Basic information

1998/0099(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Commerce: late payment in commercial transactions Repealed by 2009/0054(COD) **Subject** 3.45.05 Business policy, e-commerce, after-sales service, commercial distribution	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
DELE EP Delegation to Conciliation Committee	MURPHY Simon Francis (PSE)	28/02/2000

Former committee responsible	Former rapporteur	Appointed
ITRE Industry, External Trade, Research, Energy	MURPHY Simon Francis (PSE)	01/09/1999
ECON Economic and Monetary Affairs, Industrial Policy	HARRISON Lyndon H.A. (PSE)	20/10/1997

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs, Citizens' Rights	BERGER Maria (PSE)	19/05/1998

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2200	1999-07-29
Economic and Financial Affairs ECOFIN	2245	2000-02-28
Justice and Home Affairs (JHA)	2146	1998-12-03
Justice and Home Affairs (JHA)	2166	1999-03-12
Competitiveness (Internal Market, Industry, Research and Space)	2149	1998-11-07
Industry	2091	1998-05-07
Industry	2262	2000-05-18
Industry	2133	1998-11-16

	Industry	2174	1999-04-29

Key events

Date	Event	Reference	Summary
25/03/1998	Legislative proposal published	COM(1998)0126	Summary
07/05/1998	Debate in Council		
11/05/1998	Committee referral announced in Parliament, 1st reading		
03/09/1998	Vote in committee, 1st reading		Summary
03/09/1998	Committee report tabled for plenary, 1st reading	A4-0303/1998	
16/09/1998	Debate in Parliament		
29/10/1998	Modified legislative proposal published	COM(1998)0615	Summary
07/11/1998	Debate in Council		
16/11/1998	Debate in Council		
03/12/1998	Debate in Council		
12/03/1999	Debate in Council		
29/07/1999	Council position published	08790/1999	Summary
16/09/1999	Committee referral announced in Parliament, 2nd reading		
13/12/1999	Vote in committee, 2nd reading		Summary
13/12/1999	Committee recommendation tabled for plenary, 2nd reading	A5-0099/1999	
15/12/1999	Debate in Parliament		
16/12/1999	Decision by Parliament, 2nd reading	T5-0173/1999	Summary
28/02/2000	Parliament's amendments rejected by Council		
09/03/2000	Formal meeting of Conciliation Committee		Summary
14/04/2000	Final decision by Conciliation Committee		
02/05/2000	Joint text approved by Conciliation Committee co-chairs	3620/2000	
18/05/2000	Decision by Council, 3rd reading		
29/05/2000	Report tabled for plenary, 3rd reading	A5-0154/2000	
14/06/2000	Debate in Parliament		
15/06/2000	Decision by Parliament, 3rd reading	T5-0268/2000	Summary
29/06/2000	Final act signed		
29/06/2000	End of procedure in Parliament		
08/08/2000	Final act published in Official Journal		

Technical information

Procedure reference	1998/0099(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2009/0054(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095 Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	CODE/5/12585

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0303/1998 OJ C 313 12.10.1998, p. 0008	03/09/1998	
Text adopted by Parliament, 1st reading/single reading		T4-0497/1998 OJ C 313 12.10.1998, p. 0124-0150	17/09/1998	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0099/1999 OJ C 296 18.10.2000, p. 0019	13/12/1999	
Text adopted by Parliament, 2nd reading		T5-0173/1999 OJ C 296 18.10.2000, p. 0132-0173	16/12/1999	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A5-0154/2000 OJ C 067 01.03.2001, p. 0013	29/05/2000	
Text adopted by Parliament, 3rd reading		T5-0268/2000 OJ C 067 01.03.2001, p. 0174-0278	15/06/2000	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	08790/1999 OJ C 284 06.10.1999, p. 0001	29/07/1999	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1998)0126 OJ C 168 03.06.1998, p. 0013	25/03/1998	Summary
Modified legislative proposal	COM(1998)0615 OJ C 374 03.12.1998, p. 0004	29/10/1998	Summary
	SEC(1999)1398		

Commission communication on Council's position		10/09/1999	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2000)0133	08/03/2000	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1125/1998 OJ C 407 28.12.1998, p. 0050	10/09/1998	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3620/2000	02/05/2000	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2000/0035
OJ L 200 08.08.2000, p. 0035 Summary

Commerce: late payment in commercial transactions

1998/0099(COD) - 10/09/1999 - Commission communication on Council's position

The Commission considers that the Council's common position represents considerable progress in combating the late payments phenomenon. It would have preferred that a more decisive action were taken on a certain number of points and regrets the deletion of the obligation regarding retention of title whereby the debtor would have to settle fully the damages suffered by the creditor, as well as the mutual recognition of the retention of title. The Commission, nevertheless, accepts the common position because the chances of improving it seem slim for as long as the European Parliament does not give it renewed impetus.

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.

Commerce: late payment in commercial transactions

1998/0099(COD) - 15/06/2000 - Text adopted by Parliament, 3rd reading

The European Parliament in its third reading adopted a resolution by Simon MURPHY (PES, United Kingdom) approving the joint text of the Conciliation Committee on combating late payments in commercial transactions.

Commerce: late payment in commercial transactions

1998/0099(COD) - 29/06/2000 - Final act

PURPOSE : to combat late payment in commercial transactions. COMMUNITY MEASURE : Directive 2000/35/EC of the European Parliament and of the Council on combating late payment in commercial transactions. CONTENT : this Directive contains a range of measures to combat late payment in commercial transactions within the European Union. This Directive shall apply to all payments made as renumerations for commercial transactions. These measures apply to all delays in payment between enterprises and between the public sector and enterprises. In addition, it lays down a legal framework to discourage late payment. Member States shall ensure that: - interest shall become payable from the day following the date or the end of the period for payment fixed in the contract; - if the date or period for payment is fixed in the contract, interest shall become payable automatically without the necessity of a reminder 30 days following the date of receipt by the debtor of the invoice or an equivalent request for payment; - 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 with 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 this latter date. Furthermore, in relation to the level of interest for late payment which the debtor is obliged to pay, this shall be the sum of the interest rate applied by the European Central Bank (minimum 7% margin). For certain categories of contract to be defined by national law, Member States may fix the period after which interest becomes payable to a maximum of 60 days provided that they either restrain the parties to the contract from exceeding this period or fix a mandatory interest rate that substantially exceeds the statutory rate. With regard to the retention of title, Member States shall provide in conformity with the applicable national provisions designated by private international law that the seller retains title to goods until they are fully paid for if a retention of the title clause has been expressly agreed between the buyer and the seller before the delivery of the goods. ENTRY INTO FORCE : 08.08.2000. DEADLINE FIXED FOR TRANSPOSITION : 08.08.2002.

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.

Commerce: late payment in commercial transactions

1998/0099(COD) - 08/03/2000 - Commission opinion on Parliament's position at 2nd reading

The Commission accepts most of the European Parliament's amendments to the Common Position. There are two which the Commission does not accept. -the new recital on perishable foodstuffs would introduce a sectoral approach which should be avoided. -the duration of recovery procedures cannot be reduced to 60 days from 90 days. Whilst it is true that the Commission originally proposed 60 days, it should be remembered that it excluded the period needed by the debtor for his defence. This period is now included in the 90 day period. A reduction to 60 days seems overly ambitious, but the Commission could accept a compromise figure somewhere in between.

Commerce: late payment in commercial transactions

1998/0099(COD) - 17/09/1998 - Text adopted by Parliament, 1st reading/single reading

Adopting the report by Mr Lyndon HARRISON (PSE, UK), the European Parliament welcomed the Commission?s proposal for a directive introducing a maximum payment period of 21 days from the date of the invoice in the private sector, unless otherwise agreed. The proposal also gives the creditor the right to recoup his costs for collecting bad debts as well as a statutory interest rate. The European Parliament?s amendments seek to clarify the Commission?s text on a number of points. For private sector transactions, it considers that the payment period of 21 days should run from the date of receipt of the invoice - in principle within five days of dispatch - and not from the date of the invoice itself. If the due date stipulated in the contract is greater than 60 calendar days, the buyer should supply the seller, at the buyer?s cost, with a bill of exchange specifying explicitly the date for payment and guaranteed by an accepted credit institution. To remove obstacles to the cross-border collection of debt, Parliament adopted amendments introducing common rules for the licensing of debt collection agencies, thus enabling them to carry out their business in all Member States if they fulfil a number of criteria (e.g. high standards of honourable and ethical behaviour, undertaking not to harass debtors, managing directors with at least three years? professional experience, financial guarantees to protect the clients and the debtors, keeping the money recovered in an account separate from the agency?s own funds, clear and regular reporting to clients, supervision by a private or public organisation). Other amendments seek to set out more clearly what compensation can be claimed by the creditor (e.g. the cost of bank loans or overdraft, administrative costs of recovery, the costs of recovery through court proceedings), as well as that which cannot be claimed (e.g. consequential damages arising from delays in payments). The report also recognises the financial burdens caused by the excessively long contractual payment periods frequently used in certain sectors of the economy. To that end, Parliament has adopted an amendment calling on the European Commission to report on long payment periods and their consequences for the single market and SMEs and to propose any suitable measures by 31 December 2002.

Commerce: late payment in commercial transactions

1998/0099(COD) - 16/12/1999 - Text adopted by Parliament, 2nd reading

In adopting the report by Mr. Simon MURPHY (PES, UK), the European Parliament approves the Council's common position subject to a number of amendments. The European Parliament wishes to re-establish the time limit at the end of which interest is due to be paid to 21 days rather than the 30 days following the date of receipt of invoice that the Council had sought. Besides interest on late payment, the creditor should also be in a position to demand from the debtor the compensation of the losses caused by the late payments, including charges from loans or overdrafts, the administrative costs of recovery within the creditor's business, the costs of recovery through debt recovery agencies and the costs of recovery through court proceedings. The European Parliament requests that the Member States ensure that there are adequate and effective means introduced in order to prevent the continued use of terms which are grossly unfair. These means shall include provisions whereby persons or organisations representing the interests of small and medium-sized enterprises may take action according to the national law concerned before the courts or before competent administrative bodies. The European Parliament has also re-introduced provisions concerning the retention of title and the transparency of public procurement contracts. These contracts should in particular carry specific measures on the period of payment, the default dates and deadlines applied by the contracting authorities. The Parliament requests that Member States ensure that the default date for the payment of contractual debts by the contracting authorities does not go beyond 45 calendar days except where the value of the contract exceeds EUR 100 000, in which case the maximum default date shall be 60 calendar days. All creditors shall be entitled to interest from the contracting authority on any amount outstanding when the default date has passed. Lastly, Member States shall ensure that a retention of title, irrespective of the amount of the debt, can be obtained in the 60 calendar days (instead of 90 days) of the lodging of the creditor's action or application, provided that the debt or aspects of the procedure are not disputed.

Commerce: late payment in commercial transactions

1998/0099(COD) - 25/03/1998 - Legislative proposal

OBJECTIVE: to combat late payment in commercial transactions. SUBSTANCE: the proposal for a Directive contains a range of measures to combat late payment in commercial transactions within the European Union. These measures apply to all delays in payment between enterprises and between the public sector and enterprises. They apply to all enterprises, whether or not in company form, and the self-employed who carry on a trade or profession of any kind. The aim of the proposal is to encourage compliance with contractual deadlines for payment, to the benefit of all enterprises. It lays down a legal framework to discourage late payment, to permit adequate compensation of creditors for late payment and to establish procedures for recovering debts or improve those which already exist to ensure that they are effective, inexpensive and rapid. Specific measures are laid down to improve the payment practices of public administrations.