HELLENIC PARLIAMENT

JOINT SESSION

- **SPECIAL STANDING COMMITTEE ON EUROPEAN AFFAIRS**
- **STANDING COMMITTEE ON PRODUCTION AND TRADE**

On **Friday**, **August 28, 2009**, at **11:00**, the aforementioned committees of the Hellenic Parliament convened to a Joint Session in order to adopt an:

OPINION

On the Proposal for a Directive of the European Parliament and of the Council
on combating late payment in commercial transactions
(Recast)
Implementing the Small Business Act
{COM(2009) 126 final}

The members of the aforementioned Committees having considered:

- the **Proposal for a Directive** of the European Parliament and of the Council "on combating late payment in commercial transactions, (Recast) Implementing the Small Business Act" {COM(2009) 126 final}
- the **Commission Staff Working Document** accompanying document to the Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions (Recast) Summary of Impact Assessment {SEC(2009) 316}
- The **Memorandum** provided to the Hellenic Parliament by the Ministry of Development on 15/7/2009.
- The proposal put forward by Ms Elsa Papadimitriou, Chairperson of the Special Standing Committee on European Affairs, to have a further joint seating of the involved Committees, at the members' earliest convenience, in order to decipher the effective implementation of both the Directive in force and the proposed Directive at the national level. This is deemed necessary so as to reach an agreement upon the additional necessary steps to this end. The report from that meeting will posted on the IPEX and will be sent to the European Commission and the European Parliament.
- The intervention, during the seating, by the Deputy Minister of Development Mr Ioannis Bougas.

The majority of the Members of the two Committees reached the following conclusions:

The proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions replaces the Directive

2000/35/EP actually in force, which has been implemented in our country via the Presidential Decree 166/2003. Its own replacement is deemed necessary due to the fact that the problem of delayed payment of received commodities or furnished services is still widespread. The proposal for a Directive substantiates the provisions of the Small Business Act of 2008, particularly so in the field of facilitating the access of small businesses to the sources of financing and of improving their liquidity.

Examination with respect to the principle of proportionality:

The proposed Directive differentiates among economic actors on the basis of their legal personality. It accordingly differentiates the measures to combat late payment.

Following points 16 & 17 of the preamble, the proposed Directive:

1. adds to public authorities alone a lump sum compensation equal to 5% of the amount due, and

2. considerably limits the discretion of public authorities to agree with private enterprises on a payment period exceeding the 30-day provision (article 5, para. 4).

Nonetheless, the above-mentioned two points do not provide the rationale for a causal relationship between the legal personality of the contracting parties and late payment practices, even if an empirical correlation has indeed been observed.

Furthermore, what is of crucial importance when entering a contractual agreement relates more to its object and the relative market position of the countersignatory private enterprise (oligopoly or even monopoly power) than to the size of the enterprise per se or its accessibility to the sources of finance. An example substantiating this argument is provided when public authorities contract with exclusive importers and distributors of commodities, in contracts for supplementary supplies of commodities or provision of services, follow-on contracts, etc. Those types of contracts tilt the balance of negotiating power towards the providing private enterprise. Hence, the argument that a public authority is *a priori* capable of imposing the contractual terms of payment or of escaping payment when due does not actually hold.

The proposed lump sum compensation of 5% on public authorities does not conform to the principle of proportionality for the following reasons:

I. because it discriminates against public authorities in commercial transactions, hence distorting competition, as it is safeguarded in article 81, para. 1d of the Treaties.

II. because such as measure attempts to correct a distortion (diverging payment practices and rules among member-states impeding the efficient operation of the single market and the growth of intra-EU trade) with a new distortion, such that of competition on equal footing among economic actors while in transaction.

III. because it raises disproportionately intra-EU trade risk for public authorities. That could discourage intra-EU trade rather than enhancing it, as the proposed Directive aspires to do.

Furthermore, the above-mentioned limitation of the room of manoeuvre of both public authorities and private enterprises to voluntarily agree on a payment period exceeding the 30-day provision of the proposed Directive violates the fundamental principle of contract between economic operators. This is a too tight regulation – not envisaged for commercial transactions among private enterprises – to achieve the expected objective.

Examination with respect to the principle of subsidiarity:

Diverging payment practices and rules among member-states do in fact impede the efficient operation of the single market and the growth of intra-EU trade. In that respect, they provide the rationale for correcting action at the EU level. Nonetheless, the introduction of a uniform and mandatory economic disincentive in the form of a lump sum compensation equal to the 5% of the amount due fails to distinguish between, on the one hand, financially stable public authorities, which might encounter a temporary liquidity problem and, on the other, commercially untrustworthy public authorities, systematically evading their payment obligations. This is, however, a type of information which might be available to the creditor and to the judicial and other enforcement authorities at the level of the member-state. If a uniform and mandatory additional lump sum compensation is applied indiscriminately, then it might further destabilize the financial position of those authorities unable to pay on time, hence reversing the expected effects. The *a priori* equalization of those unable to pay on the due date with those who are unwilling to do so is the result of an inherent asymmetry of information which renders the member-state into the appropriate level of intervention. Hence, even if mitigating the intra-EU trade risk requires action at the EU level, the particular measure of 5% lump sum compensation violates the principle of subsidiarity.