



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

13 September 2018*

(Reference for a preliminary ruling — Company law — Combating late payments in commercial transactions — Directive 2011/7/EU — Article 6(1) and (3) — Reimbursement of debt recovery costs — Costs resulting from reminders sent on account of late payment by a debtor)

In Case C-287/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okresní soud v Českých Budějovicích (České Budějovice District Court, Czech Republic), made by decision of 10 March 2017, received at the Court on 19 May 2017, in the proceedings

Česká pojišťovna a.s.

v

WCZ, spol. s r.o.

THE COURT (Ninth Chamber),

composed of C. Vajda, President of the Chamber, K. Jürimäe and C. Lycourgos (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by Z. Malůšková, M. Patakia and D. Kukovec, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 May 2018,

gives the following

Judgment

- ¹ This request for a preliminary ruling concerns the interpretation of Article 6(1) and (3) 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).

* Language of the case: Czech.

- 2 The request has been made in the course of proceedings between Česká pojišťovna a.s. and WCZ, spol. s r.o., concerning compensation for the costs arising from reminders which the former had sent to WCZ on account of the late payment of insurance premiums owed by the latter, prior to bringing legal proceedings seeking payment of those premiums.

Legal context

EU law

- 3 Recitals 12, 19 and 20 of Directive 2011/7 state:

(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. A decisive shift to a culture of prompt payment, including one in which the exclusion of the right to charge interest should always be considered to be a grossly unfair contractual term or practice, is necessary to reverse this trend and to discourage late payment. Such a shift should also include the introduction of specific provisions on payment periods and on the compensation of creditors for the costs incurred, and, inter alia, that the exclusion of the right to compensation for recovery costs should be presumed to be grossly unfair.

...

(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. Compensation for the recovery costs should be determined without prejudice to national provisions according to which a national court may award compensation to the creditor for any additional damage regarding the debtor's late payment.

(20) In addition to an entitlement to payment of a fixed sum to cover internal recovery costs, creditors should also be entitled to reimbursement of the other recovery costs they incur as a result of late payment by a debtor. Such costs should include, in particular, those incurred by creditors in instructing a lawyer or employing a debt collection agency.'

- 4 Article 6 of Directive 2011/7, 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 for 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.'

Czech law

- 5 The last sentence of Paragraph 369(1) of zákon č. 513/1991, obchodní zákoník (Law No 513/1991 on the Commercial Code), as amended by zákon č. 179/2013 (Law No 179/2013), provides:

‘In addition to default interest, creditors shall be entitled to reimbursement of a minimum sum for the costs of recovery of the debt, the levels and conditions of which shall be set by Government Decree.’

- 6 Paragraph 3 of nařízení vlády č. 351/2013 (Government Decree No 351/2013) setting the amount of default interest and the costs of recovery of a debt, establishing the remuneration of court-appointed liquidators and members of the administrative body of the legal person, and clarifying certain questions relating to the Official Bulletin of Civil and Commercial Announcements and public registers of legal and natural persons, trust funds and beneficial owners, states:

‘In the case of reciprocal obligations on contractors ..., the minimum amount of costs associated with making each claim shall be 1 200 [Czech koruna (CZK) (approximately EUR 46)] ...’

- 7 Paragraph 121(3) of zákon č. 40/1964, občanský zákoník (Law No 40/1964 establishing the Civil Code), provides:

‘The ancillaries to a claim are interest, default interest, penalties for late payment and recovery costs.’

- 8 Paragraph 142(1) of zákon č. 99/1963, občanský soudní řád (Law No 99/1963 establishing the Civil Procedure Code), provides:

‘The court shall order the unsuccessful party to reimburse the party which has been fully successful in the case for the costs incurred in effectively exercising or defending a right.’

- 9 Under Paragraph 142a(1) of that code:

‘An applicant who has been successful in proceedings for the performance of an obligation shall be entitled to be reimbursed for the costs of the proceedings by the defendant only if, within a period of at least seven days before lodging the document instituting proceedings, he sent the defendant, at his address for service or at his last known address, a formal demand for performance.’

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

- 10 On 7 November 2012, Česká pojišťovna and WCZ concluded an insurance contract which took effect on the same day.
- 11 By letter of 10 March 2015, Česká pojišťovna informed WCZ that the contract had been terminated on 25 February 2015, as a result of the failure, on the part of WCZ, to pay the premiums owed, for the period from 7 November 2014 to 25 February 2015, in the amount of CZK 1 160 (approximately EUR 44). In total, Česká pojišťovna sent four reminders to WCZ before it brought proceedings before the referring court.
- 12 Česká pojišťovna requests that the referring court order WCZ, first, to pay that amount of CZK 1 160 (approximately EUR 44), increased by default interest at the statutory rate, for the period from 25 February 2015 until the date of payment of the premiums owed, and, second, to reimburse the costs associated with the recovery of its debt, in the amount of CZK 1 200 (approximately EUR 46). Česká pojišťovna further contends that WCZ should be ordered to pay the costs of the proceedings.

- 13 The referring court points out that Article 6 of Directive 2011/7 was transposed by Paragraph 3 of Government Decree No 351/2013 and that, under Czech law, the ancillaries to a claim are interest, default interest, and the costs associated with enforcing that claim.
- 14 Having established that the courts are required, under national law, to recognise, in respect of legal costs, those costs associated with a single reminder sent to the defendant prior to the bringing of judicial proceedings, the referring court is unsure as to whether it is necessary to recognise, in addition to the fixed compensation for recovery costs arising from Article 6 of Directive 2011/7, the right to compensation for the costs of a reminder in accordance with the national procedural rules. That court points out that, according to recital 19 of that directive, the fixed compensation under Article 6 of that directive must necessarily cover the costs of a reminder incurred by the creditor. In the view of the referring court, it would follow that recognition of the right to compensation cumulatively on the basis of Article 6 of Directive 2011/7 and on that of the national procedural rules would enable the applicant to obtain the same compensation twice.
- 15 Such a question, according to the referring court, is fundamental in the context of the case pending before it, since Česká pojišťovna is claiming fixed compensation in the sum of CZK 1 200 (approximately EUR 46) under Paragraph 3 of Government Decree No 351/2013 and under Article 6 of Directive 2011/7, together with compensation for the costs of legal representation, including the costs of a reminder sent before the action was brought, deriving from national law.
- 16 In those circumstances, the Okresní soud v Českých Budějovicích (České Budějovice District Court, Czech Republic) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 6(1) and (3) of Directive 2011/7 ... be interpreted as requiring the court to award a successful applicant in a dispute concerning the recovery of a debt under a commercial transaction defined in Article 3 or 4 of that directive the sum of EUR 40 (or the equivalent in national currency) as well as compensation for costs of the court proceedings, including compensation for costs of a reminder to the defendant before the bringing of the action, in the amount laid down by the procedural provisions of the Member State?’

Consideration of the question referred

- 17 By its question, the referring court is asking, in essence, whether Article 6 of Directive 2011/7 must be interpreted as recognising that a creditor claiming compensation for the costs of 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 amount of EUR 40, laid down in Article 6(1) of that directive, for the purposes of Article 6(3) thereof.
- 18 As a preliminary point, it must be noted that Article 6 of Directive 2011/7 seeks to ensure compensation for recovery costs incurred by the creditor where interest for late payment becomes payable pursuant to that directive. Furthermore, it is clear from the order for reference that Article 6 of Directive 2011/7 was transposed into Czech law by Paragraph 3 of Government Decree No 351/2013, which sets the fixed amount laid down in Article 6(1) of that directive at CZK 1 200 (approximately EUR 46).
- 19 It should be noted, first, that it is not clear from the wording of Article 6 of Directive 2011/7 that the costs of sending a reminder, incurred by the creditor in order to obtain payment of the debt, cannot be compensated over and above the fixed amount of EUR 40 laid down in Article 6(1).

- 20 Article 6(1) in fact refers only the creditor's right to obtain, as a minimum, the payment of a fixed amount of EUR 40. Furthermore, under Article 6(2), Member States are required to ensure, first, that that fixed amount is payable automatically, even in the absence of a reminder sent to the debtor, and, second, that such an amount is intended to compensate the creditor for the recovery costs incurred. In that respect, those provisions do not make any distinction between those costs.
- 21 Article 6(3) provides that, in addition to the fixed sum referred to in paragraph 1, the creditor is to be entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that fixed sum.
- 22 In that connection, it must be noted, first, that, by employing the expression 'exceeding that fixed sum' in Article 6(3) of Directive 2011/7, the EU legislature sought to emphasise that recovery costs which exceed the sum of EUR 40, whatever they may be, may thus be the subject of reasonable compensation.
- 23 Secondly, although the French-language version of Article 6(3) of Directive 2011/7 refers to the 'other' ('autres') recovery costs — which detail might suggest that they are recovery costs of a nature other than those referred to in paragraph 1 of that article — it should, however, be noted that, in particular, the Greek-, English-, Italian- and Dutch-language versions of that provision do not support that interpretation, as they employ the words '*opoiadipote schetika ypoloipomena*', '*any*', '*ogni*' and '*alle*' respectively, instead of the word '*autres*' ('other').
- 24 It is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages (judgment of 6 June 2018, *Tarragó da Silveira*, C-250/17, EU:C:2018:398, paragraph 20).
- 25 Secondly, it should be pointed out, so far as concerns the objective of Directive 2011/7, that the latter is intended to combat late payment in commercial transactions, that delay constituting, according to recital 12 of that directive, a breach of contract which has been made financially attractive to debtors because, inter alia, low or no interest is charged on late payments (judgment of 16 February 2017, *IOS Finance EFC*, C-555/14, EU:C:2017:121, paragraph 24).
- 26 It follows that the objective of that directive is to provide effective protection for creditors against late payment (see, to that effect, judgment of 15 December 2016, *Nemec*, C-256/15, EU:C:2016:954, paragraph 50). Such protection means offering those creditors the fullest possible compensation for the recovery costs incurred, in such a way as to discourage such late payment.
- 27 Consequently, it would be contrary to such an objective to interpret Article 6 of Directive 2011/7 as precluding the costs associated with sending reminders to the debtor on account of the latter's late payment from giving rise to compensation exceeding EUR 40, even where the amount of those costs exceed such a fixed sum.
- 28 It should also be recalled that Directive 2011/7 replaces 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), Article 3(1)(e) of which provided that the creditor was entitled to reasonable compensation for all recovery costs incurred through the debtor's late payment.
- 29 In so far as there is nothing to indicate that the EU legislature intended, by the adoption of Directive 2011/7, to reduce the protection offered to creditors by Directive 2000/35, it would be inconsistent to take the view that, under Directive 2011/7, the creditor could obtain compensation, limited to EUR 40, only for the costs arising from sending reminders to the debtor on account of the latter's late payment,

even where those costs exceed that amount, whereas he could have obtained compensation that was reasonable and, where appropriate, in excess of that amount in respect of the same costs under Directive 2000/35.

- 30 It should, however, be stated that, since the compensation provided for in Article 6(3) of Directive 2011/7 must be reasonable, that compensation can cover neither the part of those costs which is already covered by the fixed amount of EUR 40 laid down in paragraph 1 of that article, nor costs which appear to be excessive in the light of the facts of the case in point as a whole.
- 31 Consequently, it is clear both from the wording of Article 6 of Directive 2011/7 and from the purpose of that directive that that provision must be interpreted as enabling a creditor claiming the reimbursement of costs arising from reminders sent to the debtor due to the latter's late payment to obtain reasonable compensation, in addition to the fixed amount of EUR 40, for the part of those costs exceeding that fixed amount.
- 32 That conclusion cannot be called into question by the taking into account of recitals 19 and 20 of Directive 2011/7.
- 33 It should be noted that the preamble to an EU-law act has no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording (judgment of 19 June 2014, *Karen Millen Fashions*, C-345/13, EU:C:2014:2013, paragraph 31).
- 34 Furthermore, and in any event, it is not apparent from recital 19 or 20 of Directive 2011/7 that the fixed amount laid down in Article 6(1) of that directive must be regarded as the maximum sum which may be awarded to the creditor in order to compensate him for the costs arising from sending reminders to the debtor due to the latter's late payment or, more generally, for internal or administrative recovery costs.
- 35 In that connection, it should be noted, more particularly, that, as the Advocate General notes in point 40 of his Opinion, while the English- and French-language versions of recital 20 of Directive 2011/7 appear to reserve the right to a fixed sum to cover internal recovery costs (*remboursement forfaitaire pour les seuls frais internes de recouvrement*) as opposed to reimbursement of 'other' recovery costs which they incur (*autres frais de recouvrement*), such a formal distinction between internal costs and 'other' recovery costs does not appear in the other language versions of that recital, such as the versions in Italian (*diritto al pagamento di un importo forfettario per coprire i costi interni ... esigere anche il risarcimento delle restanti spese di recupero sostenute*) or Dutch (*het recht op betaling van een vast bedrag ter dekking van interne invorderingskosten ... recht hebben op terugbetaling van de overige invorderingskosten die ontstaan*).
- 36 Moreover, the fact that recital 19 of Directive 2011/7 states that that directive should determine a fixed minimum sum for the recovery of administrative costs and the compensation of the internal costs incurred due to late payment does not preclude reasonable compensation of those costs from being awarded to the creditor in so far as that fixed minimum sum is insufficient.
- 37 In addition, although that recital states that compensation in the form of a fixed sum should aim at limiting the administrative and internal costs linked to the recovery, that assertion must, however, be read in the light of the recital as a whole. It follows that, by that clarification, the EU legislature simply emphasised that the automatic nature of the fixed compensation of EUR 40 constitutes an incentive for a creditor to limit his recovery costs to that sum, but does not preclude the possibility for that creditor to obtain, where appropriate, an amount of reasonable compensation which is greater than this but is not awarded automatically.

- 38 It follows from the foregoing that the answer to the question referred is that 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 due to the latter's late payment is entitled to obtain reasonable compensation, on that basis and in addition to the fixed amount of EUR 40 laid down in Article 6(1) of that directive, for the purposes of Article 6(3) thereof, in respect of the part of those costs which exceeds that fixed amount.

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 (Ninth Chamber) hereby rules:

Article 6 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 recognising that a creditor claiming compensation for the costs associated with sending reminders to a debtor due to the latter's late payment is entitled to obtain reasonable compensation, on that basis and in addition to the fixed amount of EUR 40 laid down in Article 6(1) of that directive, for the purposes of Article 6(3) thereof, in respect of the part of those costs which exceeds that fixed amount.

[Signatures]