Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

18 December 2025*

(Reference for a preliminary ruling – Directive 2011/7/EU – Combating late payment in commercial transactions – Article 3(1) and (3)(a) – Interest for late payment – Article 6(1) and (2) – Compensation for recovery costs – Conditions – National legislation providing for the set-off of reciprocal claims by declaration with retroactive effect – Simultaneous extinguishment of claims up to the amount of the lowest claim – Effects on interest and on compensation)

In Case C-481/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw, Poland), made by decision of 26 June 2024, received at the Court on 10 July 2024, in the proceedings

E. sp.j.

v

C. sp. z o.o.,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fourth Chamber, M. Condinanzi, N. Jääskinen and R. Frendo (Rapporteur), Judges,

Advocate General: D. Spielmann,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 14 May 2025,

after considering the observations submitted on behalf of:

– C. sp. z o.o., by P. Wróblewska, adwokat,

– the Polish Government, by B. Majczyna, E. Buczkowska and D. Lutostańska, acting as Agents,

– the Belgian Government, by S. Baeyens and P. Cottin, acting as Agents,

* Language of the case: Polish.

– the German Government, by J. Möller, M. Hellmann, R. Kanitz and J. Simon, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and C.S. Schillemans, acting as Agents,

– the European Commission, by D. Milanowska and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 August 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1) and (3)(a) and Article 6(1) and (2) 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 the course of proceedings between the company E. sp.j. and the company C. sp. z o.o. concerning a refusal of payment based on a set-off of their reciprocal claims, effected by a declaration with retroactive effect.

Legal context

European Union law

3 Recitals 3 and 12 of Directive 2011/7 state:

‘(3) Many payments in commercial transactions between economic operators or between economic operators and public authorities are made later than agreed in the contract or laid down in the general commercial conditions. … Such late payment negatively affects liquidity and complicates the financial management of undertakings. It also affects their competitiveness and profitability when the creditor needs to obtain external financing because of late payment. …

…

(12) 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. …’

4 Article 1(1) of that directive provides:

‘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 …’

5 According to Article 2 of that directive:

‘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;

…

(4) “late payment” means payment not made within the contractual or statutory period of payment and where the conditions laid down in Article 3(1) … are satisfied;

(5) “interest for late payment” means statutory interest for late payment or interest at a rate agreed upon between undertakings …;

…

(8) “amount due” means the principal sum which should have been paid within the contractual or statutory period of payment, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment;

…’

6 Article 3 of Directive 2011/7 provides:

‘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;

…

5. Member States shall ensure that the period for payment fixed in the contract does not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor …’

7 Article 6(1) and (2) of that directive states:

‘1. Member States shall ensure that, where interest for late payment becomes payable in commercial transactions in accordance with Article 3 …, 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.’

Polish law

The Civil Code

8 The ustawa – Kodeks cywilny (Law establishing the Civil Code) of 23 April 1964 (Dz. U. of 1964, item 93), in the version applicable to the dispute in the main proceedings (‘the Civil Code’), provides, in Article 498:

‘1. If two persons are simultaneously debtors and creditors with respect to each other, each of them may set off their claim against the claim of the other party, if the object of both claims is money or generic goods of the same quality, and both claims are due and can be enforced before a court or other State body.

2. As a result of the set-off, both claims shall cancel each other up to the amount of the lower claim.’

9 Article 499 of the Civil Code provides:

‘A set-off shall be effected by a declaration submitted to the other party. The declaration shall have retroactive effect from the moment when the set-off became possible.’

The Law on Excessive Delays

10 Article 1 of the ustawa o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych (Law on counteracting excessive delays in commercial transactions) of 8 March 2013 (Dz. U. of 2013, item 403), which transposed Directive 2011/7 into the Polish legal order, in the version applicable to the dispute in the main proceedings (‘the Law on Excessive Delays’), is worded as follows:

‘This law defines the special rights of the creditor and the obligations of the debtor with regard to payment periods in commercial transactions, the effects of non-performance of those obligations and the procedure relating to excessive delay in payments.’

11 Article 4 of that law provides:

‘For the purposes of this Law:

…

(3) “statutory interest for late payment in commercial transactions” means:

…

(b) … interest of an amount equal to the reference rate of the National Bank of Poland plus 10 percentage points;

…’

12 Article 7 of that law provides, in paragraph 1:

‘Save in the case where the debtor is a public authority, the creditor in a commercial transaction shall be entitled, without the need for a reminder, and unless the parties have agreed on a higher rate of interest, to statutory interest for late payment for the period running from the date on which payment is due to the date on which it is made, if the following cumulative conditions are satisfied:

(1) the creditor has performed its contractual obligations;

(2) the creditor has not received payment within the period specified by the contract.

…’

13 Under Article 10(1) of that law:

‘From the date on which it acquires the right to interest as referred to in Article 7(1) …, the creditor shall be entitled to obtain from the debtor, without the need for a reminder, compensation for recovery costs, which shall be equivalent to:

(1) EUR 40 – if the payment amount does not exceed 5 000 zlotys [(PLN) (approximately EUR 1 175)];

(2) EUR 70 – if the payment amount exceeds [PLN] 5 000 [(approximately EUR 1 175)], but is lower than [PLN] 50 000 [(approximately EUR 11 750)];

…’

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

14 Company E. has 10 claims against Company C., arising from the performance of transport services for which it issued invoices setting out payment deadlines that expired between February and September 2022.

15 Since Company C. did not settle its debts within the prescribed periods, Company E. brought an action for payment before the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the City of Warsaw, Poland), the referring court.

16 Company E. seeks the payment of (i) PLN 26 715.60 (approximately EUR 6 280) in respect of the total amount of the claims for payment arising from those invoices, plus, pursuant to Article 7(1) of the Law on Excessive Delays, interest calculated on each unpaid claim, at the rate laid down in Article 4(3)(b) of that law, and (ii) PLN 1 997.29 (approximately EUR 470) by way of compensation for recovery costs, in accordance with Article 10 of that law, on account of the late payment of each of those claims.

17 Company C. contends that the action should be dismissed. It submits that it paid Company E. PLN 1 697.40 (approximately EUR 400) and, by document dated 2 September 2022, made a set-off declaration, in accordance with Articles 498 and 499 of the Civil Code, for the amount of PLN 25 018.20 (approximately EUR 5 880). Company C. considers that it thus paid a total amount of PLN 26 715.60 (approximately EUR 6 280) and that its debt is therefore extinguished.

18 That set-off declaration was based on a claim for damages which Company C. held against Company E. on account of the destruction, during a transport operation carried out by Company E., of the goods which Company C. had entrusted to it. The deadline for payment of that debt, as set by Company C. in a letter of formal notice of 15 February 2022, had expired on 7 March 2022.

19 The referring court explains that, first, even though the set-off declaration related only to the principal amounts payable by each of the companies concerned, Company C. submits that, as from 7 March 2022, Company E. lost, by virtue of the retroactive effect which Article 499 of the Civil Code attaches to such a declaration, the right to claim the interest and the compensation provided for in, respectively, Article 7(1) and Article 10(1) of the Law on Excessive Delays. Only one of the 10 claims of Company E. arose before that date.

20 Secondly, Company E. did not deny liability for the damage alleged by Company C., but disputed the very effectiveness of the set-off declaration and the amount of that damage. The referring court states that the part of that damage which is not covered by that declaration is the subject of other proceedings pending before it.

21 That court considers that, in the case in the main proceedings, the question arises as to the impact, on the rights arising from the Law on Excessive Delays, of the retroactive effect which Article 499 of the Civil Code attributes to set-off declarations.

22 The referring court states that that provision establishes a legal fiction according to which the set-off declaration has retroactive effect from the moment when the set-off became possible, that is to say, when the claim of the person making that declaration fell due as a result of the expiry of the period for payment. However, in the referring court's view, that retroactive effect may infringe Article 3(1) and (3)(a) and Article 6(1) and (2) of Directive 2011/7.

23 In that regard, the referring court observes, first, that that retroactive effect entails the loss of the right to claim not only interest, but also compensation for recovery costs. Even though those costs may relate to several claims and therefore be payable several times, they may be extinguished by a single reciprocal claim, for which those costs may be payable only once. Such a situation could be detrimental to one of the creditors.

24 Secondly, that court notes that the claims covered by Directive 2011/7 give rise, because of their contractual nature, to higher interest than other claims, such as Company C.'s claim for damages, which may be relied on in support of a set-off declaration.

25 Thirdly, the referring court states that set-off is a mechanism known in several national legal systems which may define its characteristics in different ways, in particular as regards any retroactive effect and the consequences for the right to claim interest for late payment and the minimum compensation provided for in the national legislation transposing Directive 2011/7. The existence of such divergences is contrary to the 'principle of harmonisation'.

26 Fourthly, the referring court states that, where the set-off declaration is submitted after the expiry of the period at the end of which the claims of the person referred to in that declaration have become payable, that person may already have taken steps to recover those debts, without knowing that an offset would subsequently take place, preventing him or her from obtaining reimbursement of the costs associated with that recovery.

27 In those circumstances, the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 3(1) and (3)(a), and Article 6(1) and (2) of Directive [2011/7] be interpreted as precluding provisions of national law which provide that the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor, after the expiry of the payment deadline set forth in the contract, has satisfied the creditor's claim by means of a set-off that is by operation of law retroactive to the moment when the set-off became possible?'

Consideration of the question referred

28 By its single question, the referring court asks, in essence, whether Article 3(1) and (3)(a) and Article 6(1) and (2) of Directive 2011/7 must be interpreted as precluding national legislation under which the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has settled the amount due by means of a set-off declaration, though made after the expiry of the contractual period for payment, on account of the retroactive effect of that declaration from the time when the set-off became possible.

29 According to settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 30 April 2025, *Generalstaatsanwaltschaft Frankfurt am Main (Export of cash to Russia)*, C-246/24, EU:C:2025:295, paragraph 18 and the case-law cited).

30 In the present case, as regards the wording of the provisions whose interpretation is sought, it must be borne in mind that, under Article 3(1) of Directive 2011/7, Member States are to ensure that, in commercial transactions between undertakings, a creditor is entitled to interest for late payment, without the necessity of a reminder, provided that the creditor has fulfilled its obligations and has not received the amount due on time, unless the debtor is not responsible for the delay.

31 Under Article 3(3)(a) of that directive, where those conditions are satisfied, the creditor is entitled to that interest from the day following the date for payment or the end of the period for payment fixed in the contract.

32 Article 6(1) of that directive provides that Member States are to ensure that, where interest for late payment becomes payable in commercial transactions in accordance with Article 3 thereof, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40. Furthermore, under Article 6(2), Member States are required to ensure that that fixed sum is payable, even in the absence of a reminder sent to the debtor, and that that sum is intended to compensate the creditor for the recovery costs incurred.

33 Thus, the interest for late payment and the right to a minimum fixed sum provided for in Directive 2011/7 are to become payable automatically upon expiry of the period for payment laid down in Article 3(3) to (5) of that directive, provided that the conditions set out in paragraph 1 thereof are satisfied (judgment of 4 May 2023, *ALD Automotive*, C-78/22, EU:C:2023:379, paragraph 25 and the case-law cited).

34 However, it must be stated that it is not apparent from the wording of the provisions referred to in paragraphs 30 to 32 above that they govern the conditions under which the claims corresponding to that interest and that fixed sum may, where appropriate, be extinguished, inter alia because, as in the main proceedings, the principal claim from which they arise no longer exists.

35 That literal interpretation is borne out by the context of those provisions. It is true that Directive 2011/7 provides that the creditor's right to obtain that interest and that fixed sum arises from a 'late payment'. As is apparent from the definition set out in Article 2(4) of Directive 2011/7, read in conjunction with Article 3(1) thereof, that concept refers to any payment not made within the contractual or statutory period of payment, where the creditor has fulfilled its contractual and legal obligations and has not received the amount due on time, unless the debtor is not responsible for the delay.

36 In addition, the concept of 'amount due' in Article 3(1) of that directive is defined in Article 2(8) thereof as the principal sum which should have been paid within the contractual or statutory period of payment, including the applicable taxes, duties, levies or charges.

37 However, neither those definitions nor that of the concept of 'interest for late payment', set out in Article 2(5), nor, moreover, any other provision of that directive lays down the conditions under which the claims corresponding to that interest and that fixed sum may, where appropriate, be extinguished.

38 The interpretation set out in paragraph 34 above is also supported by the purpose of Directive 2011/7. In accordance with Article 1(1) thereof, the objective of Directive 2011/7 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.

39 In that regard, it is apparent from recital 3 of that directive that late payments negatively affect the liquidity of undertakings, complicate their financial management and undermine their competitiveness and profitability. Similarly, according to recital 12 of that directive, such late payments may be financially attractive to debtors where they do not entail the payment of sufficiently high interest.

40 Accordingly, the Court has held that that directive is intended primarily to discourage late payment and to protect creditors against late payment (see, to that effect, judgment of 1 December 2022, *X (Deliveries of medical products)*, C-419/21, EU:C:2022:948, paragraph 26).

41 However, it also follows from the case-law that, in order to achieve the aim referred to in Article 1(1) thereof, Directive 2011/7 does not harmonise fully all of the rules relating to late payments in commercial transactions (judgment of 20 October 2022, *A (Non-recovery of interest for late payment)*, C-406/21, EU:C:2022:816, paragraphs 51 and 52 and the case-law cited).

42 That directive lays down only certain rules in this area, which include those relating to interest for late payment and to compensation for recovery costs (judgment of 20 October 2022, *A (Non-recovery of interest for late payment)*, C-406/21, EU:C:2022:816, paragraph 53 and the case-law cited).

43 It follows from the foregoing that, as the Advocate General also observed in points 39 and 40 of his Opinion, Directive 2011/7 is not intended to establish a general legal framework for contractual obligations, but merely lays down certain specific rules which must be incorporated into national civil and commercial law.

44 Consequently, as the Advocate General observed, in essence, in point 45 of his Opinion, the Member States remain free to regulate the mechanisms for extinguishing claims corresponding to interest for late payment and the fixed sum provided for by Directive 2011/7 – such as a set-off mechanism – provided, however, that they do not undermine the objectives pursued by that directive or deprive it of its practical effect (see, to that effect, judgment of 15 December 2016, *Nemec*, C-256/15, EU:C:2016:954, paragraph 49 and the case-law cited).

45 In the present case, the referring court considers, in essence, that the retroactive effect which automatically attaches, under national law, to a set-off declaration may be incompatible with that directive, which requires that the creditor be recognised as having the right to claim interest for late payment and compensation for recovery costs where the payment of the creditor's claim occurred after the expiry of the contractually prescribed period.

46 In that regard, since, in accordance with Article 499 of the Civil Code, the reciprocal claims are extinguished not on the date of the set-off declaration, but at the earlier date on which the set-off became possible, those claims cannot give rise to any right to interest for late payment as from the date on which they are extinguished.

47 Furthermore, since a set-off declaration with retroactive effect does not entail the loss of a right to that interest, but rather results in that right's being deemed never to have existed, it is irrelevant that the offset claims could have given rise, in the event of late payment, to interest calculated on the basis of different rates depending on the legal, contractual or compensatory nature of the claims concerned.

48 As regards the fact that, following a set-off declaration with retroactive effect, the creditor to whom that declaration is addressed is not entitled to compensation for recovery costs, it should be noted that, admittedly, Directive 2011/7, in particular Article 6(1) and (2) thereof, is intended not only to discourage late payment, by preventing its being financially attractive to debtors on account of the low or lack of interest charged in such a situation, but also to provide effective protection for creditors against such late payment, by ensuring that they have access to the fullest possible compensation for recovery costs incurred (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 36 and the case-law cited).

49 However, it is apparent from Article 6(1) of that directive that the right to the fixed minimum sum provided for in that provision arises under the same conditions as those laid down in Article 3 for the accrual of interest for late payment. Accordingly, no right to such a fixed sum can arise in the absence of a right to such interest.

50 It is true that a creditor, where it does not obtain payment within the prescribed period, could take steps to recover its claim and thus incur certain costs which it will not be able to recover as a result of the retroactive effect of the set-off declaration. However, any reasonably well-informed creditor undertaking must consider the possibility of such set-off as soon as it becomes, at the same time, the debtor and creditor of another undertaking.

51 In the present case, as is apparent from paragraphs 14 and 18 above, the period for payment of the claim for damages, as set by Company C. in its letter of formal notice of 15 February 2022, had expired on 7 March 2022, whereas the 10 claims held by Company E. against Company C. arose from invoices setting deadlines for payment which fell due between February and September 2022. In such circumstances, subject to verification by the referring court, the possibility of a set-off declaration by Company C. was entirely foreseeable as regards the claims of Company E. subsequent to 7 March 2022.

52 On the other hand, as the Netherlands Government has essentially stated, the objectives of Directive 2011/7 would not be respected if any interest and recovery costs incurred before the set-off became possible, under the relevant national provisions, were no longer due to the party concerned on the ground that there had been a set-off.

53 In such a case, the creditor must enjoy the rights provided for by that directive and, therefore, receive interest for late payment on the principal sum due, until the date on which the set-off became possible, as well as compensation for the recovery costs incurred up to that date.

54 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 3(1) and (3)(a) and Article 6(1) and (2) of Directive 2011/7 must be interpreted as not precluding national legislation under which the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has settled the amount due by means of a set-off declaration, though made after the expiry of the contractual period for payment, on account of the retroactive effect of that declaration from the time when the set-off became possible.

Costs

55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

Article 3(1) and (3)(a) and Article 6(1) and (2) 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 not precluding national legislation under which the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has settled the amount due by means of a set-off declaration, though made after the expiry of the contractual period for payment, on account of the retroactive effect of that declaration from the time when the set-off became possible.

[Signatures]