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The BSA response to BIS consultation 'Duty to report on payment practices and policies'

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1. The BSA – The Business Services Association - is a policy and research organisation. It brings together all those who are interested in delivering efficient, flexible and cost-effective infrastructure and service projects across the private and public sectors. A list of members is attached in the annex.
2. The BSA supports the principle and intention of the consultation proposals. We support the general theme of increasing transparency of company payment practices. This will drive the right behaviours and in turn help develop a culture of prompt payment. However, we believe there needs to be more thought about the practical considerations and costs for companies. Otherwise, unintended consequences will mean the legislation will not have the desired impact of helping SMEs.
3. We also believe there needs to be ***more understanding of the government's own payment practices and reporting inaccuracies*** as evidenced in the recent NAO report[1]. It is too simplistic and narrow to believe that the payment problems that government is trying to address are caused by large companies playing financial games with its supply chain. It is more complex than that and the government's own record in processing invoices at scale to set timelines only underlies this point. Especially as government departments have no incentive to pay other than promptly. More thought must be given to this so the requirements can be better designed before enforcing on the private sector.
4. ***There must be a level playing field between government and the private sector***. If there is not, we will not drive the necessary culture change. The private sector has no advantage in being able to process and pay invoices on time and so there is no reason the same requirements of the private sector do not apply to the government.
5. ***It is inappropriate to make company directors personally liable for reporting***. The intention should be to improve behaviour through increased transparency and to support SMEs, not to penalise and catch out large companies. Adding the new requirement to a company's annual report would be sufficient to ensure compliance and would enable third party auditors to validate the figures.

[1] NAO. 8 January 2015, *Paying government suppliers on time.*

6. ***Building the simple one page reports would take a lot of effort and cost.*** Some BSA members process in the region of 500,000 invoices over a 12 month period. These would be from multiple sources. At present this data is not captured in any kind of consistent format, so new systems would need to be designed. The costs per company as estimated in the initial impact assessment do not look realistic. We think the real figure would be considerably more than £177 per company and would urge BIS to look again at this. Revised estimates should include the initial set-up cost and ongoing costs.

7. ***Simplifying the metrics would still deliver the desired outcomes and would avoid unintended consequences.*** For example, as currently proposed, the metrics could encourage companies to extend previously short payment terms. We believe two simple metrics would be sufficient information to be able to evaluate a company's behaviour. The metrics could be proportion of invoices paid in 0-60 and 61 -120 days. The overall aim of the legislation should be to ensure suppliers are aware of the payment terms. Often large companies do have standard terms with the vast majority of their suppliers. It is important that companies can retain the ability to flex these, up or down, according to certain circumstances (on both the large company's and the supplier's part). This flexibility should not end up looking as though the company's 'performance' has deteriorated between different reporting periods.

8. ***The proposals take no account of the value of the invoice.*** So a £1 invoice paid late could offset a £1,000,000 invoice paid early. This could encourage companies to report on high volume, low cost invoices, as we have seen government departments do. To reduce the incentive to skew the figures we think the report should be supported by explanatory text on the nature of the company's contracts. Such opportunity to explain the figures would ensure companies are given fair representation when third parties try to compare companies in league tables.

9. ***Start the clock ticking the date the invoice enters the company's system.*** We support the option for companies to define how they measure payment times and as long as it is clear in the in the report outputs, we would opt for the invoice received date as being the most relevant point to start the net payment clock. The proposals would measure the time taken to pay from the date the invoice is sent but it would be more reasonable to start the invoice from the date it is entered into the company's system. This would match how internal systems are set up and so would be less burdensome to implement.

10. ***The requirement to report should be at group level.*** The proposals are not clear enough on how reporting requirements should be processed in a company which has multiple subsidiaries. For some BSA members, a group company can constitute over 200 separate entities. Having to sign off over 200 different reports would be very difficult. A further complication would be how to account for joint ventures. We therefore support the requirement to publish a group consolidated report. If it is decided that companies should report at an individual level than we would strongly recommend that large companies with multiple subsidiaries using a group or outsourced managed shared service platform, should be given the option to report at a group level. Otherwise the requirement would be excessively burdensome.

11. ***Reporting should be annual.*** The requirement to report quarterly is overly onerous and the intention should not be to measure cash flow. It would mean the reports would not receive the appropriate level of attention from senior directors. Reporting annually is more realistic, and would be in line with the requirements on government, therefore supporting a level playing field.

12. ***An invoice dispute procedure must be accurately represented.*** We support the proposal to disclose what invoice dispute procedures large companies currently have in place. However, an additional reporting metric detailing the percentage of disputed invoices could not be meaningfully adopted without further thought being given to the complexity and practicalities of imposing such a metric. It does not allow recognition that a disputed invoice may be a vendor error and the nature of this reporting may not provide an accurate representation of a business' invoice dispute procedure.

Consultation questions	
Question 1: Do you agree that the reporting requirement set out in this document is clear and easy to understand?	It is clear, but unintended consequences are still possible.
Question 2: Do you agree that the reporting requirement should effectively only cover effectively payments related to business to business contracts?	There must be a level playing field between government and the private sector. If there is not, we will not drive the necessary culture change. The private sector has no advantage in being able to process and pay invoices on time and so there is no reason the same requirements of the private sector do not apply to the government.
Question 3: Do you agree that we should be excluding financial services contracts? If yes, which financial services should we exclude; and how should we define them?	No comment
Question 4: Do you agree that the reporting requirement should extend to (a) large UK companies, (b) large LLPs and (c) all quoted companies?	The proposals are not clear enough on how reporting requirements should be processed in a company which has multiple subsidiaries. For some BSA members, a group company can constitute over 200 separate entities. Having to sign off over 200 different reports would be very difficult. A further complication would be how to account for joint ventures. We therefore support the requirement to publish a group consolidated report. If it is decided that companies should report at an individual level than we would strongly recommend that large companies with multiple subsidiaries using a group or outsourced managed shared service platform, should be given the option to report at a group level. Otherwise the requirement would be excessively burdensome.
Question 5: Do you agree that the Companies Act provides an appropriate threshold of whether a private company or LLP qualifies for an exemption from reporting?	See question 4.
Question 6: Do you agree that businesses should be required to provide individual and non-consolidated reports on their payment practices?	See question 4.
Question 7: Do you agree that businesses should report on (a) their standard (b) their maximum payment terms, and (c) any changes to these over the last reporting period? Should the report require information on whether suppliers had been notified or consulted on this change in advance[3]?	For example, as currently proposed, the metrics could encourage companies to extend previously short payment terms. We believe two simple metrics would be sufficient information to be able to evaluate a company's behaviour. The metrics could be proportion of invoices paid in 0-60 and 61 -120 days. The overall aim of the legislation should be to ensure suppliers are aware of the payment terms. Often large companies do have standard terms with the vast majority of their suppliers. It is important that companies can retain the ability to flex these, up or down, according

	to certain circumstances (on both the large company's and the supplier's part). This flexibility should not end up looking as though the company's 'performance' has deteriorated between different reporting periods.
Question 8: Do you agree that this report should be a mandatory requirement for all companies in scope?	Yes
Question 9: Do you agree that the reporting requirement should specify when the clock starts on the payment period? Do you agree that date of invoice is a suitable point to start the clock on payment?	We support the option for companies to define how they measure payment times and as long as it is clear in the in the report outputs, we would opt for the invoice received date as being the most relevant point to start the net payment clock. The proposals would measure the time taken to pay from the date the invoice is sent but it would be more reasonable to start the invoice from the date it is entered into the company's system. This would match how internal systems are set up and so would be less burdensome to implement.
Question 10: Do you agree that a metric of invoices paid beyond terms should be included in this report? If yes, should this be for (a) proportion of invoices (b) value of invoices (c) both the proportion of invoices and the value of invoices?	See question 7.
Question 11: Should a business have to report on the average time taken to pay invoices? Does this add a valuable counter balance to the proportion of invoices paid to terms?	Yes.
Question12: Would metrics demonstrating how many invoices are paid in (i) 30 (ii) 60 and (iii) 120 (iv) over 120 days be valuable to suppliers? If yes, should this be for (a) proportion of invoices (b) value of invoices (c) both the proportion of invoices and the value of invoices?	See question 7.
Question 13: Do you agree it that it would be useful for the report to include additional information, in narrative form, to give suppliers an understanding of a firm's wider payment?	Yes. The proposals take no account of the value of the invoice. So a £1 invoice paid late could offset a £1,000,000 invoice paid early. This could encourage companies to report on high volume, low cost invoices, as we have seen government departments do. To reduce the incentive to skew the figures we think the report should be supported by explanatory text on the nature of the company's contracts. Such opportunity to explain the figures would ensure companies are given fair representation when third parties try to compare companies in league tables.
Question 14: Do you agree that it would be beneficial for a business to report on their existing dispute processes?	We support the proposal to disclose what invoice dispute procedures large companies currently have in place. However, an additional reporting metric detailing the percentage of disputed invoices could not be meaningfully adopted without further thought being given to the complexity and practicalities of imposing such a metric. It does not allow recognition that a disputed invoice may be a

	vendor error and the nature of this reporting may not provide an accurate representation of a business' invoice dispute procedure.
Question 15: Would it be helpful for the Government to provide a definition of a disputed invoice in the report?	Yes
Question 16: Have you experienced companies disputing invoices as a way of delaying payments? Do you see a role for Government intervention on this issue, and if so, what is it?	No we have not seen this and do see a government role here.
Question 17: Do you agree that a business should report on whether they offer e-invoicing? Should this disclosure include any further information or simply be a 'tick box' disclosure?	Yes.
Question 18: Should businesses report on whether they offer supply chain finance? Should this disclosure also include the payment terms and average cost of this finance, or simply be a 'tick-box disclosure?	Yes.
Question 19: Do you agree that a business should disclose whether it is a signatory of a Code and which code they belong to, if any?	Yes.
Question 20: Do you have concerns about the practice of some suppliers having to pay to be included on supplier lists? If yes, why?	No comment.
Question 21: Do you think that Government should take any action with respect to supplier lists, through this reporting requirement or otherwise? If so, what?	No comment.
Question 22: Do you agree that companies should report every three months covering at least the whole three month period?	The requirement to report quarterly is overly onerous and the intention should not be to measure cash flow. It would mean the reports would not receive the appropriate level of attention from senior directors. Reporting annually is more realistic, and would be in line with the requirements on government, therefore supporting a level playing field.
Question 23: Is a 30 day period enough time after the end of a quarter to provide a report of this nature?	See question 22.
Question 24: Do you agree that companies reporting dates should be aligned with their financial reporting cycle?	Yes.

Question 25: Do you agree that this reporting requirement should not be included in a company's annual accounts but instead have to publish it on their website? If yes, do you think it would be useful for the information to also be released alongside the publication of a company's annual accounts?	See question 22.
Question 26: Is The Gazette an appropriate online resource for companies without a website to use for reporting? If no, are there more suitable alternatives?	No comment.
Question 27: Do you agree companies should be asked to report consistent with open data principles, if so what should these be?	No comment.
Question 28: How could we make this data as accessible and useful as possible?	Data must be high-level and simple to be useful.
Question 29: Do you agree that a company director should be responsible for signing off each report?	It is inappropriate to make company directors personally liable for reporting. The intention should be to improve behaviour through increased transparency and to support SMEs, not to penalise and catch out large companies. Adding the new requirement to a company's annual report would be sufficient to ensure compliance and would enable third party auditors to validate the figures.
Question 30: Do you agree that breach of this requirement should be sanctionable by a criminal offence?	See question 29.
Question 31: Would you find guidance in complying with this reporting requirement helpful? If yes, who should produce this guidance?	See question 29.

Annex

List of BSA Members

Full Members:

AECOM
Amey plc
ARAMARK Ltd
Atos
Babcock International Group plc
Balfour Beatty plc
Bellrock Ltd
Berendsen plc
Bouygues Energies and Services Ltd
British Telecommunications plc
Capita plc
Carillion plc
Cofely UK
Compass Group plc
Costain Group plc
Elior UK Ltd
G4S plc
Interserve plc
ISS UK Ltd
Kier Group plc
Laing O'Rourke plc
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