Reports of Cases

OPINION OF ADVOCATE GENERAL
SPIELMANN
delivered on 1 August 2025 [1]

Case C-481/24

E. sp.j.
v
C. sp. z o.o.

(Request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw, Poland))

(Reference for a preliminary ruling – Directive 2011/7/EU – Combating late payment in commercial transactions – Scope – Article 3(1) and (3)(a) – Article 6(1) and (2) – National rule providing for the set-off of claims with retroactive effect)

Introduction

1. By this request for a preliminary ruling, the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw, Poland) raises the question of the interpretation of Article 3(1) and (3)(a) and Article 6(1) and (2) of Directive 2011/7/EU on combating late payment in commercial transactions. [2]

2. More specifically, the referring court asks the Court to rule, in its forthcoming judgment, on whether the retroactive effect conferred on the set-off of claims by Polish legislation is compatible with Directive 2011/7. This question gives the Court the opportunity to provide important clarification as to the scope of that directive and is particularly sensitive in view of the fact that set-off with retroactive effect is firmly rooted in the legal traditions of several Member States of the European Union.

[1] Original language: French.

[2] Directive of the European Parliament and of the Council of 16 February 2011 (OJ 2011 L 48, p. 1). That directive repealed and replaced, with effect from 16 March 2013, Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in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).

Legal framework

European Union law

3. According to Article 1 of Directive 2011/7, entitled '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 …

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

…'

4. 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. Under Article 6 of that directive:

'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

6. The ustawa – Kodeks cywilny (Law establishing the Civil Code) of 23 April 1964 (Dz. U. of 2023, item 1610, as amended) ('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.'

7. Under Article 499 of the Civil Code:

'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

8. By the ustawa o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych (Law on counteracting excessive delays in commercial transactions) of 8 March 2013 (Dz. U. of 2023, item 1790) ('the Law on excessive delays'), the Polish authorities transposed Directive 2011/7 into the national legal order.

9. Article 7 of the Law on excessive delays provides:

'1. Save in the case where the debtor is a public authority, creditors in commercial transactions 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 his or her contractual obligations;

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

…'

10. Under Article 10 of the Law on excessive delays:

'1. From the date on which he or she 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 Polish zlotys [(PLN) (approximately EUR 1 190)];

(2) EUR 70 – if the payment amount exceeds [PLN] 5 000 [(approximately EUR 1 190)], but is lower than [PLN] 50 000 [(approximately EUR 11 890)];

…'

The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

11. Company E. ('the applicant') has 10 claims for payment against company C. ('the defendant'), which are established by invoices relating to transport services, laying down payment deadlines that expired between February and September 2022.

12. Since the defendant did not settle its debts within the prescribed periods, the applicant brought an action for payment before the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw), the referring court.

13. The applicant claimed payment of, first, PLN 26 715.60 (approximately EUR 5 676.56) [3] in respect of the sum of the claims for payment, plus, pursuant to Article 7 of the Law on excessive delays, interest calculated on each unpaid amount, at the rate laid down in Article 4(3)(b) of that law, and, secondly, PLN 1 997.29 (approximately EUR 424.39) by way of compensation for recovery costs, in accordance with Article 10 of that law, on account of the late payment of each of the claims for payment.

14. The defendant contended that the action should be dismissed. It paid the applicant PLN 1 697.40 (approximately EUR 360.67) and, by document dated 2 September 2022, submitted 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 5 315.90). Having thus paid the total sum of PLN 26 715.60, it is of the view that its debt has been extinguished.

15. The set-off declaration submitted by the defendant was based on a claim for compensation which it had against the applicant on account of goods being destroyed while being transported by the applicant, but which was not the subject of the action for payment. As regards that claim for compensation, the defendant submitted that the time limit for payment which it had set in its request for payment of 15 February 2022 expired on 7 March 2022.

16. According to the defendant, it follows that, even though the set-off declaration related only to the principal amounts payable by each of the companies concerned, by virtue of the retroactive effect of that declaration as provided for in Article 499 of the Civil Code, the applicant lost the right to claim interest accrued and compensation that arose after 7 March 2022. The main proceedings concern interest and compensation arising from the late payment of 9 out of the 10 claims for payment relied on in the application.

17. The applicant has not called into question its liability for the damage alleged by the defendant. However, it has disputed the very effectiveness of that set-off declaration and the amount of that damage.

[3] At the rate of exchange applicable on 2 September 2022.

18. Having doubts as to the impact of the retroactive effect of the set-off on the rights to default interest and to compensation for recovery costs arising from the Law on excessive delays, which transposes Directive 2011/7, 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?'

19. Written observations were submitted to the Court by the defendant, the Polish, Belgian, German and Netherlands Governments and the European Commission. The Polish, German and Netherlands Governments and the Commission presented oral argument at the hearing on 14 May 2025.

Analysis

20. By its question, the referring court asks the Court, 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 which provides that the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has satisfied the creditor's claim by means of a set-off declaration, submitted after the expiry of the payment deadline set forth in the contract, with retroactive effect from the moment when that set-off became possible.

21. In order to answer such a question, I consider it necessary, first of all, to make a few brief preliminary observations on the set-off of claims, before examining the compatibility of the national legislation at issue with Directive 2011/7.

Preliminary observations

22. Defined as the mode of extinguishing two separate obligations, up to the amount of the lesser obligation, between two persons who are simultaneously creditors and debtors with respect to each other, set-off has its roots in Roman law.[4] It has a dual function. First, it makes it possible to speed up and simplify the restoration of the balance in a commercial relationship, by avoiding a double payment in the opposite direction. Secondly, it plays a role as a guarantee in so far as, if one of the parties were to pay without waiting for payment from the other party, it would expose itself to the risk of the latter's insolvency and to being in competition with the other creditors of the insolvent party.

23. Set-off may be statutory, contractual or judicial.

[4] Under the Code of Justinian: 'Compensationes ex omnibus actionibus ipso iure fieri sancimus nulla differentia in rem vel personalibus actionibus inter se observanda' ('We decree that set-off shall take place by operation of law in all actions without making any distinction between real or personal actions'). See Iust C. 4.31.14, Iohanni, a. 531. With regard to the origin of set-off, see, inter alia, De Kotzebue, R., Compensation et procédure; essai de critique et de science juridique pure, Sirey, Paris, 1945.

24. The mechanism inherent in statutory set-off entails mutual claims being extinguished up to the amount of the lower claim, on the date on which they coexist, where certain conditions are satisfied. These are the conditions of reciprocity, fungibility, certainty, liquidity and enforceability of claims.

25. The laws of the Member States generally provide that reciprocal claims are extinguished either automatically, by operation of law, or following a unilateral declaration, giving the set-off retroactive effect, [5] like that at issue in the present case.

26. The first option has been adopted, by way of example, by Belgian, [6] Spanish [7] and Luxembourg [8] law, which establish that set-off takes place by operation of law, even without the knowledge of the parties.

27. The second option is also well established in national legal systems. In addition to Polish law, which is the subject of my analysis in the present case, other examples may be cited. German law provides for set-off by declaration, which, irrespective of when the declaration is submitted, has retroactive effect to the date on which the principal claim and the counterclaim coexist for the first time. [9] French law provides that set-off is to be effected from the date on which the conditions for it are satisfied, subject to it being invoked. [10] Netherlands law establishes set-off by declaration with retroactive effect to the time when the right to set-off arose. [11]

The question referred for a preliminary ruling

28. In the following analysis, after providing some essential background to Directive 2011/7, I will begin by addressing whether national legislation providing for set-off with retroactive effect falls within the scope of that directive. I will then go on to examine the compatibility of such national legislation with the objectives and practical effect of that directive.

29. It should be recalled at the outset that, 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. [12]

5 See Zimmermann, R., *Comparative Foundations of a European Law of Set-Off and Prescription*, Cambridge University Press, Cambridge, 2002, pp. 32 to 43.

6 See the first paragraph of Article 5.255 of the Code civil belge (Belgian Civil Code): 'La compensation légale s'opère de plein droit, même à l'insu des débiteurs' ('Statutory set-off shall be effected by operation of law, even without the knowledge of the debtors'). With regard to statutory set-off under Belgian law, see Van Ommeslaghe, P., *De Page*, *Traité de Droit Civil Belge – Tome II – Les obligations*, vol. 3, Bruylant, Brussels, 2013, pp. 2235 to 2271.

7 Under Article 1202 of the Código Civil de España (Spanish Civil Code): 'El efecto de la compensación es extinguir una y otra deuda en la cantidad concurrente, aunque no tengan conocimiento de ella los acreedores y deudores' ('Set-off shall have the effect of extinguishing both debts, up to the lesser amount, even if the creditors and debtors have no knowledge of it').

8 Article 1290 of the Code civil luxembourgeois (Luxembourg Civil Code) is worded as follows: 'La compensation s'opère de plein droit par la seule force de la loi, même à l'insu des débiteurs; les deux dettes s'éteignent réciproquement, à l'instant où elles se trouvent exister à la fois, jusqu'à concurrence de leurs quotités respectives' ('Set-off shall be effected by operation of law alone, even without the debtors' knowledge; the two debts shall extinguish each other reciprocally, provided that they exist concurrently, up to their respective amounts').

9 See Paragraphs 388 and 389 of the Bürgerliches Gesetzbuch (German Civil Code).

10 See Article 1347 of the Code civil français (French Civil Code). With regard to statutory set-off under French law, see Flour, J., et al., *Droit civil. Les obligations. Le rapport d'obligation*, Dalloz, Paris, 2024 (11th edition), pp. 301 to 314.

11 See Article 6:127(1) and Article 6:129(1) of the Burgerlijk Wetboek (Netherlands Civil Code).

12 Late payment was regulated for the first time by Directive 2000/35. Directive 2011/7, the interpretation of which is sought in the present case, is, according to recital 1 thereof, a mere recasting of that directive. In so far as that recasting did not entail any substantive changes to the provisions at issue, the Court's interpretation of the corresponding provisions of Directive 2000/35 remains relevant in the context of the application of Directive 2011/7.

30. As is apparent from the preamble to that directive, first, late payment constitutes a breach of contract which has been made financially attractive to debtors by low or no interest rates charged on late payments. [13] Secondly, late payment negatively affects liquidity and complicates the financial management of undertakings, affecting their competitiveness and profitability when the creditor needs to obtain external financing because of late payment. [14]

31. The Court has thus held that that directive seeks primarily to discourage late payment and to protect creditors against late payment. [15]

32. Articles 3 and 6 of Directive 2011/7 reflect that dual objective by laying down the rights of the creditor to claim interest for late payment and to claim compensation for the costs incurred in recovering his or her claim.

33. In accordance with Article 3(1) and (3)(a) of that directive, the creditor is entitled to claim interest for late payment from the day following the date or the end of the period for payment fixed in the contract, without the necessity of a reminder, 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.

34. Article 6(1) of that directive provides that, where interest becomes payable in accordance with that directive, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40. Article 6(2) provides that that fixed sum is payable without the necessity of a reminder and as compensation for the creditor's own recovery costs.

35. At the root of the creditor's right to such interest and compensation is the concept of 'late payment'. It is defined in Article 2(4) of Directive 2011/7 as 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. Although that directive governs rights to default interest and to recovery costs and those rights depend on the existence of the principal claim, it nevertheless appears from a contextual and teleological analysis that it does not establish a legal regime relating to the principal claim and thus does not concern the set-off of claims.

37. From a contextual point of view, it should be noted that, in the case of the concept of 'amount due', Article 2(8) of Directive 2011/7 merely provides that it refers to the principal sum which should have been paid within the contractual or statutory period of payment and that that amount must include the applicable taxes, duties, levies or charges. [16]

[13] See recital 12 of Directive 2011/7.

[14] See recital 3 of Directive 2011/7.

[15] See judgment of 1 December 2022, *X (Deliveries of medical products)* (C-419/21, EU:C:2022:948, paragraph 26).

[16] More specifically, that provision is worded as follows: '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' (emphasis added).

38. From a teleological point of view, it should be observed that, in accordance with settled case-law, Directive 2011/7 does not harmonise fully all of the rules relating to late payments in commercial transactions. That directive lays down only certain rules in that area, which include those relating to interest for late payment and to compensation for recovery costs. [17]

39. In other words, Directive 2011/7 merely lays down *very specific* rules which must be incorporated into national civil and commercial law. By adopting first Directive 2000/35 and then Directive 2011/7, the EU legislature was not seeking to establish a general legal framework for obligations and contracts. [18] Given the different approaches taken by the Member States in those matters, such an intention on the part of the legislature should have been absolutely clear from the wording of the provisions of that directive, its objectives or the *travaux préparatoires*. Clearly, that is not the case.

40. It follows that Directive 2011/7 is in no way intended to lay down rules on the conditions under which a claim arises, expires and is extinguished.

41. Given that the set-off mechanism forms part of extinguishing the claim, a national provision providing for set-off with retroactive effect, such as Article 499 of the Polish Civil Code, therefore falls outside the scope of that directive.

42. In the light of the foregoing, the assertion in the German Government's observations that the rules on retroactive set-off fall within the procedural autonomy of the Member States necessarily appears to be incorrect. Such autonomy comes into play only where the national legislation concerned falls within the scope of EU law, which is not the case here. [19] A legal analysis aimed at verifying the compatibility of the national provision at issue with the principles of equivalence and effectiveness is therefore not justified in the present case.

43. That consideration is supported, in my opinion, by the judgment delivered by the Court in *Nemec*. [20] In that case, the Court was asked, inter alia, whether Directive 2000/35 precluded national legislation under which interest for late payment accrued but not paid ceases to run when the amount of the interest equals the principal amount owed (*ne ultra alterum tantum*). In its reply, the Court could have taken the view, like the Advocate General did, that that legislation concerned the *minimum* level of such interest, with the result that the decision whether or not to establish a ceiling on the accumulation of interest remained within the power of Member States. [21] On the contrary, the Court stated that Directive 2000/35 did not lay down rules relating to the period during which interest for late payment runs or to the maximum amount of interest, [22] and then examined whether the national legislation at issue was such as to disregard the objectives of that directive or deprive it of practical effect.

44. That latter examination corresponds, moreover, in my view, to that which the Court is called upon to carry out in the present case in its forthcoming judgment.

[17] See, inter alia, judgment of 20 October 2022, *A (Non-recovery of interest for late payment)* (C-406/21, EU:C:2022:816, paragraphs 52 and 53).

[18] In that regard, doubts have been expressed as to the correctness of the choice of Article 114 TFEU as the legal basis for those two directives; see Editorial Comments, '*Union competences in the field of contract law: Some questions – no answers*', *Common Market Law Review*, vol. 48, No 3, 2011, pp. 655 to 657.

[19] It follows logically that the question, discussed at the hearing, concerning the substantive or procedural nature of Article 499 of the Polish Civil Code is not relevant to the present case.

[20] Judgment of 15 December 2016, *Nemec* (C-256/15, 'the judgment in *Nemec*', EU:C:2016:954).

[21] See Opinion of Advocate General Bobek in *Nemec* (C-256/15, EU:C:2016:619, points 56 to 71).

[22] Judgment in *Nemec* (paragraph 48).

45. Although the Member States remain free to adopt a provision establishing set-off with retroactive effect, the fact remains that that provision could not have the effect of disregarding the objectives pursued by Directive 2011/7 or depriving it of its practical effect. [23]

46. As regards the objectives of avoiding negative effects on the creditor's liquidity and discouraging late payment in commercial transactions, the referring court appears to be of the view that retroactive set-off is incompatible with Directive 2011/7 in so far as that directive requires the creditor to be recognised as having the right to claim default interest and recovery costs where its claim has been paid after the expiry of the contractually agreed period.

47. It is true that the retroactive effect of set-off means that a creditor against whom a set-off declaration has been lodged after the expiry of the period laid down in the contract, which has retroactive effect to the date on which set-off became possible, is not entitled to interest or to compensation for the period running from that date until the date on which the set-off declaration was submitted.

48. However, the referring court's reasoning is based on the incorrect premiss that the debt is paid when the set-off declaration is submitted. By contrast, the national provision at issue establishes that the claim is extinguished before that point, when set-off became possible. Since the regulation of such extinction falls within the competence of the national legislature, the latter point in time is the one which must be taken into account.

49. The consequences inherent in the retroactive effect of set-off are therefore not contrary to the objective of Directive 2011/7 of discouraging late payment for the simple reason that, when set-off becomes possible, the claim is extinguished. Therefore, no further payment is due [24] and there are no grounds for default interest. Moreover, once set-off becomes possible, the amount offset affects the creditor's liquidity, with the result that no late payment with negative repercussions on such liquidity could occur at a later stage.

50. It should be added that those objectives would be disregarded if the creditor were not entitled to any default interest and recovery costs incurred between the date on which the deadline for payment was exceeded and the date on which set-off became possible. However, it cannot be argued that that is the case here without distorting the mechanism of retroactive set-off.

51. In those circumstances, I am of the view that national legislation providing for set-off with retroactive effect is not such as to disregard the objectives of Directive 2011/7 or deprive it of its practical effect.

[23] Judgment in *Nemec* (paragraph 49 and the case-law cited).

[24] It is important to note that the creditor who submitted the set-off declaration has no further right to claim default interest on the amount subject to the set-off for the period from the date on which the set-off became possible until the date on which that declaration was submitted. It is therefore irrelevant that the first claim, arising from a commercial transaction, could have generated a higher rate of interest than that due to the defendant in respect of the claim for compensation.

52. In its written observations, the Commission nevertheless submits that the interpretation that, in circumstances such as those of the present case, the creditor would not be entitled to compensation for the recovery costs it has incurred runs counter to the objectives of Directive 2011/7.[25] It bases its argument on the judgments in *Česká pojišťovna*[26] and *BFF Finance Iberia*.[27]

53. In the case which gave rise to the first of those judgments, the Court was called upon to rule on whether Article 6 of Directive 2011/7 must be interpreted as recognising that a creditor claiming compensation for the costs associated with sending reminders to a debtor on account of the latter's late payment is entitled to obtain reasonable compensation, on that basis and in addition to the fixed minimum amount laid down in Article 6(1) of that directive, for the purposes of Article 6(3) thereof. In the case giving rise to the second judgment, the Court was asked whether the same article must be interpreted as meaning that the fixed minimum amount to compensate the creditor for recovery costs incurred due to the debtor's late payment is payable for each commercial transaction not remunerated on time.

54. In both cases, the Court based its answer in the affirmative on the finding that Directive 2011/7 is intended not only to discourage late payment, by preventing it 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.[28]

55. Unlike the Commission, I consider that the Court's reasoning cannot be transposed to the present case, since, in those cases, the existence of a right to compensation for recovery costs was not disputed, the referring court's doubts relating solely to the determination of the amount of compensation.

56. In the light of the foregoing considerations, I am of the view 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 which provides that the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has satisfied the creditor's claim by means of a set-off declaration, submitted after the expiry of the payment deadline set forth in the contract, with retroactive effect from the moment when that set-off became possible.

Conclusion

57. In the light of the foregoing, I propose that the Court answer the question referred for a preliminary ruling by the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw, Poland) as follows:

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

[25] It is true that, as the Commission submits in its written observations, where it does not obtain payment on time, the creditor could take specific measures to recover its claim without knowing that a set-off will subsequently take place, and thus incur certain costs that it would hardly be able to recover if the retroactive effect of the set-off provided for in Article 499 of the Polish Civil Code were considered to be compatible with Directive 2011/7. I am convinced that, in such cases, the Latin maxim *ignorantia legis non excusat* would apply.

[26] Judgment of 13 September 2018 (C-287/17, 'the judgment in *Česká pojišťovna*', EU:C:2018:707).

[27] Judgment of 20 October 2022 (C-585/20, 'the judgment in *BFF Finance Iberia*', EU:C:2022:806).

[28] Judgments in *Česká pojišťovna* (paragraphs 25 and 26 and the case-law cited), and in *BFF Finance Iberia* (paragraph 36). That finding is justified, in the Court's view, by the wording of recital 19 of Directive 2011/7, according to which 'recovery costs should also include the recovery of administrative costs and compensation for internal costs incurred due to late payment … Compensation in the form of a fixed sum should aim at limiting the administrative and internal costs linked to the recovery.'

must be interpreted as not precluding national legislation which provides that the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has satisfied the creditor's claim by means of a set-off declaration, submitted after the expiry of the payment deadline set forth in the contract, with retroactive effect from the moment when that set-off became possible.