

## 51998AP0303

### **Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on combating late payment in commercial transactions (COM(98)0126 C4-0251/98 98/0099(COD)) (Codecision procedure: first reading)**

*Official Journal C 313 , 12/10/1998 P. 0142*

A4-0303/98

Proposal for a European Parliament and Council Directive on combating late payment in commercial transactions (COM(98)0126 - C4-0251/98 - 98/0099(COD))

The proposal was approved with the following amendments:

(Amendment 1)

Recital 7

>Original text>

(7) Whereas heavy administrative and financial burdens are placed on businesses, particularly small and medium-sized ones, as a result of late payment; whereas moreover, late payments are a major cause of insolvencies threatening the survival of businesses and result in numerous job losses;

>Text following EP vote>

(7)

Whereas heavy administrative and financial burdens are placed on businesses, particularly small and medium-sized ones, as a result of the excessive payment periods and late payment; whereas moreover, these problems are a major cause of insolvencies threatening the survival of businesses and result in numerous job losses;

(Amendment 2)

Recital 13

>Original text>

(13) Whereas the use of retention of title clauses as a means of speeding up payment is at present constrained by a number of differences in national law; whereas it is necessary to ensure that creditors are in a position to exercise the retention of title throughout the Community, using a single clause recognized by all Member States;

>Text following EP vote>

(13)

Whereas the use of retention of title clauses as a means of speeding up payment is at present constrained by a number of differences in national law; whereas it is necessary to ensure that creditors are in a position to exercise the retention of title throughout the Community, using a single clause recognized by all Member States, and that excessive length of payment periods and late payments do not distort commercial transactions in the functioning of the internal market;

(Amendment 3)

Recital 15

>Original text>

(15) Whereas public authorities handle a considerable volume of payments to businesses; whereas strict payment discipline on the part of these authorities would have a beneficial trickle-down effect on the economy as a whole; whereas for payments executed by the Commission it has already been decided to give certain creditors the right to receive default interest on late payments;

>Text following EP vote>

(15)

Whereas public authorities handle a considerable volume of payments to businesses; whereas strict payment discipline on the part of these authorities would have a beneficial trickle-down effect on the economy as a whole; whereas, with regard to public contracts, contracting enterprises in turn likewise delay payments to their suppliers and subcontractors, habitually imposing disproportionate payment

periods - practices which seriously damage the interests of many businesses, especially SMEs; whereas for payments executed by the Commission it has already been decided to give certain creditors the right to receive default interest on late payments;

(Amendment 4)

Recital 16a (new)

>Original text>

>Text following EP vote>

(16a) Whereas it could be necessary, when this Directive is reviewed, to take into consideration the possibility of addressing the consequences of long contractual payment periods;

(Amendment 5)

Recital 16b (new)

>Original text>

>Text following EP vote>

(16b) Whereas Member States should be vigilant against unfair trading practices, e.g. the use in some sectors of the retail trade of the threat of 'de-listing' to discourage suppliers from pressing for prompt payment;

(Amendment 6)

Recital 16c (new)

>Original text>

>Text following EP vote>

(16c) Whereas in the case of certain products, such as perishable foodstuffs, delays in payment are attributable not to real market needs but rather to distortions of competition which ought to be corrected;

(Amendment 7)

Recital (16d) (new)

>Original text>

>Text following EP vote>

(16d) Whereas 'public contracting authority' corresponds to the definition laid down in Directive 92/50/EEC(1) and Directive 93/37/EEC(2) on public procurement;

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(1) OJ L 209, 24.7.1992, p. 1

(2) OJ L 199, 9.8.1993, p. 54.

(Amendment 9)

Article 2(1)

>Original text>

1. 'commercial transactions' means transactions between two or more natural or legal persons carrying on a trade or profession acting in the course of their business, or between such persons and public authorities, which lead to delivery of goods or provision of services for remuneration;

>Text following EP vote>

1.

'commercial transactions' means transactions between undertakings which lead to delivery of goods or provision of services for remuneration; an undertaking is any organization set up on a permanent basis with an independent economic activity, even where it is carried on by a single person and even where it is not intended to make a profit; public contracting authorities including the institutions of the European Union shall in every case be deemed to be undertakings for the purposes of this Directive;

(Amendment 10)

Article 2(3)

>Original text>

3. 'retention of title' means retention by the seller of title to the goods in question until the buyer has paid the price in full;

>Text following EP vote>

3.

'retention of title' means the agreement, irrespective of any formal requirements, that the seller remains the owner of the goods in question until the price has been paid in full;

## (Amendment 11)

## Article 2(4)

&gt;Original text&gt;

4. 'public authorities' means the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law. A body is considered to be governed by public law where it is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature, has legal personality, and is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;

&gt;Text following EP vote&gt;

4.

'public contracting authority' means the European Community and the institutions deriving from the EC Treaty, the ECSC Treaty and the Euratom Treaty and having their own legal personality, the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law.

4a. 'body governed by public law' means any body

- established with the specific purpose of fulfilling tasks of a non-commercial nature in the public interest;

- having legal personality, and

- funded predominantly by the State, by regional or local authorities or other bodies governed by public law, or subject to the supervision of such bodies as regards its management, or whose administrative, management or supervisory body consists predominantly of members appointed by the State, regional or local authority or other body governed by public law.

## (Amendment 13)

## Article 2(5)

&gt;Original text&gt;

5. 'public procurement contracts' means contracts for pecuniary interest concluded in writing between a natural or legal person and public authorities.

&gt;Text following EP vote&gt;

5.

'public procurement contracts' means contracts for pecuniary interest concluded in writing between a public contracting authority within the meaning of paragraph 4 and an undertaking which is not a public contracting authority.

## (Amendment 14)

## Article 3(1)

&gt;Original text&gt;

1. Member States shall ensure that:

&gt;Text following EP vote&gt;

1.

Member States shall enact the necessary legislation and amend their procedural rules in such a way that, subject to the goods or services having been duly provided and the underlying legal conditions being correctly fulfilled, the following is ensured:

&gt;Original text&gt;

(a) the due date for the payment of debts shall not be more than 21 calendar days from the date of the invoice, unless otherwise specified in the contract or in the seller's general conditions of sale;

&gt;Text following EP vote&gt;

(a)

the due date for the payment of debts shall not be more than 21 calendar days from the date of receipt of the invoice, unless otherwise specified in the contract or in the seller's general conditions of sale;

&gt;Original text&gt;

&gt;Text following EP vote&gt;

(aa) the invoice shall be deemed to have been received no later than the fifth calendar day following its dispatch, unless the buyer or seller is able to furnish proof of receipt at another time;

>Original text>

(b) in the absence of an invoice or if the date of the invoice cannot be determined with certainty or if the date of the invoice is earlier than the date of delivery, the due date shall be calculated from the date of delivery of the goods or services;

>Text following EP vote>

(b)

in the absence of an invoice or if the date of its receipt cannot be determined with certainty or if the date of receipt is earlier than the date of supply of the goods or services concerned, the due date shall be calculated from the latter date;

>Original text>

>Text following EP vote>

(ba) where the due date specified in the contract or in the seller's general conditions of sale is longer than 60 calendar days, the buyer shall provide the seller, at the buyer's cost, with a bill of exchange, specifying explicitly the date for its payment and guaranteed by an accepted credit institution;

>Original text>

>Text following EP vote>

(bb) where the buyer fails to provide the seller with a bill of exchange in accordance with point (ba) above, the normal due date and level of interest as foreseen in this article shall be applicable and any contractual derogations therefrom to the detriment of the seller shall be automatically null and void; the remainder of the contract shall remain in force;

>Original text>

(c) the creditor shall be entitled to claim interest from the debtor on any outstanding amount when the due date as determined under points (a) and (b) has been exceeded without the creditor having received the amount due;

>Text following EP vote>

(c)

the creditor shall be entitled to claim interest from the debtor on any outstanding amount when the due date as determined under points (a) to (bb) above has been exceeded without the creditor having received the amount due;

>Original text>

(d) interest shall accrue automatically from the day after the due date without the necessity of a reminder;

>Text following EP vote>

(d)

interest shall accrue automatically from the day after the due date without the necessity of a reminder;

>Original text>

(e) the level of interest for late payment (the 'statutory rate'), which the creditor is entitled to claim, shall be the sum of the tender (repo) interest rate of the European Central Bank (the 'reference rate') plus at least 8 percentage points (the 'margin'), unless otherwise specified in the contract or in the seller's general conditions of sale; for Member States which do not participate in the third phase of Economic and Monetary Union, the reference rates referred to above shall be the equivalent rates set by their central banks;

>Text following EP vote>

(e)

the level of interest for late payment (the 'statutory rate'), which the creditor is entitled to claim, shall be the sum of the tender (repo) interest rate of the European Central Bank (the 'reference rate') plus at least 8 percentage points (the 'margin'), unless otherwise specified in the contract or in the seller's general conditions of sale; for Member States which do not participate in the third phase of Economic and Monetary Union, the reference rates referred to above shall be the equivalent rates set by their central banks;

>Original text>

(f) the statutory rate for interest on late payment shall change automatically in accordance with changes to the reference rate mentioned in point (e);

>Text following EP vote>

(f)

the statutory rate for interest on late payment shall change automatically in accordance with changes to

the reference rate mentioned in point (e);

>Original text>

(g) in addition to the right to interest, the creditor shall be entitled to claim full compensation from the debtor for the damage incurred.

>Text following EP vote>

(g)

in addition to the right to interest, the creditor shall be entitled to claim full compensation from the debtor for the following items:

>Original text>

>Text following EP vote>

(1) the cost of the creditor's bank loans or overdraft, to the extent that this is not yet fully compensated by the right to interest;

>Original text>

>Text following EP vote>

(2) the administrative costs of recovery within the creditor's business;

>Original text>

>Text following EP vote>

(3) the costs of a third party; and

>Original text>

>Text following EP vote>

(4) the costs of recovery through court proceedings.

>Original text>

>Text following EP vote>

Any consequential damages arising from delays in payments shall not be eligible for compensation.

>Original text>

>Text following EP vote>

Member States may limit the costs of legal representation included in this damage.

(Amendment 15)

Article 3(2a) (new)

>Original text>

>Text following EP vote>

2a. The Commission, having been advised by the Committee referred to in Article 9, shall undertake for at least the first three years after the introduction of this Directive an annual review of, inter alia, the statutory rate to assess the impact on commercial transactions and the operation of the legislation in practice. The results of this review and of other reviews will be made known to the European Parliament.

(Amendment 17)

Article 3(2b) (new)

>Original text>

>Text following EP vote>

2b. The Member States shall take all suitable measures to reduce long payment periods within the Single Market.

(Amendment 18)

Article 4(1), 1st and 2nd subparagraphs

>Original text>

1. Member States shall ensure that the seller retains title if he notifies the buyer of his intention of doing so in writing no later than the date of delivery of the goods.

>Text following EP vote>

1. In commercial transactions within the meaning of Article 2(1), Member States shall ensure that the seller retains title if a retention of title clause has been agreed.

>Original text>

Once the due date has passed without the buyer having paid, the seller may claim that the goods in question be returned to him. As soon as the buyer takes possession of the goods, he becomes

responsible for any damage to or loss of the goods. A valid notification may be made in the seller's standard contract, on the invoice, or in an individual contract.

>Text following EP vote>

Once the due date has passed without the buyer having paid, the seller may claim that the goods in question be returned to him.

Member States may adopt special measures concerning goods which are supplied in connection with the carrying-out of works and which are incorporated in other movable or immovable property. Member States shall provide for the retention of title clause to be binding on third parties, even in the case of bankruptcy of the debtor or in the case of any other procedure recognized as being similar under the legislation of the Member States. No later than when the buyer takes possession of the goods, he becomes responsible for any damage to or loss of the goods. A valid notification may be made in the seller's standard contract, on the invoice, or in an individual contract. No other formality shall be required.

(Amendment 19)

Article 4(2)

>Original text>

2. Paragraph 1 shall apply only to debts payable in a single instalment.

>Text following EP vote>

Deleted

(Amendment 21)

Article 4(3)

>Original text>

3. Member States shall define the effect of the retention of title clause as regards those aspects not covered by this Directive and in particular as regards the effect on third parties acting in good faith.

>Text following EP vote>

3.

Member States shall adopt regulations, in particular for the protection of third parties acting in good faith, as regards down payments already made by the debtor.

(Amendment 22)

Article 6, 1st paragraph

>Original text>

Member States shall ensure that simplified procedures are available for debts up to a threshold, which shall not be less than ECU 20 000. These procedures shall provide for simple, low-cost methods for taking legal action for the settlement of debts.

>Text following EP vote>

Member States shall ensure that simplified procedures are available for debts up to a ceiling, which shall not be less than ECU 20 000. These procedures shall provide for simple, low-cost methods for taking legal action for the settlement of debts.

(Amendment 23)

Article 6a (new)

>Original text>

>Text following EP vote>

Article 6a

Member States' arrangements

Member States' arrangements concerning legal representation in court proceedings shall remain unaffected by the foregoing provisions.

(Amendment 24)

Article 7

>Original text>

Member States shall ensure that public procurement contracts contain precise details of the payment periods and deadlines applied by the public authorities. In particular, time limits shall be fixed for the completion of pre-payment administrative formalities, such as public works reception procedures.

>Text following EP vote>

Member States shall ensure that public procurement contracts contain precise details of the payment periods and deadlines applied by the public

contracting authorities, even if these deadlines are determined in general contract conditions laid down by law. In particular, time limits shall be fixed for the completion of pre-payment administrative formalities, such as public works reception procedures. A similar obligation of transparency shall apply in the relationship between a main contractor and a subcontractor carrying out public works.

(Amendment 25)

Article 7a (new)

>Original text>

>Text following EP vote>

Article 7a

Debt collection agencies

>Original text>

>Text following EP vote>

1. A Member State in which an agency is registered to carry out the business of recovery of debts (home state), and which has a licensing system by which agencies are authorised to recover debts, will license an agency provided it satisfies the requirements set out in paragraph 2 below.

>Original text>

>Text following EP vote>

2. The home state shall ensure that the agency fulfils the following minimum requirements for carrying out debt recovery and for obtaining a licence referred to in paragraph 1 above:

>Original text>

>Text following EP vote>

(a) the agency adheres to high standards of honourable and ethical behaviour, inter alia accepting to avoid harassment of debtors and to abstain from practices which could mislead the debtor on

- the limits of the agency's powers;

- the fact that the agency does not possess the powers of a public authority; and

- the debtor's rights of defence.

>Original text>

>Text following EP vote>

(b) the managing directors have no criminal record;

>Original text>

>Text following EP vote>

(c) the managing directors have at least 3 years' professional experience in the recovery of debts;

>Original text>

>Text following EP vote>

(d) the agency provides financial guarantees to protect the clients and the debtors;

>Original text>

>Text following EP vote>

(e) the agency keeps money recovered on behalf of the clients in an account which is separate from the agency's own funds and from funds which do not belong to the clients;

>Original text>

>Text following EP vote>

(f) there is clear and regular reporting by the agency to the client, including the transfer of all recovered amounts on the client's behalf within the period specified in the contract;

>Original text>

>Text following EP vote>

(g) the agency is supervised by a private or public organisation which ensures compliance with the requirements mentioned above.

>Original text>

>Text following EP vote>

3. Member States shall mutually recognise licences by which agencies have been authorised to recover debts in conformity with this Article.

>Original text>

>Text following EP vote>

4. The Member State in which the debt is recovered (host state) can request the agency to comply with the requirements mentioned in paragraph 2 above. If the agency, despite having received two such requests, acts in contravention of these requirements, the host state can request the agency's home state to take the appropriate measures to either ensure observance of the requirements or revoke the licence. Should the home state fail to act on such a request within one month, and should the agency continue to act in contravention to the requirements, the host state is entitled to disregard the agency's licence.

(Amendments 33 and 26)

Article 8(1)

>Original text>

1. the due date for the payment of contractual debts by the public authorities as determined under Article 3(1)(a) and (b) does not exceed 60 calendar days; the contract shall in no circumstances override that maximum payment period,

>Text following EP vote>

1.

the due date for the payment of contractual debts by the public authorities as determined under Article 3(1)(a) and (b) does not exceed 45 calendar days for contracts relating to supplies and services, 60 days for public works contracts and 90 days for the final payment of public works contracts; the contract shall in no circumstances override that maximum payment period; in a public contract, the main contractor has to grant conditions to the subcontractor and suppliers which are at least as favourable as those granted to the main contractor by the public contracting authority; in order to guarantee these conditions to suppliers and subcontractors, the contractor shall be required to provide a guarantee made out to the supplier or subcontractor covering payment of all the amounts owed. This guarantee shall be executable upon expiry of 60 calendar days from the date of submission of the invoice to the contractor by the supplier or subcontractor.

(Amendment 27)

Article 8(2)

>Original text>

2. a creditor shall be entitled to interest from the public authority on any outstanding amount when the due date has been exceeded; the interest shall be calculated as set out in Article 3(1)(d) and (e), and shall be paid automatically by the public authority without the necessity of a claim;

>Text following EP vote>

2.

a creditor shall be entitled to interest from the public contracting authority on any outstanding amount with effect from the due date; the interest shall be calculated as set out in Article 3(1)(d) and (e), and shall be paid automatically by the authority;

(Amendment 28)

Article 8(3)

>Original text>

3. the public authority is not permitted to request or require that the creditor waives any of the rights referred to in this Article.

>Text following EP vote>

3.

the public contracting authority is not permitted to request or require that the creditor waives any of the rights referred to in this Article, nor may the creditor request or demand that his suppliers or subcontractors waive those rights.

(Amendment 29)

Article 9, 4th paragraph a (new)

>Original text>

>Text following EP vote>

The chairman of the committee, at the request of the European Parliament or on his own initiative, may be heard by the competent committees of the European Parliament.

(Amendment 34)

Article 9a (new)

>Original text>

>Text following EP vote>



## Article 9a

## Progress report

No later than 31 December 2002 the Commission shall draw up, on the basis of reports from the Member States and information received from industry, a report on developments concerning payment periods and late payments, the measures taken and the results obtained. The Commission shall submit this report to the European Parliament, the Council and the professional and sectoral organisations together, where appropriate, with its proposals for action to be taken.

(Amendment 31)

## Article 10(2)

>Original text>

2. Member States may maintain or bring into force provisions which are stricter than the provisions necessary to comply with this Directive.

>Text following EP vote>

2.

Member States may maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.

Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on combating late payment in commercial transactions (COM(98)0126 - C4-0251/98 - 98/0099(COD))(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council, COM(98)0126 - 98/0099(COD) ((OJ C 168, 3.6.1998, p. 13.)),

- having regard to Article 189b(2) and Article 100a of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0251/98),

- having regard to Rule 58 of its Rules of Procedure,

- having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy and to the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0303/98),

1. Approves the Commission proposal, subject to Parliament's amendments;
2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
4. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament and requests that the conciliation procedure be initiated;
5. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
6. Instructs its President to forward this opinion to the Council and Commission.