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*****II**

RECOMMENDATION FOR SECOND READING

on the common position adopted by the Council with a view to adopting a
European Parliament and Council directive on combating late payment in
commercial transactions
(8790/1999 – C5-0125/1999 – 1998/0099(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Simon Francis Murphy

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members to give assent
majority of the votes cast in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Abbreviations for committees

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

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Procedural page

At its sitting of 17 September 1998 Parliament delivered its opinion at first reading on the proposal for a European Parliament and Council Directive on combating late payment in commercial transactions (COM(1998)0126 - 1998/0099 (COD)).

At the sitting of 16 September 1999 the President of Parliament announced that the common position had been received and referred to the committee on Industry, External Trade, Research and Energy (8790/1999 - C5-0125/1999).

At its meeting of 1 September 1999 the committee had appointed Mr Simon Francis Murphy rapporteur.

It considered the common position and the draft recommendation for second reading at its meetings of 21 and 22 September, 13 October, 6 December and 13 December 1999.

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

The following were present for the vote: Carlos Westendorp y Cabeza, (chairman), Peter Michael Mombaur (vice-chairman), Simon Francis Murphy (rapporteur), Konstantinos Alyssandrakis, Alexandros Baltas, Eduard Beysen (for Colette Flesch), Guido Bodrato, Yves Butel, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Dorette Corbey (for Claude J.-M. Desama), Willy C.E.H. De Clercq, Harlem Désir, Harald Ettl (for François Zimeray), Concepció Ferrer, Francesco Fiori (for Renato Brunetta), Christos Folias, Glyn Ford, Jacqueline Foster (for Marjo Tuulevi Matikainen-Kallström), Pat the Cope Gallagher, Michel Hansenne, Malcolm Harbour, Alain Lamassoure, Werner Langen, Rolf Linkohr, Caroline Lucas, Linda McAvan, Eryl Margaret McNally, Erika Mann, Hans-Peter Martin (for Norbert Glante), Angelika Niebler, Reino Kalervo Paasilinna, Elly Plooi-j-van Gorsel, John Purvis, Alexander Radwan (for Godelieve Quisthoudt-Rowohl), Bernhard Rapkay (for Mechtilde Rothe), Imelda Mary Read, Christian Foldberg Røvsing, Paul Rübig, Konrad K. Schwaiger, Anna Terrón i Cusí (for Massimo Carraro), Esko Olavi Seppänen, Astrid Thors, Marianne L.P. Thyssen (for Anders Wijkman), Claude Turmes (for Ilka Schröder) and W.G. van Velzen.

The recommendation for second reading was tabled on 13 December 1999.

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

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the common position adopted by the Council with a view to adopting a European Parliament and Council directive on combating late payment in commercial transactions (8790/1999 – C5-0125/1999 – 1998/0099(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (8790/1999 – C5-0125/1999),
- having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(98)0126²),
- having regard to the Commission's amended proposal (COM(98)0615³),
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5-0099/1999),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 313, 12.10.1998, pp.124-150

² OJ C 168, 3.6.1998, p.13

³ OJ C 374, 3.12.1998, p.4

(Amendment 1)
Recital 3a (new)

On 29 May 1997 the Economic and Social Committee adopted an opinion on the Commission's 'Green Paper on Public procurement in the European Union: Exploring the Way Forward', recommending maximum payment periods and interest on late payments by public authorities;

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission; inclusion of public sector is a crucial point for the enterprises, especially SMEs.

(Amendment 2)
Recital 6a (new)

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;

Justification:

The proposed amendment is intended to establish a principle recognising the peculiar situation of the food sector, whose products are perishable and thus not comparable with any other, but require appropriate provisions. The mention of such a principle in the recitals represents a sort of moral and political guideline for national authorities responsible for legislating on the matter. This amendment was approved by the European Parliament during the first reading with a large and widespread political support.

(Amendment 3)
Recital 6b (new)

In some Member States the contractual payment periods differ significantly from the Community average;

(Amendment 4)

Recital 11

This Directive should be limited to payments made as remuneration for commercial transactions and does not regulate transactions with consumers, interest in connection with other payments, e.g. payments under the laws on cheques and bills of exchange, payments made as compensation for damages including payments from insurance companies;

This Directive should be limited to payments made as remuneration for commercial transactions and does not regulate transactions with consumers, interest in connection with other payments, e.g. payments under the laws on cheques and bills of exchange, or payments made as compensation for damages;

Justification:

The legal position of insurance companies is a complex one and should - if the Council deems it necessary - be addressed in the operative part of the Directive, not in a recital.

(Amendment 5)

Recital 14

Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low interest rates on late payments and/or slow procedures for redress; a decisive shift is necessary to reverse this trend and to ensure that the consequences of late payments are such as to discourage late payment;

Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low interest rates on late payments and/or slow procedures for redress; a decisive shift is necessary to reverse this trend and to ensure that the consequences of late payments are such as both to discourage late payments and to compensate creditors for the costs incurred;

Justification:

Reinstatement of the European Parliament's first reading amendment, slightly adapted; the damage incurred through late payment can in some cases constitute a significant amount compared to the amount of the interest payable.

(Amendment 6)

Recital 17a (new)

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; it is necessary to ensure that creditors are in a position to exercise the

retention of title throughout the Community, using a single clause recognised 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;

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission. Parliament considers the retention of title as an essential tool to combat late payments in the single market.

(Amendment 7)
Recital 17b (new)

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

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission; inclusion of public sector is a crucial point for the enterprises, especially SMEs.

(Amendment 8)

Recital 18

Article 4 of this Directive requires that the recovery procedure for unchallenged claims be completed within a short period of time in conformity with national legislation, but does not require Member States to adopt a specific procedure or to amend their existing legal procedures in a specific way,

Article 4 of this Directive requires that the recovery procedure for unchallenged claims be completed within a short period of time in conformity with national legislation,

Justification:

The common position text seems to allow Member States to do nothing; this cannot be the intention of this Directive.

(Amendment 9)
Recital 18a (new)

It is necessary that this Directive addresses the problem of long contractual payment periods;

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission, but adapted to the present context, where the new 'anti-abuse clause' in Article 3(3) addresses the problem.

(Amendment 10)
Recital 18a (new)

The term 'contracting authorities' should correspond to the definition laid down in Directive 92/50/EEC⁴ and Directive 93/37/EEC⁵ and should include, for the purposes of the present Directive, the 'contracting entities' as defined in Directive 93/38/EEC⁶.

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission; inclusion of the public sector is a crucial point for the enterprises, especially SMEs.

(Amendment 11)
Article 2(2a) (new)

'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; the term 'seller' shall comprise the supplier of goods which are to be produced or manufactured;

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission; Parliament considers the retention of title as an essential tool to combat late payments in the single market; it is necessary to include the situation where goods or services are being produced to order as a consequence of the contract.

⁴ OJ L 209, 24.7.1992, p. 1

⁵ OJ L 199, 9.8.1993, p. 54

⁶ OJ L 199, 9.8.1993, p. 84

(Amendment 12)
Article 2(2b) (new)

'interest rate applied by the European Central Bank (ECB) to its main refinancing operations' means the interest rate applied to such operations in the case of fixed rate tenders. In the event that a main refinancing operation was conducted according to a variable rate tender procedure, this interest rate refers to the marginal interest rate which resulted from that tender. This applies both in the case of single rate and variable rate auctions;

(Amendment 13)
Article 2(3a) (new)

'contracting authorities' corresponds to the definition laid down in Directive 92/50/EEC⁷ and Directive 93/37/EEC⁸ and includes the 'contracting entities' as defined in Directive 93/38/EEC⁹.

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission; inclusion of the public sector is a crucial point for the enterprises, especially SMEs.

(Amendment 14)
Article 2(3b) (new)

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

Justification:

⁷ OJ L 209, 24.7.1992, p. 1

⁸ OJ L 199, 9.8.1993, p. 54

⁹ OJ L 199, 9.8.1993, p. 84

Reinstatement of EP's first reading amendment, as supported by the Commission; inclusion of the public sector is a crucial point for the enterprises, especially SMEs.

(Amendment 15)
Article 3(1b)

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| <p>(b) if the date or period for payment is not fixed in the contract, interest shall become payable automatically without the necessity of a reminder:</p> <p>(i) <u>30</u> days following the date of receipt by the debtor of the invoice or an equivalent request for payment, or</p> <p>(ii) if the date of the receipt of the invoice or the equivalent request for payment is uncertain, <u>30</u> days after the date of receipt of the goods or services, or</p> <p>(iii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, <u>30</u> days after the receipt of the goods or services, or</p> <p>(iv) if a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by statute or in the contract and if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place, <u>30</u> days after this latter date;</p> | <p>(b) if the date or period for payment is not fixed in the contract, interest shall become payable automatically without the necessity of a reminder:</p> <p>(i) <u>21</u> days following the date of receipt by the debtor of the invoice or an equivalent request for payment, or</p> <p>(ii) if the date of the receipt of the invoice or the equivalent request for payment is uncertain, <u>21</u> days after the date of receipt of the goods or services, or</p> <p>(iii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, <u>21</u> days after the receipt of the goods or services, or</p> <p>(iv) if a procedure of acceptance or verification, by which the conformity of the goods or services with the contract is to be ascertained, is provided for by statute or in the contract and if the debtor receives the invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place, <u>21</u> days after this latter date;</p> |
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Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission, to add more efficiency to the system and reflect good practice already implemented in some Member States

(Amendment 16)
Article 3(1d)

(d) the level of interest for late payment ('the statutory rate'), which the debtor is obliged to pay, shall be the sum of the interest rate of the main refinancing facility of the European Central Bank (ECB) in the form of two-week-tenders at fixed interest rates in force on the first ECB business day of the half-year in question ('the reference rate'), plus at least 6 percentage points ('the margin'), unless otherwise specified in the contract. For a Member State which is not participating in the third stage of Economic and Monetary Union, the reference rate referred to above shall be the equivalent rate set by its national central bank. In both cases, the reference rate in force on the first central bank business day of the half-year in question shall apply for the following 6 months.

(d) the level of interest for late payment ('the statutory rate'), which the debtor is obliged to pay, shall be the sum of the interest rate of the main refinancing facility of the European Central Bank (ECB) as applied to its most recent main refinancing operation carried out on the first calendar day of the half-year in question ('the reference rate'), plus at least 6 percentage points ('the margin'), unless otherwise specified in the contract. For a Member State which is not participating in the third stage of Economic and Monetary Union, the reference rate referred to above shall be the equivalent rate set by its national central bank. In both cases, the reference rate in force on the first central bank business day of the half-year in question shall apply for the following 6 months.

(Amendment 17)
Article 3(1da) (new)

In addition to the right to interest, the creditor shall be entitled to claim full compensation from the debtor for the losses incurred by the latter's delayed payment, including the following costs:

- i) 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;
- ii) the administrative costs of recovery arising incurred by the creditor enterprise;
- ii) the costs of recovery through debt

recovery bodies, and

iv) the costs of recovery through court proceedings.

Member States may act to ensure that any claims for compensation under items (ii), (iii) and (iv) above are in reasonable proportion to the actual debt.

Justification:

Reinstatement of EP's first reading amendment, slightly modified: the damage incurred through late payment can in some cases constitute a significant amount compared to the amount of the interest payable. To avoid excessive fees being charged by intermediaries, full compensation of costs incurred may, however, legitimately be restricted to reasonable amounts.

(Amendment 18)
Article 3(1a) (new)

Conditions of payment

Provided the goods or services concerned in the commercial transaction have been duly provided and the underlying legal conditions met, the Member States shall take the measures necessary to ensure that the following conditions are met:

Without prejudice to paragraph 1:

(a) 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;

(b) where the buyer fails to provide the seller with a bill of exchange in accordance with point (a) above, interest shall become payable automatically, with the same deadlines, conditions, and levels as those established in paragraph 1, points (b), (c) and (d), 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;

Justification:

The aim is to establish a system which provides a balance in the relationship between seller and buyer, without affecting the parties' freedom of contract. No adjustment is required for those Member States which have payment deadlines shorter than the 60 days provided for. In addition, their undertakings will enjoy security and flexibility when they sell their products in Member States with longer deadlines. Countries with payment deadlines longer than 60 days will move closer to the average and their undertakings will be free of the handicaps they currently suffer.

(Amendment 19)
Article 3(3)

3. Member States shall ensure that an agreement on the date for payment or on the consequences of late payment which is not in line with the provisions of paragraphs 1 and 2 either shall not be enforceable or shall give rise to a claim for damages if, when all circumstances of the case, including good commercial practice, are considered, it is grossly unfair to the creditor. If such an agreement is determined to be grossly unfair, the statutory terms will apply, unless the national courts determine different conditions which are fair.

3. Member States shall ensure that an agreement on the date for payment or on the consequences of late payment which is not in line with the provisions of paragraphs 1 b) to d) and 2 either shall not be enforceable or shall give rise to a claim for damages if, when all circumstances of the case, including good commercial practice, are considered, it is grossly unfair to the creditor. In determining whether an agreement is grossly unfair to the creditor, it will be taken into account whether the debtor has any objective reason to deviate from the provisions of paragraphs 1 b) to d) and 2 or whether the agreement mainly serves the purpose of procuring the debtor any additional liquidity at the expense of the creditor. If such an agreement is determined to be grossly unfair, the statutory terms will apply, unless the national courts determine different conditions which are fair.

3a. Member States shall ensure that, in the interests of creditors and of competitors, adequate and effective means exist to prevent the continued use of terms which are grossly unfair in the sense of paragraph 3.

3b. The means referred to in paragraph 3a shall include provisions whereby persons or organisations representing the interests of small and medium-sized enterprises, as defined in Commission Recommendation 96/280/EC¹⁰, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are grossly unfair in the sense of paragraph 3, so that they can apply appropriate and effective means to prevent the continued use of such terms.

3c. With due regard for national laws, the legal remedies referred to in paragraph 3b may be directed separately or jointly against a number of buyers from the same economic sector or their associations who use or recommend the use of the same general contractual terms or similar terms.

Justification:

In cases where large companies order from small firms, the freedom to contract is jeopardised by the imbalance between the trading partners, as orders are based on non-negotiable terms. The existence of efficient procedures would make it possible for SMEs to act collectively through their representative bodies and restore more equitable trading conditions.

(Amendment 20)
Article 3a (new)

Retention of title

1. Member States shall ensure that the creditor retains title of durable or capital goods if a retention of title clause has been agreed. Apart from an individual contract, such an agreement shall be considered valid if the retention of title clause is contained in the creditor's standard contract, on the invoice, or on delivery documents accompanying the goods, which the buyer has received no later than at the time of delivery, and to which he has not objected. No other formality shall be

¹⁰ OJ L107, 30.4.1996, p. 4

required.

2. Member States shall recognise the validity of the clause: 'The goods remain the property of the seller until fully paid', or of clauses having equivalent effect.

3. Once the default date has passed without the buyer having paid, the creditor may claim that the goods in question be returned to him. Member States shall provide for the retention of title to be enforceable against third parties, even in the case of bankruptcy of the debtor or in the case of any other procedure recognised 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.

4. Member States may adopt provisions governing down payments already made by the debtor. They may limit or exclude recourse to the retention of title clause in the following cases:

a) where a third party has acquired the goods in good faith;

b) where the goods have been incorporated into or mixed with other goods, unless the process can be reversed without causing significant damage to other goods.

Annex

List of clauses to be recognised by Member States for the purposes of Article 3a

ES: 'El vendedor conservará la propiedad de los bienes hasta el pago final.'

DA: 'Varen forbliver sælgerens ejendom, indtil den er fuldstændig betalt.'

DE: 'Die Ware bleibt bis zur vollständigen Bezahlung im Eigentum des Verkäufers.'

EL: 'Ο πωλητής παρακρατεί την κυριότητα των αγαθών μέχρι την πλήρη εξόφληση του τιμήματος'

EN: 'The goods remain the property of the seller until fully paid.'

FR: 'Les marchandises restent la propriété du vendeur jusqu'au paiement complet.'

IT: 'Le merci restano di proprietà del venditore fino al pieno pagamento.'

NL: 'De waren blijven tot de volledige betaling eigendom van de verkoper.'

PT: 'O vendedor conservará a propriedade dos bens até ao momento do pagamento final.'

FI: 'Tavara on myyjän omaisuutta, kunnes kauppahinta on kokonaisuudessaan maksettu.'

SV: 'Varorna förblir säljarens egendom tills de betalats helt och hållet.'

Justification:

Reinstatement of EP's first reading amendment, slightly modified with a view to clarifying the wording and facilitating the reaching of an agreement with the Council; Parliament considers the retention of title as an essential tool to combat late payments in the single market.

(Amendment 21)
Article 3b (new)

Transparency of public procurement contracts

Member States shall ensure that calls for tender and public procurement contracts contain precise details of the default dates and deadlines applied by the contracting authorities. 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.

Justification:

Reinstatement of the Commission's initial position, together with a more binding transparency requirement for the relationship between main contractor and subcontractor, as already called for at first reading.

(Amendment 22)

Article 3c (new)

Prompt payment, default date and automatic interest
Member States shall ensure that:

1. the default date for the payment of contractual debts by the contracting authorities shall not be more than 45 calendar days except where the value of the contract exceeds ECU 100 000, where the maximum default date will be 60 calendar days; the contract shall in no circumstances override these maximum default dates; in a public contract, the main contractor has to grant conditions to the suppliers and subcontractors which are at least as favourable as those granted to the main contractor by the contracting authority; in order to guarantee these conditions to suppliers and subcontractors, the main 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 main contractor by the supplier or subcontractor. The same conditions shall apply between the main contractor and the contracting authority.
2. a creditor shall be entitled to interest from the contracting authority on any outstanding amount when the default date has been exceeded; the interest shall be calculated as set out in Article 3(1)(g) and (h), and shall be paid automatically by the

contracting authority without the necessity of a claim;

3. the 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 require that his suppliers or subcontractors waive those rights.

Justification:

Reinstatement of EP's first reading amendment, as supported by the Commission (slightly modified).

(Amendment 23)
Article 4(1) and 4(3)

Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, normally within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, as long as the debt or aspects of the procedure are not disputed. This duty shall be carried out by Member States in conformity with their respective national legislation, regulations and administrative provisions.

3. The 90 calendar day period referred to in paragraph 1 shall not include the following:

- a) periods of service,
- b) any delays caused by the creditor, such as periods devoted to correcting invalid applications.

1. Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, normally within 60 calendar days of the lodging of the creditor's action or application at the court or other competent authority, as long as the debt or aspects of the procedure are not disputed. This duty shall be carried out by Member States in conformity with their respective national legislation, regulations and administrative provisions.

3. The 60 calendar day period referred to in paragraph 1 shall not include the following:

- a) periods of service,
- b) any delays caused by the creditor, such as periods devoted to correcting invalid applications.

Justification:

The 60-day deadline was included in the Commission's initial proposal. A 90-day deadline would represent an improvement in only four Member States (Portugal, Greece, Spain and Italy).

(Amendment 24)

Article 5(3)

3. In transposing this Directive Member States may exclude:

(a) debts that are subject to insolvency proceedings instituted against the debtor, and

(b) contracts that have been concluded prior to*.

3. In transposing this Directive Member States may exclude:

(a) debts that are subject to insolvency proceedings instituted against the debtor,

(b) contracts that have been concluded prior to ;

and

(ba) claims for interest of less than EUR 5.

Justification:

This is to avoid litigation arising over small amounts of interest.

(Amendment 25)

Article 5(5)

5. The Commission shall undertake for at least the first three years after ...* 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 and the Council.

5. The Commission shall undertake for at least the first three years after ...* an annual review of, inter alia, the statutory rate, the contractual payment periods and late payments, 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 and the Council, accompanied where appropriate by proposals for improvement of this Directive.