



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

1 December 2022*

(Reference for a preliminary ruling – Directive 2011/7/EU – Combating late payment in commercial transactions – Article 2(1) – Concept of ‘commercial transactions’ – Compensation for recovery costs incurred by the creditor due to late payment by the debtor – Article 6 – Fixed minimum sum of EUR 40 – Several late payments for supplies of goods or services under a single contract)

In Case C-419/21,

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 21 June 2021, received at the Court on 8 July 2021, in the proceedings

X sp. z o.o. sp.k.

v

Z,

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur), acting as President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Z, by A. Moroziewicz, adwokat,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by M. Brauhoff and G. Gattinara, acting as Agents,

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

* Language of the case: Polish.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(1) and Article 6(1) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2011 L 48, p. 1).
- 2 The request has been made in proceedings between X sp. z o.o. sp.k. and Z concerning a claim for fixed compensation for recovery costs incurred as a result of successive late payments within the framework of a single contract.

Legal context

European Union law

- 3 Recitals 3, 17, 19 and 22 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. Although the goods are delivered or the services performed, many corresponding invoices are paid well after the deadline. 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. ...
 - ...
 - (17) A debtor’s payment should be regarded as late, for the purposes of entitlement to interest for late payment, where the creditor does not have the sum owed at his disposal on the due date provided that he has fulfilled his legal and contractual obligations.
 - ...
 - (19) Fair compensation of creditors for the recovery costs incurred due to late payment is necessary to discourage late payment. Recovery costs should also include the recovery of administrative costs and compensation for internal costs incurred due to late payment for which this Directive should determine a fixed minimum sum which may be cumulated with interest for late payment. Compensation in the form of a fixed sum should aim at limiting the administrative and internal costs linked to the recovery. ...
 - ...
 - (22) This Directive should not prevent payments by instalments or staggered payments. However, each instalment or payment should be paid on the agreed terms and should be subject to the rules for late payment set out in this Directive.’

4 Article 1 of that directive, entitled ‘Subject matter and scope’, provides, in paragraphs 1 and 2:

‘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 [small and medium-sized enterprises (SMEs)].

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

5 As set out in 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) or Article 4(1) are satisfied;

...’

6 Article 4 of that directive, entitled ‘Transactions between undertakings and public authorities’, provides in paragraph 1:

‘Member States shall ensure that, in commercial transactions where the debtor is a public authority, the creditor is entitled upon expiry of the period defined in paragraphs 3, 4 or 6 to statutory 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.’

7 As provided in Article 5 of Directive 2011/7, entitled ‘Payment schedules’:

‘This Directive shall be without prejudice to the ability of parties to agree, subject to the relevant provisions of applicable national law, on payment schedules providing for instalments. In such cases, where any of the instalments is not paid by the agreed date, interest and compensation provided for in this Directive shall be calculated solely on the basis of overdue amounts.’

8 Article 6 of that directive, entitled ‘Compensation for recovery costs’, provides:

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

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

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

- 9 Article 7 of that directive, entitled 'Unfair contractual terms and practices', states in paragraph 1: 'Member States shall provide that a contractual term or a practice relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs is either unenforceable or gives rise to a claim for damages if it is grossly unfair to the creditor.

In determining whether a contractual term or a practice is grossly unfair to the creditor, within the meaning of the first subparagraph, all circumstances of the case shall be considered, including:

...

- (c) whether the debtor has any objective reason to deviate ... from the fixed sum as referred to in Article 6(1).'

Polish law

- 10 Article 4(1) of the Ustawa o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych (Law on counteracting excessive delays in commercial transactions) of 8 March 2013, in its consolidated version (*Dziennik Ustaw* of 2021, item 424; 'the Law of 8 March 2013'), defines 'commercial transaction' as 'a contract having as its object a supply of goods or provision of a service for consideration, where the parties referred to in Article 2 [of that law] enter into it in connection with the activity carried out'.

- 11 Article 8(1) of that law is worded as follows:

'In commercial transactions in which the debtor is a public entity, the creditor shall, without demand, be entitled to statutory interest for delay in commercial transactions for the period from the due date for the payment until the actual payment date, if both the following conditions are met:

- (1) the creditor has performed his or her contractual obligations;
- (2) the creditor has not obtained payment within the period laid down in the contract.'

- 12 Article 10(1) to (3) of the Law of 8 March 2013 provides:

'1. From the date on which he or she acquires the right to interest as referred to in Article 7(1) or Article 8(1), the creditor shall be entitled to obtain from the debtor, without giving formal notice, 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 1 070)];

(2) EUR 70 – if the payment amount exceeds PLN 5 000, but is lower than PLN 50 000 [(approximately EUR 10 700)];

(3) EUR 100 – if the payment amount is equal to or exceeds PLN 50 000.

...

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

3. Entitlement to the amount referred to paragraph 1 shall arise in relation to a commercial transaction, subject to Article 11(2)(2).'

13 As provided in Article 11 of the Law of 8 March 2013:

'1. The parties to a commercial transaction may in their contract establish a payment schedule providing for instalments, provided that the establishment of such a payment schedule is not grossly unfair to the creditor.

2. If the parties to a commercial transaction have in their contract provided that payment will be made in instalments, entitlement:

(1) to interest as referred to in Article 7(1) or Article 8(1);

(2) to the amount referred to in Article 10(1), and to reimbursement of the recovery costs incurred, as referred to in Article 10(2);

shall be payable in relation to each unpaid instalment.'

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

14 X, a company governed by Polish law, entered into a contract with Z, a public hospital, under which X was to make successive deliveries of medical products to Z in accordance with a predetermined schedule. Payment for each delivery was required within 60 days.

15 Since Z failed to make the payments due for 12 successive deliveries of goods on time, X brought an action before the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw, Poland), the referring court, seeking an order, under the Law of 8 March 2013, for Z to pay it fixed compensation for recovery costs in an amount corresponding to 12 times the fixed minimum sum of EUR 40, that is, EUR 480.

16 The referring court states that it is required to determine whether, within the framework of a single contract, each late payment by the debtor confers entitlement to payment of a fixed minimum sum of EUR 40 for recovery costs, or whether that amount is payable only once, irrespective of the number of late payments. It considers that, when applied to the case in the main proceedings, the Law of 8 March 2013 leads to the second outcome, since Article 10(3) of that law provides that the fixed sum is payable in relation to each 'commercial transaction'.

- 17 However, the referring court notes that Article 4(1) of that law expressly defines ‘commercial transaction’ as a ‘contract’, unlike Article 2(1) of Directive 2011/7, so that the outcome of the dispute in the main proceedings requires an interpretation, first of all, of the latter provision and of Article 6(1) of that directive.
- 18 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 questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 6(1) of [Directive 2011/7] be interpreted as meaning that, in the case of a contract in which the parties provided for several deliveries of goods and in which payment for each delivery was due within a certain time limit after that delivery, a fixed sum of EUR 40, as a minimum, is payable for each late payment for an individual delivery, or does European Union law merely require that the creditor be paid a fixed sum of EUR 40 in respect of the entire commercial transaction which comprises several deliveries irrespective of the number of late payments for individual deliveries?
- (2) Within the meaning of Article 2(1) of [Directive 2011/7], does a contract for the supply of goods that obliges the supplier to supply to the contracting authority, for a price agreed in that contract, a certain quantity of goods and at the same time grants the contracting authority the right to determine unilaterally the timing and volumes of the individual deliveries comprising execution of the subject of the contract, including the possibility of opting out from receiving some of the goods contracted for without suffering any negative consequences, and obliges the contracting authority to pay for each part delivery within a certain time limit calculated from receipt of that part delivery, constitute a single commercial transaction, or does each of those part deliveries, which are based on the contracting authority’s stated requirements, constitute a separate commercial transaction within the meaning of the directive, even though it does not constitute a separate contract under national law?’

Consideration of the questions referred

The second question

- 19 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 2(1) of Directive 2011/7 must be interpreted as meaning that the concept of ‘commercial transactions’ referred to therein covers each delivery of goods carried out under a single contract or whether it covers only the contract under which those goods are required successively to be delivered.
- 20 In that regard, it must be noted, first, that Directive 2011/7 is to apply, according to Article 1(2) thereof, to all payments made as remuneration for ‘commercial transactions’ and, second, that that concept is defined, broadly, in Article 2(1) of that directive as ‘transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration’ (judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 21).

- 21 Since Article 2(1) of Directive 2011/7 makes no express reference to the law of the Member States for the purpose of determining the meaning and scope of the concept of ‘commercial transactions’, it requires an autonomous and uniform interpretation which takes into account both the wording and the context of the provision in which that concept appears as well as the objectives of that provision and the act of EU law of which it forms part (see, to that effect, judgments of 9 July 2020, *RL (Directive combating late payment)*, C-199/19, EU:C:2020:548, paragraph 27, and of 18 November 2020, *Techbau*, C-299/19, EU:C:2020:937, paragraph 38).
- 22 As regards the wording of Article 2(1) of Directive 2011/7, the use of the term ‘transactions’ shows that the concept of ‘commercial transactions’, as noted in paragraph 20 above, must be understood broadly and accordingly that it does not necessarily coincide with the concept of ‘contract’.
- 23 Two conditions are laid down in that provision in order for a transaction to be classified as a ‘commercial transaction’. First, it must be carried out either between undertakings or between undertakings and public authorities. Second, it must lead to the delivery of goods or the provision of services for remuneration (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 22 and the case-law cited).
- 24 Consequently, where the parties have agreed, under a single contract, to successive deliveries of goods or provision of services, each giving rise to a payment obligation on the part of the debtor, the two conditions laid down in Article 2(1) of that directive are met so that each delivery of goods or provision of services carried out under that contract may be classified as a commercial transaction within the meaning of that provision.
- 25 The scheme of Directive 2011/7 confirms that the EU legislature did not intend that the concept of ‘commercial transaction’ should coincide with that of ‘contract’. As noted in paragraph 20 of the present judgment, Article 1(2) of that directive provides that the directive ‘shall apply to all payments made as remuneration for commercial transactions’, whether or not those transactions correspond to a specific contract. Therefore, to interpret the concept of ‘commercial transaction’ restrictively as coinciding with that of ‘contract’ would run counter to the very definition of the material scope of that directive.
- 26 As regards the objectives of Directive 2011/7, which seeks primarily to protect creditors against late payment and to discourage late payment, there is nothing to suggest that the concept of ‘commercial transaction’ must necessarily correspond to that of ‘contract’.
- 27 In the light of the foregoing, the answer to the second question is that Article 2(1) of Directive 2011/7 must be interpreted as meaning that the concept of ‘commercial transactions’ referred to therein covers each successive delivery of goods or provision of services carried out under a single contract.

The first question

- 28 By its first question, the referring court asks, in essence, whether Article 6(1) of Directive 2011/7, read in conjunction with Article 4 thereof, must be interpreted as meaning that, where a single contract provides for successive deliveries of goods or provision of services, each requiring payment within a specified period, the fixed minimum sum of EUR 40 is payable for each late payment, by way of compensation for the creditor’s recovery costs, or whether it is payable only once, irrespective of the number of late payments.

- 29 In that regard, it should be recalled, in the first place, that Article 6(1) of Directive 2011/7 requires Member States to ensure that, where interest for late payment becomes payable in commercial transactions, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40 by way of compensation for recovery costs. Furthermore, under Article 6(2), Member States are obliged to ensure that that fixed minimum sum is payable automatically, even without any reminder to the debtor, and as compensation for the creditor's own recovery costs. Lastly, Article 6(3) recognises that the creditor is, in addition to that fixed minimum sum of EUR 40, to 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.
- 30 The concept of 'late payment', which gives rise to the creditor's entitlement to obtain from the debtor not only statutory interest under Article 4(1) of Directive 2011/7, but also a fixed minimum sum of EUR 40 under Article 6(1) of that directive, is defined in Article 2(4) of that directive as payment not made within the contractual or statutory period of payment. Since Directive 2011/7 covers, in accordance with Article 1(2) thereof, 'all payments made as remuneration for commercial transactions', that concept of 'late payment' is applicable to each individual commercial transaction (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 28).
- 31 In the second place, Article 6(1) of Directive 2011/7 defines the conditions under which the fixed minimum sum of EUR 40 is to become payable by reference, as regards commercial transactions between undertakings and public authorities, to Article 4 of that directive. Article 4 provides, in paragraph 1, that Member States are to ensure that, in such commercial transactions, a creditor which has fulfilled its obligations and has not received the amount due on time is entitled upon expiry of the period defined in paragraphs 3, 4 or 6 of that article to statutory interest for late payment, without the necessity of a reminder, unless the debtor is not responsible for that delay (judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 31 and the case-law cited).
- 32 It follows from the foregoing, first, that the entitlement to statutory interest for late payment provided for in Article 4(1) of Directive 2011/7, and the entitlement to a fixed minimum sum provided for in Article 6(1) of that directive, which arise from the fact that there is a 'late payment' within the meaning of Article 2(4) of that directive, are linked to individual 'commercial transactions'. Second, that statutory interest, like that fixed sum, is to become payable automatically upon expiry of the period for payment laid down in Article 4(3), (4) or (6) of that directive, provided that the conditions set out in paragraph 1 thereof are satisfied. Recital 17 of Directive 2011/7 states in that regard that 'a debtor's payment should be regarded as late, for the purposes of entitlement to interest for late payment, where the creditor does not have the sum owed at his disposal on the due date provided that he has fulfilled his legal and contractual obligations' (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 32).
- 33 As regards the conditions under which interest for late payment and the fixed minimum sum respectively become payable, neither Article 4(1) nor Article 6(1) of Directive 2011/7 draws a distinction as to whether or not the payments due as remuneration for goods delivered or services provided, which are not made on time, arise from a single contract. Therefore, the wording of those provisions cannot support the interpretation that, in the case of a single contract, the fixed minimum sum of EUR 40, by way of compensation for recovery costs, is payable to the creditor only once, irrespective of the number of individual late payments.

- 34 That finding is supported by Article 5 of Directive 2011/7, which concerns a situation comparable, for the purposes of the application of that directive, to the situation at issue in the main proceedings. It follows from that article, read in the light of recital 22 of that directive, that where the parties have agreed a payment schedule providing for instalments, a fixed minimum sum of EUR 40 by way of compensation for recovery costs is payable for each instalment not paid by the agreed date.
- 35 Accordingly, it is apparent from a literal and contextual interpretation of Article 6(1) of Directive 2011/7 that the fixed minimum sum of EUR 40, by way of compensation for recovery costs, is payable to the creditor which has fulfilled its obligations for each payment that is not made on time as remuneration for a commercial transaction, as evidenced by an invoice or equivalent payment demand, including where several payments made as remuneration for successive deliveries of goods or provision of services under a single contract are late, unless the debtor is not responsible for those delays (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 34).
- 36 In the third place, that interpretation of Article 6 of Directive 2011/7 is confirmed by its aims. It follows from Article 1(1) of that directive, read in the light of recital 3, that it is intended not only to discourage late payment by preventing it from being financially attractive for the debtor because of a low rate or lack of interest being charged in such a situation, but also to protect the creditor effectively against such delays by ensuring that the creditor is afforded the fullest possible compensation for recovery costs incurred. In that regard, recital 19 of that directive makes clear, first, that recovery costs should also include the recovery of administrative costs and compensation for internal costs incurred due to late payment and, second, that compensation in the form of a fixed sum should aim at limiting the administrative and internal costs linked to the recovery (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraphs 35 and 36).
- 37 From that perspective, the fact that a debtor is responsible for a number of delays in making payment for successive deliveries of goods or provision of services under a single contract cannot have the effect of reducing, to a single fixed sum, the fixed minimum sum payable by way of compensation for the recovery costs in respect of each late payment. Such a reduction would, first of all, effectively deprive Article 6 of Directive 2011/7 of any practical effect, the objective of that directive being, as has been pointed out in the preceding paragraph, not only to discourage late payment but also for those sums to serve as compensation ‘for the creditor’s own recovery costs’, costs which tend to rise in proportion to the number of payments and amounts which the debtor fails to pay on time. That reduction would moreover be equivalent to granting the debtor a derogation from the entitlement to the fixed sum referred to in Article 6(1) of that directive, without that derogation being justified by any ‘objective reason’ within the meaning of point (c) of the second subparagraph of Article 7(1) of that directive. Lastly, the reduction at issue would effectively exempt the debtor from part of the financial burden arising from the debtor’s obligation to pay, in respect of each payment not paid on time, the fixed sum of EUR 40 provided for in Article 6(1) (see, to that effect, judgment of 20 October 2022, *BFF Finance Iberia*, C-585/20, EU:C:2022:806, paragraph 37).
- 38 In the light of the foregoing, the answer to the first question is that Article 6(1) of Directive 2011/7, read in conjunction with Article 4 of that directive, must be interpreted as meaning that, where a single contract provides for successive deliveries of goods or provision of services, each requiring payment within a specified period, the fixed minimum sum of EUR 40 by way of compensation for recovery costs is payable to the creditor for each late payment.

Costs

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

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

- 1. Article 2(1) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions**

must be interpreted as meaning that:

the concept of ‘commercial transactions’ referred to therein covers each successive delivery of goods or provision of services carried out under a single contract.

- 2. Article 6(1) of Directive 2011/7, read in conjunction with Article 4 of that directive,**

must be interpreted as meaning that:

where a single contract provides for successive deliveries of goods or provision of services, each requiring payment within a specified period, the fixed minimum sum of EUR 40 by way of compensation for recovery costs is payable to the creditor for each late payment.

[Signatures]