

PRESIDENT OF THE CHAMBER OF DEPUTIES

Dear Mr Barroso,

I wish to inform you that on 10 June 2010 the joint Committees II (Justice) and X (Productive Activities) of the Chamber of Deputies approved a document – which I am enclosing with this letter – 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).

Yours sincerely

---signature illegible---

José Manuel BARROSO
President of the European Commission
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Doc. XVIII
N. 22

CHAMBER OF DEPUTIES

JOINT COMMITTEES II (JUSTICE) AND X
(PRODUCTIVE ACTIVITIES, TRADE AND TOURISM)

FINAL DOCUMENTO, IN ACCORDANCE WITH ARTICLE 127 OF THE RULES OF
PROCEDURE 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)

Approved on 10 June 2010

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)

FINAL DOCUMENT APPROVED BY THE COMMITTEES

The joint Committees II (Justice) and X (Productive Activities)

Having considered pursuant to Article 127 of the Rules of Procedure the proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions COM(2009) 126 final;

Having received the opinion expressed on 21 July 2009 by Committee XIV (European Union Policies), with whose assessment they agree;

Whereas:

The Commission initiative is of the utmost importance for the business system, especially small and medium-sized enterprises, because its intention is to tackle conclusively the long-standing problem of the late payment by debtors of what they owe for the provision of goods and services;

The problem becomes macroscopic in the case of the delays with which public administrations settle the debts which they have incurred with their suppliers;

The consolidation of the practice whereby public administrations make payments with considerable delay, benefiting from their position of strength in relation to their counterparts, who very often put up with the delays without complaint for fear of losing their status as suppliers, prompts these creditor companies to defer the payments which they in turn are required to make to their own suppliers, thereby aggravating the difficulties for the whole production system;

the result is a general lack of liquidity for undertakings which are obliged to incur debts, to the detriment of their investment prospects and with adverse repercussions on their competitiveness;

The consequences of delays are particularly serious at times of recession or of economic crisis, such as now, and this increases the number of undertakings at risk of bankruptcy;

The issue of late payments takes on the nature of a genuine emergency in Italy which stands out, within the EU, for the particularly long delays in making payments by public administrations, especially in the health sector;

The steady accumulation of debts to their suppliers by public administrations in our country is unacceptable, also in view of the fact that these undertakings are, at the same time, urged to comply with their fiscal obligations without being able to benefit from the possibility of offsetting credit and debt positions;

The Community action, which calls for more stringent rules at European level, also with regard to the system of penalties to be applied, especially when responsibility for delays may be attributed to public administrations, seems to merit full support also in view of the distortive effects which the delays can cause with regard to national undertakings and those of other countries, to the detriment of competition;

The problem cannot therefore be satisfactorily solved in most Member States without specific and precise European rules;

The indication of very short time limits and the scale of the penalties laid down are bound to provide, in regulatory terms, the conditions for ensuring a decisive change;

EXPRESS a positive assessment:

calling on the Government, with regard to the position to be adopted for defining legislative proposals and for decision-making for the relevant Community institutions, to take account of the following comments:

- a) the proposal for a Directive provides an opportunity for a systematic solution to

the problem of late payments in respect of which - while laudable attempts have hitherto been made to tackle and solve the problem – there is a need for collaboration in order to ensure swift approval so that there can be prompt settlement of debts which have accumulated and so that such circumstances do not recur in the future;

- b)* the delays in payments by public administrations in Italy have reached a scale which is no longer acceptable and, as a result, the Government must make an utmost effort to ensure, when implementing the Directive, the adoption of every initiative which can return the situation to a physiological status which is at least comparable to that found in other Member States of the European Union, while complying with financial compatibility;
- c)* every effort must be made to avoid unfair situations which would result if a distinction were made between outstanding debts and new debts, so that there is no discrepancy of treatment likely to have distortive effects on the market;
- d)* with regard to the rules on compensation to be paid to creditors for administrative and internal costs incurred because of late payment, an effort must be made to avoid the risk of causing inequalities, in particular when the amounts owed are equal to or slightly more than EUR 10 000, in relation to amounts owed which are just below the amount mentioned;
- e)* an assessment also needs to be made as to whether the compensation figure of 5% laid down by the Directive is proportionate in relation to late payment by public administrations, given that this figure has been fixed regardless of the length of delay in making payment;
- f)* with a view to making the provisions of the Directive effective and applicable, the Government will have to make the utmost effort to raise at Community level the issue of revising the provisions of the stability pact which needs to be amended to provide greater flexibility in the arrangements for its application.

CHAMBER OF DEPUTIES - XVI LEGISLATURE
Report of Standing Committee XIV
(European Union Policies)

21 July 2009

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)

Committee XIV (European Union Policies),

Having considered pursuant to Article 127 of the Rules of Procedure the proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions COM(2009) 126 final;

Whereas:

The proposal for a Directive constitutes the first major measure implementing the Small Business Act and is intended to solve a problem which affects the business system and which is particularly serious in scale in Italy; it concerns in fact the delays which occur in the payment of goods and services, especially by public administrations;

The delays cause tremendous difficulties for creditor companies, especially small and medium-sized enterprises, which are deprived of the liquidity they need to perform their activities and to make new investments, hampering their growth and, in some cases, jeopardising their survival; in particular, the delays also cause undertakings to get into debt with the banking system in order to obtain the resources they need, thereby aggravating their precarious financial situation;

The problem has assumed quite alarming proportions in the current economic circumstances which are marked by a serious economic crisis and a contraction in demand and thus in orders;

The initiatives adopted by the Government with the provisions referred to in Article 9 of Decree-Law No 78/2009, currently being transposed, seem consistent with the objectives which the proposal for a Directive seeks to attain and provide the basis for an operational and structural solution to the problem, which will require the adoption of further measures, particularly with regard to the time limit fixed at 30 days within which public administrations will be required to settle invoices; in view of the request that this opinion, together with the final document approved by the Committee, be forwarded to the European Commission and the European Parliament;

expresses its

FAVOURABLE OPINION

with the following comments:

a) The proposal for a Directive seems to comply fully with the principle of

subsidiarity, given that late payments have an adverse effect on inter-Community trade because public administrations very often tend to be less sensitive to a loss of reputation when the creditor is a foreign supplier; the adoption of standard European rules, strengthening the provisions of Directive 2000/35, is also justified in relation to the objective of countering types of unfair protection of national economic operators to the disadvantage of undertakings from other Member States;

b) Concerning the scale of the amounts to be paid to creditors as compensation for administrative and internal costs incurred because of late payments, for which there is provision for three bands, the utmost attention must be given to assessing the risk of fixing unfair conditions, especially in the case of amounts equal to or slightly more than EUR 10 000 in relation to amounts owed which are just below the amount mentioned;

e) Every initiative, whether legislative or administrative, must be taken which can guarantee the full application of the proposal for a Directive, including the time limit of 30 days within which public administrations must make payments.