Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

18 November 2020*

(Reference for a preliminary ruling – Combating late payments in commercial transactions – Directive 2000/35/EC – Concept of 'commercial transactions' – Concepts of 'delivery of goods' and 'provision of services' – Article 1 and first subparagraph of Article 2(1) – Public works contract)

In Case C-299/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Torino (District Court, Turin, Italy) made by decision of 9 March 2019, received at the Court on 11 April 2019, in the proceedings

Techbau SpA

v

Azienda Sanitaria Locale AL,

THE COURT (Ninth Chamber),

composed of N. Piçarra (Rapporteur), President of the Chamber, S. Rodin and K. Jürimäe, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Azienda Sanitaria Locale AL, by C. Castellotti, avvocato,

– the European Commission, by R. Tricot, G. Gattinara and K. Mifsud-Bonnici, acting as Agents,

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

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) 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).

2 The request has been made in proceedings between Techbau SpA and Azienda Sanitaria Locale AL (public body responsible for the public health service, Alessandria, Italy) ('ASL') concerning the payment of default interest on the amount due for the performance of a contract having as its object the realisation of an operating block for a hospital.

Legal context

EU law

Directive 2000/35

3 Directive 2000/35 was repealed and replaced by Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ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) with effect from 16 March 2013.

4 Recitals 7, 9, 10, 13, 16, 19, 20 and 22 of Directive 2000/35 stated:

'(7) Heavy administrative and financial burdens are placed on businesses, particularly small and medium-sized ones, as a result of excessive payment periods and late payment. Moreover, these problems are a major cause of insolvencies threatening the survival of businesses and result in numerous job losses.

…

(9) The differences between payment rules and practices in the Member States constitute an obstacle to the proper functioning of the internal market.

(10) This has the effect of considerably limiting commercial transactions between Member States. This is in contradiction with Article 14 [EC (now Article 26 TFEU)] as entrepreneurs should be able to trade throughout the internal market under conditions which ensure that transborder operations do not entail greater risks than domestic sales. Distortions of competition would ensue if substantially different rules applied to domestic and transborder operations.

…

(13) This Directive should be limited to payments made as remuneration for commercial transactions and does not regulate transactions with consumers, interest in connection with other payments, e.g. payments under the laws on cheques and bills of exchange, payments made as compensation for damages including payments from insurance companies.

…

(16) Late payment constitutes a breach of contract which has been made financially attractive to debtors in most Member States by low interest rates on late payments and/or slow procedures for redress. A decisive shift, including compensation of creditors for the costs incurred, is necessary to reverse this trend and to ensure that the consequences of late payments are such as to discourage such late payment.

…

(19) This Directive should prohibit abuse of freedom of contract to the disadvantage of the creditor. …

(20) The consequences of late payment can be dissuasive only if they are accompanied by procedures for redress which are rapid and effective for the creditor. In conformity with the principle of non-discrimination contained in Article 12 [EC], those procedures should be available to all creditors who are established in the [European Union].

…

(22) This Directive should regulate all commercial transactions irrespective of whether they are carried out between private or public undertakings or between undertakings and public authorities, having regard to the fact that the latter handle a considerable volume of payments to business. It should therefore also regulate all commercial transactions between main contractors and their suppliers and subcontractors.'

5 Article 1 of the directive provided:

'This Directive shall apply to all payments made as remuneration for commercial transactions.'

6 Under Article 2 of the directive, headed 'Definitions':

'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,

"public authority" means any contracting authority or entity, as defined by the Public Procurement Directives …

"undertaking" means any organisation acting in the course of its independent economic or professional activity, even where it is carried on by a single person;

…'

7 Article 6(1) and (3) of Directive 2000/35, that article being entitled 'Transposition', provided:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 8 August 2002. They shall forthwith inform the Commission thereof.

…

3. In transposing this Directive, Member States may exclude:

(a) debts that are subject to insolvency proceedings instituted against the debtor;

(b) contracts that have been concluded prior to 8 August 2002; and

(c) claims for interest of less than EUR 5.'

Directive 2004/18/EC

8 Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114), which repealed and replaced, with effect from 31 January 2006, Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1), except for Article 41 thereof, and Council Directives 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), was itself repealed and replaced, with effect from 18 April 2016, by Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18 (OJ 2014 L 94, p. 65).

9 Article 1(2), (8) and (9) of Directive 2004/18, that article being entitled 'Definitions', provided:

'2. (a) "Public contracts" are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive.;

(b) "Public works contracts" are public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A "work" means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.;

(c) "Public supply contracts" are public contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products.

…;

(d) "Public service contracts" are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II.

…

8. …

The term "economic operator" shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.

…

9. "Contracting authorities" means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

A "body governed by public law" means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

…'

10 The list of activities referred to in Article 1(2)(b) of Directive 2004/18, set out in Annex I thereto, included, inter alia, building construction and civil engineering works.

Directive 2011/7

11 Article 12(1) of Directive 2011/7 required Member States to transpose the directive by 16 March 2013 at the latest and Article 12(4) thereof gave them the power to exclude, when transposing the directive, contracts concluded before that date.

12 Under the first paragraph of Article 13 of that directive:

'Directive [2000/35] 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).'

Italian law

Legislative Decree No 231

13 Decreto legislativo n. 231 – Attuazione della direttiva 2000/35/EC relativa alla lotta contro i ritardi di pagamento nelle transazioni commerciali (Legislative Decree No 231/2002 implementing Directive 2000/35/EC on combating late payment in commercial transactions) of 9 October 2002 (GURI No 249 of 23 October 2002; 'Legislative Decree No 231') transposed Directive 2000/35 into Italian law.

14 Article 1 of that legislative decree provides:

'This legislative decree shall apply to all payments made as remuneration for commercial transactions.'

15 Article 2(1) of that legislative decree, that article being entitled 'Definitions', stipulates:

'For the purposes of this decree:

(a) "commercial transactions" means transactions, however described, between undertakings or between undertakings and public authorities which lead, exclusively or primarily, to the delivery of goods or the provision of services in exchange for remuneration;

(b) "public authorities" means State authorities, the regions, the autonomous provinces of Trento and Bolzano, local public authorities and their groupings, non-economic public bodies and any other body with legal personality established for the purpose of meeting specific needs in the general interest, not having an industrial or commercial character, whose activity is financed, for the most part, by the State, the regions, local authorities, other public authorities or bodies governed by public law, or subject to management supervision by the latter, or having administrative, managerial or supervisory boards composed, at least for half, of members appointed by those public entities.'

16 Article 11(1) of that legislative decree states that its provisions do not apply to contracts concluded before 8 August 2002.

Legislative Decree No 163

17 Decreto legislativo n. 163 – Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/EC (Legislative Decree No 163 establishing a Code on public works contracts, public service contracts and public supply contracts implementing Directives 2004/17/EC and 2004/18/EC) of 12 April 2006 (Ordinary Supplement to GURI No 100 of 2 May 2006; 'Legislative Decree No 163') defines, in Article 3(3) thereof, the concepts of 'contracts' or 'public contracts' as 'procurement or concession contracts having as their object the acquisition of services or supplies or the realisation of a work or works, put in place by the contracting authorities, contracting bodies or contracting entities'.

Legislative Decree No 192

18 Decreto legislativo n. 192 – Modifiche al decreto legislativo 9 ottobre 2002, n. 231, per l'integrale recepimento della direttiva 2011/7/UE relativa alla lotta contro i ritardi di pagamento nelle transazioni commerciali, a norma dell'articolo 10, comma 1, della legge 11 novembre 2011, n. 180 (Legislative Decree No 192, amending Legislative Decree of 9 October 2002, No 231, for the purpose of transposing in full Directive 2011/7/EU on combating late payment in commercial transactions, in accordance with Article 10(1) of the Law of 11 November 2011, No 180) of 9 November 2012 (GURI No 267, of 15 November 2012; 'Legislative Decree No 192') transposed Directive 2011/7 into Italian law.

19 Legislative Decree No 192 essentially left unchanged the definition of the concept of 'commercial transactions' as set out in Article 2(1)(a) of Legislative Decree No 231 in its original version.

20 By contrast, Article 2(1)(b) of Legislative Decree No 231, in the version resulting from Legislative Decree No 192 ('Legislative Decree No 231 as amended'), now defines 'public authorities' as 'the authorities referred to in Article 3(25) of Legislative Decree [No 163], and any other entity, when carrying on an activity in respect of which it is required to comply with the rules laid down by Legislative Decree [No 163]'.

21 Pursuant to Article 3 thereof, Legislative Decree No 192 applies to transactions concluded on or after 1 January 2013.

Law No 161

22 Following the opening by the European Commission of an EU PILOT procedure (5216/13/ENTR.1) against the Italian Republic, the Italian legislature adopted legge n. 161 – Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea – Legge europea 2013-bis (Law No 161 laying down provisions for the fulfilment of the obligations arising from Italy's membership to the European Union – European Law 2013-*bis*) of 30 October 2014 (Ordinary Supplement to GURI No 261 of 10 November 2014; 'Law No 161').

23 Article 24(1) of that law provides:

'Article 2(1)(a) of Legislative Decree [No 231], as replaced by Article 1(1)(b) of Legislative Decree [No 192], must be interpreted as meaning that the commercial transactions referred to also include the contracts referred to in Article 3(3) of Legislative Decree [No 163].'

The facts in the main proceedings and the question referred for a preliminary ruling

24 On 29 April 2010, ASL and Techbau concluded a public contract with a value of EUR 7 487 719.49 having as its object the 'turnkey' delivery and fitting-out, using a prefabricated modular system, of an operating block for the Ospedale Santo Spirito di Casale Monferrato (Holy Spirit hospital, Casale Monferrato, Italy). The contract concerned six operating theatres with additional space and connecting corridors as well as the execution of all civil engineering works and necessary installation works.

25 While the tender specifications attached to the contract provided for a payment period of 90 days after receipt of the invoice, it is apparent from the order for reference that ASL paid with considerable delays the amount of remuneration stipulated in the contract with the result that Techbau brought an action before the referring court seeking an order requiring ASL to pay it default interest in the amount of EUR 197 008.65, calculated at the rate laid down by Legislative Decree No 231.

26 ASL disputes the existence of that debt, arguing that the contract at issue in the main proceedings, in so far as it is a works contract having as its object the realisation of a public work, is not covered by the concept of 'commercial transactions' within the meaning of Article 2(1)(a) of Legislative Decree No 231 and therefore falls outside the scope of that legislative decree.

27 In that regard, the referring court is of the opinion, on the basis of an examination of the tender specifications attached to the contract at issue in the main proceedings, that it is a works contract and not a supply contract, since the contracting authority's interest in the construction of the building prevails over its furnishing.

28 It states that, under Italian law, a works contract for the realisation of a work, in so far as it must be distinguished from a contract having as its object the delivery of goods or the provision of services, must be excluded from the concept of 'commercial transactions' within the meaning of Article 2(1)(a) of Legislative Decree No 231, as interpreted by national case-law, and therefore fall outside the scope of that legislative decree. It follows that the consequences of late payment with regard to public works contracts are governed not by the provisions of Legislative Decree No 231 but by those, less favourable for creditors, of Legislative Decree No 163 and the rules adopted pursuant to it.

29 However, the referring court expresses doubts as to that approach, in so far as it amounts to interpreting the terms 'delivery of goods' and 'provision of services', which appear in the definition of the concept of 'commercial transactions' laid down in Article 2(1)(a) of Legislative Decree No 231, without taking account of the meaning of those terms in the EU legal order.

30 Against that background, the referring court points out that, admittedly, according to the authentic interpretation provided by Law No 161 in respect of Article 2(1)(a) of Legislative Decree No 231 as amended, the concept of 'commercial transactions' referred to therein now also includes contracts having as their object the realisation of a work or works and the design and execution of public construction and civil engineering works. However, it takes the view that, in the absence of transitional measures prescribed by Law No 161, it is not clear from that law that that authentic interpretation had the effect of bringing a works contract for the realisation of a public works concluded before the entry into force, on 1 January 2013, of Legislative Decree No 192, within the concept of 'commercial transactions' under Article 2(1)(a) of Legislative Decree No 231 and, therefore, within the scope thereof.

31 In those circumstances, the referring court considers that, for the purposes of ruling on the dispute in the main proceedings, it is necessary to ascertain whether the concept of 'commercial transactions' referred to in the first subparagraph of Article 2(1) of Directive 2000/35, which Article 2(1)(a) of Legislative Decree No 231 transposed into Italian law, covers a contract such as that at issue in the main proceedings.

32 It is in those circumstances that the Tribunale ordinario di Torino (District Court, Turin, Italy) decided to stay the proceedings and to refer the following question to the Court of Justice:

'Does Article 2(1) of Directive [2000/35] preclude a national provision, such as Article 2(1)(a) of Legislative Decree [No 231], which excludes works contracts ("*contratto d'appalto d'opera*"), whether public or private, and specifically public works contracts within the meaning of Directive [2004/18], from the concept of "commercial transactions" – defined as contracts that "lead, exclusively or primarily, to the delivery of goods or the provision of services in exchange for remuneration" – and therefore from the scope of that directive?'

Consideration of the question referred

33 The question referred must be understood as seeking, in essence, to ascertain whether the first subparagraph of Article 2(1) of Directive 2000/35 must be interpreted as meaning that a public works contract constitutes a commercial transaction within the meaning of that provision and therefore falls within the material scope of that directive.

34 In that regard, it must be noted at the outset that the Italian Republic exercised the power conferred upon Member States by Article 12(4) of Directive 2011/7 to exclude, when transposing that directive, contracts concluded before 16 March 2013. As is apparent from paragraph 21 above, pursuant to Article 3 of Legislative Decree No 192, which transposed that directive into Italian law, that decree was declared applicable to transactions concluded on or after 1 January 2013.

35 Here, since the contract at issue in the main proceedings was concluded on 29 April 2010, it falls within the scope *ratione temporis* of Directive 2000/35, which, pursuant to Article 13 of Directive 2011/7, without prejudice to the scenario referred to in Article 6(3)(b) of Directive 2000/35, remains applicable to contracts concluded before 16 March 2013.

36 Moreover, it must be pointed out that the facts in the main proceedings concern the late performance by ASL of the obligation to pay provided for in the works contract concluded with Techbau and having as its object the realisation of a public work. It is apparent from the order for reference that that contract for pecuniary interest, for the conclusion of which ASL acted as contracting authority and Techbau as tenderer and, thus, economic operator, is covered by the concept of 'public contracts' and, specifically, that of 'public works contracts' under Directive 2004/18. Article 1(2)(a) and (b) of the directive defines those concepts, respectively, as 'contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their

object the execution of works, the supply of products or the provision of services within the meaning of [that] directive' and as 'public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority'.

37 As regards the concept of 'commercial transactions' within the meaning of Directive 2000/35, the first subparagraph of Article 2(1) thereof defines that concept as 'transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration', without expressly mentioning public works contracts and, more generally, the realisation of a work or works and without defining the concepts of 'delivery of goods' or 'provision of services' referred to therein (see, by analogy, with regard to the interpretation of Article 2(1) of Directive 2011/7, judgment of 9 July 2020, *RL (Directive combating late payment)*, C-199/19, EU:C:2020:548, paragraph 27).

38 Since the first subparagraph of Article 2(1) of Directive 2000/35 also makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, that provision must normally be given an independent and uniform interpretation throughout the European Union. Such an interpretation must take account of the terms of that provision, its context and the objectives it pursues (see, by analogy, judgment of 9 July 2020, *RL (Directive combating late payment)*, C-199/19, EU:C:2020:548, paragraph 27) and, where appropriate, its origins (see, to that effect, judgment 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 47).

39 As regards, in the first place, the terms of the first subparagraph of Article 2(1) of Directive 2000/35, that provision sets out two conditions for a transaction to be covered by the concept of 'commercial transactions' referred to therein. It must, first, be carried out between undertakings or between undertakings and public authorities and, secondly, lead to the delivery of goods or the provision of services for remuneration (see, by analogy, judgment of 9 July 2020, *RL (Directive combating late payment)*, C-199/19, EU:C:2020:548, paragraph 24).

40 As regards the first condition, the interpretation of which raises no doubt for the referring court, it is sufficient to point out that the concept of 'public authority' is defined in the second subparagraph of Article 2(1) of Directive 2000/35 as meaning 'any contracting authority or entity, as defined by the Public Procurement Directives', whereas the concept of 'undertaking' is defined in the third subparagraph of Article 2(1) of that directive as meaning 'any organisation acting in the course of its independent economic or professional activity, even where it is carried on by a single person'.

41 As regards the second condition referred to in paragraph 39 above, according to which the transaction at issue must 'lead to the delivery of goods or the provision of services for remuneration', it should be noted that Directive 2000/35, in accordance with Article 1 thereof, read in the light of recitals 13 and 22 thereof, is applicable to all payments made as remuneration for commercial transactions, including those between undertakings and public authorities, to the exclusion of transactions with consumers and other types of payments, under Article 6(3) of that directive. Since transactions concerning public works contracts are not among the matters covered by that last provision, they cannot fall outside the material scope of that directive.

42 In that context, the Court has already stated that Article 1 of Directive 2000/35, read in conjunction with the first subparagraph of Article 2(1) thereof, defines the scope of that directive very broadly (see, to that effect, judgment of 28 November 2019, *KROL*, C-722/18, EU:C:2019:1028, paragraphs 31 and 32).

43 In those circumstances, a public works contract within the meaning of Article 1(2)(b) of Directive 2004/18 cannot fall outside the scope of Directive 2000/35 as defined in the first subparagraph of Article 2(1) of that directive.

44 In addition, the use in that last provision of the terms 'which lead to', in order to describe the link that must exist between, on the one hand, the 'transaction' and, on the other, the 'delivery of goods' or the 'provision of services' shows that a transaction which does not have as its object the delivery of goods or the provision of services may nevertheless be covered by the concept of 'commercial transactions' within the meaning of that provision, where such a transaction actually gives rise to such a delivery of goods or provision of services.

45 In particular, while a public works contract has as its object the realisation of a work or works, the fact remains that the undertakings given by the economic operator with regard to the contracting authority under that contract are capable of being given concrete expression, as in this case, through the provision of services, such as the drawing up of a project defined by the call for tender or the completion of administrative formalities, or through the delivery of goods, such as the supply of materials with a view to the realisation of the work in question.

46 Accordingly, the very terms used in the first subparagraph of Article 2(1) of Directive 2000/35 militate in favour of an interpretation of that provision meaning that a public works contract may be covered by the concept of 'commercial transactions' within the meaning of that provision.

47 In the second place, the context of that provision supports such an interpretation. It should be noted in that regard that the concept of 'public authority' found in that provision is defined in the second subparagraph of Article 2(1) of Directive 2000/35 as meaning 'any contracting authority or entity, as defined by the Public Procurement Directives'.

48 The express reference to the corresponding concept of 'contracting authorities', which appears in particular in Article 1(9) of Directive 2004/18, would be rendered redundant if public works contracts concluded by such authorities, subject to the rules and procedures laid down by those directives, were not covered by the concept of 'commercial transactions' within the meaning of the first subparagraph of Article 2(1) of Directive 2000/35 and, consequently, fell outside the material scope of that directive.

49 Furthermore, while Directive 2004/18 draws a distinction, on the basis of the object of the contract, between public works contracts, public supply contracts and public service contracts, it does not, however, appear that Directive 2000/35, in the absence of any indication to that effect, is based on such a distinction, with the effect of excluding public works contracts from the concepts of 'delivery of goods' and 'provision of services' referred to in the first subparagraph of Article 2(1) of that directive.

50 Furthermore, since Directive 2000/35, adopted on the basis of Article 95 EC (now Article 114 TFEU), falls within the framework of the approximation of the laws of the Member States, the object of which is the establishment and functioning of the internal market, account may be taken, for the purposes of its interpretation, of the concepts of 'goods' and 'services' within the meaning of the provisions of the FEU Treaty providing for the free movement of goods and services, and the Court's case-law interpreting those fundamental freedoms (see, by analogy, judgment of 9 July 2020, *RL (Directive combating late payment)*, C-199/19, EU:C:2020:548, paragraph 30).

51 According to the Court's case-law, 'goods' for the purposes of Article 28(1) TFEU means goods which can be valued in money and which are capable, as such, of forming the subject of commercial transactions (judgment of 23 January 2018, *Buhagiar and Others*, C-267/16, EU:C:2018:26, paragraph 67). As regards the concept of 'services', the first paragraph of Article 57 TFEU defines that concept as referring to services normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons, and, in its second paragraph, by way of example, it lists certain activities covered by that concept, including activities of a commercial character.

52 In the light of the definitions in the FEU Treaty in the area of fundamental freedoms, mentioned in the preceding paragraph, and the case-law relating thereto, there can therefore scarcely be any doubt that a works contract having as its object the realisation of a work or works, in general, and a public works contract, in particular, involve the delivery of 'goods' or the provision of 'services' within the meaning of Articles 28 and 57 TFEU. From that point of view, a public works contract may lead to the delivery of goods or the provision of services within the meaning of the first subparagraph of Article 2(1) of Directive 2000/35.

53 As regards, in the third place, the objective of Directive 2000/35, it must be borne in mind that that directive, as stated in recitals 9, 10 and 20 thereof, seeks to harmonise the consequences of late payment in order to make them dissuasive, so that commercial transactions throughout the internal market are not hindered (see, to that effect, judgment of 28 November 2019, *KROL*, C-722/18, EU:C:2019:1028, paragraph 35).

54 The exclusion of a not insignificant proportion of commercial transactions, namely those relating to public works contracts, from the benefit of the mechanisms for combating late payment laid down by Directive 2000/35 would, first, run counter to the objective of that directive, set out in recital 22 thereof, according to which the directive should regulate all commercial transactions, irrespective of whether they are carried out between private or public undertakings or between undertakings and public authorities. Secondly, such an exclusion would necessarily have the consequence of reducing the effectiveness of those mechanisms, including in relation to transactions that may involve operators from different Member States.

55 That is all the more so since, as the Commission pointed out in its written observations, in the area of public works contracts, late payment is likely to cause much greater problems than in other areas, due to the economic costs and risks which those contracts entail for economic operators.

56 As regards, in the fourth place, the origins of Directive 2000/35, it should be noted that, in the explanatory memorandum to the Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions of 25 March 1998 (OJ 1998 C 168, p. 13), which gave rise to that directive, the Commission highlighted, on the one hand, the contractual imbalance that exists between a large number of undertakings and public authorities, in particular in some sectors, such as construction, as a result of which payment terms are likely to be imposed on those undertakings without them genuinely being able to negotiate and, on the other hand, the need to regulate the consequences of late payment in the public construction sector.

57 Having regard to all of the foregoing, the answer to the question referred is that the first subparagraph of Article 2(1) of Directive 2000/35 must be interpreted as meaning that a public works contract constitutes a commercial transaction which leads to the delivery of goods or the provision of services within the meaning of that provision and, therefore, falls within the material scope of that directive.

Costs

58 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:

The first subparagraph of Article 2(1) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions must be interpreted as meaning that a public works contract constitutes a commercial transaction which leads to the delivery of goods or the provision of services within the meaning of that provision and, therefore, falls within the material scope of that directive.

[Signatures]