Commerce: late payment in commercial transactions

1998/0099(COD) - 29/10/1998 - Modified legislative proposal

The Commission?s amended proposal takes account of most of the 27 amendments adopted by the European Parliament where they improve the initial text. The main elements of the amended proposal are as follows: a) Definitions: the definition of ?commercial transactions? has been reworded in order to include enterprises which are neither natural nor legal persons. The expression ?public authorities? has been replaced by ?public contracting authority? and the definition has been simplified; b) Payment period, interest and compensation for damage: the concept of ?due date? has been replaced by ?payment period? throughout the directive. Account has also be taken of the due provision of goods and services as a pre-requisite to default by the debtor. In order to define an unambiguous method for calculating the payment period, it has been stipulated that the invoice shall be deemed to have been received no later than the fifth calendar day following the date of invoice, unless the buyer or seller is able to prove otherwise. The Commission has reduced the payment period from 60 to 45 days in order to avoid excessively long periods. Although the contracting parties are, in principle, free to agree on longer payment periods, these will only be valid if the buyer provides the seller with a guaranteed bill of exchange. The consequences to the buyer of failure to provide the seller with a bill of exchange are set out. An evaluation will be carried out in three years for the purpose of examining changes in payment practices; c) Retention of title: the proposal stipulates the need for the parties to agree on the use of retention of title. This may be governed by a separate contract or a tacit agreement based on the documents which accompany the goods or services in question. It is clearly stated that the retention of title clause shall be binding on third parties, even in the case of bankruptcy of the debtor. They may also adopt legal regulations concerning goods incorporated into other movable or immovable property; d) Prompt payment, payment period, automatic interest: the payment periods for public contracts have been laid down. The Commission proposes a ceiling of EUR 100 000 and a maximum payment period of 45 days for minor contracts, and proposes 60 days for contracts above this amount. The directive has been amended in order to ensure that subcontractors and suppliers receive equal treatment with the main contractor. The main contractor must provide subcontractors and suppliers with a guarantee covering payment of all amounts owed. It should be noted that the Commission was unable to incorporate the amendments relating to the following aspects: - the insertion of an additional article concerning the licensing of debt collection agencies; - the insertion of a new paragraph stipulating that Member States? arrangements concerning legal representation in court proceedings shall not be affected; - the insertion of a new recital relating to perishable foodstuffs; - the right to claim interest from a public contracting authority; - the hearing of the chairman of the consultative committee; - a report on developments in the situation; - a new recital inviting Member States to be vigilant against unfair trading practices.