

IN THE WEMBLEY COUNTY COURT

BATORY INTERNATIONAL LTD

Claimant

and

KHAN PROPERTY MANAGEMENT LTD

Defendant

A. Facts:

1. The Claimant is a commercial undertaking which owns and leases a commercial property (the Wembley Shopping Centre) to the Defendant, pursuant to a 27-year lease concluded between those parties on 20 September 2013 and expiring on 20 September 2040.
2. The lease agreement obliges the Defendant ("the Lessee") to make monthly Lease Payment Amounts of €10,000 within 14 days after having received a valid VAT invoice for the relevant month, issued by the Claimant ("Lessor").
3. The Lessee did not make payment of one Lease Payment Amount for the month of April 2017. The Lessor initiates the present proceedings in June 2019, seeking a court order requiring the Lessee to pay: (i) the monthly Lease Payment Amount for April 2017 (€10,000), plus (ii) contractual penalties for late payment at €100 per day for 780 days until 10 June 2019 (€78,000), plus (iii) automatic punitive damages laid down by the *Payment Periods in Commercial Transactions Act 2016* for the late payment of commercial debts (€40), plus (iv) discretionary punitive damages which a court may, at its discretion, order a late payer of commercial debts to pay, pursuant to other provisions of the same statute (at a level to be assessed by the national court), plus (v) statutory interest on all of the aforementioned "qualifying debts".
4. The lease agreement contains a clause entitling the Lessor to terminate the agreement in the event of late or non-payment by the Lessee which results in a court making an order which requires the Lessee to pay punitive damages in accordance with the applicable law. The lease agreement defines punitive damages as "damages categorised as punitive under the applicable statutory provisions and awarded on the basis of a court order."

B. National Law

5. The *Late Payment in Commercial Transactions Act 1965* contains the following provisions:

Art 1: Definitions

For the purposes of this Act, the following terms shall have the meanings ascribed to them below:

[...]

28) *punitive damages award* – an award made by way of court order pursuant to Article 35 of the present Act.

Art 35: Punitive Damages Awards

In the event that the court is of the opinion that the failure to make timely payment of a commercial debt was the result of bad faith action(s) or omission(s) on the part of the debtor, the court shall be entitled to make a punitive damages award at an amount which the courts thinks fit, having in mind the nature, extent and duration of the bad faith action(s) or omission(s). Punitive damages awards shall be payable by a debtor in addition to any contractual or other sums that the debtor may be liable to pay to the creditor.

Art. 48: Non-recoverability of Recovery Costs

1. Creditors shall not be entitled to seek to recover amounts which reflect the recovery costs incurred in recovering their commercial debts.

6. Parts of the 1965 Act remain in force, but many of the legal issues dealt with in that Act are now governed by the *Payment Periods in Commercial Transactions Act 2016*, which was approved by Parliament on 8th March 2016 and entered into force on 28th April 2016. The 2016 Act was intended *inter alia* to give effect to *Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast)*.

7. The relevant provisions of the 2016 Act state as follows:

Art. 1: Definitions

For the purposes of this Act, the following terms shall have the meanings ascribed to them below:

1) *commercial transaction – a contract involving the payment of money or other consideration in exchange for the supply of goods or a supply of services, concluded by commercial parties acting in the course of their business*

[...]

32) *punitive damages award – an award made by way of court order pursuant to Articles 10 and 11 of the present Act.*

35) *qualifying debt – a debt created by virtue of an obligation under a contract to pay the whole or any part of the contract price*

Article 6: Statutory interest

Statutory interest shall be payable on any qualifying debts at a rate of eight percentage points.

Art. 10: Automatic Punitive Damages Awards

1. *A creditor who has become entitled to the payment of interest due to the late payment of a commercial debt shall automatically be entitled, without summons, to a sum equivalent to 40 euros, converted into the national currency at the average euro exchange rate announced by the National Bank on the last working day of the month preceding the month in which the payment became due, as compensation for recovery costs.*

2. *This Article is intended to give effect to Article 6(1) of Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast) and shall be payable on the conditions laid down therein.*

Art 11: Discretionary Punitive Damages Awards

In the event that the court is of the opinion that the failure to make timely payment of a commercial debt was the result of bad faith action(s) or omission(s) on the part of the debtor, the court shall be entitled to make a punitive damages award at an amount which the courts thinks fit, having in mind the nature, extent and duration of the bad faith action(s) or omission(s). Punitive damages awards shall be payable by a debtor in addition to any contractual or other sums that the debtor may be liable to pay to the creditor.

Article 12: Recoverability of Recovery Costs

1. *A creditor shall be entitled to recover a reasonable amount not exceeding 50 euros in addition to the sum payable as automatic punitive damages in accordance with Article 10 above, which reflects the recovery costs actually incurred in recovering the interest for late payment of the commercial debt.*

2. *This Article is intended to give effect to Article 6(3) of Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast) and shall be payable on the conditions laid down therein*

Article 15: Non-Applicability of this Act to Prior Transactions

1. *Commercial transactions which were concluded before the entry into force of this Act shall be governed by the statutory law which was in force prior to the entry into force of this Act.*

8. Articles 10 and 12 of the 2016 Act were implemented in order to give effect to the Article 6 of Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial

transactions (recast). The 1965 Act did not contain any provisions that entitled a creditor to receive recovery costs the late payment of a commercial debt. Conversely, *Article 48* of the 1965 Act specifically precluded such a possibility.

C. EU Law

9. **Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions** was repealed with effect from 16 March 2016. Nevertheless, it remains applicable to contracts concluded before that date to which **Directive 2014/7/EU** does not apply pursuant to Article 12(4).
10. For the purposes of the present dispute, it suffices to say that if **Directive 2000/35/EC** is applicable to the dispute, as would be the case in the event that the obligations deriving from **Directive 2014/7/EU** do not apply to the 2013 lease contract in question, the national court considers that **Directive 2000/35/EC** does not impose upon the Member States any obligation to allow compensation for the recovery of costs of the type sought in the national dispute (see: *QDQ Media SA Case C-235/03*).
11. *Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast)*

Article 1: Subject matter and scope

1. *The 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 SMEs.*
2. *This Directive shall apply to all payments made as remuneration for commercial transactions.*
3. *Member States may exclude debts that are subject to insolvency proceedings instituted against the debtor, including proceedings aimed at debt restructuring.*

Article 2: Definitions

For the purposes of this Directive, the following definitions shall apply:

- (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; [...]

Article 3: Transactions between undertakings

1. Member States shall ensure that, in commercial transactions between undertakings, the creditor is entitled to interest for late payment without the necessity of a reminder, where the following conditions are satisfied:
 - (a) the creditor has fulfilled its contractual and legal obligations; and
 - (b) the creditor has not received the amount due on time, unless the debtor is not responsible for the delay.
3. Where the conditions set out in paragraph 1 are satisfied, Member States shall ensure the following:
 - (a) that the creditor is entitled to interest for late payment from the day following the date or the end of the period for payment fixed in the contract;

[...]

Article 6: Compensation for recovery costs

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.

Article 12: Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 8 and 10 by 16 March 2016. They shall forthwith communicate to the Commission the text of those

provisions. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the repealed Directive shall be construed as references to this Directive. The methods of making such reference and the formulation of such statement shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Member States may bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.

4. In transposing the Directive, Member States shall decide whether to exclude contracts concluded before 16 March 2016.

Article 13: Repeal

Directive 2000/35/EC is repealed with effect from 16 March 2016, 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). References to the repealed Directive shall be construed as references to this Directive and be read in accordance with the correlation table set out in the Annex.

D. The Disputed Issues of EU Law

Issue 1: Applicability of the 2014 Directive to the present dispute

12. The claimant contends that the 2013 lease contract in question is not excluded from the rules laid down in the 2014 Directive. Firstly, the claimant argues that Article 12(4) of the 2014 Directive clearly limits a Member State's discretion to exclude the applicability of the obligations in the 2014 Directive to contracts concluded before 16 March 2016. The claimant argues that the Member State's decision to adopt national law (the 2016 Act) which extends the period for which that exclusion applies to the date of the entry into force of the national legislation (i.e. 28th April 2016) clearly exceeds the scope of the discretion allowed to the Member States by virtue of Article 12(4) of the 2014 Directive and is therefore unlawful and must be ignored, disapplied or struck down by the national court, with the consequence that the Member State should be deemed not to have excluded the applicability of the obligations derived from the 2014 Directive at all.

The Defendant contends that, since the contract in question was concluded in 2013 and in no way benefitted from the Member States decision to extend the aforementioned period until 28th April 2016, this question is entirely hypothetical. Furthermore, the Defendant contends that (even in the event that the national law had failed to properly implement the 2014 Directive) this question would only be relevant in a case brought against the Member State (for non/wrongful implementation of EU law) and not in a national trial between two private commercial undertakings.

The national court is uncertain as to the legal consequences of the fact that Article 15 of the national law extends the period in which the rules derived from the 2014 Directive will not apply to contracts concluded before 28th April 2016, as opposed to the 16 March 2016 date stated in Article 12(4). In particular, the national court seeks clarification as to whether this amounts to a non-implementation or wrongful implementation of EU law and, if so, whether the national court is entitled to ignore, disapply or strike down Article 15, with the result that the rules from the 2014 Directive apply in full to the present dispute.

13. Secondly, the Claimant argues that the discretion provided to Member States in Article 12(4) to exclude certain contracts from the rules in the 2014 Directive should be interpreted as being applicable only to contracts where all obligations and transactions due to be performed under the contract have been performed in full by 16 March 2016. In the Claimant's opinion, where a contract was concluded prior to that date, but where transactions related to that contract still remain to be performed after that date, Article 12(4) of the 2014 Directive does not allow the Member States to exclude the obligations deriving from that Directive (including Article 6 thereof). The Claimant notes that Art 12(4) makes no reference to "transactions" but merely to "contracts", whereas the obligations laid down in Articles 1,2,3 and 6 of the same Directive lay down obligations in relation to late "transactions". The Claimant further notes that

Art 2(1) of the Directive defines 'commercial transactions' thus: *transactions between undertakings... which lead to the delivery of goods or the provision of services for remuneration*. The Claimant notes that the lease payments in the relevant dispute were all made precisely in order to secure the provision of services (i.e. the ability to use and manage the commercial premises). The Claimant argues that Art 12(4) must be understood as meaning that Member States only have the discretion to apply the relevant exclusion where both the "contract" in question and any "transaction" due to be made pursuant to that "contract" have all been completely in full prior to 16 March 2016. Otherwise, an undertaking which concluded a 99 year lease on 15 March 2016 and received late payments for the next 99 years would be unable to rely on the rule in Art 6, which cannot be what the EU legislator intended. The claimant supports this interpretation *inter alia* by reference to recitals 2, 3, 7, 11, 18 and 23 of Directive 2014/7/EU which, in the claimant's opinion, reflect the EU legislature's aim to protect the competitiveness and profitability of undertakings. This aim would be threatened in the event that the exclusion permitted by Art 12(4) could apply to long-term contracts concluded before 16 March 2016 where multiple future transactions remain to be performed on those contracts.

Conversely, the Defendant argues that the meaning of Article 12(4) is *acte clair* and clearly permits Member States to exclude the scope of the rules derived from the 2014 Directive (including Article 6 thereof) to contracts and any transactions made or due to be made pursuant to such contracts. The sole criterion is the date on which the contract itself was concluded, and the contract in question was concluded in 2013, clearly before the 16 March 2016 date stated in Article 12(4).

The national court understands that it is obliged to interpret the national statute so as to ensure its compatibility with EU law. However, the national court is uncertain as to how to understand Article 12(4) and, in particular, whether it permits Member States to exclude the applicability of the rules in the 2014 Directive (including Article 6 thereof) to a contract concluded in 2013 nevertheless continues to produce transactions which lead to the provision of services for remuneration after 16 March 2016.

Issue 2: Interpretation national law in the light of *Directive 2014/7/EU*

14. The national court understands that it is obliged to interpret the national statute so as to ensure its compatibility with EU law. However, in order to do so, it feels that it requires guidance on certain interpretative arising from the terms of the Directive itself, on which the litigants disagree and which the court considers necessary to enable it to give judgment in the present case. This is particularly so in light of the fact that the Articles of the national law on which the claimant bases its case specifically state that they are applicable on the conditions laid down in the 2014 Directive.
15. Firstly, the Defendant contends that the 2014 Directive does not apply to lease contracts, since such contacts are not "services" within the meaning of that Directive. It notes that neither the first or second Late Payment Directives provides a definition of "services" and argues in favour of a narrow definition of that concept. The Defendant bases its arguments on the case *Falco Privatstiftung and Rabitsch, C-533/07*. In that case, the ECJ held that: "...a contract under which the owner of an intellectual property right grants its contractual partner the right to use that right in return for remuneration is not a contract for the provision of services..." (para 44) since such an owner does not agree to perform any "activity" (paras 29-30) "...the only obligation which the owner of the right granted undertakes with regard to its contractual partner is not to challenge the use of that right by the latter." (para 31). Such an owner "...does not perform any service in granting a right to use that property and undertakes merely to permit the licensee to exploit that right freely." (para 31). The defendant contends that the *Falco* case is comparable to the present dispute, since the owner of real property merely consents to allow another party to use his property and undertakes not to sue that other party for the use of his property. The owner does not oblige himself to perform any "activity" other than consenting not to sue the other party.

The Claimant contends that such a lease amounts to a "service" within the meaning of *Article 57(b) of the Treaty on the Functioning of the European Union ("Services" shall in particular include: [...] (b) activities of a commercial character...)* and the ECJ's broad definition of "services" under *Article 56 TFEU*. The Claimant argues that the *Falco* case should be understood in the context of the EU law to which it relates (i.e. the Brussels Regulation 44/2001). In the *Falco* case, the ECJ was asked to consider whether the rules for "special jurisdiction" should apply. It concluded that, since jurisdiction is generally based on the defendant's domicile, the rules of "special jurisdiction" which depart from this general rule, must be interpreted narrowly. The ECJ held (at para 37) that: "*The broad logic and scheme of the rules governing jurisdiction laid down by Regulation No 44/2001 require... a narrow interpretation of the rules on*

special jurisdiction, including the rules which derogate from the general principle that jurisdiction is based on the defendant's domicile." In the claimant's opinion, this explains the ECJ's narrow interpretation of "services" in that case. However, the claimant considers that these special considerations do not apply to other pieces of EU law, including the 2014 Directive and that, accordingly, there is no need to adopt a narrower interpretation of "services" than that which is generally applied in EU law. Accordingly, a lease contract is a contract for the provision of a "service".

The national court notes that the national law defines a commercial "transaction" as being: "...a contract involving the payment of money or other consideration in exchange for the supply of goods or a supply of services, concluded by commercial parties acting in the course of their business.". The national court is uncertain, given the absence of any definition of "services" in the Directive(s), as to whether it should interpret a lease agreement as being a contract for "services" within the meaning of the Directive.

16. Secondly, the parties disagree as to whether the monthly payments made pursuant to a lease of the kind in the present dispute amount to separate "transactions" within the meaning of the Directive. The claimant submits that there is a difference between the single lease "contract" and the later, multiple "transactions" (i.e. each monthly lease payment) which were performed in pursuance of that "contract". The claimant further submits that the possibility in Article 12(4) of the Directive to exclude "contracts" from the scope of the Directive should be understood as being limited to contracts in respect of which the contractual rights and obligations were fully completed by 16 March 2016 and not to contracts (such as that in the present case) which are subject to further "transactions" (i.e. monthly lease payments) which continue after that date. The claimant also notes that the national implementing legislation excludes the application of the Directive's rules to "commercial *transactions*" which were concluded before the entry into force of the Act and argues that the Directive's rules should apply to lease payments which still required performance after that date, including the disputed sums in the present case. The defendant contends that the lease agreement should be viewed as a single contract/transaction within the meaning of the Directive and that Article 12(4) permits Member States to exclude the application of its rules to "contracts" concluded before 16th March 2016, which the Member State has chosen to do, with the consequence that the Directive's rules do not apply to the parties' contract, which was concluded in 2013, even if obligations stemming from that contract still require performance after 16 March 2016.

17. Thirdly, the parties disagree as to whether Article 10 of the national legislation could lawfully categorise the costs recoverable under that Article as "punitive damages".

The Claimant contends that, since the substance of this Article is compatible with the Directive and, indeed, Article 10(2) specifically states that it is intended to give effect to Article 6(1) of Directive, there can be no question of any impropriety in the Member State's implementation of the EU law. The fact that the recoverable costs under the Directive are categorised as "punitive" in national law falls squarely within the element of legislative discretion permitted to Member States when implementing Directives.

The Defendant contends that such categorisation is clearly at odds with the aims of the Directive in general and Article 6(1) thereof in particular. It notes that there is no reference in the Directive to punitive damages and that the aims of Article 6 are clearly compensatory ("Compensation for recovery costs") and not punitive. The mere fact that the €40 amount payable by virtue of that section is intended to deter late payments does not mean that they should be punitive but, rather, fair just, effective, and proportionate. The fact that the relevant national law specifically states that it is intended to give effect to Article 6(1) of Directive and that the sums mentioned in Article 10 of the 2016 Act are payable on the conditions laid down in the 2014 Directive indicates that, whilst such sum may be payable, the national court should not interpret this as being a "punitive" award.

The national court notes that this issue is relevant to its judgment insofar as the Claimant's right to terminate the lease agreement is conditional upon the receipt of a court order awarding the payment of "punitive damages". It is uncertain as to whether, in light of the Directive, it must interpret national law in such a way as to preclude the award of costs in Article 10 of the 2016 Act being classified as "punitive". The national court is satisfied that Article 10 of the 2016 Act seeks to implement Article 6(1) of Directive 2014/7/EU but is uncertain as to whether the national legislature has "...manifestly and gravely disregarded the limits on the exercise of its powers" and thereby infringed EU law within the meaning of existing ECJ case law (most notably, joined *Cases 83/76, 94/76, 4/77, 15/77 and 40/77 HNL and Others v Council and Commission* [1978] ECR 1209, paragraphs 5 and 6 and *Joined Cases C-46/93 and C-48/93 Brasserie du Pêcheur SA v Federal Republic of Germany and The Queen v Secretary of State for Transport, ex parte Factortame Ltd and Others*, paragraph 45) by classifying the sums payable by virtue of that Article as "punitive".

18. Fourthly, the parties disagree as to the application of Article 12 of the 2016 Act, understood in the light of Article 6(3) of the 2014 Directive.
19. The Claimant contends that, since Article 6(3) of the 2014 Directive does not lay down any maximum amount of recoverable costs and requires Member States to provide for the recovery of “...reasonable compensation from the debtor for any recovery costs exceeding [the €40 amount discussed above]” the national court must interpret the €50 limit imposed on such costs by Article 12 of the 2013 Act as being contrary to Article 6(3), with the consequence that the national court should ignore, disapply or strike down such limit. This is particularly so in light of the fact that Article 12 is specifically intended to give effect to Article 6(3) of Directive and shall be payable on the conditions laid down in the 2014 Directive. It contends that the amount of recoverable costs must be left entirely to the discretion of the national judge and that it is not permissible for national legislation to state a maximum recoverable amount. Furthermore, it submits that, since the level of recoverable costs permitted by the national legislation is lower than the costs actually incurred by the claimant, this amounts to a breach of the right to a fair trial contrary to Article 6 of the European Convention of Human Rights.

The Defendant contends that Member States enjoy a considerable degree of discretion when implementing Directives and that the Member State was entitled to impose a maximum recoverable amount, after having considered the reasonable levels of costs in its national system. It argues that the claimant’s fees are greatly exaggerated and that they fall outside the meaning of “reasonable” costs in light of the legal system within which they apply.

The national court considers that this issue is relevant to its judgment insofar as the Claimant seeks to recover a higher amount of costs than the statute permits. Accordingly, the legality of the limitation in question is directly relevant to the costs award that can be made by the court.

E. The Questions for Referral

The national court considers that these questions raise issues of the applicability and interpretation of EU law which are of general interest for the uniform application of European Union law in all the Member States, and that this justifies referring the questions for a preliminary ruling by the ECJ pursuant to *Article 267 TFEU*.

The national court considers that the national proceedings have reached a stage at which the national court is able to define the factual and legal context of the question, so that the Court of Justice has available to it all the information necessary to check, where appropriate, that European Union law applies to the main proceedings. It has also heard both sides, in the interests of justice, before referring these questions for a preliminary ruling.

The result of the national dispute will decide whether or not the Claimant becomes entitled to a court order for damages which, in essence, will entitle the Claimant to terminate its lease agreement with the Defendant and reclaim control over the leased commercial property. In such an event, the Claimant would become eligible to apply for government-provided development grants and loans which are only available until early 2017. Accordingly, the national court is satisfied that the Claimant has a genuine interest in ensuring that the Court of Justice’s preliminary ruling is handed down as soon as possible. For this reason, the national court requests that the ECJ apply *the urgent preliminary ruling procedure* to this reference.

In light of the above, the national court asks the following questions:

Applicability of Directive 2014/7/EU to the present dispute:

1. In circumstances where *Article 12(4) of Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast)* permits a Member State to excluded contracts concluded before 16 March 2016 from the rules laid down in that Directive, but that period is extended until the entry into force of the national law (28 April 2016):

- (a) Does the national legislature manifestly and gravely disregarded the limits on the exercise of its powers and thereby infringed EU law by extending the relevant period until 28 April 2016?
- (b) If so, does this oblige the national court to ignore, disapply or strike down the national law provision in question?

(c) Would this mean that the Member State in question should be deemed not to have excluded the applicability of the Directive's rules (including Article 6 thereof) to contracts concluded before 16 March 2016?

(d) Is the answer to any of the above questions affected by the fact that the contract between the parties in the national dispute was concluded in 2013, and not in the period between 16 March 2016 and 28 April 2016?

Interpreting national law in the light of *Directive 2014/7/EU*:

2. Insofar as the national court is under a duty to interpret national law in accordance with EU law, should *Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on combating late payment in commercial transactions (recast)* be understood as meaning that, in circumstances such as those of the present case:

(a) such a lease falls within the term "services" in Article 2(1) and Article 3 of the Directive?

(b) each individual lease payment constitutes a separate "transaction" within the meaning of Article 1, Article 2(1), Article 3, Article 6 and Article 8 (and also recitals 1, 3, 4, 8, 9, 26 and 35) of the Directive?

(c) Article 12(4) of Directive 2014/7/EU should be understood as precluding Member States from excluding the applicability of the rules in the Directive to "contracts" which, whilst having been concluded prior to 16 March 2016, nevertheless continue to give rise to "transactions" after that date, in relation to which the late payment issue arises?

3. (a) When implementing the obligation in Article 6 of *Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast)*, is a Member State entitled to categorise the compensation of recovery costs in that Article as punitive damages within national law?

(b) Is the answer to this question affected by the fact that such categorisation may entitle a commercial undertaking to terminate a commercial lease agreement because of that categorisation?

4. (a) Is a Member State permitted to limit the extent of costs recoverable under Article 6(3) of *Directive 2014/7/EU of the European Parliament and of the Council of 16 February 2014 on the combating of late payment in commercial transactions (recast)* to a fixed sum of €50?

(b) If no, must the amount of recoverable costs be left to the discretion of the national judge or is it permissible for national legislation to state a maximum recoverable amount?

(c) If the level of recoverable costs permitted by the national legislation is lower than the costs actually incurred by the claimant, does this amount to a breach of the right to a fair trial contrary to Article 6 of the European Convention of Human Rights?