

Commerce: late payment in commercial transactions

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The Conciliation Committee reached agreement on a joint text on the directive on combating late payment in commercial transactions. The main elements of the agreement are as follows: (1) public and private sectors are placed on an equal footing; the provisions of the directive will now apply equally to both sectors, whereas this was not clear before the conciliation negotiations. In addition, the definition of "public authorities" is that laid down in certain Community directives; (2) the "retention of title" clause is included in the directive, which means that Member States must, in conformity with the applicable national provisions designated by private international law, provide that the seller retains title to goods until they are fully paid for; (3) an agreement on a date for payment which exceeds 30 days either shall not be enforceable or shall give rise to a claim for damages if it is grossly unfair to the creditor. The directive seeks to 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, 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. Organisations having a legitimate interest in representing an SME may take action before the courts or the competent authorities; (4) the rate of interest for late payment which the debtor is obliged to pay shall be the sum of the interest rate applied by the European Central Bank plus at least 7 percentage points. The Council common position proposed 6% and Parliament's second reading 8%. Parliament's delegation to the Conciliation Committee felt that the outcome of conciliation was very satisfactory, as the joint text had incorporated most of Parliament's main amendments, either in full or in a reworked form.