

Confederation of British Industry response to the Department for Business, Energy and Industrial Strategy's Survey on the potential reforms of the Prompt Payment Code

(This response is a record of the CBI's response to the online survey run by BEIS between 21 September – 16 October 2020 on the following link <https://beisgovuk.citizenspace.com/business-growth/11bf35af/>). CBI responses are in **bold**.

1. Government believe that an important policy driver for action on late payment is to help safeguard the cashflow of those most impacted when it happens. These are often the smallest businesses, who are least able to manage cash flow shortfalls. Do you agree with introducing an additional Code principle whereby signatories commit to pay 95% of invoices from smaller businesses within 30 days?

- Agree / disagree: **Agree**
- Please comment: **The CBI's members agree that government and business actions to improve payment practices should be targeted at helping those firms most at risk of negative impacts from late payment. Our members agree that these are small and medium-sized firms (SMEs). Currently, the Code treats payment of all size of suppliers the same - the Prompt Payment Code should be focused on delivering positive outcomes for small and medium-sized businesses, especially now that the administration of the Code is handled by the Small Business Commissioner. In this context, the CBI therefore supports the introduction of a new Prompt Payment Code principle for signatories to commit to paying 95% of invoices from smaller businesses within 30 days, which will aim to improve outcomes for SMEs.**

For some small and medium-sized firms, paying other SMEs within 30 days can be challenging. The introduction of this new principle should support higher value invoices from large customers to be paid to SMEs quickly, resulting in more liquidity and improving onward cashflow. However, the Department should monitor whether the introduction of this new principle also enables SMEs to pay other SMEs within 30 days effectively, as this will be as important an outcome.

2. If you agree that the principle in Question 1 is important, what should the definition of smaller businesses be?

- *Based on the current definition of small business (0 – 50 staff)*
- *Based on the current definition of small and medium sized enterprises (0 – 250 staff):*
- *Based on a turnover threshold with the business*
- *Any other criteria not listed above: **Due to the Department's ambition to reform the Prompt Payment Code at pace, the definition of small and medium-sized enterprises (0 – 250 staff) would be the most straightforward option and consistent with BEIS Business Surveys. However, the Payment Practices and Performance legal requirement ('Duty to report') on large businesses defines "large" businesses as those that meet at least two of the following thresholds: 250+ staff; £36m+ annual turnover; £18m+ balance sheet. The Prompt Payment Code uses this reporting to monitor large business signatories' performance against the Code's principles.***

To simplify reporting and compliance with both the 'Duty to report' and Prompt Payment Code, BEIS should explore a future opportunity to align the definition of SMEs to the same thresholds; i.e. an SME is a business that satisfies a maximum of one of the thresholds: 250 staff; £36m turnover; £18m balance sheet; or in other words, SMEs are firms that are not required to report under the Payment Practices and Performance regulations.

3. Do you agree that Code signatories should continue to commit to pay 95% of invoices from all other suppliers within 60 days?

- Yes / No: **Yes**
- Please comment: **This has been the Prompt Payment Code's standard metric for more than 10 years and, for continuity, should remain for now. In calculating this metric, it should be inclusive of a business's performance on SME invoices. Efforts made by a business to speed up payments to SMEs as a result of the new principle should be reflected in any resulting improvement to their overall payment performance against the 60 day target.**

It should also be recognised that not all suppliers are SMEs. Many business-to-business agreements between large firms utilise payment times that exceed 60 days, which continue to be fair and beneficial arrangements for both parties. Arrangements for goods or services delivered over a period of months or years often have longer payment terms and can utilise mutually agreed supplier finance, reflecting the nature of the service provided. Monitoring and potentially penalising such arrangements will have little bearing on how quickly firms pay their smaller suppliers. The Prompt Payment Code should continue to be, first and foremost, driving behaviours that improve cashflow to small and medium-sized firms. With the introduction of the new principle for paying SME invoices in 30 days, and the inclusion of a principle of "percentage of payments made to terms" to indicate a business's reliability, as outlined below, the Code can carve out a targeted role in the payments space that is likely to attract more businesses to sign up and, ultimately, speed up more payments to small and medium-sized firms.

4. Do you agree that, to ensure commitment to the principles and ethos of the Code, the company's Chief Executive Officer or Finance Director (or, in the case of a small business, the owner of the company) should sign the application to join the Code?

- Yes / No: **Yes**
- Please comment: **By requiring a senior, board-level representative to sign a company's application to be on the Code, businesses of all sizes should be reminded to take their commitment to the Code's principles seriously. Existing signatories should be asked to 'renew' their application within a reasonable timeframe to include this signature.**

5. We believe that the process for ensuring compliance with the Code is fundamental to its integrity. Which of the following mechanisms should be used to support compliance with the Code?

- *Random sample checking of signatories using the Payment Practices Reporting data*
- *An annual report/statement from the CEO or Finance Director of signatories who are not required to submit data under Payment Practices Reporting regulations on their payment performance*
- *Transparent and published processes for dealing with Code suspensions, removals and reinstatements*

- **All of the above**
- *Any other compliance measures you would like to suggest: The representatives on the Prompt Payment Code's Compliance Board should be published as part of the transparent compliance processes.*

Other organisations have called for measures to require large businesses to report their payment performance in annual reports. As government has previously indicated it would consider such a move, firms of all sizes would be keen to know how this measure might be introduced.

6. Should Code compliance be measured by any of these additional principles?

- **Percentage of invoices paid to terms**
- *Average time taken to pay invoices*
- *Other (please specify in box below)*
- *Other measures you would like to suggest: The CBI's members agree that measuring the percentage of invoices paid to terms indicates reliability of payment, and should be an important additional principle of the Prompt Payment Code. Through this measure, suppliers can assess whether a business does in practice what it promises in its contracts. Smaller firms in the CBI membership have noted that reliability of payment is often as important as speed. Our members also point out that in the majority of business-to-business relationships, payment terms are agreed to the benefit of both parties. Measuring the "percentage of invoices paid to terms" is a strong indicator of a business's reliability and trustworthiness, which helps answer the question for suppliers: 'will this business do what they say they do?', and should be part of the Code.*

7. We strongly believe that being a signatory to the Code, and being able to demonstrate compliance, should be a badge of honour for companies. Would a logo you could display on documentation, such as websites, contracts or tenders, be helpful to show your compliance with the Code?

- Yes
- No
- **Please comment: Our members have no strong views on this question either way. Similar to previous concerns about the Code 'lacking teeth' before payment data became a mandatory reporting requirement for large firms, the use of a logo would only add value if it helped to bolster the Code's principles being monitored and enforced. It is unclear how a logo would further this, as signatories are already publicly listed.**

8. Would the use of a logo give smaller businesses greater confidence and certainty that they would be paid promptly?

- Yes / No: **No.**

9. Could the logo help raise a challenge against payment breaches by Code signatories?

- Yes / No: **Yes. It would assist smaller firms to identify whether their customers are Code signatories. Knowing this information may improve smaller firms' confidence that raising a challenge to the Code's Compliance Board will result in action being taken.**

10. Do you agree that the administrators of the Code should be able to approach signatories on the basis of an anonymous complaint by a third party, e.g., a trade body on behalf of their member, to discuss their payment practices?

- Yes /No: **No**
- Please comment: **The Small Business Commissioner already has this power, which does not need to be duplicated in the Prompt Payment Code.**

11. With regard to introducing new principles to the existing Code, we acknowledge that changes introduced might require time to implement. How long might it take for signatories to be fully prepared to report on any new requirements, for example, reporting on payments to smaller companies?

- Please indicate the amount of time required: **The Department is right to be moving at pace to make the Prompt Payment Code more effective in support of small businesses, and the new principles for the Prompt Payment Code will likely be announced this year (2020). However, government must remain cognisant of the wider business landscape and the unavoidable impacts of the coronavirus pandemic on business practices, capacity and performance. For some businesses, reporting on their invoices paid to SMEs will require investment and implementation of new systems and training for employees. Some of the CBI's members have told us they would have a pool of several thousand regular suppliers from which the SMEs would need to be manually identified. With this in mind, the CBI would recommend a 12-month period before the new principles become mandatory for Code signatories to report on.**

12. What other measures or reforms might be introduced and not mentioned above to further strengthen the Code and give greater confidence to those contracting with signatories?

- Please comment: **The Department for Business, Energy and Industrial Strategy may wish to look at measures to support the identification of SMEs, such as requiring this information in Companies House filings, or encouraging companies to include this information on invoices as standard practices, to increase the accuracy and simplicity of reporting on payments.**

The separate consultation into the scope and powers of the Small Business Commissioner offers an opportunity for the Department of Business, Energy and Industrial Strategy to complement the reformed Prompt Payment Code and further improve the wider landscape on payment practices, particularly focusing on achieving positive outcomes for small and medium sized businesses.

13. Do you believe that a reformed Code will reduce late payment, act as a preventative measure to avoid or resolve disputes, and help to protect business relationships?

Yes / No: **Yes**

If no, please explain:

Ends

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