Brussels, - 7 OCT. 2010
C/2010/

Dear President,

The Commission would like to thank the Italian Chamber of Deputies for its comments on the Commission 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}.

The Commission welcomes the thorough analysis by, and the broad support of, the Chamber for this proposal as well as its view that the proposal takes adequate account of the principle of subsidiarity.

You will find here attached the comments of the Commission to the opinion of the Italian Chamber of Deputies.

I look forward to continuing this fruitful exchange of views.

Yours sincerely,

Mr Gianfranco Fini
President of the Chamber of Deputies
Piazza Montecitorio
I-00100 Rome
Italy

EUROPEAN COMMISSION

COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE ITALIAN CHAMBER OF DEPUTIES

COM(2009)126 – 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 {SEC(2009)315} {SEC(2009)316} {SEC(2009)317}

The opinion of the Committees focused on Articles 4 and 5 of the Commission proposal on which the Commission is invited to comment and provide some clarifications.

a) Commission's position on Articles 4 and 5 of its proposal following comments raised by the Italian Chamber of Deputies:

The presumption of this proposal is that late payment always causes some kind of damage to the creditor. Late payment and the subsequent effects on cash flow are particularly problematic for small businesses that have limited financial resources. The impact of delayed payment could be devastating for some businesses. The financing costs and management time involved in slow or uncertain payment erodes the profitability of a sale and, when profit margins are tight, can eliminate it altogether. Uncertainties regarding the timing of trade payments make cash-flow management and banking relationships even more difficult. Chasing payment puts a strain on the owner-manager of many small businesses, whose attention and time is diverted away from business strategy, as well as on customer and supplier relations. Where slow payment progresses to protracted default and bad debt the whole viability and survival of the business can be at risk. Indeed surveys by insolvency practitioners indicate that problems with cash-flow or working capital management and bad debts are the primary reasons that small businesses fail. Late payments have a knock on effect through the small business sector, and late payments between small businesses are pervasive.

The Directive only applies in cases of late payment caused by the fault or the negligence of the debtor. One of the major challenges for creditors is how then to prove the damage caused by such late payment. How can they prove, under the current legal regime, the time and the effort spent on chasing payments and credit management in a case of late payment? The objective of Article 4 is exactly to avoid this question by fixing lump sum amounts covering the internal costs with respect to late payment and credit management.

Article 4 will only serve as an additional tool with fixed amounts so that the thorny question of an equitable estimation of the damage can be avoided. The Commission takes note of the concerns raised by the Chamber about the lump sum compensation equal to 5% of the amount due, which public authorities should pay in cases of late payment (Article 5 of the proposal). The aim of this compensation was to serve as a deterrent and to strongly encourage public authorities throughout the EU to honour their contractual payment obligations.

In this regard, the Commission informs the Chamber that the Internal Market and Consumer Protection Committee of the European Parliament proposed to amend Articles 4 and 5 by deleting respectively the compensation of recovery costs of 1% in Article and the lump sum compensation equal to 5% in Article 5 [legislative resolution A7-0136/2010].

b) The Committees raised the **need to review the stability and growth pact** in order to make the provisions of the Directive effective and applicable. The Commission wishes to emphasize that the proposal deals with payment delays and not with the level of government outlays. It therefore does not affect the fiscal position of the Member States other than by avoiding government's additional outlays in the form of late payment interest through its objective to improve the payment discipline of public authorities.

c) Conclusion

The Commission welcomes the opinion of the Chamber of Deputies as generally supportive of its proposal.

This proposal will have to be endorsed by the Council and the European Parliament under the ordinary legislative procedure. The Commission wishes to emphasise that the opinion of the Italian Chamber of Deputies can be referred to during the forthcoming negotiations with the Council and the European Parliament on this proposal.