



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

1 June 2017*

(Reference for a preliminary ruling — Combating late payments in commercial transactions — Directive 2011/7/EU — Commercial lease contracts of indefinite duration — Late rent payments — Contracts concluded before the period for transposing that directive had expired — National rules — Exclusion of such contracts from the temporal scope of that directive)

In Case C-330/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), made by decision of 16 May 2016, received at the Court on 10 June 2016, in the proceedings

Piotr Zarski,

v

Andrzej Stadnicki,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda and C. Lycourgos (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Piotr Zarski, by B. Stankiewicz and Z. Korsak and by A. Ostrowska-Maciąg, radcy prawni,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Spanish Government, by A. Sampol Pucurull, acting as Agent,
- the European Commission, by M. Patakia and A.C. Becker and by J. Szczodrowski, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Polish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(1), Article 2(1), Article 3, Article 6, Article 8 and Article 12(4) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2011 L 48, p. 1).
- 2 The request has been made in proceedings between Piotr Zarski and Andrzej Stadnicki concerning compensation for recovery costs incurred by Mr Zarski in order to recover rent arrears from Mr Stadnicki.

Legal context

European Union law

Directive 2000/35/EC

- 3 Article 6(3) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35) provides:

‘In transposing this Directive, Member States may exclude:

...

(b) contracts that have been concluded prior to 8 August 2002 ...’

Directive 2011/7

- 4 Recital 12 of Directive 2011/7 states:

‘Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low or no interest rates charged on late payments and/or slow procedures for redress. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest should always be considered to be a grossly unfair contractual term or practice, is necessary to reverse this trend and to discourage late payment. Such a shift should also include the introduction of specific provisions on payment periods and on the compensation of creditors for the costs incurred, and, inter alia, that the exclusion of the right to compensation for recovery costs should be presumed to be grossly unfair.’

- 5 Under Article 1(1) of Directive 2011/7:

‘[t]he aim of this Directive is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of [small and medium-sized enterprises (SMEs)].’

6 Article 2 of that directive provides:

‘For the purposes of this Directive:

(1) “commercial transactions” means transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration;

...’

7 Under the title ‘Compensation for recovery costs’, Article 6 of Directive 2011/7 provides:

‘1. Member States shall ensure that, where interest for late payment becomes payable in commercial transactions in accordance with Article 3 or 4, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40.

2. Member States shall ensure that the fixed sum referred to in paragraph 1 is payable without the necessity of a reminder and as compensation for the creditor’s own recovery costs.

3. The creditor shall, in addition to the fixed sum referred to in paragraph 1, be entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that fixed sum and incurred due to the debtor’s late payment. This could include expenses incurred, inter alia, in instructing a lawyer or employing a debt collection agency.’

8 Article 12(4) of Directive 2011/7 states:

‘In transposing the Directive, Member States shall decide whether to exclude contracts concluded before 16 March 2013.’

9 The first subparagraph of Article 13 of Directive 2011/7 provides:

‘Directive 2000/35/EC is repealed with effect from 16 March 2013, without prejudice to the obligations of the Member States relating to the time limit for its transposition into national law and its application. However, it shall remain applicable to contracts concluded before that date to which this Directive does not apply pursuant to Article 12(4).’

Polish law

10 Directive 2011/7 was transposed into Polish law by the Law of 8 March 2013 on payment periods in commercial transactions (‘the Law of 8 March 2013’), which entered into force on 28 April 2013 and repealed the Law of 12 June 2003 on payment periods in commercial transactions.

11 Article 4 of the Law of 8 March 2013 provides:

‘For the purposes of this Law:

“commercial transaction” means a contract having as its object a supply of goods or provision of a service for consideration, where parties as referred to in Article 2 enter into it in connection with the activity they carry out;

...’

12 Article 10 of that law provides:

‘1. From the date on which entitlement to interest as referred to in Article 7(1) or Article 8(1) is acquired, the creditor shall be entitled to receive from the debtor, without prior request, the equivalent of EUR 40 converted into PLN [(Polish zloty)] at the mean euro exchange rate announced by the National Bank of Poland on the final working day of the month preceding the month in which the payment constituting compensation for recovery costs became due.

2. In addition to the amount referred to in paragraph 1, the creditor shall also be entitled to a refund, in a reasonable amount, of the costs incurred in recovering amounts in excess of that amount.

3. The amount referred to in paragraph 1 shall be due on a commercial transaction, subject to Article 11(2)(2).’

13 Article 15 of the Law of 8 March 2013 provides:

‘1. The provisions previously in force shall apply to commercial transactions concluded before the date on which this Law enters into force.

...’

14 Unlike Article 10(1) of the Law of 8 March 2013, no provision of the Law of 12 June 2003 on payment periods in commercial transactions entitled the creditor to claim lump-sum compensation of EUR 40 for recovery costs incurred.

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 The parties to the dispute in the main proceedings are businessmen who, on 20 September 2010, concluded a lease contract of indefinite duration, pursuant to which the lessee, Mr Stadnicki, used the office premises belonging to the lessor, Mr Zarski, in return for the payment of rent. The lessor demanded payment from the lessee of a lump sum of EUR 40 as compensation for the costs of recovering late rent payments between 9 April 2014 and February 2015.

16 The Sąd Rejonowy dla m. st. Warszawy (District Court, Warsaw, Poland) dismissed Mr Zarski’s action, based on Article 10(1) of the Law of 8 March 2013, on the ground that, in accordance with Article 15 thereof, that law did not apply to contracts concluded before 28 April 2013. Mr Zarski brought an appeal against that decision before the referring court.

17 The referring court is uncertain, first of all, whether the letting of premises is a service within the meaning of Article 2(1) and Article 3 of Directive 2011/7.

18 In the event that the first question is answered in the affirmative, the referring court has doubts as to whether, in the case of a lease contract of indefinite duration, the commercial transaction corresponds to the contract or to the single, separate ‘transaction’ that each rent payment constitutes. In the referring court’s view, the contract is made up of a number of operations which constitute a sequence of commercial transactions. It is true that the Law of 8 March 2013 limits commercial transactions to contracts. However, uncertainty remains as to whether the EU legislature protects a legal act such as a contract or whether it also safeguards a commercial operation carried out by an economic operator, such as a payment made in return for the provision of goods or services.

- 19 According to the referring court, it follows from Article 2(1) of Directive 2011/7, that although every contract is a commercial transaction, not every commercial transaction is necessarily a contract. Thus, several commercial transactions could be carried out under a single framework contract. In addition, the creditor's right to obtain prompt payment in a commercial transaction pleads in favour of that protection not being limited to contracts, but extended to commercial operations.
- 20 If it is held that the concept of a 'commercial transaction' must be understood as covering the single, separate transaction that each rent payment constitutes, the referring court asks whether the Member States may exclude, under Article 12(4) of Directive 2011/7, the application of that directive to lease contracts concluded before 16 March 2013, in cases where the late payments of rent occur after that date.
- 21 The referring court points out that Article 12(4) of Directive 2011/7 uses the term 'contract' and not 'transaction', whereas the term 'transaction' appears in several other provisions. It considers, however, that uncertainty remains as to whether or not the purpose of that directive is to protect individual permanent or periodic relationships and, accordingly, whether or not, in interpreting Article 12(4) of that directive, preference should in principle be given to the immediate application of the new law.
- 22 In those circumstances, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Does the letting of premises constitute a service within the meaning of Articles 2(1) and 3 (and recitals 2, 3, 7, 11, 18 and 23) of Directive 2011/7?
- (2) If the answer to Question 1 is in the affirmative, where a letting contract of indefinite duration is concluded, does the contract or the single, separate 'transaction', which is what each individual rental payment in return for access to the premises and utilities is, constitute a commercial transaction within the meaning of Articles 1(1), 2(1), 3, 6 and 8 (and recitals 1, 3, 4, 8, 9, 26 and 35) of Directive 2011/7?
- (3) If in the answer to Question 2 it is established that each individual payment of rent in return for access to the premises and utilities does constitute a commercial transaction, must Articles 1(1), 2(1) and 12(4) (and recital 3) of Directive 2011/7 be interpreted as meaning that the Member States can exclude application of [that] directive to letting contracts concluded before 16 March 2013 in cases where late individual payments of rent occur after that date?

Consideration of the questions referred

The second and third questions

- 23 By its second and third questions referred, which it is appropriate to examine first and together, the referring court asks, in essence, whether Article 12(4) of Directive 2011/7 must be interpreted as meaning that the Member States may exclude late payments in the performance of a contract concluded before 16 March 2013 from the scope of that directive, even where those late payments occur after that date or whether those payments constitute commercial transactions which must necessarily fall within the temporal scope of that directive.
- 24 Article 12(4) of Directive 2011/7 allows the Member States to decide, in transposing that directive, whether to exclude contracts concluded before 16 March 2013 from the scope of that directive.

- 25 It must be observed that, according to settled case-law, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (judgment of 18 October 2016, *Nikiforidis*, C-135/15, EU:2016:774, paragraph 28 and the case-law cited).
- 26 As Article 12(4) of Directive 2011/7 makes no express reference to the law of the Member States, it should therefore be interpreted autonomously and uniformly. Such an interpretation must take into account the terms of that provision, its context and the objective of Directive 2011/7 (judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 33).
- 27 Thus, as regards the wording of Article 12(4) of Directive 2011/7, it must be noted that the EU legislature uses the term ‘contracts concluded’ and not the term ‘commercial transactions’, which is used in other provision of that directive.
- 28 Accordingly, and without it being necessary to determine, in the context of the present reference for a preliminary ruling, whether the concept of ‘commercial transactions’ can cover, as the referring court seems to suggest, the means of performance of a contract, it suffices to note that, in any event, the EU legislature was careful not to use that term in any way when it determined the scope of the power granted to the Member States under Article 12(4) of Directive 2011/7.
- 29 The examination of the wording of that provision therefore leads to the conclusion that, by using the term ‘contracts concluded’, the EU legislature intended to allow Member States to exclude from the scope of Directive 2011/7 contractual relationships concluded before 16 March 2013, in their entirety, including the effects of those contractual relationships which arise after that date.
- 30 That interpretation is supported by the context of the provision at issue and, in particular, by the scope of Article 13 of Directive 2011/7.
- 31 Article 13 of Directive 2011/7 repeals Directive 2000/35 with effect from 16 March 2013, while providing that that directive nevertheless remains applicable to contracts concluded before that date to which Directive 2011/7 does not apply pursuant to Article 12(4) thereof.
- 32 It follows that, where a Member State has made use of the power granted to it under Article 12(4) of Directive 2011/7, contracts concluded before 16 March 2013 continue — subject to Article 6(3)(b) of Directive 2000/35 — to be governed by Directive 2000/35, including as regards their future effects, notwithstanding the fact that that directive is, in principle, repealed as from that date. In this case, Directive 2011/7 cannot apply to the effects of such contracts which occur as from 16 March 2013, since those effects cannot be subject to both Directive 2000/35 and Directive 2011/7.
- 33 It follows from the foregoing that the claims relating to payments due after 16 March 2013 cannot fall within the scope of Directive 2011/7 where the contract, pursuant to which those payments are due, was concluded before that date and the Member State concerned has made use of the power granted to it under Article 12(4) of Directive 2011/7.
- 34 Consequently, the answer to the second and third questions referred is that Article 12(4) of Directive 2011/7 must be interpreted as meaning that the Member States may exclude from the scope of that directive late payments in the performance of a contract concluded before 16 March 2013, even where those late payments occur after that date.

The first question

- 35 In view of the answer to the second and third questions, there is no need to reply to the first question.
- 36 Since the contract at issue in the main proceedings was concluded before 16 March 2013 and the Republic of Poland has made use of the power granted to it under Article 12(4) of Directive 2011/7, that contract cannot fall within the temporal scope of that directive, with the result that it is unnecessary to determine whether it must also be excluded from the material scope of that directive.

Costs

- 37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

Article 12(4) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions must be interpreted as meaning that the Member States may exclude from the scope of that directive late payments in the performance of a contract concluded before 16 March 2013, even where those late payments occur after that date.

[Signatures]