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BUILDING A RESPONSIBLE PAYMENT CULTURE IN THE EU: IMPROVING THE LATE PAYMENT DIRECTIVE

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BACKGROUND

At the EU level, the problem of late payments is addressed by Directive 2011/7/EU, commonly referred to as the **Late Payment Directive (LPD)**.

Recent surveys suggest an **improvement in the situation**. In 2022, 43% of businesses experienced problems with late payments (12% regular problems, 31% occasional problems), compared with 49% in 2019. Overall, **COVID had only a transitory impact**.

The theme has nonetheless attracted considerable attention from policy makers

- ✓ **European Parliament 2019 Resolution** calling for *“a decisive shift towards a culture of prompt payment”*
- ✓ Commission’s **SME Strategy of 2020**, aimed at supporting LPD implementation *“by equipping it with strong monitoring and enforcement tools.”*

STUDY ON 'BUILDING A RESPONSIBLE PAYMENT CULTURE IN THE EU: IMPROVING THE EFFECTIVENESS OF THE LPD'

Study commissioned by DG GROW and completed in mid 2022. Emphasis on **supporting measures to prevent late payments and/or alleviate their effects.**

Covered six themes

Feasibility of an 'EU Observatory' on payment behavior

Enhance SMEs' capabilities in credit management

Foster the utilization of factoring

Foster the use of credit information on prospective clients

Foster the use of alternative dispute resolution mechanisms

Enhance synergies with public procurement

The Study did not deal with a possible revision of the LPD, which was not envisaged at that time, but **currently ongoing** (e.g. recent public consultation).

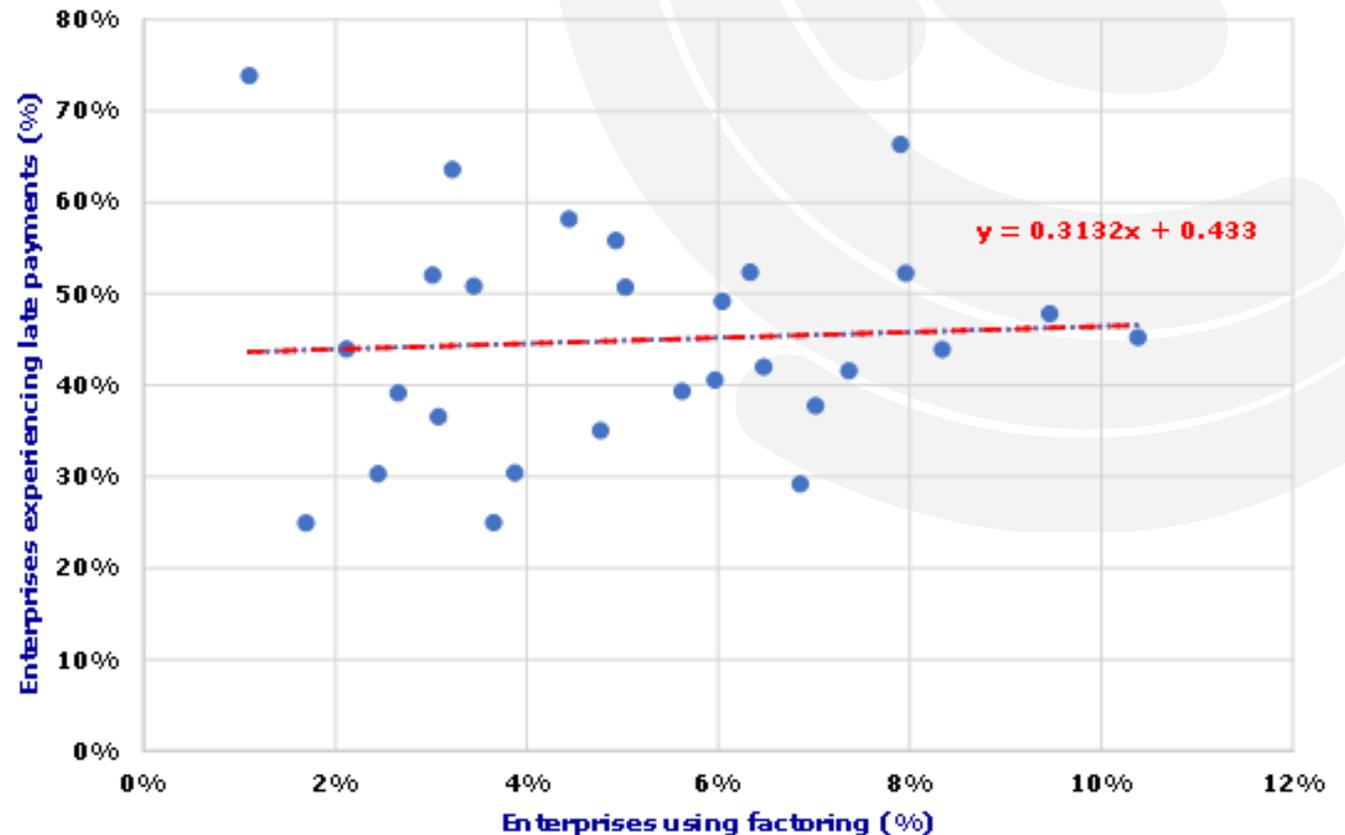
FACTORING AND LATE PAYMENTS (1)

Factoring can be very useful to **mitigate the effects of late payments, but ...**

... in EU Member States there is only a feeble relationship between late payments and the use of factoring.

For instance, GDP penetration:

- ✓ higher in Belgium and The Netherlands, where late payments are less common,
- ✓ than in Italy, which is more affected.



FACTORING AND LATE PAYMENTS (2)

The study focused on **factors that may hamper the use of factoring**, namely contractual clauses preventing the assignment of receivables, the so-called **ban on assignment (BoA) clauses**.

The **situation in EU Member States is quite variegated**, and not always easy to interpret, due to the combination of various pieces of legislation and jurisprudence (EUF Legal Study was a fundamental source). Overall:

- ✓ In most countries BoA clauses in B2B contracts **are invalid or their effects are nullified de jure or de facto**. However, BoA clauses are still possible and enforceable in some Member States.
- ✓ Sometimes **additional restrictions apply to G2B contracts**. For instance, in Italy, legislation introduced during the COVID pandemic required an explicit authorization by health authorities for the assignment of proceeds (45 days).

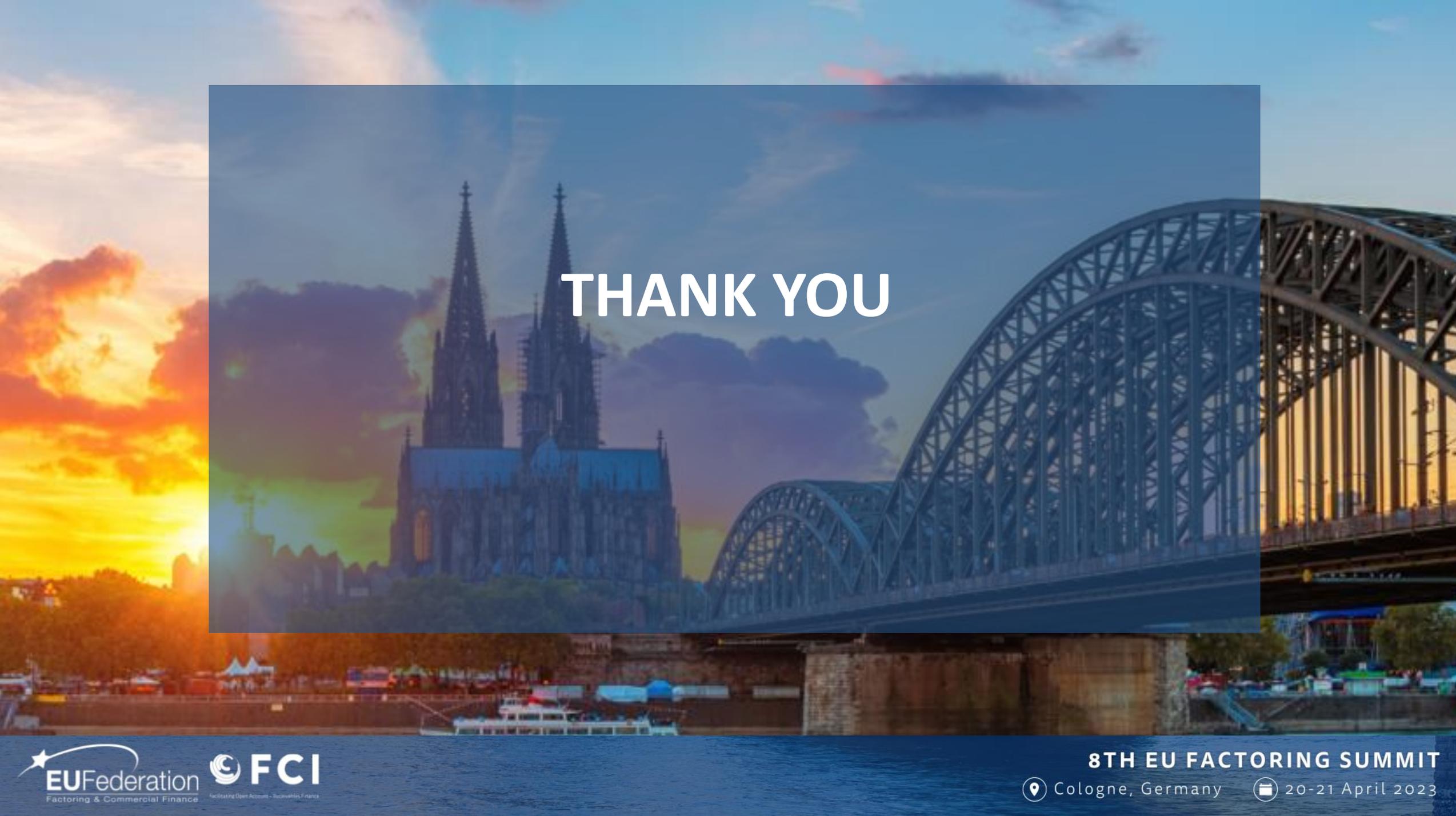
FACTORING AND LATE PAYMENTS (3)

Relatively recent reform in the UK, with the passing of the Business Contract Terms (Assignment of Receivables) Regulations 2018, which applies to B2B transactions involving SMEs. However, the impact is difficult to ascertain, due to various concomitant factors (COVID, extent to which BoA clauses are actually included in contracts).

A reform also proposed in 2020 in The Netherlands, but the bill is reportedly still pending before Parliament.

Conclusions: Commission to **promote changes in national legislation**, namely with reference to transactions involving SMEs.

- ✓ Unlikely to have effects at the 'macro' level (average GDP penetration at 12-13%), but ...
- ✓ ... certainly useful to address issues in selected sectors/categories of transactions.



THANK YOU