, 2021. https://commission.europa.eu/system/files/2023-04/Final%20opinion%202021_SBGR2_06%20Late%20payments_fup_0.pdf
[2] This was the case in 16 out of the 20 EU Member States for which data was available.
[3] European Commission, European Innovation Council and SMEs Executive Agency, *EU Payment Observatory – Annual report 2023*, Publications Office of the European Union, 2024, **https://data.europa.eu/doi/10.2826/904718**

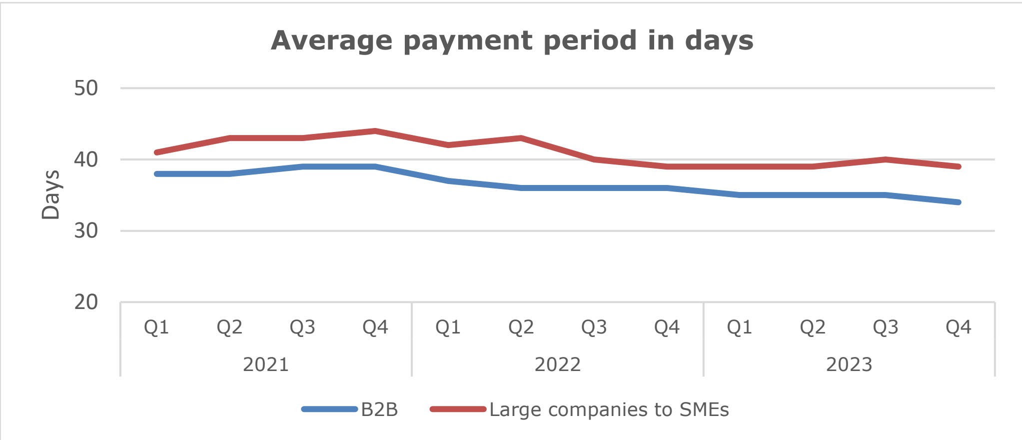
days for payments from large companies to SMEs was introduced. In July 2022, this was shortened to 30 days. This means that large companies must pay invoices from SMEs within 30 days after the date of receipt of the invoice. Large companies are defined as legal entities that meet at least two of the following three criteria: (i) a balance sheet total exceeding EUR 20 million, (ii) net turnover exceeding EUR 40 million and (iii) having more than 250 employees[4]. Conversely, all companies that fall outside of this definition are considered to be SMEs.[5]

First insights on the effects of the legislation

As the legislation was only implemented 1,5 years ago, and the transitional period ended in July 2023, it is too early to draw conclusions about the long-term effects. However, it is possible to share first insights based on data on average payment periods during 2021-2023[6], a small-scale survey under businesses[7] and the consultation of stakeholders.

Shorter average payment periods

Since the entry into force of this law in July 2022, the average payment period for transactions from large companies to SMEs has been reduced by 3 days and did not exceed 40 days anymore. Before July 2022, the average payment period for transactions from large companies to SMEs varied between 41-44 days. After the law came into effect, this has decreased to 39-40 days.



Different opinions on helpfulness of the legislation

The SMEs participating in the small-scale survey are divided on the helpfulness of the new law. Some SMEs report that the legislation helps them agree on more favourable payment terms with their large suppliers. Other SMEs are sceptical about the usefulness of the new law, as they do not experience shorter payment terms, noting that it is not enforced and that in practice large companies "set the rules" anyway. Some SMEs believe that not all large companies are informed about the law yet.

[4] (Section 2:397 of the Dutch Civil Code, based on the EU recommendation 2003/361)
[5] Section 2:396 of the Dutch Civil Code, based on the EU recommendation 2003/361)
[6] Based on quarterly reports by credit rating agency Graydon, which monitors on average 150.000 B2B-transactions per month.
[7] 29 SMEs have participated in this small-scale online study. They are part of an SME panel, that is consulted for qualitative research to test policies of the Ministry of Economic Affairs and Climate Policy. Qualitative research focuses on gathering different opinions and experiences and interpreting them. Due to the relatively small number of respondents, qualitative research is not suitable for making statements about percentages of a population or extrapolating to the entire population. However, it does provide insight into the background of certain trends.

No change in suppliers

According to most SMEs participating in the small-scale survey, the new law does not lead to a decrease in suppliers. Most entrepreneurs report that they have not experienced large companies choosing large suppliers over SME suppliers in order to avoid the 30-day payment term, nor do they expect that this will happen in the future. Companies often have long-lasting relationships with suppliers as they seek stability and security of supply.

No administrative burden for identification of SMEs

No practical issues with regards to the identification of SMEs by large companies were raised thus far. Large companies can rather easily determine whether their supplier is an SME or not. Most of the time, this information is simply exchanged between the two businesses.
The SMEs that participated in the survey have generally not had to prove that they are SMEs in order to set a maximum payment term of 30 days. A few participating entrepreneurs have been asked to provide a statement demonstrating their SME status. One entrepreneur explained that this approximately required 30 minutes, and did not consider this as burdensome.

<u>Conclusion: Dutch law is a focused, effective and proportional solution</u>

Trade relationships between large companies and SMEs are influenced by unequal power dynamics, so a strict capping of payment terms for transactions of large companies to SMEs is important to protect SMEs against the negative consequences of late payment.

Initial results show that the new Dutch law is effective and leads to a minimal administrative burden for SMEs. The average payment period for transactions from large companies to SMEs has declined 3 by days and SMEs report that the new law helps them agree on more favourable payment terms with their large suppliers. Furthermore, no negative side effects for SMEs were found in initial research. At the same time, the average payment period from large companies to SMEs is still above 30 days and some SMEs do not experience tangible effects thus far.

The Netherlands is convinced that this focused approach provides a good alternative to the proposed 30 payment term that would apply for all commercial transactions. Limiting contractual freedom and imposing additional regulatory burden for transactions among large companies and among SMEs, would outweigh the benefits. An imbalance of power is not prevalent in these trade relationships. Additionally, a maximum term of 30 days for all trade transactions may impede the growth of fast-growing SMEs, as they can leverage the flexibility in payment terms as a favorable condition when obtaining working capital from larger companies. Furthermore, the measure may create barriers for SMEs looking to enter industries with small profit margins. These companies require time to generate sufficient sales to repay their suppliers.

Considering the effectiveness of the Dutch law and the low administrative burden, the Netherlands is of the opinion that the EU would benefit from the Dutch model. Introducing a strict payment term of 30 days only for transactions between governments and undertakings, and from large companies to SMEs leads to a more elegant, focused and proportional solution to the problem of late payment.