# Commerce: late payment in commercial transactions

1998/0099(COD) - 29/07/1999 - Council position

The Council sought to improve the situation of the creditor in the three areas where the need for harmonised rules is the most urgent. These are the period after which interest shall become payable, the level of interest payable on arrears and the need of recovery procedures for unchallenged claims to be completed normally within 90 days. The Council set the deadline after which interest becomes payable at 30 days, rather than 21, after the receipt of an invoice (the current Community average is 39 days). It is clearly specified that the creditor shall be entitled to interest for late payment to the extent that he has fulfilled his contractual and legal obligations and he has not received the amount due on time, unless the debtor is not responsible for the delay. As far as the rate of interest is concerned, the Council reduced the margin from 8% to 6% and deleted the reference to a committee procedure for the adjustment of the margin. The Council also found a partial solution to the problems of longer periods for contractual payments. Member States are permitted to extend the period after which interest becomes due to up to 60 days, under the condition that the respective Member State in its national legislation either reduces the freedom of contract and prevents the parties to foresee a further extension of the 6O days period in their contract or instead provides for a significantly higher interest rate. The Council took into account the European Parliament's wishes by underlining the fact that SMEs are penalised as much by long payment deadlines as by late payments. Furthermore, the common position specifies that any organisation has to act in the course of the exercise of its independent economic or professional activity, thus excluding company directors who acquire goods and services for private use and who are, therefore, treated as consumers. On the other hand, in other fields covered by the Commission's proposal, the Council did not accept the need for, or even the possibility of, harmonisation. It deleted the provisions regarding the retention of title, a simplified procedure for disputed claims up to the amount of 20,000 euros and special rules for public procurement.