



FEBIS is the federation of leading Business Information Services Providers. Today it has developed into an organization comprising 102 full members involved in providing credit management solutions, debt collection services and marketing information services of national and international importance. Supported by a combined workforce of over 27.000 employees, FEBIS members and associate members analyse over 1,300 million entities annually for over 1.6 million customers (businesses of all sizes and economic sectors), providing these clients with business support for the provision of credit and other commercial services on all economical agents in Europe. Aggregate sales turnover of FEBIS members and its associate members is about € 11,000 million. More information on FEBIS at www.febis.org

Providing and permanently improving solutions and tools enabling businesses to manage their cash through the payment delays they grant to their customers or that they are granted by their suppliers has been FEBIS members' objective for many years now.

This is why the present analysis of the implementation of the Directive 2011/7/EU on combating late payment in commercial transactions is very valuable. **As a matter of fact, payment delays are de facto an implicit short term credit**, but in many occasions not being notoriously recognized, even by the EC.

Also currently called "trade credit", this kind of credit is often overlooked although it represents around 1/3 of the GDP in some EU member States such as France or Spain, and in the UK it is estimated that trade credit is at least 2-3 times the amount of bank lending. It is then essential to consider trade credit as part of SME funding, as well as banking credit, crowdfunding or other ways to develop the access to finance as promoted with the CMU.

We thank the IMCO committee for the workshop organised on the 12th of July 2018 and we also notice each day that SMEs are not aware:

- of national laws regarding payment delays, in spite of efforts from Governmental instances, sanctions of late payers and name & shame like in France,
- of trade credit risk and cash management, also called credit management.

We fully agree on the fact that more education of SMEs on that topic is crucial.

It is important to highlight that enabling SMEs, and businesses in general, to manage their cash requires an easy access to information on their future or present national and foreign trade counterparts. To propose such an easy access is basically the job of Business Information Providers (BIP). In addition to business reports, BIP calculate business scores which are done *at scale - on the whole enterprise population of a given country* - to produce a statistical assessment of the risk of default of a business. The scoring is done automatically with calculation algorithms, and as prescribed by the EU Credit Rating Agencies regulation (1060/2009), without human intervention in the scoring calculation itself. This score aims to rank a company / business on a scale of risk classes. It is an indicator / an assessment of its risk of default.

As the whole businesses population is scored, the entity using BIP score for assessing the default risk before contracting with a trade counterpart is scored too.

To monitor its own score is very useful as an early warning tool of cash difficulties (as proposed by the draft directive on "preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures"), as it may enable the business to require assistance before it's too late and being directly liquidated. And businesses should be encouraged to provide data to BIP to be integrated to the calculation algorithms, in order to have a score as accurate as possible according to their trade credit situation.



Data not to be filed to the Business Registers etc. will of course remain confidential, ie not be publicly disclosed. But they can feed scoring calculation algorithms.

As very well explained during the workshop, this is a cascade. If a business is in distress, it can generate a contagion effect to its customers and suppliers, especially smallest ones.

But in order to provide these business reports and tools like scoring, it is essential to access information.

This is why **it seems to us essential to highlight the links existing between this initiative on the late payment directive and other EU initiatives**, like:

- **the fitness check of the EU framework for public reporting by companies.**

As a matter of fact, enabling SMEs not to disclose their annual accounts or P&L to the Business Register (which is one of the options granted to Member States by the 2013/34 directive) is detrimental to their potential or existing trade counterparts and creates a different level playing between Member States.

But it is also detrimental to the filing but not disclosing company, as its potential or existing counterparts may consider it has “something to hide” and then require to pay when ordering.

We certainly understand that some companies do not want to share their financial information because of competition issues. But a deep analysis of the advantages (transparency of the economy, fight against fraud, money-laundering, corruption etc.) and disadvantages should be made.

- **the recast of the PSI directive.** At present time, not all EU Member States enable access ~~on~~ and re-use of PSI on businesses. In addition, the differences in terms of company law require specialists of these data to process them in the right way. This is not a question of APIs or licences only, even if it is important. The concept of “comparable categories of re-use” does not exist in each Member State, which can generate side effects as some data may not be provided anymore since they are available as open data according to an open license.

- **the initiatives on non-performing loans (NPL) or Payment Services (cf the PSD2 directive).** Accessing businesses’ NPL or banking account(s) data, or data from Anacredit, without disclosing them of course, but to integrate them in the calculation algorithms would enable BPI scores to be more accurate, for the benefit of the complete chain as described here above. As a matter of fact, a business that cannot reimburse a banking loan may also have difficulties to pay its suppliers on due time, and it would be very interesting for the business itself when using “its” score as a “mirror” / early warning tool.

Of course this would be used only as another layer to improve the accuracy of the score, the BPI acting then as a data manager.

From a general economical point of view, each business should be aware of the “cascade effect”, either if it is a victim or if it has unintentionally generated it because of financial difficulties. Such a global perspective would have benefits that outweigh the risks and moreover it is the score that is communicated to counterparts, not the granular information that is processed by BIPs exclusively to calculate it accurately.



Business Information Providers are also a useful **source of information** on late payments through studies, for example, and can provide contributions to get a clear picture on late payments.

As outlined in the summary of discussions following the EC workshop on 25 April 2018 on “*Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour*”:

- Databases on payment practices are not systematically available across Member States.
- **Business should have access to data regarding payment practices of potential business partners. This would enable them to make informed decision about future business collaborations.**
- Businesses could be allowed to provide information anonymously to protect their business relations.

Moreover, other regulatory issues should be considered in conjunction.

A clarification on sole entrepreneurs is urgently required. In some regulations, they are considered as “normal” enterprises, which seems to us correct since, as all businesses, they have customers, suppliers, a turnover, even small, a P&L, may be paid late or pay late.

But according to the GDPR, they are considered as individuals: https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company_en

Which means that, when providing / using a business report or calculating / using a score to assess the risk of default of the business, not of the individual / consumer, it may be considered as profiling.

The same situation more or less occurs with **legal representatives** (cf the PSI directive) **or beneficial owners of companies** (cf the 5th AML directive which is to be now transposed by Member States).

When contracting with a customer or a supplier, it is common, not to say required according to some regulations (like the anti-corruption law in France) to make due diligences, and not only from a solvency point of view. Making due diligences on the basis of questionnaires is a way, but not the “safest” one. Cross-checking is essential.

What happens if this data cannot be easily re-used because the natural person, acting as a legal representative or a beneficial owner can exercise his/her right to correction or right to be forgotten towards the re-user, even if this personal data must be filed to and disclosed by registers created to inform third parties?

On both topics, it seems to us essential that the right to correction or to be forgotten (in exceptional cases, according to the ECJ Judgment of the Court of 9 March 2017 in case C-398/15, *Manni*) should be exercised to the Public Registers only, *if and if only* the purpose of reuse of that “personal / business” data is fully compatible with the initial one of the public bodies providing these PSI, ie the information of third parties / trade counterparts. Which is typically the case of BIP when providing credit management services as well as their customers, exclusively businesses.

In addition, if data was deleted according to the right to be forgotten, it would come back automatically in the BIP database, because of the updates from the public body.

Of course, such a way to proceed should *not* be possible if the purpose of reuse, direct marketing for example, is not compatible with the initial one of the public body.

FEBIS would be very pleased to meet you in order to deeper explain how its members can contribute to reducing late payments impacts and enable early-warning mechanisms to prevent cascade liquidations and insolvencies.