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**A7-0136/2010**

4.5.2010

**\*\*\*I**

## **REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on combating late payment in commercial transactions (recast)  
(COM(2009)0126 – C7-0044/2009 – 2009/0054(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Barbara Weiler

(Recast – Rule 87 of the Rules of Procedure)

Rapporteur for the opinion(\*):  
Raffaele Baldassarre, Committee on Legal Affairs

(\*) Associated committees - Rule 50 of the Rules of Procedure

### ***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.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast)  
(COM(2009)0126 – C7-0044/2009 – 2009/0054(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0126),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0044/2009),
  - having regard to the Communication from the Commission to the European parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
  - having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the EU,
  - having regard to the opinion of the European Economic and Social Committee;
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to the letter of ... from the Committee on Legal Affairs to the Committee on the Internal Market and Consumer Protection in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to Rule 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Legal Affairs and of the Committee on Industry, Research and Energy (A7-0136/2010),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts the position hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

## Amendment 1

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) One of the priority actions of the “European Economic Recovery Plan” is the reduction of administrative burdens and the promotion of entrepreneurship by, inter alia, ensuring that **public authorities pay** invoices, including to SMEs, for supplies and services within one month to ease liquidity constraints.

#### *Amendment*

(7) One of the priority actions of the “European Economic Recovery Plan” is the reduction of administrative burdens and the promotion of entrepreneurship by, inter alia, ensuring that, **as a matter of principle**, invoices, including to SMEs, for supplies and services **are paid** within one month to ease liquidity constraints.

#### *Justification*

*Public and private contracting authorities should be required, as a matter of principle, to pay invoices within 30 days. However, derogations from this rule should remain a possibility, as provided for in the directive. In the construction sector, for example, the work performed, and, therefore, the documents substantiating the invoices submitted, can be so complicated that it may take longer than the specified period to check them. The rules on part payments can be used to offset this problem.*

## Amendment 2

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low or no interest rates charged on late payments and/or slow procedures for

#### *Amendment*

(12) Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low or no interest rates charged on late payments and/or slow procedures for

redress. A decisive shift, *including making the exclusion of the right to charge interest an unfair contractual clause and providing for a 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 late payment.

redress. A decisive shift *to a culture of prompt payment* is necessary to reverse this trend and to ensure that the consequences of late payments are such as to discourage late payment. *This shift should include fixing the maximum duration of payment periods, providing for the compensation of creditors for the costs incurred, and making the exclusion of the right to charge interest and the right to compensation for recovery costs unfair contractual terms and unfair commercial practices. Special emphasis should be given to SMEs. It is therefore crucial not to propose actions that create red tape and bureaucracy.*

#### *Justification*

*It is necessary to send a clear message to economic operators that excluding the right to compensation for recovery costs, a right which the proposal seeks to strengthen, is an unfair term which cannot be enforced against creditors and which can give rise to a claim for damages.*

### **Amendement 3**

#### **Proposition de directive Recital 12 a (new)**

*Texte proposé par la Commission*

*Amendement*

*(12a) Accordingly, provision should be made for business-to-business contract payment periods to be limited as a general rule to 60 days. However, there may be grounds for companies requiring more extensive payment periods, such as where sales take place in a concentrated period of the year whereas purchases have to be made year round. It should therefore remain possible for the parties to the contract to specifically agree on payment periods longer than 60 days, provided however that such extension does not lead to unjustified damages to any of the*

## **Amendment 4**

### **Proposal for a directive Recital 13**

#### *Text proposed by the Commission*

(13) In the interest of consistency of Community legislation, the definition of “contracting authorities” in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts should apply for the purposes of this Directive.

#### *Amendment*

(13) In the interest of consistency of Community legislation, the definition of “contracting authorities” in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts ***and in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>1</sup>*** should apply for the purposes of this Directive.  
***However, the definition of “public authority” should not cover public undertakings as defined in Directive 2004/17/EC.***

<sup>1</sup> OJ L 134, 30.4.2004, p. 1.

#### *Justification*

*Including public undertakings as defined in Directive 2004/17/EC in the scope of the directive would give rise to distortions of competition in the sectors concerned. Consistency with the amendment to Article 2(2).*

## **Amendment 5**

### **Proposal for a directive Recital 15**

#### *Text proposed by the Commission*

(15) A fair compensation of creditors for the recovery costs incurred through late payment is necessary to ensure that the

#### *Amendment*

(15) A fair compensation of creditors for the recovery costs incurred through late payment is necessary to ensure that the



consequences of late payments are such as to discourage late payment. Recovery costs should also include the recovery of administrative costs and compensation for internal costs incurred due to late payment for which this Directive should determine the possibility of flat-rate *minimum* amount which may be cumulated with interest for late payment. Compensation for the recovery costs should be considered without prejudice to national provisions according to which a national judge may award to the creditor any additional damage regarding the debtor's late payment.

consequences of late payments are such as to discourage late payment. Recovery costs should also include the recovery of administrative costs and compensation for internal costs incurred due to late payment for which this Directive should determine the possibility of *a* flat-rate amount which may be cumulated with interest for late payment. Compensation for the recovery costs should be considered without prejudice to national provisions according to which a national judge may award to the creditor any additional damage regarding the debtor's late payment.

#### *Justification*

### **Amendment 6**

#### **Proposal for a directive Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) In addition to an entitlement to payment of a fixed sum to cover internal recovery costs, creditors should also be entitled to reimbursement of the other recovery costs they incur as a result of late payment by a debtor, costs which should include, in particular, those incurred by creditors in instructing a lawyer or employing a debt-collecting agency. Creditors should also be able to claim costs incurred in making use of an overdraft facility.***

#### *Justification*

*It must be made clear precisely which costs are to be regarded as recovery costs incurred as a result of late payment by debtors. The above list is not exhaustive.*

## Amendment 7

### Proposal for a directive Recital 16

*Text proposed by the Commission*

*Amendment*

***(16) Surveys show that public authorities often require contractual payment periods for commercial transactions that are significantly longer than 30 days. Therefore, payment periods for procurement contracts awarded by public authorities should be as a general rule limited to a maximum of 30 days.***

***deleted***

*Justification*

## Amendment 8

### Proposal for a directive Recital 17

*Text proposed by the Commission*

*Amendment*

(17) Late payment is particularly regrettable if it occurs despite the debtor's solvency. Surveys show that public authorities often pay invoices very late after expiration of the applicable payment period. Public authorities may face lighter financing constraints because they may benefit from more secure, predictable and continuous revenue streams than private undertakings. At the same time, they depend less than private undertakings on building stable commercial relationships for the achievement of their aims. Consequently, public authorities may have less incentive to pay on time. In addition, many public authorities can obtain financing at more attractive conditions than private undertakings. Therefore, late payment by public authorities not only leads to unjustified costs for private undertakings, but to inefficiency in general. It is therefore appropriate to introduce

(17) Late payment is particularly regrettable if it occurs despite the debtor's solvency. Surveys show that public authorities often pay invoices very late after expiration of the applicable payment period. Public authorities may face lighter financing constraints because they may benefit from more secure, predictable and continuous revenue streams than private undertakings. At the same time, they depend less than private undertakings on building stable commercial relationships for the achievement of their aims. Consequently, public authorities may have less incentive to pay on time. In addition, many public authorities can obtain financing at more attractive conditions than private undertakings. Therefore, late payment by public authorities not only leads to unjustified costs for private undertakings, but to inefficiency in general. ***This negative impact of late***

*correspondingly higher dissuasive compensation in case of late payment by public authorities.*

*payment by public authorities is to be measured in light of the importance of public procurement in the overall economy of the European Union. It is therefore appropriate to introduce **specific rules as regards commercial transactions between undertakings and public authorities, providing in particular for payment periods not exceeding 30 days as a rule for procurement contracts awarded by public authorities.***

*Justification*

## **Amendment 9**

### **Proposal for a directive Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

*(17a) The European Union institutions are in a situation comparable to that of the public authorities of Member States with regard to their financing and commercial relationships. The maximum payment periods for public authorities as set out in this Directive accordingly apply to the European Union institutions.*

*Justification*

*The amendment should be read in conjunction with Article 2, paragraph 2. The Rapporteur considers that the Directive should apply to the European Union institutions.*

## **Amendment 10**

### **Proposal for a directive Recital 17 b (new)**

*Text proposed by the Commission*

*Amendment*

*(17b) A particular cause for concern in connection with late payment is the situation of health services in a large number of Member States. However, the*

*healthcare sector's problems cannot be solved overnight, because the difficulties experienced by healthcare establishments stem from inherited debt burdens. Healthcare establishments should therefore be afforded greater flexibility in meeting their commitments. Member States should nonetheless make every effort to ensure that payments in the healthcare sector are made within the contractual payment periods.*

#### *Justification*

*In many Member States the health service finds it difficult to make payments on time. In many cases, such payment problems are the result of 'past errors' and structural problems. The Member States should endeavour to ensure that the rules laid down in this directive also apply to payments by healthcare establishments. Such establishments should, however, be afforded greater flexibility in making payments.*

## **Amendment 11**

### **Proposal for a directive**

#### **Recital 18**

##### *Text proposed by the Commission*

(18) This Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor. Where ***an agreement*** mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, for example through the exclusion of the possibility for the creditor to charge interest for late payment or specifying an interest rate for late payment which is substantially lower than the statutory interest provided for in this Directive, 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. This Directive should not affect national provisions relating to the way contracts are concluded or regulating the

##### *Amendment*

(18) This Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor. Where ***a contract term or practice*** mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, for example through the exclusion of the possibility for the creditor to charge interest for late payment or specifying an interest rate for late payment which is substantially lower than the statutory interest provided for in this Directive, 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. ***In accordance with the academic Draft Common Frame of Reference, any contract term or practice***

validity of contractual terms which are unfair to the debtor.

***grossly deviating from good commercial practice, contrary to good faith and fair dealing should be considered unfair.*** This Directive should not affect national provisions relating to the way contracts are concluded or regulating the validity of contractual terms which are unfair to the debtor.

## **Amendment 12**

### **Proposal for a directive Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

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***(18a) In the context of enhanced efforts to prevent the abuse of contractual freedom to creditors' detriment, Member States, officially recognised bodies and bodies with a legitimate interest should encourage, with the Commission's support, the drawing-up and publicisation of codes of conduct and the adoption of conflict resolution systems based on mediation and arbitration, which should be voluntary, should offer suitable complaint procedures and should be negotiated at national or Union level and designed to ensure full observance of the rights set out in this Directive.***

*Justification*

*It is in all ways desirable that the codes of conduct should include effective complaint procedures that can be invoked against those failing to meet their contractual obligations. Nonetheless, such provisions can only be of limited effectiveness if set up on a voluntary basis, given, furthermore, the absence of binding means of ensuring correct behaviour by the partners concerned (other than on pain of expulsion). It is therefore essential to secure the fullest possible involvement of the representative bodies and to encourage mediation and arbitration with a view to ensuring that the solutions found are the least costly and the most rapid.*

## **Amendment 13**

### **Proposal for a directive Recital 18 b (new)**

*Text proposed by the Commission*

*Amendment*

***(18b) This Directive sets out specific criteria for assessing the possible unfairness of contract terms, having regard to the particular features of transactions between undertakings, or between undertakings and public authorities, which significantly differ from those of transactions involving consumers.***

*Justification*

*The amendment clarifies that the specific criteria for assessing the possible unfairness of contract terms as set out in this Directive have been developed having regard to the particular features of transactions between undertakings, or between undertakings and public authorities which significantly differ from those of transactions involving consumers.*

## **Amendment 14**

### **Proposal for a directive Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

***(20a) In order to facilitate compliance with the provisions of this Directive, Member States should encourage recourse to mediation or other means of alternative dispute resolution.***

*Justification*

*The Rapporteur wishes to encourage the usage of mediation and other means of alternative dispute resolution.*

## **Amendment 15**

**Proposal for a directive**  
**Recital 22**

*Text proposed by the Commission*

(22) It is necessary to ensure that the recovery procedures for unchallenged claims related to late payment in commercial transactions be completed within a short period of time.

*Amendment*

(22) It is necessary to ensure that the recovery procedures for unchallenged claims related to late payment in commercial transactions be completed within a short period of time, ***with the option of pursuing such claims against businesses and public authorities through a widely accessible online procedure, available under the same conditions for all creditors established in the Union, and accesible without delay through the European e-Justice portal as and when it becomes available.***

**Amendement 16**

**Proposition de directive**  
**Recital 22 a (new)**

*Texte proposé par la Commission*

*Amendement*

***(22a) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States should draw up, for themselves and in the interests of the Union, their own tables illustrating the correlation between this Directive and the transposition measures, and make them public.***

**Amendment 17**

**Proposal for a directive**  
**Article 2 – point 2**

*Text proposed by the Commission*

(2) "public authority" means any contracting authority, as defined by Directive 2004/18/EC;

*Amendment*

(2) "public authority" means any contracting authority, as defined ***in Article 1(9) of Directive 2004/18/EC, and in Article 2(1)a of Directive 2004/17/EC***

*regardless of the subject or value of the contract, as well as any of the institutions, bodies, offices and agencies of the European Union;;*

*Justification*

**Amendment 18**

**Proposal for a directive  
Article 2 – point 4**

*Text proposed by the Commission*

(4) “late payment” means failure to pay within the period of payment specified in Article 3(2) or Article 5(2);

*Amendment*

(4) “late payment” means failure to pay within the period of payment specified in ***the contract or, in the absence of such specification, that*** specified in Article 3(2)(b) or Article 5(2)(b);

*Justification*

*This amendment is important since it should be permitted for a contract to specify a payment deadline shorter than those laid down in Articles 3(2) and 5(2), and if so the debtor should be appropriately penalised for not meeting it.*

**Amendment 19**

**Proposal for a directive  
Article 2 – point 5**

*Text proposed by the Commission*

(5) “interest for late payment” means statutory interest or interest negotiated and agreed upon between undertakings;

*Amendment*

(5) “interest for late payments” means statutory interest or interest negotiated and agreed upon between undertakings ***which shall not be lower than statutory interest;***

**Amendment 20**



**Proposal for a directive**  
**Article 2 – point 6**

*Text proposed by the Commission*

6. “statutory interest” means simple interest for late payment at a rate which is the sum of the reference rate, plus at least **seven** percentage points;

*Amendment*

6. “statutory interest” means simple interest for late payment at a rate which is the sum of the reference rate, plus at least **nine** percentage points;

*Justification*

*A more uniform set of rules applying to all sectors and involving a slight increase in the statutory interest rate rather than a fixed lump sum compensation for late payment would ensure that all debtors are treated fairly and subject to proportionate but dissuasive penalties. This amendment is contingent upon the deletion of Article 5(5) of the Commission’s proposal.*

**Amendment 21**

**Proposal for a directive**  
**Article 2 – point 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) “checkable invoice” means a clearly drawn up final invoice which keeps to the agreed order of items and uses the descriptions contained in the contract. The quantity calculations, drawings and other supporting documents required to prove the nature and scope of the work performed must be enclosed with the invoice;***

*Justification*

*If it is to start a payment period running and trigger a requirement to pay, an invoice must be checkable. It must therefore, for example, list the items in respect of which payment is being requested, indicate to which items the cost of work performed is being charged, and be accompanied by appropriate supporting documents. If it is to be regarded as comprehensive and properly drawn up, the invoice must be consistent with the provisions of the contract agreed between the parties.*

**Amendment 22**

**Proposal for a directive**  
**Article 3 – title**

*Text proposed by the Commission*

*Amendment*

Interest in case of late payment

***Transactions between undertakings***

*Justification*

*For the sake of clarity, the title should indicate that article 3 only concerns late payments between undertakings.*

**Amendment 23**

**Proposal for a directive**  
**Article 3 - paragraph 2 - point b**

*Text proposed by the Commission*

*Amendment*

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following time limits:

(i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment;

(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services;

(iii) 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, 30 days after ***that*** date.

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following time limits:

(i) 30 ***calendar*** days following the date of receipt by the debtor ***and the due date*** of the invoice or an equivalent request for payment;

(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 ***calendar*** days after the receipt of the goods or services;

(iii) 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, 30 ***calendar*** days after ***that*** date;

*(ba) the date of the receipt of the invoice shall not be subject to a contractual agreement between debtor and creditor.*

## Amendment 24

### Proposal for a directive Article 3 – paragraphs 2a and 2b (new)

*Text proposed by the Commission*

*Amendment*

*2a. Member States shall ensure that the maximum duration of the procedure of acceptance or verification referred to in paragraph 2(b)(iii) shall not exceed 30 days.*

*2b. Member States shall ensure that the period for payment fixed in the contract shall not exceed 60 days, unless it is specifically agreed between the debtor and the creditor and it does not lead to unjustified damages to any of the contracting parties.*

*Justification*

## Amendment 25

### Proposal for a directive Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that, when interest for late payment becomes payable in commercial transactions in accordance with Articles 3 and 5 ***and unless otherwise specified in the contract***, the creditor is entitled to obtain from the debtor ***any of the following amounts***:

1. Member States shall ensure that, when interest for late payment becomes payable in commercial transactions in accordance with Articles 3 and 5, the creditor is ***automatically*** entitled to obtain from the debtor, ***i.e. without the individual creditor's having to take any action, as a minimum, a fixed sum of EUR 40.***

### *Justification*

*Article 6 of the proposal for a directive states that ‘a clause which excludes interest for late payment shall always be considered as grossly unfair’. A contractual provision which deviates from the provisions proposed in Article 3 would detract from the contractual guarantees which protect creditors. It is important to guarantee that the procedure is automatic, in order to avoid any retaliation from the customer. The compensatory amounts owed for recovery costs should be expressed in minimum amounts.*

### **Amendement 26**

#### **Proposition de directive**

#### **Article 4 – paragraph 1 - point a**

*Texte proposé par la Commission*

*Amendement*

*(a) for a debt of EUR 1 000 or more, but less than EUR 10 000, a fixed sum of EUR 70;* *deleted*

### **Amendement 27**

#### **Proposition de directive**

#### **Article 4 – paragraph 1 - point b**

*Texte proposé par la Commission*

*Amendement*

*(b) for a debt of EUR 10 000 or more, a sum equivalent to 1% of the amount for which interest for late payment becomes payable.* *deleted*

### **Amendment 28**

#### **Proposal for a directive**

#### **Article 4 – paragraph 1 - point c**

*Text proposed by the Commission*

*Amendment*

*(c) for a debt of EUR 10 000 or more, a sum equivalent to 1% of the amount for which interest for late payment becomes payable.* *deleted*

### *Justification*

*An open-ended 1% compensation rate payable on late payments of EUR 10,000 or more could involve significant and disproportionate costs for larger value transactions and may not reflect actual costs. The Rapporteur is of the view that there should be a fixed upper ceiling for the compensation of recovery costs.*

### **Amendment 29**

#### **Proposal for a directive**

#### **Article 4 – paragraph 1 - subparagraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that in the case of multiple claims against the same debtor, the compensation for recovery costs referred to in paragraph 1 shall be payable only on the sum of the debts and not on the individual claims.***

### *Justification*

*It would not be fair, nor consistent with current practice, to compensate the same suppliers' and purchasers' recovery costs for individual claims, but it should lead to reimbursement of costs referred to in paragraph 1 corresponding to the sum of all these cumulative claims for late payment. This is particularly relevant in the healthcare sector, when hospitals cannot pay a supplier of various types of medicines for individual supplies because of late payment on the part of health insurers.*

### **Amendment 30**

#### **Proposal for a directive**

#### **Article 4 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Unless the debtor is not responsible*** for the delay, the creditor shall, in addition to the amounts set out in paragraph 1, be entitled to obtain reasonable compensation from the debtor for all remaining recovery costs incurred through the latter's late payment.

***3. Except where the debtor is exempted from responsibility*** for the delay, the creditor shall, in addition to the amounts set out in paragraph 1, be entitled to obtain reasonable compensation from the debtor for all remaining recovery costs incurred through the latter's late payment. ***The other costs include in particular the costs incurred by the creditor arising from late payment as a result of instructing a***

*lawyer, employing a debt-collecting agency or making use of an overdraft facility.*

*Justification*

*It must be made clear what cost items are included among the other costs arising from late payment by the debtor.*

**Amendment 31**

**Proposal for a directive**  
**Article 5 – Title**

*Text proposed by the Commission*

*Amendment*

***Payment by public authorities***

***Transactions between undertakings and public authorities.***

**Amendment 32**

**Proposal for a directive**  
**Article 5 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that, in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if the following conditions are satisfied:

1. Member States shall ensure that, in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities ***or for the purposes of achieving the objectives of public authorities***, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if the following conditions are satisfied:

*Justification*

*This amendment should be viewed in the light of Article 2(1). Many of the services purchased by public authorities are not provided to the authorities themselves, but to third parties pertaining to different social groups, on whose behalf the public authorities enter into contracts for the provision of goods or services. The contracting of such goods or services to meet the needs of a given group forms part of the objectives of the public authorities' activities, even though those authorities are not the final recipient of the goods or services concerned.*

## Amendment 33

### Proposal for a directive

#### Article 5 – paragraph 2 – point b

##### *Text proposed by the Commission*

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable ***automatically within*** any of the following time limits:

(i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment;

(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services;

(iii) 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, 30 days after that date.

##### *Amendment*

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall ***automatically*** become payable ***at the latest upon expiry of*** any of the following time limits:

(i) 30 ***calendar*** days following the date of receipt by the debtor of the ***checkable*** invoice or an equivalent request for payment;

(ii) if the debtor receives the ***checkable*** invoice or the equivalent request for payment earlier than the goods or the services, 30 ***calendar*** days after the receipt of the goods or services;

(iii) 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 ***checkable*** invoice or the equivalent request for payment earlier or on the date on which such acceptance or verification takes place, 30 ***calendar*** days after that date.

***(iiia) if the date of the receipt of the invoice or the equivalent request for payment is not determined, 30 days after the date of receipt of the goods of services.***

***(ba) the date of receipt of the invoice is not subject to a contractual agreement between debtor and creditor.***

##### *Justification*

*In order to trigger a requirement to pay, the invoice must be checkable. A final invoice must be checkable to determine whether it is complete, has been properly drawn up and is final in order to trigger a requirement to pay. As a matter of principle, a final invoice which fails to meet these criteria may not trigger a requirement to pay.*

## Amendment 34

### Proposal for a directive

#### Article 5 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. For public health institutions and public medico-social institutions, the time limits referred to in points (i), (ii) and (iii) of Article 5(2)(b) shall be 60 days.***

#### *Justification*

*Les établissements publics de santé ainsi que les établissements médico-sociaux publics (ex. foyers pour handicapés) doivent bénéficier d'un délai de paiement de 60 jours en raison de la spécificité de leur mode de financement au niveau national (remboursement via le système de sécurité sociale). Il ne s'agit pas d'exclure ces établissements du champ de la Directive, ni de créer une dérogation pour une catégorie de payeurs par principe, mais bien de prendre en compte la spécificité de leur système de financement qui ne leur permet pas, indépendamment de leur volonté, de respecter le délai de paiement de 30 jours.*

## Amendment 35

### Proposal for a directive

#### Article 5 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Member States shall ensure that the maximum duration of a procedure of acceptance or verification referred to in paragraph 2(b)(iii) shall not exceed 30 days, ***unless otherwise specified and duly justified in the tender documents and the contract.***

3. Member States shall ensure that the maximum duration of a procedure of acceptance or verification referred to in paragraph 2(b)(iii) shall not exceed 30 days ***from the date of the receipt of the goods or services.***

#### *Justification*

*The derogation from the 30-day period for verification is open to an indefinite number of interpretations and should therefore be deleted. Moreover, as there is often no level playing field between public purchasers and private suppliers, it leaves a gateway for public authorities to introduce different periods for the verification procedure. Furthermore the proposed amendment specifies the starting date for counting the 30 day-period: the date of the receipt of the goods or services.*



## Amendment 36

### Proposal for a directive Article 5 – paragraph 4

*Text proposed by the Commission*

4. Member States shall ensure that the period for payment fixed in the contract shall not exceed the time limits provided for in paragraph 2(b), unless it is specifically agreed between the debtor and the creditor and is duly justified in the light of particular circumstances ***such as an objective need to schedule payment over a longer period.***

*Amendment*

4. Member States shall ensure that the period for payment fixed in the contract shall not exceed the time limits provided for in paragraph 2(b), unless it is specifically agreed between the debtor and the creditor and is ***objectively*** justified in the light of ***the particular nature or features of the contract and in any event should never exceed 60 days.***

*Justification*

*Both undertakings and public authorities should be able to derogate from the 30-day deadline only under exceptional duly justified circumstances. It is important to set a maximum period for payment in order to limit this deviation and to avoid abuse.*

## Amendment 37

### Proposal for a directive Article 5 – paragraph 5

*Text proposed by the Commission*

***5. Member States shall ensure that when interest for late payment becomes payable, the creditor is entitled to a lump sum compensation equal to 5% of the amount due. This compensation shall be additional to the interest for late payment.***

*Amendment*

***deleted***

*Justification*

*It would be an anomaly for penalties to take the form of payments to creditors, since the beneficiaries would be the individuals concerned and not a public authority. Creditors' compensation should take the form of interest.*

## Amendment 38

## Proposal for a directive

### Article 6 – title and paragraph 1 – subparagraph 1

*Text proposed by the Commission*

#### ***Grossly unfair contractual clauses***

1. Member States shall provide that a ***clause*** in a contract relating to the date for payment, the rate of interest for late payment or recovery costs shall ***either*** be unenforceable ***or*** shall give rise to a claim for damages if it is ***grossly*** unfair to the creditor. In determining whether a ***clause*** is ***grossly*** unfair to the creditor, all circumstances of the case shall be considered, including good commercial practice ***and*** the nature of the product or the service. ***Account shall also be taken of*** whether the debtor has any objective reason to deviate from the statutory rate of interest or from Article 3(2)(b), Article 4(1) or Article 5(2)(b).

*Amendment*

#### ***Unfair contract terms and practices***

1. Member States shall provide that ***aterm*** in a contract ***or a practice*** relating to the date ***or period*** for payment, the rate of interest for late payment or ***compensation*** ***for*** recovery costs shall be unenforceable ***and*** shall give rise to a claim for damages if it is unfair to the creditor.

In determining whether a ***term or practice*** is unfair to the creditor, ***within the meaning of subparagraph 1***, all circumstances of the case shall be considered, including:

(a) ***any gross deviation from*** good commercial practice, ***contrary to good faith and fair dealing***;

(b) the nature of the product or the service;  
***and***

(c) whether the debtor has any objective reason to deviate from the statutory rate of interest or from Article 3(2)(b), Article 4(1) or Article 5(2)(b).

*(The deletion of the word "grossly [unfair]", the introduction of the word "term" and the introduction of the word "practice" apply throughout the text. Adopting this amendment will necessitate corresponding changes throughout.)*

### *Justification*

*It is understood that the translation for "term" is "cláusula" in Spanish, "clausola" in Italian and "clause" in French. This is consistent, for example, with Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts.*

## **Amendment 39**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 – subparagraph 2 (new paragraph)**

##### *Text proposed by the Commission*

For the purpose of the ***first subparagraph***, a ***clause*** which excludes interest for late payment shall always be considered as ***grossly*** unfair.

##### *Amendment*

***1a.*** For the purpose of the ***paragraph 1***, a ***term or a practice*** which excludes interest for late payment ***or compensation for recovery costs, or both***, shall always be considered as unfair.

### *Justification*

*It is necessary to send a clear message to economic operators that excluding the right to compensation for recovery costs, a right which the proposal seeks to strengthen, is an unfair term which cannot be enforced against creditors and which can give rise to a claim for damages.*

## **Amendment 40**

### **Proposal for a directive**

#### **Article 6 – paragraph 3**

##### *Text proposed by the Commission*

3. The means referred to in paragraph 2 shall include provisions whereby ***representative*** organisations may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that ***clauses*** are ***grossly*** unfair, so that they can apply appropriate and effective means to prevent their ***continued*** use.

##### *Amendment*

3. The means referred to in paragraph 2 shall include provisions whereby organisations ***officially recognised as, or having a legitimate interest in, representing enterprises*** may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that ***terms or commercial practices, including in the case of an individual contract*** are unfair, so that they can apply appropriate and effective means to prevent their use.

### *Justification*

*This amendment, inspired by the wording of Directive 2000/35, attempts to clarify the concept of "organisations". In contrast to Directive 2000/35 however, it seeks to open up this possibility beyond organisations representing SMEs, for example to organisations in a particular industrial sector.*

*The amendment also clarifies that representative organisations are not prevented from taking action according to the national law concerned by the mere fact that the allegedly unfair terms are included in an individual contract, as opposed to standard terms and conditions.*

### **Amendment 41**

#### **Proposal for a directive Article 7 – title**

*Text proposed by the Commission*

*Amendment*

Transparency

Transparency ***and awareness raising***

### *Justification*

*The amendment needs to be read in conjunction with changes made to Article 7 .*

### **Amendment 42**

#### **Proposal for a directive Article 7**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure full transparency about the rights and obligations stemming from this Directive, in particular by publishing the applicable statutory interest rate.

Member States shall ensure full transparency about the rights and obligations stemming from this Directive, in particular by publishing the applicable statutory interest rate ***and the procedure relating to payments by public authorities, as a specific guarantee to any possible chain for subcontractors.***

### **Amendment 43**

**Proposal for a directive**  
**Article 7 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The Commission shall publish in the Official Journal and on the Internet details of the current statutory rates of interest applying in all the Member States in the event of late payment in commercial transactions.***

*Justification*

*This will ensure greater clarity and easier access for courts and creditors to details of the statutory interest rates applying in the individual Member States. This is of particular importance in connection with cross-border transactions.*

**Amendment 44**

**Proposal for a directive**  
**Article 7 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Member States shall, where appropriate, use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies for late payment among businesses.***

*Justification*

*The empirical evidence provided by the Commission in its impact assessment shows that businesses are sometimes not aware of the remedies against late payment. The Rapporteur thinks that the implementation of the directive should be accompanied by awareness-raising targeted at undertakings and in particular SMEs, informing them about their rights.*

## **Amendment 45**

### **Proposal for a directive**

#### **Article 7 – paragraph 1 c and 1 d (new)**

*Text proposed by the Commission*

*Amendment*

***1c. Member States may encourage the establishment of prompt payment codes which set out clearly defined payment time limits and a proper process for dealing with any payments that are in dispute, or any other initiatives that tackle the crucial issue of late payment and contribute to developing a culture of prompt payment which supports the aims of this Directive.***

***1d. Member States shall make efforts to encourage the publication of a list of prompt payers to foster the spread of good practice.***

*Justification*

*The Rapporteur pointed out in her working document that late payment can be only combated with a wide-range of complementary measures. These measures should include the use of positive naming of payers and the spread of best practices to promote timely payment, including instruments such as prompt payment codes.*

## **Amendment 46**

### **Proposal for a directive**

#### **Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 7a***

##### ***Payment schedules***

***This Directive shall be without prejudice to the ability of parties to agree, subject to the relevant provisions of applicable national law, on payment schedules providing for the amounts due to be paid by instalments over a period of time. In such cases, where any of the instalments is not paid at the agreed date, interest,***

***compensation and other penalties provided for in this Directive shall be calculated solely on the basis of overdue amounts.***

#### *Justification*

*Staggered payment arrangements may contribute to ensure liquidity of businesses and SMEs in particular. In this connection, the Rapporteur considers it appropriate to clarify: (1) that parties to a commercial transaction remain entirely free to agree, subject to the application of the relevant provisions of national law, on arrangements of this kind; and (2) in the event of late payment of one instalment, interest, compensation and other penalties should be calculated solely on the basis of overdue amounts.*

#### **Amendment 47**

##### **Proposal for a directive Article 9 – paragraphs 1 and 2**

###### *Text proposed by the Commission*

1. Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed.

2. National legislation, regulations **and** administrative provisions shall apply the same conditions for all creditors who are established in the **Community**.

###### *Amendment*

1. Member States shall ensure that an enforceable title can be obtained, ***through an expedited procedure and*** irrespective of the amount of the debt, within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that 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. In this respect, creditors shall be given the possibility to have recourse to a widely accessible online procedure.***

2. National legislation, regulations, administrative provisions shall apply ***and the online procedure referred to in paragraph 1 shall be available under*** the same conditions for all creditors who are established in the **Union**.





## EXPLANATORY STATEMENT

### *Introductory Remarks*

Your Rapporteur considers that the Commission's proposal makes an important contribution to tackling the problem of late payment, given that it improves the functioning of the internal market, taking into account especially the situation of small and medium-sized enterprises.

Your Rapporteur supports the core elements of the Commission's proposal, but also proposes a number of substantive amendments, notably as regards to sanctions, the definition of public authorities and harmonised payment periods for public authorities.

Given that late payment is a phenomenon with numerous and interlinked causes, it can be only combated with a wide-range of complementary measures. Your Rapporteur therefore considers that a purely legalistic approach which aims at improving remedies for late payment is necessary but not sufficient. The Commission's "hard" approach with a focus on harsh sanctions and disincentives must be broadened to include "soft" measures with a focus on providing positive incentives to combat late payment. In addition, practical measures, such as the use of electronic invoices, should be encouraged in parallel to the implementation of the Directive.

Your Rapporteur highlights that it is only the combined impact of the late payment Directive and other measures that can eventually lead to a new commercial culture which is more prone to timely payment and in which late payment is considered as an unacceptable abuse of the client's position and a breach of contract and not as a normal practice.

Your Rapporteur emphasises that whilst the Directive will not solve all problems of the financial crisis, it is an important tool in tackling current and future challenges.

In more detail, the main elements of your Rapporteur's position on the Commission's proposal are the following:

### *Compensation for Recovery Costs*

Your Rapporteur considers that an open-ended 1% compensation rate payable on late payments of 10,000 EUR or more could involve significant and disproportionate costs for larger value transactions and may not reflect actual costs. There should be a fixed upper ceiling of 100 EUR for the compensation of recovery costs.

### *Staggered Payment Arrangements*

Your Rapporteur takes the view that Member States should be able to retain payment arrangements providing for amounts due to be paid by instalments over a given period of time. Such advance instalments are a common practice in a number of Member States, including Germany and Italy, particularly with regard to large work and/or services supplies, notably construction projects. It is indeed quite usual in the construction sector to provide for

payments to be made by instalments, subject to partial fulfilment of the corresponding contractual obligations.

Your Rapporteur emphasises that staggered payment arrangements may contribute to ensure liquidity of businesses and SMEs in particular. In this connection, your Rapporteur considers it appropriate to clarify that, on the one hand, the parties to a commercial transaction remain entirely free to agree, subject to the application of the relevant provisions of national law, on arrangements of this kind; and, on the other hand, that, in the event of late payment of one instalment, interest, compensation and other penalties should be calculated solely on the basis of overdue amounts.

#### *Harmonised payment periods for public authorities*

Your Rapporteur considers that derogations from the 30 days payment period shall remain an exception. While some flexibility is needed, the derogations should indeed be used only in specific circumstances. The last sentence of Article 5, paragraph 4 ("*duly justified in the light of particular circumstances such as an objective need to schedule payment over a longer period*") is somewhat ambiguous and creates confusion, especially as regards to its application to staggered payments.

Your Rapporteur suggests a more precise wording of the possibility for derogating from the 30 days which still allows for the necessary flexibility to take into account justified cases for a longer payment period. She further supports the establishing of 60 days as a maximum length of the payment period for public authorities.

#### *Equal sanctions for undertakings and public authorities*

Your Rapporteur supports a more balanced approach to the treatment of undertakings and public authorities. Whilst she supports a differential treatment of undertakings and public authorities as regards to the payment periods, she considers that equal rules on sanctions shall apply to undertakings and public authorities.

Your Rapporteur furthermore considers that 5% of the amount due from when the interest for late payment becomes payable is not a proportionate sanction. Moreover, it would not provide an incentive to pay back the amount earlier once the payment is already late. The debtor would pay the same sum (5% of the sum due) independently of whether the payment is effected one day or one year after the interest of late payment becomes payable.

Your Rapporteur proposes a gradual and progressive system whereby the debtor would pay 2% of the sum from the date when interest for late payment becomes payable and 4% of the sum from the 45th day after the interest for late payment becomes payable with an increase to 5% after 60 days from the date when interest becomes payable. The Rapporteur also proposes that the penalty should never be more than 50,000 EUR.

#### *Inclusion of utility undertakings (Directive 2004/17/EC) in the regime of public authorities*

Your Rapporteur supports including the commercial transactions of utility undertakings within the meaning of the Directive 2004/17/EC in the proposal's regime for public

authorities. She considers that, similar to public authorities, utility undertakings enjoying special or exclusive rights can rely on constant (or, at least predictable) revenues. Therefore, utility undertakings should be treated in the same way as public authorities.

#### *Positive incentives and accompanying measures*

Your Rapporteur proposes amendments which aim at broadening the Commission's approach and at shifting its focus from a purely legalistic approach to an incentive-based approach. Firstly, she wishes to encourage Member States to use prompt payment codes, positive naming and other similar instruments that tackle the crucial issue of late payment and contribute to developing a culture of prompt payment which supports the aims of this Directive. Secondly, she proposes that Member States shall use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies against late payment among businesses. Thirdly, your Rapporteur wishes to encourage the use of the usage of mediation and other means of alternative dispute resolution.

#### *Draft Opinion of the Legal Affairs Committee*

The Rapporteur takes note of the amendment of the Rapporteur of the Committee on Legal Affairs to include terms relating to payment periods in the scope of Article 6 which falls under the competence of the JURI Committee, following an agreement between the IMCO and the JURI Committee. She wishes to express her support for this amendment. o

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS  
Will be published separately.

## **ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES**

Brussels, 7 May 2009

### **OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council Proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions**

**COM(2009)126 of 8.4.2009 – 2009/0054(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 22 April 2009 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting<sup>1</sup>, an examination of the proposal for a directive of the European Parliament and of the Council recasting Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions resulted in the Consultative Working Party's establishing, by common accord, that the following parts of the text of the recast proposal should have been identified by using the grey-shaded type generally used for marking substantive changes:

- in recital 15, the proposed replacing of the words "*caused by*" with the word "*regarding*";
- in Article 9(1), the word "*normally*" (having been marked with the "double-strikethrough" adaptation marker);
- in Article 9, the existing wording of Article 5(4) of Directive 2000/35/EC, having been entirely marked with the "double-strikethrough" adaptation marker.

In consequence, examination of the proposal has enabled the Consultative Working Party to

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Jurisconsult

C.-F.DURAND  
Director General

25.3.2010

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast)  
(COM(2009)0126 – C7-0044/2009 – 2009/0054(COD))

Rapporteur (\*): Raffaele Baldassarre

(\*) Associated committee – Rule 50 of the Rules of Procedure

### **SHORT JUSTIFICATION**

#### ***Background***

The Commission's new proposal, in the form of a recast, was published on 8 April 2009, together with an impact assessment<sup>1</sup>. It was officially received by Parliament on 14 September 2009 and is being dealt with under the ordinary legislative procedure.

According to the Commission's impact assessment, public administrations in a number of Member States have displayed so far "particular bad payment behaviour"<sup>2</sup>. With public procurement by Member States amounting in 2006 to just over 1 943 billion euro<sup>3</sup>, the Commission proposes to tackle this trend by making a central distinction between debtor businesses, against whom the directive provides optional remedies, and debtor public authorities, against whom increased and automatic remedies are generated which can be relied on by creditor businesses.

Following an agreement between the Committee on Legal Affairs and the Committee on Internal Market and Consumer Protection, the former will be exclusively responsible under Rule 50 of the Rules of Procedure for Articles 6, 8 and 9 and Recitals 4, 12, 18, 19, 20 and 22

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<sup>1</sup> COM(2009)0126, SEC(2009) 315, SEC(2009) 316. The Impact Assessment Board's comments are available at [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/cia\\_2009\\_en.htm#entr](http://ec.europa.eu/governance/impact/ia_carried_out/cia_2009_en.htm#entr).

<sup>2</sup> Explanatory memorandum, p.4 and recital 17 of the proposal. For some statistics per Member State, see impact assessment at pp. 60-61 and 68-71.

<sup>3</sup> Impact assessment at p.68.

of the proposal.

Your rapporteur supports the main thrust of the proposal and intends the opinion of the Committee on Legal Affairs to constructively feed into the work of the lead committee. He considers that the proposal, with some fine-tuning and innovations as proposed in this draft opinion, to be essential for the effective functioning of the internal market and to have the potential to contribute significantly to the necessary shift to a culture of prompt payment which he would like to see in the Member States.

### ***Position of the rapporteur on Articles 6, 8 and 9.***

Amendments 3 and 10 comprise several aspects which are explained in turn. First of all, it seeks to clarify that certain commercial practices related to, but not strictly forming part of the contract, should also be unenforceable and give rise to a claim for damages. Secondly, the Late Payment Directive refers to "agreements" and the proposal to "contractual clauses", but the word "term" would seem more appropriate here and consistent with the rest of the *acquis* and the Draft Common Frame of Reference (II. -9:401-410, hereinafter the DCFR). Thirdly, this amendment aims to ensure that the revised Late Payment Directive is consistent with the DCFR which itself seeks consistency between the meaning of "unfair" in relation to unfair terms relating to late payment (III. -3:711) and unfair terms generally in contracts between businesses (II. -9:405). Fourthly, this amendment clarifies that terms relating to payment periods are also covered by this provision. Finally, this amendment seeks to present in a clearer and more systematic manner the different criteria which a national judge must take into account when deciding whether a term or commercial practice is unfair.

Your rapporteur takes a favourable approach to the proposal which creates a "black list" of contract terms in its Article 6(1) second indent. However, he considers that it is important to include in this list a term which purports to exclude any compensation for recovery costs, as this would send a clear message to economic operators that excluding the right to compensation for recovery costs, a right which the proposal seeks to strengthen, is an unfair term which cannot be enforced against creditors and which can give rise to a claim for damages (see Amendments 1 and 11).

Your rapporteur considers that the Commission's proposal concerning the important provision on redress by representative organisations lacks clarity and legal certainty. He proposes a partial return to the wording of the Late Payment Directive whilst supporting a widening beyond organisations representing SMEs, for example to organisations representing a particular industrial sector. He also proposes to clarify that actions by such representative organisations are not contingent on the existence of standard terms and conditions but can also cover, for example, an alleged breach of the directive by a term in an individual contract (see Amendment 12).

Given that the proposal is a recast, Article 8 of the proposal ("Retention of title") which was left untouched by the Commission is similarly unamended, despite the importance of this issue for Parliament in the negotiations leading up to the adoption of the Late Payment Directive.

Your rapporteur considers that the amendment of the Late Payment Directive should not



affect the rules governing forced execution procedures, which should remain subject to national law. This principle is already laid out clearly in the Late Payment Directive and the case-law of the Court of Justice of the European Union<sup>1</sup>. At the same time, he is of the opinion that further efforts must be made to reduce the time-period within which an enforceable title can be obtained and to facilitate the means by which this can take place (see Amendments 5 and 13). Your rapporteur examined a possible interlinking of the Late Payment Directive with the European Payment Order Procedure<sup>2</sup>, and would be keen to pursue this line of thinking with colleagues in the committee. However, at this stage, he considers that the reduced material and geographical scope of the latter instrument make such an interlinking difficult (see Amendment 14, which is therefore purely technical). He considers it important to link any progress made in the revision of the Late Payment Directive to ongoing work on the EU e-Justice portal in order to ensure the widest possible dissemination and use of the former instrument (see Amendment 5).

Your rapporteur recognises the fact that a confrontational approach to late payment is insufficient in itself in order to bring about the desired cultural shift in payment behaviour, given that creditors are often reluctant to avail themselves of their rights under the Late Payment Directive, for example to charge interest, for fear of damaging a continuing commercial relationship. A complementary preventive approach is therefore suggested, involving on the one hand the drawing up and dissemination of codes of good conduct, and on the other hand recourse to mediation (see Amendments 4 and 15).

#### ***Position of the rapporteur on Article 5.***

Finally, Amendment 9 seeks to deal with Article 5 from a legal perspective. Article 5(5) is deleted as it is perceived as a disproportionate and punitive measure which is contrary to Union law. Furthermore, the amendment upholds the principle that payment periods in business-to-business transactions should not be harmonised, as this would be contrary to the principles of proportionality, subsidiarity and party autonomy, and would radically reduce the possibility for SMEs to obtain trade credit.

## **AMENDMENTS**

The Committee on Legal Affairs calls on the Committee on Internal Market and Consumer Protection, as the committee responsible, to accept without a vote those of its amendments which fall within the exclusive competence of the associated committee, under the procedure with associated committees (Rule 50):

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<sup>1</sup> See, for example, the judgment in case C-265/07 *Caffaro* ECR [2008] I-45 on 11 September 2008.

<sup>2</sup> Regulation (EC) 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

## Amendment 1

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low or no interest rates charged on late payments and/or slow procedures for redress. A decisive shift, ***including making the exclusion of the right to charge interest an unfair contractual clause and providing for a 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 late payment.

#### *Amendment*

(12) Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low or no interest rates charged on late payments and/or slow procedures for redress. A decisive shift ***to a culture of prompt payment*** is necessary to reverse this trend and to ensure that the consequences of late payments are such as to discourage late payment. ***This shift should include providing for the compensation of creditors for the costs incurred, and making the exclusion of the right to charge interest and the right to compensation for recovery costs unfair contractual terms and unfair commercial practices.***

#### *Justification*

*It is necessary to send a clear message to economic operators that excluding the right to compensation for recovery costs, a right which the proposal seeks to strengthen, is an unfair term which cannot be enforced against creditors and which can give rise to a claim for damages.*

## Amendment 2

### Proposal for a directive Recital 17

#### *Text proposed by the Commission*

(17) Late payment is particularly regrettable if it occurs despite the debtor's solvency. Surveys show that public authorities often pay invoices very late after expiration of the applicable payment period. Public authorities may face lighter financing constraints because they may

#### *Amendment*

(17) Late payment is particularly regrettable if it occurs despite the debtor's solvency. Surveys show that public authorities often pay invoices very late after expiration of the applicable payment period. Public authorities may face lighter financing constraints because they may

benefit from more secure, predictable and continuous revenue streams than private undertakings. At the same time, they depend less than private undertakings on building stable commercial relationships for the achievement of their aims. Consequently, public authorities may have less incentive to pay on time. In addition, many public authorities can obtain financing at more attractive conditions than private undertakings. Therefore, late payment by public authorities not only leads to unjustified costs for private undertakings, but to inefficiency in general. ***It is therefore appropriate to introduce correspondingly higher dissuasive compensation in case of late payment by public authorities.***

benefit from more secure, predictable and continuous revenue streams than private undertakings. At the same time, they depend less than private undertakings on building stable commercial relationships for the achievement of their aims. Consequently, public authorities may have less incentive to pay on time. In addition, many public authorities can obtain financing at more attractive conditions than private undertakings. Therefore, late payment by public authorities not only leads to unjustified costs for private undertakings, but to inefficiency in general.

### *Justification*

*The penalty applicable to public authorities is disproportionate and discriminatory. It creates perverse incentives within the system and opens the door to potential abuse and corruption. The public authorities in their turn, in attempting to cover themselves against the additional cost of such sanctions, would try to set up external bodies that operated as public companies, through which to channel their acquisitions of goods and services. An additional layer of administration, and one potentially unjustifiable from the standpoint of economic efficiency, would be required.*

## **Amendment 3**

### **Proposal for a directive Recital 18**

#### *Text proposed by the Commission*

(18) This Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor. Where ***an agreement*** mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, for example through the exclusion of the possibility for the creditor to charge interest for late payment or specifying an interest rate for late payment which is substantially lower than the

#### *Amendment*

(18) This Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor. Where ***a contract term or practice*** mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, for example through the exclusion of the possibility for the creditor to charge interest for late payment or specifying an interest rate for late payment which is substantially lower

statutory interest provided for in this Directive, 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. This Directive should not affect national provisions relating to the way contracts are concluded or regulating the validity of contractual terms which are unfair to the debtor.

than the statutory interest provided for in this Directive, 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. ***In accordance with the academic Draft Common Frame of Reference, any contract term or practice grossly deviating from good commercial practice, contrary to good faith and fair dealing should be considered unfair.*** This Directive should not affect national provisions relating to the way contracts are concluded or regulating the validity of contractual terms which are unfair to the debtor.

#### **Amendment 4**

##### **Proposal for a directive Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters<sup>1</sup> already sets a framework for mediation at Union level.***

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<sup>1</sup> OJ L 136, 24.5.2008, p. 3.

#### **Amendment 5**

##### **Proposal for a directive Recital 22**

*Text proposed by the Commission*

*Amendment*

(22) It is necessary to ensure that the recovery procedures for unchallenged claims related to late payment in commercial transactions be completed

(22) It is necessary to ensure that the recovery procedures for unchallenged claims related to late payment in commercial transactions be completed

within a short period of time.

within a short period of time, *with the option of pursuing such claims against businesses and public authorities through a widely accessible online procedure, available under the same conditions for all creditors established in the Union, and accessible without delay through the European e-Justice portal as and when it becomes available.*

## Amendment 6

### Proposal for a directive Article 2 – point 8

#### *Text proposed by the Commission*

(8) ‘**retention of title**’ means the contractual **agreement** according to which the seller retains **title to** the goods in question until the price has been paid in full;

#### *Amendment*

(8) ‘**reservation of ownership**’ means the contractual **clause** according to which the seller retains **ownership of** the goods in question, **with ownership not passing from the seller to the buyer** until the price has been paid in full;

#### *Justification*

*In order to define the concept of reservation of ownership more clearly, the term ‘retention of title’ has been replaced with ‘reservation of ownership’ because it is the right that is retained and not the title, which is the certificate acknowledging that right.*

## Amendment 7

### Proposal for a directive Article 3 – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. Member States shall ensure that in commercial transactions between undertakings, the creditor is entitled to interest for late payment without the necessity of a reminder if the following conditions are satisfied:

#### *Amendment*

1. Member States shall ensure that in commercial transactions between undertakings, the creditor is entitled to interest for late payment, **starting as of right from the day after the due date for payment**, without the necessity of a reminder if the following conditions are satisfied:

*Justification*

*Clearer definition of when the entitlement to interest starts.*

**Amendment 8**

**Proposal for a directive**  
**Article 4 – paragraph 3**

*Text proposed by the Commission*

3. ***Unless the debtor is not responsible*** for the delay, the creditor shall, in addition to the amounts set out in paragraph 1, be entitled to obtain reasonable compensation from the debtor for all remaining recovery costs incurred through the latter's late payment.

*Amendment*

3. ***Except where the debtor is exempted from responsibility*** for the delay, the creditor shall, in addition to the amounts set out in paragraph 1, be entitled to obtain reasonable compensation from the debtor for all remaining recovery costs incurred through the latter's late payment.

*Justification*

*Clearer wording.*

**Amendment 9**

**Proposal for a directive**  
**Article 5**

*Text proposed by the Commission*

Payment by public authorities

1. Member States shall ensure that, in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if the following conditions are satisfied:

- (a) the creditor has fulfilled its contractual and legal obligations;
- (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.

2. Where the conditions set out in

*Amendment*

Payment by public authorities

1. Member States shall ensure that, in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if the following conditions are satisfied:

- (a) the creditor has fulfilled its contractual and legal obligations;
- (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.

2. Where the conditions set out in

paragraph 1 are fulfilled, Member States shall ensure the following:

(a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable ***automatically within*** any of the following time limits:

(i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment;

(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services;

(iii) 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, 30 days after that date.

3. Member States shall ensure that ***the maximum duration of*** a procedure of acceptance or verification referred to in paragraph 2(b)(iii) ***shall not exceed 30 days, unless otherwise specified and duly justified in the tender documents and the contract.***

4. Member States shall ensure that the period for payment fixed in the contract shall not exceed the time limits provided for in paragraph 2(b), unless it is specifically agreed between the debtor and the creditor ***and is duly justified in the light of particular circumstances such as an objective need to schedule payment over a longer period.***

paragraph 1 are fulfilled, Member States shall ensure the following:

(a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;

(b) if the date or period for payment is not fixed in the contract, interest for late payment shall ***automatically*** become payable ***at the latest upon expiry of*** any of the following time limits:

(i) 30 ***calendar*** days following the date of receipt by the debtor of the invoice or an equivalent request for payment;

(ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 ***calendar*** days after the receipt of the goods or services;

(iii) 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, 30 ***calendar*** days after that date.

3. Member States shall ensure that a procedure of acceptance or verification referred to in paragraph 2(b)(iii) ***is carried out immediately and does not exceed 30 calendar days.***

4. Member States shall ensure that:

(a) the period for payment fixed in the

contract shall not exceed the time limits provided in paragraph 2(b), unless it is ***duly justified in accordance with the principle of necessity and*** unless it is specifically agreed between the debtor and the creditor. ***In any event the period for payment shall never exceed 60 calendar days;***

***(b) the date of receipt of the invoice referred to in paragraph 2(b)(i) is not subject to a contractual agreement between debtor and creditor.***

***5. Member States shall ensure that when interest for late payment becomes payable, the creditor is entitled to a lump sum compensation equal to 5% of the amount due. This compensation shall be additional to the interest for late payment.***

6. Member States shall ensure that the applicable reference rate in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities:

(a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;

(b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

6. Member States shall ensure that the applicable reference rate in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities:

(a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;

(b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

#### *Justification*

*The compromise amendment tackles some legal aspects of Article 5. Paragraph 5 is deleted as it represents an unjustified and punitive measure which is contrary to Union law. Furthermore, payment periods in business-to-business transactions should not be harmonised, as this would be contrary to the principles of proportionality and subsidiarity, and would radically reduce the possibility of trade credit for SMEs. The option for a supplier to grant a deferral in the time to pay to a customer is a vital competitive tool for SMEs.*

#### **Amendment 10**



## Proposal for a directive

### Article 6 – title and paragraph 1 – subparagraph 1

*Text proposed by the Commission*

#### ***Grossly unfair contractual clauses***

1. Member States shall provide that a ***clause*** in a contract relating to the date for payment, the rate of interest for late payment or recovery costs shall ***either*** be unenforceable ***or*** shall give rise to a claim for damages if it is ***grossly*** unfair to the creditor. In determining whether a ***clause*** is ***grossly*** unfair to the creditor, all circumstances of the case shall be considered, including good commercial practice ***and*** the nature of the product or the service. ***Account shall also be taken of*** whether the debtor has any objective reason to deviate from the statutory rate of interest or from Article 3(2)(b), Article 4(1) or Article 5(2)(b).

*Amendment*

#### ***Unfair contract terms and practices***

1. Member States shall provide that a ***term*** in a contract ***or a practice*** relating to the date ***or period*** for payment, the rate of interest for late payment or ***compensation*** ***for*** recovery costs shall be unenforceable ***and*** shall give rise to a claim for damages if it is unfair to the creditor.

In determining whether a ***term or practice*** is unfair to the creditor, ***within the meaning of subparagraph 1***, all circumstances of the case shall be considered, including:

(a) ***any gross deviation from*** good commercial practice, ***contrary to good faith and fair dealing***;

(b) the nature of the product or the service;  
***and***

(c) whether the debtor has any objective reason to deviate from the statutory rate of interest or from Article 3(2)(b), Article 4(1) or Article 5(2)(b).

*(The deletion of the word "grossly [unfair]", the introduction of the word "term" and the introduction of the word "practice" apply throughout the text. Adopting this amendment will necessitate corresponding changes throughout.)*

### *Justification*

*It is understood that the translation for "term" is "cláusula" in Spanish, "clausola" in Italian and "clause" in French. This is consistent, for example, with Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts.*

## **Amendment 11**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 – subparagraph 2 (becomes a new paragraph)**

##### *Text proposed by the Commission*

For the purpose of the ***first subparagraph***, a ***clause*** which excludes interest for late payment shall always be considered as ***grossly*** unfair.

##### *Amendment*

***1a.*** For the purpose of ***paragraph 1***, a ***term or a commercial practice*** which excludes interest for late payment ***or compensation for recovery costs, or both***, shall always be considered as unfair.

### *Justification*

*It is necessary to send a clear message to economic operators that excluding the right to compensation for recovery costs, a right which the proposal seeks to strengthen, is an unfair term which cannot be enforced against creditors and which can give rise to a claim for damages.*

## **Amendment 12**

### **Proposal for a directive**

#### **Article 6 – paragraph 3**

##### *Text proposed by the Commission*

3. The means referred to in paragraph 2 shall include provisions whereby ***representative*** organisations may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that ***clauses*** are ***grossly*** unfair, so that they can apply appropriate and effective means to prevent their ***continued*** use.

##### *Amendment*

3. The means referred to in paragraph 2 shall include provisions whereby organisations ***officially recognised as, or having a legitimate interest in, representing enterprises*** may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that ***terms or commercial practices, including in the case of an individual contract***, are unfair, so that they can apply appropriate and effective means to prevent their use.

## Justification

*This amendment, inspired by the wording of Directive 2000/35, attempts to clarify the concept of "organisations". In contrast to Directive 2000/35 however, it seeks to open up this possibility beyond organisations representing SMEs, for example to organisations in a particular industrial sector.*

*The amendment also clarifies that representative organisations are not prevented from taking action according to the national law concerned by the mere fact that the allegedly unfair terms are included in an individual contract, as opposed to standard terms and conditions.*

## Amendment 13

### Proposal for a directive Article 9 – paragraphs 1 and 2

#### *Text proposed by the Commission*

1. Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed.

2. National legislation, regulations **and** administrative provisions shall apply the same conditions for all creditors who are established in the **Community**.

#### *Amendment*

1. Member States shall ensure that an enforceable title can be obtained, ***through an expedited procedure and*** irrespective of the amount of the debt, within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that 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. In this respect, creditors shall be given the possibility to have recourse to a widely accessible online procedure.***

2. National legislation, regulations, administrative provisions shall apply ***and the online procedure referred to in paragraph 1 shall be available at*** the same conditions for all creditors who are established in the **Union**.

## **Amendment 14**

### **Proposal for a directive Article 9 – paragraph 4**

*Text proposed by the Commission*

4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions of Regulation (EC) **1986/2006**.

*Amendment*

4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions of Regulation (EC) **No 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European order for payment procedure<sup>1</sup>**.

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<sup>1</sup> OJ L 399, 30.12.2006, p. 1.

*Justification*

*Correction of a clerical error in the Commission proposal.*

## **Amendment 15**

### **Proposal for a directive Article 9 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 9a**

##### ***Mediation and Codes of Good Conduct***

***1. Member States shall promote the adoption of systems to solve conflicts through mediation, involving inter alia the organisations referred to in Article 6(3).***

***2. Member States and the organisations referred to in Article 6(3), with the support of the Commission, shall draw up and disseminate codes of good conduct with appropriate complaints mechanisms, negotiated at national or Union level, and designed to contribute to the proper implementation of this Directive.***

## PROCEDURE

<b>Title</b>	Combating late payment in commercial transactions (recast version)			
<b>References</b>	COM(2009)0126 – C7-0044/2009 – 2009/0054(COD)			
<b>Committee responsible</b>	IMCO			
<b>Opinion by</b> Date announced in plenary	JURI 14.9.2009			
<b>Associated committee(s) - date announced in plenary</b>	17.12.2009			
<b>Rapporteur</b> Date appointed	Raffaele Baldassarre 2.9.2009			
<b>Discussed in committee</b>	3.9.2009	6.10.2009	9.11.2009	28.1.2010
<b>Date adopted</b>	23.3.2010			
<b>Result of final vote</b>	+: 24 -: 0 0: 0			
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Daniel Hannan, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka			
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Sergio Gaetano Cofferati, Sajjad Karim, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, József Szájer			

19.3.2010

## **OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on combating late payment in commercial transactions (Recast)  
(COM(2009)0126 – C7-0044/2009 – 2009/0054(COD))

Rapporteur: Francesco De Angelis

### **SHORT JUSTIFICATION**

Directive 2000/35/EC, adopted in May 2000 and in force since 8 August 2002, whose purpose is to combat late payment in commercial transactions, has had a limited impact. Disparities between Member States regarding payment discipline remain marked, and delays in payment threaten the survival of businesses, particularly SMEs, especially at a time of economic and financial crisis such as that which Europe and the world are currently experiencing.

Widespread resort to delays in payment, dictated by necessity or more often deliberate, destabilises the internal market and seriously damages international trade. Moreover, in the Member States where this problem is most prevalent, businesses face greater risks of a steady decline in revenue until the point of bankruptcy. The problem is most serious in transactions between the public authorities and businesses, although the desirability of different treatment for transactions between private parties is debatable. The latter too – many of them SMEs – may be exposed to iniquitous contract clauses which they have accepted out of a fear of damaging their relations with a large private customer.

In his opinion, the rapporteur welcomes the Commission proposal. However, he feels that he should propose a few amendments to both the form and the substance which, while upholding the general approach in the Commission proposal, are intended to promote clarity and certainty in the interpretation and transposition of the Directive.

The rapporteur considers that the scope of the provisions concerning public authorities should be extended to public utilities. He also proposes amendments regarding the certainty of periods, the incentive character of the additional penalties applicable to debtors, a reduction in the contractual derogations permitted by the legislation and passive/active information of businesses about their new rights.

The draft opinion is consistent with the working document drafted by the rapporteur of the committee responsible, the Committee on the Internal Market and Consumer Protection, Mrs Barbara Weiler. However, in the opinion of the Committee on Industry, Research and Energy, the rapporteur considers it incumbent upon him to include additional elements to protect businesses, especially SMEs. In particular, he proposes making binding the application of the penalties in the form of compensation for recovery costs and interest in the event of late payment. This would obviate the requirement for individual creditors to have the ability to assert their rights, protecting them against the risk of commercial retaliation by the debtor.

The rapporteur's proposal incorporates a number of ideas received from the shadow rapporteurs during the initial exchange of views on the proposal for a directive. In particular, the rapporteur endorses the need - pointed out by colleagues - to reduce the derogations applicable to the provisions of European legislation.

Lastly, it has not yet been possible to arrive at a widely agreed solution with regard to the lump sum compensation (5%) which the creditor is entitled to receive from public authorities guilty of late payment. The rapporteur reserves the right to consider the matter during the next exchange of views and, possibly, to adopt a position on it by tabling an ad hoc amendment.

## **AMENDMENTS**

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1**

#### **Proposal for a directive Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) Even if the Union's institutions are not directly bound by this Directive, it should be ensured that those institutions, as a matter of good practice, apply the payment provisions laid down in this Directive.***

*Justification*

*The European Institutions should lead by example by consistently making timely payments.*

### **Amendment 2**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) *Surveys show* that **public authorities often require** contractual payment periods for commercial transactions **that** are significantly longer than 30 days. Therefore, payment periods **for procurement contracts awarded by public authorities** should be as a general rule limited to a maximum of 30 days.

*Amendment*

(16) **Experience shows** that contractual payment periods for commercial transactions are **often** significantly longer than 30 days. Therefore, payment periods **in commercial transactions** should be as a general rule limited to a maximum of 30 days; **in cases where longer payment periods are duly justified in accordance with the principle of necessity or with special provisions of national law and where an explicit agreement has been made between the debtor and the creditor, the payment period could be extended to a maximum of 60 days.**

*Justification*

*The same set of payment provisions should apply for all kinds of commercial transactions to avoid competitive disadvantages either for public or for private companies. Commercial relationships between undertakings and public authorities are in many ways similar to commercial relationships between undertakings. In order to avoid disadvantageous payment periods in particular for small and medium-sized enterprises, interest shall be payable at all events not later than 60 days after the receipt of the invoice.*

**Amendment 3**

**Proposal for a directive**  
**Article 2 – point 2**

*Text proposed by the Commission*

(2) ‘public authority’ means any contracting authority, as defined by Directive 2004/18/EC;

*Amendment*

(2) ‘public authority’ means any contracting authority as defined by Directive **2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>1</sup>** and by Directive 2004/18/EC, regardless of the subject or value of the contract, and any of the Union's institution mentioned in



**Article 13 of the Treaty on European Union;**

<sup>1</sup>OJ L 134, 30.4.2004, p. 1.

*Justification*

*In order to avoid the misunderstanding that contracting authorities as defined by Directive 2004/17/EC are no longer included, there should be a reference to Directive 2004/17/EC. As Directives 2004/18/EC and 2004/17/EC apply only to specific subjects of contracts and only above a certain threshold, it should be made clear that the same restrictions do not apply in the case of Directive 2000/35/EG. Late payments concern also EU institutions, not only national authorities. The EU institutions cannot exclude themselves from provisions imposed to other public authorities.*

**Amendment 4**

**Proposal for a directive  
Article 2 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) ‘sectoral undertaking’ means any undertaking operating in the water, energy or transport services sector within the meaning of Directive 2004/17/EC, regardless of the value of the contract;***

*Justification*

*‘Sectoral undertakings’ have a particularly strong position on the market due to their particular position. They are the only suppliers in the area of water, energy and transport supply infrastructure and are not subject to any real competition. Thus sectoral undertakings can very often set their ‘purchase conditions’ and payment deadlines unilaterally. This powerful position should not be abused. Sectoral undertakings should therefore be treated in the same way as sectoral contracting authorities.*

**Amendment 5**

**Proposal for a directive  
Article 2 – point 6**

*Text proposed by the Commission*

*Amendment*

(6) ‘statutory interest’ means simple interest for late payment at a rate which is the sum of the reference rate, plus at least

(6) ‘statutory interest’ means simple interest for late payment at a rate which is the sum of the reference rate, plus at least

*seven* percentage points;

*nine* percentage points;

### *Justification*

*In conjunction with amending Articles 3 and 5 to reflect a more uniform, equitable and proportionate set of rules applying to both the public and private sectors, a slight increase in the mandatory statutory interest rate would be a way of encouraging both sectors to engage in better payment practices.*

## **Amendment 6**

### **Proposal for a directive Article 3**

#### *Text proposed by the Commission*

##### Interest in case of late payment

1. Member States shall ensure that in commercial transactions between undertakings, the creditor is entitled to interest for late payment without the necessity of a reminder if the following conditions are satisfied:

- (a) the creditor has fulfilled its contractual and legal obligations;
  - (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.
2. Where the conditions set out in paragraph 1 are fulfilled, Member States shall ensure the following:
- (a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;

- (b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following

#### *Amendment*

##### Interest in case of late payment *in commercial transactions between undertakings*

1. Member States shall ensure that in commercial transactions between undertakings, the creditor is entitled to interest for late payment without the necessity of a reminder if the following conditions are satisfied:

- (a) the creditor has fulfilled its contractual and legal obligations;
  - (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.
2. Where the conditions set out in paragraph 1 are fulfilled, Member States shall ensure the following:
- (a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract, ***which shall take into account the time limits provided in point (b) and which shall not exceed 60 days from the date of receipt of the goods or performance of the services to which the contract relates;***
  - (b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following

time limits:

- (i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment;
- (ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services;
- (iii) 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, 30 days after *that* date.

3. Member States shall ensure that the applicable reference rate:

- (a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;
- (b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

## Amendment 7

### Proposal for a directive

#### Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

Member States shall ensure that, when interest for late payment becomes payable in commercial transactions in accordance

time limits:

- (i) 30 ***calendar*** days following the date of receipt by the debtor of the invoice or an equivalent request for payment;
- (ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 ***calendar*** days after the receipt of the goods or services;
- (iii) 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, 30 ***calendar*** days after ***this latter*** date;  
***(ba) the date of the receipt of the invoice is not subject to a contractual agreement between debtor and creditor.***

***2a. Member States shall ensure that the maximum duration of a procedure of acceptance or verification referred to in paragraph 2 (b)(iii) shall not exceed 15 days, unless otherwise specified and duly justified in the tender documents or the contract.***

3. Member States shall ensure that the applicable reference rate:

- (a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;
- (b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

*Amendment*

Member States shall ensure that, when interest for late payment becomes payable in commercial transactions in accordance

with Articles 3 and 5 ***and unless otherwise specified in the contract***, the creditor is entitled to obtain from the debtor any of the following amounts:

with Articles 3 and 5, the creditor is ***automatically*** entitled to obtain from the debtor, ***i.e. without the individual creditor's having to take any action***, any of the following ***minimum*** amounts:

#### *Justification*

*It is realistic to take the view that a contractual provision which deviates from the proposed provisions in Articles 3 and 5 would detract from the contractual guarantees which protect creditors. The rapporteur considers it fundamental that Member States should ensure that the procedure is automatically to be implemented, so that the individual creditor need not fear any retaliation from the customer.*

### **Amendment 8**

#### **Proposal for a directive**

#### **Article 4 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The amounts set out in the first subparagraph shall be subject to biennial review.***

#### *Justification*

*It is necessary to update the compensation amounts, although the amounts proposed do not cover the real legal costs and therefore do not facilitate access to justice. When setting costs reference should be made to a biennial incremental mechanism.*

### **Amendment 9**

#### **Proposal for a directive**

#### **Article 5**

*Text proposed by the Commission*

*Amendment*

Payment by public authorities

Payment by public authorities ***and sectoral undertakings***

1. Member States shall ensure that, in commercial transactions ***leading to the delivery of goods or the provision of services for remuneration to public authorities***, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if

1. Member States shall ensure that, in commercial transactions, the creditor is entitled, without the necessity of a reminder, to interest for late payment equal to statutory interest if the following conditions are satisfied:

the following conditions are satisfied:

- (a) the creditor has fulfilled its contractual and legal obligations;
- (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.

2. Where the conditions set out in paragraph 1 are fulfilled, Member States shall ensure the following:

- (a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;
- (b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following time limits:
  - (i) 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment;
  - (ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 days after the receipt of the goods or services;
  - (iii) 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, 30 days after *that* date.

3. Member States shall ensure that the maximum duration of a procedure of acceptance or verification referred to in paragraph 2(b)(iii) shall not exceed **30 days**, unless otherwise specified and duly justified in the tender documents and the contract.

4. Member States shall ensure that the period for payment fixed in the contract

- (a) the creditor has fulfilled its contractual and legal obligations;
- (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.

4. Where the conditions set out in paragraph 1 are fulfilled, Member States shall ensure the following:

- (a) interest for late payment shall become payable from the day following the date or the end of the period for payment fixed in the contract;
- (b) if the date or period for payment is not fixed in the contract, interest for late payment shall become payable automatically within any of the following time limits:
  - (i) 30 **calendar** days following the date of receipt by the debtor of the invoice or an equivalent request for payment;
  - (ii) if the debtor receives the invoice or the equivalent request for payment earlier than the goods or the services, 30 **calendar** days after the receipt of the goods or services;
  - (iii) 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, 30 **calendar** days after *this latter* date;

***(c) the date of the receipt of the invoice is not subject to a contractual agreement between debtor and creditor.***

3. Member States shall ensure that the maximum duration of a procedure of acceptance or verification referred to in paragraph 4(b)(iii) shall not exceed **15 days**, unless otherwise specified and duly justified in the tender documents and the contract.

2. Member States shall ensure that the period for payment fixed in the contract

shall not exceed the time limits provided for in paragraph 2(b), unless it is specifically agreed between the debtor and the creditor and is duly justified *in the light of particular circumstances such as an objective need to schedule payment over a longer period.*

**5. Member States shall ensure that when interest for late payment becomes payable, the creditor is entitled to a lump sum compensation equal to 5% of the amount due. This compensation shall be additional to the interest for late payment.**

6. Member States shall ensure that the applicable reference rate in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities:

(a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;

(b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

shall not exceed the time limits provided for in paragraph 4(b), unless it is specifically agreed between the debtor and the creditor and is duly justified *in accordance with the principle of necessity, and in any event never exceeds 60 days.*

6. Member States shall ensure that the applicable reference rate in commercial transactions leading to the delivery of goods or the provision of services for remuneration to public authorities:

(a) for the first semester of the year concerned shall be the rate in force on 1 January of that year;

(b) for the second semester of the year concerned shall be the rate in force on 1 July of that year.

## **Amendment 10**

### **Proposal for a directive**

#### **Article 6 – title**

*Text proposed by the Commission*

Grossly unfair contractual clauses

*Amendment*

Grossly unfair contractual clauses **and commercial practices**

#### *Justification*

*To avoid abuse or unfair clauses in contracts and business relations the scope in this article should be extended to include commercial practices as this is equally a significant and grave problem for SMEs, for instance when larger companies unilaterally change payment periods retrospectively.*

## **Amendment 11**

## Proposal for a directive

### Article 6 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

1. Member States shall provide that a clause in a contract relating to the date for payment, the rate of interest for late payment or recovery costs shall either be unenforceable or shall give rise to a claim for damages if it is grossly unfair to the creditor. In determining whether a clause is grossly unfair to the creditor, all circumstances of the case shall be considered, including good commercial practice and the nature of the product or the service. Account shall also be taken of whether the debtor has any objective reason to deviate from the statutory rate of interest or from **Article 3(2)(b)**, Article 4(1) or Article 5(2)(b).

#### *Amendment*

1. Member States shall provide that a clause in a contract **and/or a commercial practice** relating to the date for payment, the rate of interest for late payment or recovery costs, **or such a clause in informal agreements and in retrospective changes to the contract**, shall either be unenforceable or shall give rise to a claim for damages if it is grossly unfair to the creditor. In determining whether a clause is grossly unfair to the creditor, all circumstances of the case shall be considered, including good commercial practice and the nature of the product or the service, **as well as the size of the undertakings**. Account shall also be taken of whether the debtor has any objective reason to deviate from the statutory rate of interest or from Article 4(1) or Article 5(2)(b).

#### *Justification*

*To ensure this legislation fully protects SMEs from abusive or unfair behaviour in relation to payment it is paramount to include commercial practices. If commercial practices, including retrospective changes to a contract's payment conditions, the legislation as proposed by the Commission will not sufficiently hinder creditors from being used as 'banks', i.e. unilateral changes making the payment period longer to increase debtors' liquidity, to the detriment of creditor's. Change of reference to articles to make the amendments consistent with amendments merging article 3 and 5. This is to ensure that, when determining whether a clause in a contract is vexatious, account is taken not only of good commercial practices and the nature of the product or service but of the size of the undertaking involved as well.*

## Amendment 12

## Proposal for a directive

### Article 6 – paragraph 1 - subparagraph 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***For the purposes of the first subparagraph a clause which exceeds the***

*period provided for in Article 5(2)(b) shall always be considered as grossly unfair, taking also into account the criteria laid down in Article 5(4).*

## **Amendment 13**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 - subparagraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*Any clause adding extra financial burden on the creditor as a prerequisite for claiming legal compensation due to late payments shall be considered as grossly unfair.*

## **Amendment 14**

### **Proposal for a directive**

#### **Article 6 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The means referred to in paragraph 2 shall include provisions whereby representative organisations may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that clauses are grossly unfair, so that they can apply appropriate and effective means to prevent their *continued* use.

3. The means referred to in paragraph 2 shall include provisions whereby representative organisations may take action according to the national law concerned before the courts or before competent administrative bodies on the grounds that clauses are grossly unfair, so that they can apply appropriate and effective means to prevent their use. *This provision shall be without prejudice to the confidentiality clause binding representative organisations to their member entities.*

#### *Justification*

*Representative organisations should also be enabled to act according to the national law if the clauses concerned are used episodically or intermittently.*

## **Amendment 15**



**Proposal for a directive**  
**Article 7**

*Text proposed by the Commission*

Member States shall ensure full transparency about the rights and obligations stemming from this Directive, in particular by publishing the applicable statutory interest rate.

*Amendment*

Member States shall ensure full transparency about the rights and obligations stemming from this Directive, in particular by publishing the applicable statutory interest rate ***and the procedure relating to payments by public authorities, as a specific guarantee to any possible chain of subcontractors.***

*Justification*

*This provision would introduce traceability and transparency in the payments made by public authorities. The measure is appropriate in particular to guarantee that the benefits of improved payment periods are passed on in practice to possible subcontracting and/or outsourcing sectors downstream of the main contractors.*

**Amendment 16**

**Proposal for a directive**  
**Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. For the purposes of the implementation of this Directive, Member States shall organise information campaigns to make undertakings, particularly small and medium-sized enterprises (SMEs), more aware of their rights.***

***Member States shall consider the possibility of arranging for publication of information on 'good' and 'bad' debtors and disseminating good practices to promote punctuality of payment.***

*Justification*

*As indicated in the Commission's impact assessment, undertakings do not demand interest partly because they are not aware of their rights. In addition to providing information, practical measures can be taken to promote punctuality of payment.*

## PROCEDURE

<b>Title</b>	Combating late payment in commercial transactions (recast version)	
<b>References</b>	COM(2009)0126 – C7-0044/2009 – 2009/0054(COD)	
<b>Committee responsible</b>	IMCO	
<b>Opinion by</b> Date announced in plenary	ITRE 14.9.2009	
<b>Rapporteur</b> Date appointed	Francesco De Angelis 9.11.2009	
<b>Discussed in committee</b>	2.12.2009	4.2.2010
<b>Date adopted</b>	18.3.2010	
<b>Result of final vote</b>	+: 46 –: 0 0: 1	
<b>Members present for the final vote</b>	Jean-Pierre Audy, Zigmantas Balčytis, Zoltán Balczó, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Pilar del Castillo Vera, Ioan Enciu, Adam Gierek, Norbert Glante, Fiona Hall, Jacky Hénin, Romana Jordan Cizelj, Sajjad Karim, Arturs Krišjānis Kariņš, Judith A. Merkies, Angelika Niebler, Jaroslav Paška, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Paul Rübig, Francisco Sosa Wagner, Britta Thomsen, Patrizia Toia, Evžen Tošenovský, Ioannis A. Tsoukalas, Claude Turmes, Marita Ulvskog, Vladimir Urutchev, Adina-Ioana Vălean, Kathleen Van Brempt, Alejo Vidal-Quadras, Henri Weber	
<b>Substitute(s) present for the final vote</b>	Rachida Dati, Francesco De Angelis, Andrzej Grzyb, Jolanta Emilia Hibner, Oriol Junqueras Vies, Ivailo Kalfin, Marian-Jean Marinescu, Vladko Todorov Panayotov, Silvia-Adriana Țicău, Hermann Winkler	
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Britta Reimers	

## PROCEDURE

<b>Title</b>	Combating late payment in commercial transactions (recast version)			
<b>References</b>	COM(2009)0126 – C7-0044/2009 – 2009/0054(COD)			
<b>Date submitted to Parliament</b>	8.4.2009			
<b>Committee responsible</b> Date announced in plenary	IMCO 14.9.2009			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ITRE 14.9.2009	JURI 14.9.2009		
<b>Associated committee(s)</b> Date announced in plenary	JURI 17.12.2009			
<b>Rapporteur(s)</b> Date appointed	Barbara Weiler 14.9.2009			
<b>Discussed in committee</b>	2.9.2009	28.9.2009	6.10.2009	4.11.2009
	26.1.2010	23.2.2010		
<b>Date adopted</b>	28.4.2010			
<b>Result of final vote</b>	+: –: 0:	30 0 6		
<b>Members present for the final vote</b>	Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Alan Kelly, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Gianni Pittella, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Andreas Schwab, Róza Gräfin Von Thun Und Hohenstein, Kyriacos Triantaphyllides, Bernadette Vergnaud, Barbara Weiler			
<b>Substitute(s) present for the final vote</b>	Damien Abad, Pascal Canfin, Cornelis de Jong, Anna Hedh, Othmar Karas, Emma McClarkin, Konstantinos Poupakis, Kerstin Westphal			