

# EUROPEAN PARLIAMENT

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**A5-0154/2000**

29 May 2000

## **\*\*\*III REPORT**

on the joint text approved by the Conciliation Committee for a European Parliament and Council directive on combating late payment in commercial transactions  
(C5-0205/2000 – 1998/0099(COD))

European Parliament delegation to the Conciliation Committee

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 except 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)

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## PROCEDURAL PAGE

At the sitting of 17 September 1998 Parliament adopted its position at first reading on the proposal for a Council directive on combating late payment in commercial transactions (COM(1998) 126 - 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 the sitting of 16 December 1999 Parliament adopted amendments to the common position.

By letter of 28 February 2000 the Council stated that it was unable to approve all Parliament's amendments.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 9 March 2000.

At subsequent trialogue and delegation meetings the common position was considered on the basis of the amendments proposed by the Parliament. A final agreement was reached by exchange of letters of 12 and 14 April.

On 4 May 2000 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure,<sup>1</sup> and forwarded it to Parliament and the Council in all the official languages.

On 29 May 2000 Parliament's delegation to the Conciliation Committee adopted the draft legislative resolution unanimously.

The following took part in the vote: Ingo Friedrich, Vice-President and chairman of the delegation; Renzo Imbeni and James L.C. Provan, Vice-Presidents; Simon Francis Murphy, rapporteur; Alexandros Baltas (for Carlos Westendorp y Cabeza), Christos Folias, Carmen Fraga Estévez, Norbert Glante, Eryl Margaret McNally, Elly Plooij-van Gorsel, Marianne L.P. Thyssen and Joachim Wuermeling.

The report was tabled on 29 May 2000.

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<sup>1</sup> OJ C 148, 28.5.1999, p. 1.

## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the joint text approved by the Conciliation Committee for a European Parliament and Council directive on combating late payment in commercial transactions (C5-0205/2000 – 1998/0099(COD))**

#### **(Codecision procedure: third reading)**

*The European Parliament,*

- having regard to the joint text approved by the Conciliation Committee (C5-0205/2000),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(1998) 126<sup>2</sup>),
  - having regard to the amended Commission proposal (COM(1998) 615<sup>3</sup>),
  - having regard to its position at second reading on the Council common position<sup>4</sup>,
  - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2000) 133 - C5-0139/2000)<sup>5</sup>,
  - having regard to Article 251(5) of the EC Treaty,
  - having regard to Rule 83 of its Rules of Procedure,
  - having regard to the report of its delegation to the Conciliation Committee (A5-0154/1999),
1. Approves the joint text;
  2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
  3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Communities;
  4. Instructs its President to forward this legislative resolution to the Council and Commission.

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<sup>1</sup> OJ C 313 of 12.10.1998, p. 150.

<sup>2</sup> OJ C 168 of 3.6.1998, p. 13.

<sup>3</sup> OJ C 374 of 3.12.1998, p. 4.

<sup>4</sup> OJ C not yet published.

<sup>5</sup> OJ C not yet published.

## **EXPLANATORY STATEMENT**

### **Introduction**

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, including compensation of creditors for the costs incurred, is necessary to reverse this trend and to ensure that the consequences of late payments are such as to discourage them.

Heavy administrative and financial burdens are placed on businesses, particularly small and medium-sized ones, as a result of excessive payment periods and late payment. Moreover, these problems are a major cause of insolvencies threatening the survival of businesses and result in numerous job losses: it is estimated that one in four bankruptcies is caused by cash-flow problems resulting from late payments of bills.

In addition, the differences between payment rules and practices in the Member States constitute an obstacle to the proper functioning of the internal market.

Several Parliament Resolutions called on the Commission to submit proposals to deal with these problems.

The central purpose of this directive, is to ensure that if the date or period for payment is not fixed in the contract, then the buyer has to pay the full amount due to the seller 30 days (the current Community average is 39 days) after the receipt of goods or the invoice. Failure to do so results in automatic payment of interest to the creditor.

### **First and second reading**

The subject was discussed in the Lyndon Harrison (PSE, UK) report, adopted at first reading on 17 September 1998. It welcomed the Commission's proposal and tabled 27 amendments seeking to clarify the text.

The Council adopted its common position on 29 July 1999. The Commission assessment of this last text regretted the deletion of the obligation regarding retention of title but basically accepted the common position.

At second reading Parliament adopted the Simon Murphy (PSE, UK) report containing 25 amendments, on 16 December 1999. Its main proposals concerned the time limit at the end of which interest is due to be paid, the compensation of losses caused by late payments, the prevention of continued use of terms which are grossly unfair, the retention of title and public procurement contracts.

### **The directive in conciliation**

On 28 February 2000 the Council decided that it could not accept all Parliament's amendments and convened, in agreement with Parliament's President, the conciliation committee, which met on 9 March. Before and after this last date, several EP delegation and

trialogue meetings took place leading to a final agreement on 4 May.

The discussion focused mainly on the following subjects, where the Parliament succeeded in persuading the Council to modify its stands in important aspects:

While the Council tried to limit the effects of the "anti-abuse clause" (applicable to written contracts) invoking freedom of contract, Parliament struggled to give to this clause a real content. Thus, in its final form, this directive establishes the principle that abuse of freedom of contract to the disadvantage of the creditor should be prohibited. Where an agreement mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, or where the main contractor imposes on his suppliers and subcontractors terms of payment which are not justified on the grounds of the terms granted to himself, these may be considered to be factors constituting such an abuse. Besides, organisations having a legitimate interest in representing SME may take action before the Courts or competent authorities.

As far as the notion of "retention of title" is concerned, the directive foresees that Member States shall ensure that the seller retains title to goods until they are fully paid for if the retention of title clause is valid under the applicable national provisions.

While the scope of this directive was not clear in the Council common position as far as the public sector was concerned, the final text establishes that it should regulate all commercial transactions irrespective of whether they are carried out between private or public undertakings or between undertakings and public authorities. Thus, the principle of equal treatment between the public and private sector is acknowledged. It also regulates all commercial transactions between main contractors and their suppliers and sub-contractors.

Unless the debtor is not responsible for the delay, the creditor shall be entitled as a result of this agreement to claim reasonable compensation from the debtor for all relevant recovery costs.

Finally, regarding the rate of interest for late payment which the debtor is obliged to pay, the Council proposed 6% whereas Parliament proposed 8%. The percentage agreed in the course of the conciliation is 7%. To this rate should be added the rate applied by the European Central Bank, which implies a total 10.5% at the present time.

## **Conclusions**

We may regard the end result of conciliation as very satisfactory for Parliament, as the joint text has incorporated most of its main amendments, either in full or in a reworked form. We therefore propose that the House adopt the text at third reading.