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Deutsche Sozialversicherung
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# Statement from the German Social Insurance dated 6 December 2023

## Proposal for a Regulation of the European Parliament and of the Council on combating late payment in commercial transactions of 12 September 2023 COM (2023) 533 final

## Contents

# I. Preliminary remark

With its proposal for a Regulation on combating late payment in commercial transactions of 12 September 2023, the European Commission aims to improve liquidity and access to finance for small and medium-sized enterprises (SMEs) and reduce their insolvency risks. The new regulation is intended to replace the current Late Payment Directive from 2011.

The core contents of the draft Regulation include

_ The **limitation of the payment period** to a maximum of 30 days for all transactions (Article 3(1)).

_ The **limitation of acceptance or verification procedures** to a maximum of 30 calendar days (Article 3(3)).

_ The **deletion of a derogation** which, in the current Directive 2011/7/EU on combating late payment in commercial transactions under Article 4(4)(b), allows an extension of the deadline to a maximum of 60 days for public organisations providing healthcare services.

Violations of the above-mentioned deadlines will be penalised with mandatory default interest that is automatically due and a flat-rate compensation for recovery costs of 50 euros per invoice.

## 1 _ Applicability of the draft Regulation

The German Social Insurance welcomes the European Commission's intention to strengthen the position of SMEs in business transactions. However, it is not clear why the payment flows in the social insurance system, which result from the fulfilment of its statutory mandate, have been included in the scope of its proposed Regulation. There is no need for European regulations at this point, as the processing of payment transactions is regulated by law and contract without exception.

Central regulations proposed by the European Commission are also neither appropriate nor feasible for social insurance in the context of fulfilling its statutory mandate. An unconditional obligation of social insurance institutions to rigid specifications on payment and review periods, mandatory interests for late payment and flat fee compensations for recovery costs - which are primarily aimed at business transactions between companies and not at the fulfilment of the social insurance institutions' statutory mandate - would prevent deviating, yet appropriate and voluntary contractual agreements with the associations of service providers. As a result, existing agreements would have to be cancelled and established procedures would have to be changed. Legally prescribed downstream audit schemes would be completely disregarded.

## 2 _ Payment deadlines and verification procedures

The European Commission's proposal to limit the **payment period to a maximum of 30 days** for the settlement of invoices or a payment by instalment in accordance with Article 3(1) is also sufficient in the vast majority of cases in social insurance. In a few areas, however, the deadline cannot always be met.. This is taken into account by the current Late Payment Directive, according to which a payment period of 60 days can be granted.

Particularly problematic, however, are the **provisions** in the draft Regulation **on the acceptance or verification procedures** in accordance with Article 3(2) and (3) and, in particular, the limitation of the **duration of these procedures** to 30 calendar days. The downstream billing and settlement procedures, which are established in particular in statutory health insurance for billing hospitals, doctors, dentists and pharmacies, require significantly longer periods of sometimes more than a year in order to fulfil the statutory auditing tasks in the area of social insurance. This must be clearly taken into account in the new Regulation to combat late payments in commercial transactions.

### No time limit for downstream acceptance and verification procedures

Unlike business transactions with SMEs, social security systems are characterised by special remuneration and billing procedures. Essentially, a "mass business" must be managed. Within the framework of the resulting "mass data" with the invoices for healthcare billions of data from insured persons, service providers and service items are to be exchanged and be merged according to different verification purposes. Such remuneration and billing procedures can be found in Germany, for example, in medical and dental remuneration via the associations of statutory health insurance physicians and dentists, in hospital billing or in pharmaceutical billing via the pharmacy data centres.

These billing procedures are subject to a high degree of state regulation in order to ensure the quality, efficiency and appropriateness of healthcare for the insured. As a rule, the invoice amounts are paid directly or a high instalment payment is made. Billing is audited in accordance with the aforementioned political objectives **after payment** of the invoice and may result in invoice corrections. Due to the complexity of the audit schemes used, these procedures require longer periods of time. For example, in the area of auditing the remuneration for outpatient medical services, it is possible that the Associations of Statutory Health Insurance Physicians, which are responsible for billing doctors in their area of responsibility (usually a federal state), may still check the documents with the health insurance funds after three years. Conversely, the statutory health insurance funds have the right to audit within the same period. These deadlines are necessary because, due to social insurance law requirements, the review procedures often cover not just one accounting period (in Germany, the quarter), but several. This is the case, for example, for services that may only be provided once a year or less frequently, such as certain cancer screening services. In addition, care services that are provided by several service providers in one case often have to be reviewed, which requires the data to be collated on a case-by-case basis in order to prevent possible double billing.

The settlement procedures applicable in the area of social security are therefore not comparable with the B2B business transactions of SMEs, which are the main focus of the Commission proposal. However, they are essential for ensuring contractually compliant billing and remuneration and, due to the underlying mass business, are also relevant to contribution rates in certain cases. For example, the billing volume of hospitals in Germany to be borne by statutory health insurance totalled 88.1 billion euros in 2022. By checking and correcting hospital invoices, around 1.2 billion euros could flow back to the statutory health insurance funds and thus to the contributors. Unfortunately, the present draft does not clarify that the maximum 30-day acceptance and verification period under Article 3(3) does not apply to these downstream billing, accounting and review procedures. The necessary legal clarity should be created here by means of a legally secure **exemption rule** in which the period for downstreaming acceptance or verification procedures in the area of social security is not limited in time.

### Maintain 60-day derogation for healthcare

In some cases, social insurance invoices are checked before they are **paid.** Statutory accident insurance, for example, checks the invoices of its service providers before payment with contractually agreed payment terms of 30 days or less. However, if the claims are disputed, for example due to poor performance, non-performance or a claim for subsequent fulfilment, payment of the invoice can be withheld until the dispute has been resolved. In the hospital sector, instalment payments are agreed in such cases due to the generally higher invoice amounts in order to avoid liquidity bottlenecks for the hospital operators. In the dental sector, too, only the part of the invoice that is in dispute is generally withheld. Strict application of the 30-day payment period would be contrary to this.

In the area of statutory pension insurance as a main provider of rehabilitation services, invoices for the implementation of rehabilitation measures are also checked before they are paid. The audit is case-specific and complex. In view of the large number of cases, it is not possible to routinely ensure that invoices are approved within 30 days for all procedures, which is currently compensated for by the current **60-day payment period.** For this reason, the 60-day payment period for public organisations providing healthcare, which is stipulated in the current Late Payment Directive (Directive 2011/7/EU), should be retained and transferred to the new Regulation.

The following amendments are proposed in order to eliminate the aforementioned legal uncertainties regarding the 30-day period for acceptance and verification procedures and to enable necessarily or contractually agreed deviating payment periods within the framework of the current 60-day rule in the future as well.

## II. Proposed amendment

### Article 1 - Scope of application

**Intended amendment:**
The DSV proposes to clarify the application of the Regulation to social security institutions providing healthcare in Article 1 after paragraph 2 as follows:

| Commission proposal | Proposed amendment |
|---|---|
| **Art.1**<br><br>Par. 2a new | ***By way of derogation from Article 3(1), a payment period of no more than 60 calendar days shall apply to payment obligations that have arisen on the basis of national social security legislation or on the basis of the agreements concluded to implement this legislation on the details of the procedure and implementation of health services, including the associated acceptance and verification procedures.***<br><br>***By way of derogation from Article 3(3), acceptance or verification procedures may exceed 30 calendar days if the debtor makes appropriate payments by instalments or staggered payments.*** |

**Justification**
Social security systems are characterised by remuneration and billing procedures that are regulated to a particular degree by the Member States and the institutions they commission and supervise for this purpose. This regulation pursues political objectives such as ensuring the quality, efficiency or appropriateness of healthcare. The remuneration, billing and auditing procedures are geared towards these objectives and serve to realise them. In order not to jeopardise these procedures, the payment periods for social security systems should remain at up to a maximum of 60

calendar days in accordance with sentence 1 of the proposed amendment and the downstream acceptance and verification procedures in accordance with sentence 2 of the proposed amendment should not be limited in time.

**Maintain the 60-day derogation for healthcare**

The current Late Payment Directive EU 2011/7/EU rightly grants public bodies providing healthcare "a certain degree of flexibility" in the fulfilment of their payment obligations (Directive EU 2011/7/EU, recital 25). This is reflected in the possible extension of the payment period to up to 60 days. This should also continue to apply with the new Regulation so that no penalties are imposed in cases where payment takes longer and which are usually also contractually regulated.

**No time limit for downstream acceptance and verification procedures**

With regard to the envisaged acceptance and verification period of 30 calendar days in accordance with Article 3(3), the following applies: In many social insurance billing and accounting formats, this deadline cannot be met due to the specific verification requirements. For example, healthcare data from several billing periods and different healthcare providers must be collated from the mass data of the service billing in order to be able to check the accuracy of the billing on a case-by-case basis and fulfil the statutory audit mandate. Aderogation to the 30-day period must therefore be made here. This new derogation could be linked to the payment of an appropriate instalment or staggered payment within a payment period of 30 days. This would be in line with the aim of the proposed Regulation to ensure reliable, predictable payment flows for creditors.

## About us

The German Pension Insurance Association (DRV Bund), the German Social Accident Insurance (DGUV), the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband), the associations of statutory health and long-term care insurance funds at federal level and the Social Insurance for Agriculture, Forestry and Horticulture (SVLFG) have joined forces to form the "German Social Insurance Working Group Europe e.V." with a view to their common European policy interests. The association represents the interests of its members vis-à-vis the bodies of the European Union and other European institutions and advises the relevant players on current legislative projects and initiatives. As part of a statutory insurance system, health and long-term care insurance, pension insurance and accident insurance offer effective protection against the consequences of major life risks.