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Why WIBOR Cannot Be Challenged by the Common Courts? A Gloss (Approving) to the Judgment of the Court of Justice of the European Union in Case C-471/24

Abstract

This article provides an approving commentary on the Judgment of the Court of Justice of the European Union of 12 February 2026 in Case C-471/24, concerning the admissibility of reviewing contractual terms in credit agreements based on the WIBOR reference index under Directive 93/13/EEC. The authors analyze the economic and legal context of mass consumer claims against banks in Poland, highlighting the emergence of a multi-billion market for legal services and attempts to extend litigation to variable-index loans. The paper discusses the factual background of the case, the preliminary questions referred, and the key findings of the Court, particularly regarding the scope of lenders' information duties, the transparency requirement, and the relationship between consumer protection rules and the Benchmark Regulation (BMR). The authors argue that the judgment excludes the possibility of considering the WIBOR mechanism itself as unfair and significantly limits the grounds for mass challenges to credit agreements. In conclusion, the judgment is assessed as important for maintaining financial stability and for curbing a potential new wave of litigation against banks.

Keywords: CJEU judgment, WIBOR reference index, credit, consumer, law

JEL Codes: K12, K23, G21, D18

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Introduction

The judgment of the Court of Justice of the European Union (hereinafter: the “CJEU”) of 3 October 2019 in Case C-260/18 Dziubak is regarded as a symbolic turning point in litigation involving Polish borrowers who entered into Swiss franc-linked loan agreements and as marking the beginning of a period of “golden harvests” for entities providing services consisting in the pursuit of consumer claims against banks.

Handling hundreds of thousands of cases concerning indexed or denominated loans (i.e. loans linked to a foreign currency) and claims made in connection with the so-called “free credit sanction”, as well as complaints and allegations relating to the WIBOR (Warsaw Interbank Offered Index) reference index has given rise to a market worth many billions of zlotys, while simultaneously obliging banks to create provisions of a similar magnitude (WIB, 2026). Although there is a lack of reliable and comprehensive data, it has been suggested that *“this powerful and highly profitable industry has grown over the last few years (...) there is nothing like it anywhere else in the world. It is the law firms that, on behalf of Swiss franc borrowers, are bringing legal proceedings against banks (...) that have so far earned around PLN 4 billion, or one billion dollars”* [authors’ own translation] (Ramotowski 2024) or *“this market may currently be worth around PLN 11 billion and will continue to grow”* [authors’ own translation] (Wysota 2023). Regardless of the diversity of entities (including: compensation firms and other entities pursuing or purchasing claims, foreign funds financing the pursuit of claims in Poland, law firms, as well as so-called quasi-law firms without the status of a practice run by an advocate or an attorney-at-law, providing legal assistance, including those operating as non-governmental organisations or commercial companies) and the fee model used with clients – this activity is based on the mass handling of standardised cases according to a template-based model, sometimes using ready-made drafts of pleadings, forms, and fragments of legal reasoning. Consequently, handling a single case is relatively inexpensive and can be largely automated. The scale effect – according to the same model, several hundred cases are being conducted – means that such ventures are highly profitable, particularly given the influx of new clients. Nevertheless, the essentially limited pool of potential clients leads to fierce competition (manifesting itself, among other things, in aggressive advertising, often questionable in the light of the professional ethics governing advocates and attorneys-at-law). The aggressiveness of legal service promotion regarding challenges to WIBOR has also been driven by the gradual depletion of the pool of Swiss franc borrowers interested in litigation against banks. Furthermore, the very high revenues achieved in previous periods and their expected extrapolation are not without significance. Under these circumstances, the prospects for maintaining the current momentum, or at least the level of revenue achieved, lie in encouraging clients to bring disputes with banks over alleged irregularities in loan agreements providing for variable interest rates indexed to the WIBOR reference index.

Regardless of the doubts surrounding the CJEU judgment in Case C-260/18 Dziubak (e.g.: Koźmiński 2024; Jabłoński 2018; Koźmiński 2022; Bełdowski 2021), a repetition of the Swiss franc loan litigation scenario, in which it was the CJEU's case-law and arguments derived from EU law that tipped the balance in favour of consumers before national courts, appeared to be a realistic prospect in WIBOR cases as well. This expectation was reinforced by the decision of the Regional Court in Częstochowa, 1st Civil Division, of 31 May 2024 in case no. I C 1226/23, initiating preliminary ruling proceedings in Case C-471/24 (hereinafter: "C-471/24"), in which the judgment of the CJEU (hereinafter: the "Judgment") delivered on 12 February 2026 is the subject of this commentary.

The case of J.J. v PKO Bank Polski S.A.

Before analysing the Judgment itself and discussing the characteristics of the WIBOR reference index, it is worth outlining the general background of the case before the Regional Court in Częstochowa (hereinafter: the "Referring Court"), which referred four questions to the CJEU for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union concerning issues related to a term in a mortgage loan agreement providing for a variable interest rate based on the WIBOR reference index.

In accordance with the information provided in the Opinion of the Advocate General of 11 September 2025, C-471/24 (hereinafter: the "Opinion") and in the Judgment:

- a) the claimant (J.J.) approached PKO BP S.A. in June 2019 with a view to concluding a mortgage loan agreement for PLN 400,000.00;
- b) on 1 August 2019, the claimant (J.J.) entered into a mortgage loan agreement with PKO BP S.A. with a repayment period of 20 years for a total amount of PLN 413,436.69, intended for the purchase of a residential property;
- c) the loan agreement provided for a variable interest rate, the value of which was to be calculated based on:
 - i. the WIBOR 6M reference index, which belongs to the WIBOR family of reference indexes and is a reference index within the meaning of Article 3(1)(22) of Benchmark Regulation and whose value on the date of conclusion of this agreement was 1.79%, and secondly,
 - ii. a fixed margin of 1.85%, with the applicable interest rate to be adjusted in line with changes in that index on a half-yearly basis;
- d) the specific terms of the loan agreement show that PKO BP S.A. informed the borrower of the risks associated with the use of a variable interest rate, which, in specific circumstances, could lead to an increase in interest and, consequently, in the monthly repayment instalments. Information on this matter was also included in the general terms and conditions of the loan agreement;

- e) the claimant (J.J.) lodged a complaint with PKO BP S.A. regarding the legality of setting the variable interest rate using the WIBOR 6M reference index. This complaint was not upheld by the Bank;
- f) subsequently, the claimant (J.J.) brought an action before the Referring Court, seeking:
 - i. a declaration that the term of the loan agreement relating to the variable interest rate is unfair in so far as it refers to the WIBOR 6M reference index, and that, consequently, that term is not binding on him (is void),
 - ii. an award in his favour of PLN 10,828.93, plus default interest;
- g) the claimant (J.J.) alleged that he had not been properly informed by PKO BP S.A. of the risks associated with the variable-index loan agreement and the determination of the WIBOR 6M reference index, in particular regarding issues related to the influence of banks (including PKO BP S.A.) on the setting of the WIBOR reference index and the data used to determine its value. According to the claimant (J.J.), this indicates that the banks were securing a “hidden margin” for themselves;
- h) PKO BP S.A. disagreed with the claimant’s (J.J.) assertions, stating that: (i) the claimant (J.J.) was properly informed, during the process of concluding the loan agreement, of the risk of interest rate changes, (ii) the WIBOR 6M reference index is not detached from actual transactions, (iii) it is not possible for banks providing data for the calculation of the WIBOR 6M reference index to manipulate that index or to enter into an agreement between themselves aimed at determining its value.

In view of the above, the Referring Court has referred four questions to the CJEU for a preliminary ruling:

- 1) Must Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as permitting examination of contractual clauses concerning a variable interest rate based on the WIBOR reference index?
- 2) If the answer to the first question is in the affirmative, must Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as permitting examination of contractual clauses concerning a variable interest rate based on the WIBOR reference index?
- 3) If the answers to the first and second questions are in the affirmative, must Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a contractual clause concerning a variable interest rate based on the WIBOR reference index may be regarded as contrary to the requirement of good faith and causing a significant imbalance in the parties’ rights and obligations under the contract, to the detriment of the consumer, on account of the failure duly to inform the consumer of his or her exposure to the risk of a variable interest rate, in particular the failure to indicate how the reference index, which forms the basis for determining the variable interest rate, is determined and what uncertainties are associated with its non-transparency and the uneven distribution of that risk between the parties to the contract?

- 4) If the answers to the previous questions are in the affirmative, must Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in conjunction with Article 3(1) and (2), second sentence, and Article 2 thereof, be interpreted as meaning that, if a contractual clause concerning a variable interest rate based on the WIBOR reference index is found to be unfair, there can be continued operation of a contract in which the interest rate on the amount of the loan capital will be based on a second component determining the interest rate included in the contract, that is to say the bank's fixed margin, which will change the interest rate on the loan from variable to fixed?

Judgment of the CJEU in Case C-471/24

The CJEU provided the following answers to the questions referred for a preliminary ruling by the Referring Court:

- 1) Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the exception provided for therein does not cover a term in a mortgage loan agreement stipulating a variable interest rate based on a benchmark, within the meaning of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, and a fixed margin, where the statutory or regulatory provisions applicable to such a term merely establish a general framework for the setting of the interest rate for such contracts, while leaving it open to the seller or supplier to determine the contractual benchmark or the fixed margin which may be added to the value of that index.
- 2) Article 4(2) of Directive 93/13 must be interpreted as meaning that, where a mortgage loan agreement relating to residential immovable property contains a term stipulating a variable interest rate based on a benchmark, within the meaning of Regulation 2016/1011, the transparency requirement arising from that provision does not impose on the creditor certain specific obligations to provide information as regards the methodology of that benchmark. The fact that the creditor has complied with all the obligations to provide information imposed on it by Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, as amended by Regulation 2016/1011, in respect of such a term and, if it has provided additional information, has not provided any information giving a distorted picture of that benchmark is such as to establish that that creditor has satisfied that requirement of transparency as regards that term.

- 3) Article 3(1) of Directive 93/13 must be interpreted as meaning that, where a term in a mortgage loan agreement stipulates a variable interest rate based on a benchmark, within the meaning of Regulation 2016/1011, first, the lack of information on the part of the consumer concerning certain specific features of the contractual benchmark, in particular the fact that its methodology provides for the use of input data which does not necessarily correspond to actual transactions and the fact that the creditor is one of the banks contributing to the determination of that index, and, secondly, those specific features themselves are not such as to render that term unfair, provided that that index could be regarded as consistent with that regulation at the time of the conclusion of that contract.

In light of (i) the Referring Court's indication that it will not review the assessment of the competent national authority: the Polish Financial Supervision Authority (hereinafter: the "KNF"), according to which the WIBOR reference index complies with Benchmark Regulation, (ii) the CJEU's answer to the third question referred for a preliminary ruling, the CJEU stated that there was no need to answer the fourth question from the Referring Court.

This ruling has significant implications for proceedings concerning WIBOR clauses within the Polish ordinary court system. In the public debate concerning WIBOR disputes, comparisons are often drawn with earlier proceedings in Swiss franc loan cases. It is argued that this new wave of disputes may end in a comparable manner (Augustynowicz 2025; FrankNews 2026; Consumer Foundation, 2026). Undoubtedly, regardless of the substantive issues, a new wave of lawsuits against banks would contribute to significantly overburdening the Polish justice system.

The authors of this commentary do not share these pessimistic projections of a catastrophic scenario for the judicial system in Poland, particularly considering the conclusions to be drawn from the Judgment under discussion.

First, as discussed in the section on the WIBOR rate, the index itself – which is administered by a body specifically established for this purpose (GPW Benchmark S.A.), and supervised by the Polish Financial Supervision Authority (KNF) – complies with both Polish and European law.

Importantly, the Referring Court itself stated that it did not intend to challenge the index *per se*. That approach should be endorsed. It is not for a civil court to challenge either the methodology for determining WIBOR or the rules governing its operation, since the power to make such an assessment lies with the KNF. In particular, it is the KNF that may revoke the authorisation granted to GPW Benchmark S.A. to administer the benchmark. The procedure for granting authorisation to administrators of interest rate reference indices, including key reference indices, as well as the rules governing supervisory oversight in that respect, are laid down in Benchmark Regulation.

Second, the Judgment clearly indicates that the principal subject matter of the loan agreement is the clause concerning interest, which means that the court hearing the case must first assess whether that clause is transparent. The CJEU referred

extensively to the principles developed in its case-law for assessing whether a given provision is transparent. Particular attention should, however, be paid to the part of the Judgment describing the relationship between Directive 2014/17/EU, 2014, and Benchmark Regulation.

In this regard, the CJEU explicitly ruled out an expansive interpretation of Article 13(1), second subparagraph, point (ea) of Directive 2014/17/EU, 2014, stating that this provision does not refer to the methodology of the reference index or to factors that could influence a change in such an index: *“Furthermore, since the information which must be provided in accordance with point (ea) of the second subparagraph of Article 13(1) is general information on credit agreements which a creditor must make available on a permanent basis, the words ‘the possible impact on the consumer’ of agreements referring to a reference index, in that provision, cannot refer to more precise information than the personalised pre-contractual information described in paragraphs 93 and 94 of the present judgment. More specifically, those terms cannot refer to the methodology of the benchmark or benchmarks used by that creditor in the contracts it proposes or to the factors likely to influence the variation of those contracts.”* This means that the bank, as lender, is not required to inform the consumer of the methodology for determining WIBOR.

As regards the provisions of Benchmark Regulation, the CJEU confirmed that, together with the provisions of Directive 2014/17/EU, they establish information obligations towards consumers. Those obligations, however, are imposed on benchmark administrators, not on lenders. One should agree with the CJEU’s endorsement of the Opinion that: *“the publication of information for which the administrator of a benchmark assumes responsibility is such as to allow all stakeholders, including consumers, to understand the methodology used to provide that index.”* Lenders should not, therefore, bear the negative consequences of a third party’s failure properly to perform obligations imposed on that third party by EU law. Neither European law nor Polish law imposes any obligations on lenders to cooperate with benchmark administrators in relation to information obligations.

Further on in the Judgment, the CJEU explicitly set out the scope of the information obligations borne by the various actors in the financial market, namely lenders and benchmark administrators: *“Within the framework thus established, it is for the former [the lenders – author’s note] to provide consumers with the information that will enable them, at the same time, to assess the actual consequences of the variability of the interest index on their obligations under the contract offered to them and to acquaint themselves with all the information that the administrator of a benchmark must make public”.* It should nevertheless be noted that, if a lender chooses to provide additional details concerning the reference index, then, regardless of the fact that the relevant information obligations rest with the administrator of that index, it must describe such matters correctly: *“That said, where the information communicated by the creditor does not refer merely to publicly available information, such as that which Regulation 2016/1011 requires any administrator of a benchmark*

to make available, but describes, summarises or explains that information, those data must be accurate as compared with that information”.

Consequently, the CJEU made it unequivocally clear that:

- (i) lenders have no specific information obligations regarding the methodology of a benchmark,
- (ii) where a lender has complied with all information obligations under Directive 2014/17/EU of 2014, and has not provided additional information that would distort the picture of the benchmark, it must be considered to have met the transparency requirement.

Third, in order to assess whether a contractual provision linking a variable interest rate to the WIBOR reference index was unfair, it is first necessary to establish that this term lacked transparency. The CJEU rightly emphasised that a mere breach of the transparency requirement cannot in itself make a contractual term unfair: *“In that context, it must be pointed out that, although any failure to comply with that requirement of transparency is one of the factors to be taken into account in the assessment of the unfairness of a contractual term, it nevertheless follows from Article 4(2) of Directive 93/13 that a failure to comply with that requirement is not, in itself, such as to render that term unfair (see, to that effect, judgment of 13 July 2023, Banco Santander (Reference to an official index), C265/22, EU:C:2023:578, paragraph 66 and the case-law cited)”.*

Fourth, as noted above and confirmed in the Judgment, the provisions of Benchmark Regulation set out, in a detailed and exhaustive manner, inter alia: (i) the administrator’s information obligations; (ii) the development of benchmarks (including WIBOR); (iii) the provision of input data used to determine those benchmarks; (iv) the use of those benchmarks; and (v) the possibility of lodging a complaint in order to challenge benchmarks. Consequently, the CJEU held that: *“the intervention of the EU legislature sought to ensure a balance between the public interest linked to the need to be able to have such indices, in particular for the conclusion of financial contracts such as mortgage loan agreements, and the interest of consumers in having guarantees as to the integrity and transparency of those indices, having regard, in particular, to the risks of conflict of interest and manipulation liable to affect their provision. (...) the use, in a mortgage loan agreement, of a benchmark which, at the time that agreement is concluded, may be regarded as complying with the requirements of the framework established by Regulation 2016/1011, in particular as regards its methodology, in the light of the control provided for by that regulation, cannot, in principle, be, in itself, such as to create, to the detriment of the consumer, a significant imbalance in the parties’ rights and obligations, notwithstanding the fact that the creditor is one of the banks which provide the input data used by the administrator of that index to determine its successive values”.*

In other words, the characteristics of the WIBOR reference index do not render interest clauses unfair within the meaning of Directive 93/13/EEC, 1993. Moreover,

given the exhaustive regulation of benchmark-related matters in Benchmark Regulation, that fact may also support the argument that a bank, acting as lender, could not have disturbed the contractual balance in a loan agreement concluded with a consumer. Furthermore, the bank is not required to inform the borrower of its role in determining the value of the WIBOR benchmark; accordingly, the lender's submission of input data for the purposes of WIBOR is irrelevant to the assessment of whether a variable-interest clause based on WIBOR is unfair.

Summary

The Judgment under discussion should be assessed positively as an expression of a rational approach to consumer law, to its relationship with the regulatory framework governing the financial market, and, importantly in the circumstances of the present case and in the context of the activities of entities pursuing claims against banks in Poland, to its socio-economic consequences.

Irrespective of the allegations and arguments advanced, WIBOR has operated in Poland for more than thirty years as an obvious, standard, and widely accepted market measure of the time value of money in contractual obligations. Although for many years it functioned on a self-regulatory basis under the auspices of the industry organisation administering the interbank market in Poland, EURIBOR (Euro Interbank Offered Index), the principal variable interest rate benchmark for the euro, operated in a similar manner during the same period. However, following the regulatory reform that took place globally after the economic crisis that began in 2008, new rules were adopted within the European Union, requiring numerous changes in the operation of such external measures of the time value of money. The most important act in that respect is Benchmark Regulation. It introduced, inter alia, legal definitions of concepts such as a benchmark and an interest rate benchmark and laid down detailed conditions for the operation of benchmarks in the EU, including WIBOR in Poland.

In addition, WIBOR's administrator, GPW Benchmark S.A., operates based on authorisations granted by the KNF. Meanwhile, Polish case-law assumes that, once an administrative decision becomes final, it is binding on every civil court, save only in exceptional cases involving procedural defects so serious that the decision cannot be recognised as an administrative act. Furthermore, the KNF's decision was preceded in March 2019 by the European Commission's classification of WIBOR as a key benchmark. As a result of this decision, WIBOR became one of five key benchmarks – alongside: EURIBOR, the Euro Overnight Index Average (EONIA), the Stockholm Interbank Offered Index (STIBOR) and the Norwegian Interbank Offered Index (NIBOR).

The Judgment is also unquestionably favourable to the banking sector, as it limits, and perhaps even definitively closes off, the possibility of profiting from the mass pursuit of consumer claims against banks in WIBOR-related disputes. Assertions

appearing in the public domain, including in newspapers and magazines, electronic media or social media, as well as in promotional and advertising materials, regarding a “consumer victory at the CJEU in the WIBOR case”, and in particular the possibility of challenging contracts based on the ESIS (*European Standardised Information Sheet*) or the chance of challenging contractual relationships established earlier, i.e. before 2016 or 2018, must be treated solely as part of a communication campaign, a tactic of putting a brave face on a bad situation.

In light of the foregoing, promotional and advertising messages disseminated by various entities – including law firms and non-lawyer claims handling services – encouraging consumers to challenge credit agreements based on the WIBOR reference index, and in particular those containing promises of high chances of success, assurances of obtaining financial benefits comparable to the outcomes of Swiss franc loan cases, or suggesting that the CJEU ruling opens the way for the mass invalidation of existing contractual relationships, must be regarded – in light of the commented Judgment – as devoid of legal basis and justification. Such messages may mislead consumers as to the actual litigation prospects, harm their interests as recipients of legal services, and – in the case of qualified legal practitioners, namely advocates and attorneys-at-law – exceed the boundaries of permissible information about professional activity, thereby entering the realm of conduct contrary to the principles of professional ethics and potentially constituting a disciplinary offence. Consideration should also be given – although this matter goes beyond the scope of the present article – to whether the professional self-governing bodies of advocates and attorneys-at-law ought to take appropriate action to eliminate practices of a purely mercantile character that undermine public trust in the legal professions and the reliability of information provided to consumers.

After all, any CJEU approval of challenging contractual provisions referring to WIBOR would, in practice, mean the possibility of challenging loan agreements, the number and value of which far exceed those of foreign-currency-linked credit agreements. Such a situation would be – both from the perspective of the Polish judiciary and the stability of the financial sector – a threat, ultimately exposing consumers themselves, including current and future borrowers, depositors, and other market participants, especially persons seeking to enforce their rights in court, to serious risk, while simultaneously generating further transfers to the benefit of the lobby of entities pursuing such claims on a mass scale, including foreign investors financing disputes before Polish courts. In light of the experience of litigation brought by Swiss franc borrowers against banks, which generated legal risks to the financial system greater than those posed by the global COVID-19 pandemic, the global economic crisis, or the Russian Federation’s aggression against Ukraine (Financial Stability Committee 2022), the Judgment under discussion gives reason to hope that the dangers outlined above have been averted.

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