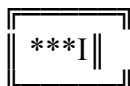


4 September 1998

A4-0303/98



## REPORT

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

Committee on Economic and Monetary Affairs and Industrial Policy

Rapporteur: Mr Lyndon Harrison

Draftsman of the opinion:

Mrs Maria Margarethe Berger, Committee on Legal Affairs and Citizens' Rights  
(\*)

(\* "HUGHES" Procedure)

## CONTENTS

### Page

Procedural page .....	3
A. LEGISLATIVE PROPOSAL .....	4
DRAFT LEGISLATIVE RESOLUTION .....	23
B. EXPLANATORY STATEMENT .....	24
Opinion of the Committee on Legal Affairs and Citizens' Rights (*) .....	27
(*"HUGHES" Procedure)	

By letter of 23 April 1998 the Commission submitted to Parliament, pursuant to Article 189b(2) and Article 100a of the EC Treaty, the proposal for a European Parliament and Council Directive on combatting late payment in commercial transactions.

At the sitting of 11 May 1998 the President of Parliament announced that he had referred this proposal to the Committee on Economic and Monetary Affairs and Industrial Policy as the committee responsible and to the Committee on Legal Affairs and Citizens' Rights for its opinion.

At its meeting of 20 October 1997 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Harrison rapporteur.

At the sitting of 17 July 1998 the President announced that this report would be drawn up in accordance with the HUGHES Procedure by the Committee on Economic and Monetary Affairs and Industrial Policy in conjunction with the Committee on Legal Affairs and Citizens' Rights.

The Committee on Economic and Monetary Affairs and Industrial Policy considered the Commission proposal and the draft report at its meetings of 23 April 1998, 25 May 1998, 24 June 1998 and 3 September 1998.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: von Wogau, chairman; Katiforis, Garosci and Secchi, vice-chairmen; Harrison, rapporteur; Anttila (for Cox), Areitio Toledo, Barton (for Billingham), Beres, Blot (for Trizza), Bowe (for Caudron), Camison Asensio (for Arroni), Carlsson, Castagnede, Cassidy (for de Brémont d'Ars), Christodoulou, Cunningham (for Glante), de Lassus Saint Genies (for Scarbonchi), de Rose, Donnelly, Ettl (for Kuckelkorn), Fayot, Fourçans, Friedrich, García Arias, García-Margallo, Gasoliba I Böhm, Glase (for Konrad), Hendrick, Herman, Hoppenstedt, Ilaskivi, Imbeni, Kestelijn-Sierens, Larive, Lukas, Mann E. (for Murphy), Mann T. (for Langen), Metten, Mezzaroma, Miller, Paasilinna, Peijs, Pérez Royo, Porto (for Lulling), Rapkay, Read, Riis-Jørgensen, Rübig, Skinner (for Randzio-Plath), Soltwedel-Schäfer, Tappin (for Torres Marques), Thyssen, Willockx (for Wibe) and Wolf (for Hautala).

The opinion of the Committee on Legal Affairs and Citizens' Rights is attached.

The report was tabled on 4 September 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A  
LEGISLATIVE PROPOSAL

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

The proposal is approved with the following amendments:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

(Amendment 1)  
Recital 7

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;

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

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;

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

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<sup>1</sup> OJ C168 03.06.98, pp 13

excessive length of payment periods and late payments do not distort commercial transactions in the functioning of the internal market;

(Amendment 3)

Recital 15

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;

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 17

17. 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 18

18. 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 19

19. 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 20

	<u>20. 'public contracting authority' corresponds to the definition laid down in Directive 92/50/EEC and Directive 93/37/EEC on public procurement.</u>
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(Amendment 8)

Recital 21

21. Whereas there are obstacles preventing agencies authorised to recover debt from benefiting from the freedom to provide services within the internal market; these obstacles should be removed so that such agencies are able to recover their clients' debts on a Community-wide basis;

(Amendment 9)  
Article 2(1)

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;

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)

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;

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)

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;

4. "public contracting authority" means the European Community and the institutions deriving from under 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.

"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 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 12)  
Article 2 (4)(a) (new)

4.a. 'debt collection agency' means any natural or legal person licenced to recover debts in accordance with Article 7;



(Amendment 13)  
Article 2(5)

5. "public procurement contracts" means contracts for pecuniary interest concluded in writing between a natural or legal person and public authorities.	5. "public procurement contracts" means contracts for pecuniary interest concluded in writing between a <u>public contracting authority within the meaning of paragraph 4 and an undertaking which is not a public contracting authority.</u>
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(Amendment 14)  
Article 3(1)

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|---|--|
| <p><u>1. Member States shall ensure that:</u></p> <p><u>(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;</u></p> | <p><u>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:</u></p> <p><u>(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;</u></p> |
|---|--|

(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;

(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;

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

(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;

(f) the statutory rate for interest on

(b) 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;

(c) 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;

(d) where the due date specified in the contract or in the seller's general conditions of sale is longer than 45 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;

(e) where the buyer fails to provide the seller with a bill of exchange in accordance with point (d) 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;

(f) the creditor shall be entitled to

(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;

late payment shall change automatically in accordance with changes to the reference rate mentioned in point (e);

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

(e) where the buyer fails to provide the seller with a bill of exchange in accordance with point (d) 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;

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

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

(h) 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;

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

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

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

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

(3) the costs of a third party; and

(4) the costs of recovery through court proceedings.

Any consequential damages arising from

delays in payments shall not be eligible for compensation.

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

(Amendment 15)  
Article 3(3)

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 the 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 Parliament.

(Amendment 16)  
Article 3(4)

4. At the latest two years after the entry into force of this Directive, and periodically thereafter, the Commission will report to Parliament and the Council on

long contractual payment periods and their consequences for the Single Market and SMEs, and may propose any suitable measures.

(Amendment 17)  
Article 3(5)

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

(Amendment 18)  
Article 4(1)

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.

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.

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.

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.

Member States shall recognize the validity of the clauses contained in the Annex or of clauses having equivalent effect.

Member States shall recognize the validity of the clauses contained in the Annex or of clauses having equivalent effect.

(Amendment 19)  
Article 4(2)

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

Deleted.

(Amendment 20)  
Article 4(3)  
Does not affect the English version.

(Amendment 21)  
Article 4(3)

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.

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

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.

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.

This sum can if necessary be modified by the Commission to reflect changing economic conditions in accordance with the procedure referred to in Article 9.

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These procedures shall be available to creditors from all Member States irrespective of their place of residence.

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(Amendment 23)

Article 6a

6a. Member States' arrangements concerning legal representation in court proceedings shall remain unaffected by the foregoing provisions.

(Amendment 24)

Article 7

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

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.

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 7(a)

### **Debt collection agencies**

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 licencing system by which agencies are authorised to recover debts, will licence an agency provided it satisfies the requirements set out in paragraph 2 below.
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:
  - a) it 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.
  - b) the managing directors have no criminal record;
  - c) the managing directors have at least 3 years' professional experience in the recovery of debts;
  - d) it provides financial guarantees to protect the clients and the debtors;
  - e) it 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;
  - 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;
  - g) it is supervised by a private or public organisation which ensures compliance with the requirements mentioned above.
3. Member States shall mutually recognise licenses by which agencies have been authorised to recover debts in conformity with this article.
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 to 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 license. 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 license.

(Amendment 26)  
Article 8(1)

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;
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 except where the value of the contract exceeds ECU 100 000, where the maximum payment period will be 60 calendar days; 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 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)

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;

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)

<p>3. the public authority is not permitted to request or require that the creditor waives any of the rights referred to in this Article.</p>	<p>3. the public <u>contracting</u> authority is not permitted to request or require that the creditor waives any of the rights referred to in this Article, <u>nor may the creditor request or demand that his suppliers or subcontractors waive those rights.</u></p>
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(Amendment 29)  
Article 9

**Committee**

For the purposes of reviewing the functioning of this Directive and in particular for the cases mentioned in Article 3(2) and Article 6, the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of The Commission shall submit to The committee a draft of the measures to be taken. The

**Committee**

For the purposes of reviewing the functioning of this Directive and in particular for the cases mentioned in Article 3(2) and Article 6, the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The

committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

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 30)  
Article 9 (new)

With effect from the entry into force of this Directive, the Commission, on the basis of the reports which the Member States are required to submit to the committee, shall draw up every two years a progress report on payment periods and late payment, the measures adopted and the results attained. The Commission shall submit this report to Parliament and the Council, possibly accompanied by appropriate proposals.

(Amendment 31)

Article 10(2)

2. Member States may maintain or bring into force provisions which are <u>stricter</u> than the provisions necessary to comply with this Directive.	2. Member States may maintain or bring into force provisions which are <u>more favourable to the creditor</u> than the provisions necessary to comply with this Directive.
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**OPINION    LEGAL COMMITTEE**

(Amendment 32)

List of clauses to be recognized by Member States for the purposes of Article 4

(does not affect the English text)

## **DRAFT LEGISLATIVE RESOLUTION**

**Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on combatting 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)<sup>2</sup>,
  - 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.

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<sup>2</sup> OJ C168 03.06.98, pp 13

## **B**

### **EXPLANATORY STATEMENT**

This proposal for a European Parliament and Council Directive combatting late payments in commercial transactions is the result of the persistent damaging effects of late payments on the Single Market. The lack of action on the part of most Member States to the Commission's Recommendation of 12 May 1995 and the resolution by Parliament of 4 July 1996 both justify this Directive being brought forward.

It is also the case that Member States own laws are inadequate in this field (though some Member States will believe that this proposal goes too far). However, it will not prevent those Member States that wish to do so from introducing even more stringent measures (as the UK is currently doing).

One of the most interesting features of this Directive is what it does not propose. For example, the use of licensed debt collection services as part of the combat against late payments. The use of licensed and well-regulated debt collection services would assist SMEs to reclaim debts (including cross-border debts), would create an internal market for debt collection services and would ensure that debt collection services have to 'behave' for fear of losing their licence in a profitable business. As such, your rapporteur is proposing to introduce an Article which would allow for licensed debt collection agencies to operate across borders to recoup debts. Furthermore, your rapporteur believes that there is a need to have a 'belt and braces' approach to dealing with the issue of compensation for damages incurred. Therefore, he is proposing to clarify what compensation can be claimed, as well as what cannot be claimed. In this instance it should be made crystal clear that claims for consequential damages cannot be made as well as detailing what damages can be claimed.

The Commission is proposing a maximum payment period of 21 days for payment in the private sector (in the absence of a written contract) as opposed to 60 days in the public sector. There is some justification for a longer period in the public sector; the different nature of public sector payments (use of public monies and the need for further verification of major public works) means that there is a need to allow time for checks to be undertaken. However, providers of goods and services to the public sector should expect to be paid promptly for 'everyday' items such as stationery and computers. Therefore, your rapporteur is proposing a 45 day limit for the public sector for items which are not major public works (below ECU 100,000) but a 60 day limit on major public works, where further checks are required to ensure that public monies are properly accounted for before payments are completed. Your rapporteur is also proposing that any subcontractor who is part of a public contract should be treated on the same terms as the main supplier. This is to ensure that the main contractor does not profit from public monies by offering poorer terms to a subcontractor than they are receiving from the state.

With regards to the issue of receipt of goods versus the invoice date as the start of the period for payments, it may be the case that the invoice arrives before receipt of goods. Hence, it is being proposed by your rapporteur that if the delivery of goods is delayed until after the arrival of the invoice, then the date of delivery of goods should be taken as the beginning of the 21 day payment period.



On the issue of the accelerated procedure, the proposal is that all Member States should have such a procedure and that it should be available to creditors from all Member States, irrespective of their place of residence. The maximum procedural length should be 60 days, without prejudice to the rules of notification and signification and the right of the defendant to dispute the debt. A clause has also been introduced to ensure that businesses from Member States are not discriminated against, and that 'foreign' companies will be able to pursue debtors in their Member State, circumventing a cumbersome legal procedure via their own national courts. Your rapporteur is supportive of this and believes it will improve the functioning of the Directive.

It is also welcoming to see that whenever the contractual obligation or requirement to pay is breached, the businesses which pay late will not only be required to pay compensation in the form of payment of interest, but also the costs of pursuing the debts (e.g. legal and administrative fees). As such, businesses will be able to recoup the penalty of costs, and this should be welcomed, with the amendments outlined above.

Article 3 of the proposed Directive states that the creditor will be entitled to claim interest for the late payment, and that this will be the sum of the tender (repo) rate of the European Central Bank plus at least 8 percentage points, unless otherwise specified in the contract or conditions of sale. This could subsequently be altered, after consulting the Committee (see below), if it was felt that the rate was not sufficiently high to discourage the buyer from paying late. This would currently mean an interest rate of between 11% and 12%. Your rapporteur is of the opinion that this seems a sensible approach, but that it should be reviewed at regular intervals during its initial phase to ensure that the rate is having the desired deterrent effect. This should be done by the Commission, in consultation with the Committee referred to in Article 9, and an amendment has been brought forward to this effect. The results of this should be made known annually to Parliament and the review should also be able to include other subjects (see below).

In the working document, your rapporteur also raised the issue of what happens in those countries which will not be part of the single currency. Differing interest rates between 'in' and 'pre-in' Member States could be interpreted as introducing a distortion into the Single Market when it comes to compensation levels. While this could be seen as a transitional problem until countries join the single currency, your rapporteur is suggesting an amendment to Article 3 (1) (e) which would state that the level of interest for 'pre-in' Member States will either be the ECB repo rate or the equivalent national central rate whichever is the higher.

The working document also raised the institutional issue of the Committee which will review the functioning of the Directive. The likelihood is that this Committee would meet rarely, for example if the percentage points on top of the ECB repo rate as interest on late payments was thought to be too low. However, your rapporteur feels that there ought to be the opportunity for dialogue between this Committee and the European Parliament, and has put forward an amendment which would allow such a dialogue to take place.

A further issue to be remembered when considering this draft Directive is that it will become, once adopted, part of the *acquis communautaire*. As such, those countries of Central and Eastern Europe who wish to become part of the EU will have to accept this proposal as it stands. This will, therefore, help those companies who will be trading in this region to be paid on time. This should be encouraged and is a further incentive to introduce this draft Directive as quickly as possible in order to improve confidence in the trading environment. Your rapporteur is of the opinion that the

effects of this Directive on the countries of Central and Eastern Europe and members of the EEA, as well as the current Member States, should be studied as part of his proposed annual review of the 8 percentage point rate (see amendment 5).

**OPINION**  
(Rule 147)

for the Committee on Economic and Monetary Affairs and Industrial Policy

on the proposal for a European Parliament and Council Directive on combatting late payment in commercial transactions (COM(98)0126 - C4-0251/98 - 98/0099(COD))  
(Report by Mr Harrison)

Committee on Legal Affairs and Citizens' Rights

Draftsman: Mrs Berger

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**PROCEDURE**

At its meeting of 19 May 1998 the Committee on Legal Affairs and Citizens' Rights appointed Mrs Berger draftsman.

It considered the draft opinion at its meetings of 30 June 1998 and 21-23 July 1998.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: De Clercq, chairman; Palacio Vallelersundi and Rothley, vice-chairmen; Berger, draftsman; Barzanti, C. Casini, Cassidy, Ewing, Fontaine, Gebhardt, Lehne, Martin D., McIntosh, Mosiek-Urbahn, Thors und Wijsenbeek.

**1. INTRODUCTION**

This proposal for a directive seeks to counteract the negative economic effects of unreliable payment, particularly on SMEs. It seeks to harmonize rules on *due date*, interest for late payment, delays in payment, compensation and retention of title clauses, and also provides for the *introduction of speedy and simple proceedings* for the collection of debts, as well as rules for *representation in such proceedings*.

**2. Legal basis and other primary law aspects**

The Commission bases its proposal for a directive on Art. 100a of the EC Treaty. The breadth of scope of the rules contained in the proposal raises the preliminary question whether the European Community has the power to enact certain of its provisions.

While the draft directive is intended to improve the functioning of the internal market, the proposed measures fall almost exclusively within the sphere of civil and civil procedural law. These rules are intended to apply not only in cross-border commercial transactions but in legal relationships which are the preserve of purely domestic law. They amend or complement core institutions of the legal systems of the Member States in civil and civil procedural matters, and in particular restrict the freedom to conclude contracts.

The articles of the Treaty on European Union which deal directly with civil law do not permit such wide-ranging harmonization of civil and civil procedural law, indeed, they specifically rule it out;

Article K.3 in conjunction with Article K.1 (6) of the *Treaty on European Union* applies - inter alia - to judicial cooperation in civil matters.

Article 220 of the EC Treaty refers in the sphere of reciprocal recognition and enforcement of court decisions to instruments of international law.

Article 73m of the EC Treaty, to be introduced by the Treaty of Amsterdam<sup>3</sup>, sets out the legal basis for measures in the field of judicial cooperation in civil matters having ***cross-border*** implications insofar as these are necessary for the proper functioning of the internal market.

Since Article 120 of the EC Treaty cannot be applied, and in order to avoid having to apply Article 235 of the EC Treaty, the proposal for a directive needs to be amended on the basis chosen by the Commission (Article 100a) so that it appears at least marginally defensible as a proposal on that legal basis.

Other restrictions of the Community's scope for legislative activity emerge from Article 222 of the EC Treaty, particularly with regard to the rules on the property law aspect of the retention of title clause, and more generally from Article 3b of the EC Treaty.

### **3. Comments on the proposal for a directive**

In a general way it should be noted that this opinion can select only a few central points from the proposal for a directive, and that there is no way in which a complete analysis of the effects on the Member States' legal systems can be made in the time and with the space and resources available

#### Article 1: Scope

Article 1 seeks to set out the scope of the directive, but proves, in the light of the directive's contents, to be manifestly wrong. In the first place the directive does not apply to payments but to outstanding claims and to cases of at least temporary non-payment. Secondly the proposal also governs the rate of interest on late payments and the retention of title, and an accelerated and simplified civil procedure.

#### Article 2: Definitions

The actual scope of the proposed directive becomes clear, however, from Article 1 in conjunction with the definitions set out in Article 2.

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<sup>3</sup>see in particular subparagraph (c) thereof (Translator's note: new Art. 65 in consolidated text).

- a. The directive is intended to apply to all outstanding debts in business transactions, in other words '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'<sup>4</sup>.

- b. It would follow from this definition that, under the law of at least some Member States, **commercial law partnerships**<sup>5</sup>, a legal form typical of SMEs, which are neither natural nor legal persons but have a special status of legal entities with partial legal personality, are not covered.
- c. The current definition of **commercial transaction** (in German 'gewerbliche Tätigkeit') in Article 2(1) is narrower in the German version than in the English ('carrying on a trade or profession'), French ('exerçant un commerce ou une profession') or Italian ('che esercitano un'attività commerciale, una professione o un mestiere') versions. The German version thus excludes both **independent professional** and **agricultural** activities (the latter also excluded by the other language versions).

A definition which covers these activities as well as legal entities with partial legal personality should thus be devised by using the term **undertaking**.

- d. The proposal covers in principle both cross-border and **domestic** cases, and this cannot be justified on the legal basis selected, even though it is perfectly clear that limiting its scope to cross-border cases would have a distorting effect.
- e. In the German version, the definition of 'retention of title' is tautologous. The term 'retention of title' (in German 'Eigentumsvorbehalt') is defined in principle as a reservation ('Vorbehalt') in respect of ownership ('Eigentum') rather than as the retention of ownership even though the goods have been transferred. In particular it is not clear whether this reservation is to have effects in property law or merely in the law of contract. Moreover, the concept of retention of title in the proposal seems moreover (and this is confirmed by Art.4(1)) to be a legal situation arising from a unilateral act. This conflicts with the legal concept in those Member States whose legal systems require an agreement permitting the retention of title, so as to prevent a transfer of ownership being ordered by law.
- f. The terms 'public authorities' could, instead of coining a new definition, be replaced by the familiar concept of the public authority contractor within the meaning of the public procurement directives. The legal entities covered would be the same.

### Article 3: Due date

- a. Subparagraphs a. and b. state that the due date shall be not more than 21 days from the **date of the invoice**. Derogations from this rule in either direction are, however, permissible by **mutual agreement** or by the **general conditions of sale**.

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<sup>4</sup>Article 2(1)

<sup>5</sup>In German and Austrian law, the OHG and KG (general partnership and limited partnership); in Austrian law also the EG and KEG (forms of partnership open to members of the independent professions.)

Reference to a - unilaterally determined - date of invoice naturally implies a risk to legal certainty, particularly if the invoice has been sent late or is accidentally wrongly dated. To create a 'level playing field' between the two contracting parties, it would seem appropriate to relate the due date to the date of delivery of the invoice. If the invoice is not sent by registered post, the delivery date can at least be ascertained on the basis of the number of days which experience shows are normally taken for the delivery of mail.

- b. The rule set out in Art. 3(1)(a) with its **21 day deadline**, compared to the graduated scales in most Member States' law and also in UN Convention on Contracts<sup>6</sup> is a simplification which probably fails to do justice to all possible situations. The advantages of the greater precision and uniformity which it brings, however, may be regarded as outweighing this shortcoming.
- c. The **date of delivery** referred to in Article 3(1)(b) is not defined. It is not clear what is meant by **delivery**. By comparison with the possible dates of transfer of title, it could refer to the date of simple contractual agreement<sup>7</sup>, the date of dispatch (i.e. transfer to the haulier), the date of physical arrival at the addressee's premises, the date of transfer by written instrument or a number of other dates. When a third party is involved the matter becomes even more complicated. For example, what is the date of delivery to B if A delivers the goods direct to B's customer C?

In cross-border transactions it should be noted that the choice-of-law rules governing conflicts of jurisdiction in international private law stipulate that the acquisition and loss of rights *in rem* in physical objects, including possession, must be judged under the law of the state in which the objects are situated when the facts leading to the acquisition or loss were completed. Under these rules there can be no choice as to the applicable law - unlike the law of contract. The Rome Convention applies only to contractual obligations in cross-border cases.<sup>8</sup>

### Article 3: Interest for late payment

It frequently occurs that the contract is **not properly fulfilled**, that the contract has **legal defects** (was not properly concluded, is void or voidable, etc.) or that the **amount of the invoice was not adequately determined** or contains other pathological errors.

In such cases the Member States' legal systems provide for highly sophisticated solutions to guarantee that the interests of the parties are properly taken into account.

Interest for incomplete or late payment would be hard to justify, and the Commission did not at any rate intend it to be understood in the way in which the link to the delivery date in Article 3(1)(b) suggests. Any such reading of the directive, and such a reading would be possible, must be expressly ruled out.

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<sup>6</sup>Art. 58

<sup>7</sup>This applies to private law systems which permit the transfer of title by a simple agreement in contract law.

<sup>8</sup>OJ C 27, 26.1.1998, p. 34, Article 1(1)

Your draftsman therefore proposes in so far as Article 3 does not solve the problem itself, the provisions of Article 3 should be made expressly conditional, on the due completion of the contract and its freedom from legal defects. Wherever these conditions are not met, the solution provided in the relevant domestic law would then apply.

The proposed interest rate for late payment seems indefensibly high. An interest rate at this level is tantamount to a penal or lump sum payment, which is alien to the legal systems of at least most Member States.

It should also be noted that for some Member States the proposed uniform rate of interest for late payment would mean a doubling of the existing interest rates under their law. **SMEs**, whose survival this directive is precisely intended to ensure, should not be subjected to exorbitantly high additional demands from their contracting partners when they find themselves in the position of **debtors** which would make their temporary payment difficulties even more acute, and would eventually be reflected in their prices.

The question of the proper level of interest rates for late payment is, however, not one which the Committee on Legal Affairs and Citizens' Rights needs to follow up. On the other hand the Commission cannot be empowered to set new interest rates while disregarding the rules governing amendments to directives.

#### Article 3: compensation for damage

The creditor's entitlements in the case of late payment, in addition to interest, are set out in Article 3(1)(g). It is significant that the **creditor** is entitled (**irrespective of fault!**) to claim '**full**' compensation for the damage '**incurred**'. This would enable the creditor, without acting unlawfully, to employ a very expensive lawyer or debt collection agency.

A literal interpretation of subparagraph g. does not restrict the creditor's entitlement to damage incurred to **him** (i.e. the creditor). This could therefore be interpreted as meaning that the creditor was entitled to compensation for damage incurred to **other persons**.

An extremely wide range of creditors' entitlements is conceivable. It cannot be the role of a directive, or of an opinion, to reinvent the law on damages.

On the other hand, an entitlement to **appropriate** debt collection costs should be clearly expressed, while leaving the rules on further costs as the preserve of the national legal system.

#### Article 4: Retention of title

The current wording of Article 4(1) of the Commission proposal would make it possible to declare retention of title unilaterally and a posteriori i.e. after the conclusion of the contract and up to and including the date of delivery. This contradicts the legal view in a number of Member States. It must therefore be made clear that the retention of title clause must be agreed between the parties.

The proposal contains no rules for cases where the supplier sells a third party's goods over which that third party has given him right of disposal. Nor does it cover cases in which B sells on to C goods which he has acquired from A subject to a retention of title clause, or cases where the goods sold are processed or where the protection of third parties acting in good faith as part of the original acquisition of title is expressly excluded, etc.

To all these problems the national legal systems provide for highly sophisticated but differing solutions. It cannot be the task of this directive to provide conclusive arrangements on this matter.

The directive excludes payment by instalments from the effects of an agreed retention of title clause. This is hard to understand in the light of practice. Generally a retention of title clause is agreed upon precisely in those cases where the purchase price is to be paid in instalments.

Article 5: Accelerated recovery procedures for undisputed debts, and Article 6: Simplified legal procedures for small debts

Both these procedures seek to render access to the law easier and to simplify and speed up the procedure for obtaining a writ of execution.

- a. However, Articles 5 and 6 would theoretically force the Member States to establish two new procedures. This cannot be justified on the legal basis selected.
- b. Moreover, a seemingly innocent wording implies the **abolition of the requirement to employ a lawyer**. Article 5(4) reads: 'The creditor shall be able to choose whether or not he wishes to be represented by a third person'.

In its 'Reisebüro Bröde' judgment<sup>9</sup> the Court of Justice stated that 'As Community law presently stands, it is for the Member States to assess whether it is necessary to place restrictions on the professional recovery of debts by way of judicial proceedings'<sup>10</sup>. This ruling covers precisely the type of situation occurring in the application of this directive, and can be applied across the board.

- c. It is also doubtful what scope remains for Article 6. Whether an outstanding debt is disputed or undisputed generally only emerges during the course of the proceedings.
- d. In the light of the above, your draftsman proposes that the directive should include only minimum requirements and introduce a uniform procedure without setting an upper limit.

Articles 7 and 8: Special rules for public authority contractors

Public authority contractors benefit from an extension of the payment deadline from 21 to 60 days, though this is not unconditional.

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<sup>9</sup>C-3/95, Reisebüro Bröde v. Gerd Sandker [1996] ECR I-6511.

<sup>10</sup>Ibid., ground 41 of judgment



It should however be remembered that public authorities include small rural municipalities with a small budget. These authorities are themselves dependent on financial allocations from other authorities which may be made only quarterly. They are thus often only able to conclude contracts, particularly for large sums, if they agree on long payment deadlines. If they are forced to comply with rigid rules about the due date, they will be faced with the choice of either not embarking on large-scale projects at all or, in order to meet their legal obligations, incurring other debts, i.e. other than with the contracting firm. The argument repeatedly adduced to justify this provision, that public authorities should set an example in their adherence to payment discipline, is perfectly valid and must also apply to EU bodies. However, national legislators should be permitted to place public authorities with small budgets on the same footing as private firms.

#### Article 10

Article 10(2) contains a clause permitting the Member States to adopt more favourable provisions. The wording proposed in the amendment seeks to make this wording more precise.

#### **4. Relationship between the proposal and the UN Convention on Contracts**

The UN's Convention on Contracts for the International Sale of Goods (CISG)/Convention sur les contrats de vente de marchandises (Vienna 1980) is interestingly not mentioned at all by the Commission, even though it contains *material* rules in the field of *purchasing contracts* concerning *goods* between parties with their headquarters in different states.<sup>11</sup> The CISG is not applicable to the purchase of goods for individual use. It contains provisions on the conclusion of contracts, the duties of the seller (delivery of goods; compliance of the goods with the contract and rights or entitlements of third parties; purchaser's legal remedies for breach of contract by the seller), the duties of the purchaser, the passing of risk and common provisions governing the duties of the purchaser and seller. Overlaps between the CISG and the proposal for a regulation occur particularly in the purchaser's legal remedies for breach of contract by the seller, the passing of risk, compensation for damage, and interest.

- a. The proposal for a directive tightens up the wording of the CISG's provision on *interest*.
- b. The *entitlement to compensation for damage* under the CISG is, however, much more subtly differentiated than in the model proposed by the Commission. It covers losses *arising from breach of contract*, including loss of profits. It is *unrelated to fault*. However, under Article 74(2) of the CISG, the compensation may not exceed the loss which the party in breach of contract *predicted* or, given the circumstances of which he was aware or should have been aware, *should have predicted* would be the result of his breach of contract. The extent of liability is also moderated by Article 79 of the CISG if the failure to complete the contract was caused by factors *outside the control* of one or other party.
- c. The *passing of risk* clause in Article 4(1), subparagraph 2, second sentence of the proposal is not compatible in every case with the rules of Articles 66-70 on the bearing of risk.

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<sup>11</sup>Art. 1

The proposal for a directive would compel many Member States to neglect their obligations to third countries under the CISG. Where these Member States only joined the EC after they had ratified the CISG, Article 234 of the EC Treaty applies. From this point of view, too, it seems sensible to restrict the directive to cross-border transactions between EU Member States.

## **5. CONCLUSIONS**

The Committee on Legal Affairs and Citizens' Rights calls on the Committee on Economic and Monetary Affairs and Industrial Policy, as the committee responsible, to incorporate the following amendments in its report:

### (Amendment 1) Recital 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;

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 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;

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 3) Recital 17 (new)

	'public contracting authority' corresponds to the definition laid down in Directive 92/50/EEC and Directive 93/37/EEC on public procurement.
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(Amendment 4)  
Article 2(1)

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;

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 shall in every case be deemed to be undertakings for the purposes of this Directive;

(Amendment 5)  
Article 2(4)

<p>4. "public <u>authorities</u>" means the State, <u>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.</u> 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;</p>	<p>4. "public <u>contracting authority</u>" means the European Community and the institutions deriving from under 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.</p> <p>"body governed by public law" means any body</p> <ul style="list-style-type: none"> <li>- <u>established with the specific purpose of fulfilling tasks of a non-commercial nature in the public interest;</u></li> <li>- <u>having legal personality, and</u></li> <li>- <u>funded predominantly by the State, by 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.</u></li> </ul>
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(Amendment 6)  
Article 2(5)

<p>5. "public procurement contracts" means contracts for pecuniary interest concluded in writing between a natural or legal person and public authorities.</p>	<p>5. "public procurement contracts" means contracts for pecuniary interest concluded in writing between a <u>public contracting authority within the meaning of paragraph 4 and an undertaking which is not a public contracting authority.</u></p>
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(Amendment 7)  
Article 3(1)

1. Member States shall ensure that:	Member States shall enact the necessary <u>legislation and amend their procedural rules in such a way that, as a general rule, subject to the goods or services having been duly provided and the underlying legal conditions being correctly fulfilled, the following is ensured:</u>
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(Amendment 8)  
Article 3(1)(a)

(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;

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

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

(Amendment 9)  
Article 3(1)(b)

(b) in the absence of an invoice or if the date of <u>the invoice</u> cannot be determined with certainty or if the <u>date of the invoice</u> is earlier than the date of <u>delivery</u> , the due date shall be calculated from the <u>date of delivery of the goods or services;</u>	(b) in the absence of an invoice or if the date of <u>its receipt</u> cannot be determined with certainty or if the date of <u>receipt</u> is earlier than the date of <u>supply of the goods or services concerned</u> , the due date shall be calculated from <u>that date.</u> ;
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(Amendment 10)  
Article 3(1)(c)

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

(g) in addition to the right to interest, the creditor shall be entitled to claim compensation from the debtor for the following costs:

(1) the cost of the creditor's bank loans or overdraft, to the extent that this is not fully

compensated by the right to interest;

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

(3) the costs of third parties; and

(4) the costs of recovery through court proceedings.

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

The costs eligible for compensation must be reasonable and necessary to appropriate legal action. The creditor may seek compensation for the costs referred to in points (1), (2) and (3) only if the debtor has been negligent.

(Amendment 11)  
Article 3(2)

<u>2. The margin referred to in paragraph 1(e) may be modified by the Commission in accordance with the procedure referred to in Article 9 if it becomes apparent that the statutory rate is no longer sufficiently high to discourage the buyer from paying late and to compensate the seller for any loss incurred as a result of late payment, in particular for any interest he would have to pay on overdraft credit.</u>	<u>deleted</u>
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(Amendment 12)  
Article 4(1) first subparagraph

<u>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.</u>	<u>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.</u>
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(Amendment 13)

Article 4(1) second subparagraph

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.

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 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 14)  
Article 4(2)

<u>2. Paragraph 1 shall apply only to debts payable in a single instalment.</u>	<u>Deleted</u>
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(Amendment 15)  
Article 4(3)

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.

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 and for cases in which the retention of title clause cannot be used as a safeguard.

(Amendment 16)  
Article 5

Accelerated recovery procedures for undisputed debts

Deleted

1. Member States shall ensure that there is an accelerated debt recovery procedure for undisputed debts.

2. This procedure shall apply irrespective of the amount of the debt.

3. This procedure shall be available to creditors from all Member States, irrespective of their place of residence.

4. The creditor shall be able to choose whether or not he wishes to be represented by a third person.

5. The procedure before the court shall be formulated in such a way that a period of 60 calendar days is not exceeded from the receipt of the creditor's request to the time when the writ of execution or equivalent document becomes enforceable. This period is without prejudice to:

the application of the rules governing notification or service; and

the rights of the defendant to dispute the debt.

(Amendment 17)  
Article 6

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.

This sum can if necessary be modified by the Commission to reflect changing economic conditions in accordance with the procedure referred to in Article 9.

These procedures shall be available to creditors from all Member States irrespective of their place of residence.

Member States shall ensure that simplified procedures are available for debts up to a threshold, which shall not be less than ECU 5000. These procedures shall provide for simple, low-cost methods for taking legal action for the settlement of debts.

Deleted.

These procedures shall be available to creditors from all Member States irrespective of their place of residence.



Amendment 18  
Article 5(1)  
Article 6a (new)

Article 6a

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

(Amendment 19)  
Article 7

<u>Transparency in public procurement contracts</u>  Member States shall ensure that public procurement contracts contain precise details of the payment periods and deadlines applied by <u>the public authorities</u> . In particular, time limits shall be fixed for the completion of pre-payment administrative formalities, such as public works reception procedures.	<u>Public procurement contracts</u>  Member States shall ensure that public procurement contracts contain precise details of the payment periods and deadlines applied by <u>public contracting authorities</u> . In particular, time limits shall be fixed for the completion of pre-payment administrative formalities, such as public works reception procedures.
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(Amendment 20)  
Article 8(1)

Member States shall ensure that:  1. the due date for the payment of contractual debts by <u>the public authorities as determined under Article 3(1)(a) and (b) does not exceed 60 calendar days</u> ; the contract shall in no circumstances override that maximum payment period;	Member States shall ensure that  1. the due date for the payment of contractual debts by the <u>public contracting authorities falls not more than 60 calendar days after the dates determined under Article 3(1)(a) and (b)</u> ; the contract shall in no circumstances override that maximum payment period; <u>in the case of a public contract the prime contractor must grant terms to subcontractors which are at least as favourable as those granted to the prime contractor by the public authority concerned.</u>
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(Amendment 21)  
Article 8(2)

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;

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 22)  
Article 8(3)

3. the public authority is not permitted to request or require that the creditor waives any of the rights referred to in this Article.	3. the public <u>contracting</u> authority is not permitted to request or require that the creditor waives any of the rights referred to in this Article, <u>nor may the creditor request or demand that his suppliers or subcontractors waive those rights.</u>
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(Amendment 23)  
Article 9

<u>For the purposes of reviewing the functioning of this Directive and in particular for the cases mentioned in Article 3(2) and Article 6, the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.</u>	<u>deleted</u>
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<p><u>The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.</u></p> <p><u>The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.</u></p> <p><u>The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account</u></p>	
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(Amendment 24)  
Article 9 (new)

With effect from the entry into force of this Directive, the Commission, on the basis of the reports which the Member States are required to submit to the committee, shall draw up every two years a progress report on payment periods and late payment, the measures adopted and the results attained. The Commission shall submit this report to Parliament and the Council, possibly accompanied by appropriate proposals.

(Amendment 25)  
Article 10(2)

<p>2. Member States may maintain or bring into force provisions which are <u>stricter</u> than the provisions necessary to comply with this Directive.</p>	<p>2. Member States may maintain or bring into force provisions which are <u>more favourable to the creditor</u> than the provisions necessary to comply with this Directive.</p>
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(Amendment 26)

List of clauses to be recognized by Member States for the purposes of Article 4

(does not affect the English text)