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Judgment of the Court in Case C-471/24 | PKO BP (Critical benchmark)

Property loans: a bank's obligation to provide information does not require it to disclose to the consumer the details of the methodology of a regulated benchmark used to calculate a variable interest rate

A contractual term including a benchmark such as WIBOR does not, in principle and on its own, create a significant imbalance between the parties to the detriment of the consumer

In 2019, a Polish consumer concluded a property loan agreement with a bank for a term of 20 years, borrowing the equivalent of approximately € 100 000. The loan was subject to a variable interest rate, calculated on the basis of the WIBOR 6M benchmark,¹ plus the bank's fixed margin. At the time the agreement was concluded, almost all mortgage loans in Poland were granted at variable rates and indexed to WIBOR.

WIBOR is subject to an EU regulatory framework² designed to ensure the accuracy and reliability of benchmarks, thereby ensuring a high level of protection for consumers and investors. In addition, the European Commission has classified it³ as one of the critical benchmarks used in financial markets, subject to enhanced requirements to ensure their integrity and robustness.

The consumer claims before a Polish court that the contractual term relating to the interest rate is unfair and therefore not binding on him. He criticises the bank for failing to explain to him in a reliable, comprehensive and intelligible manner how the WIBOR 6M is calculated, what factors influence its value, and what role the banks themselves play in determining that index. In his view, without this information, he was unable to assess the financial consequences of the contract, while he bore the entire risk associated with interest rate variations.

The Polish court referred the matter to the Court of Justice. The referring court wishes to know whether the Directive on unfair terms in consumer contracts⁴ applies to the term at issue and, if so, whether it complies with the requirements of that directive. In particular, it asks whether, in the absence of information on the specific characteristics of WIBOR, the term in question must be regarded as unfair.

The Court finds that the Unfair Terms Directive applies in this case. Neither the fact that national law lays down the rules for determining the variable interest rate based on a benchmark nor the fact that WIBOR is partly governed by EU law precludes this. Where national provisions merely establish a general framework for setting such an interest rate, **while allowing the seller or supplier to determine the contractual benchmark or the fixed margin to be added, the contractual term setting the variable interest rate based on a benchmark such as WIBOR may be examined in the light of the directive.**

The transparency requirement⁵ laid down in the directive **does not require the bank to provide the consumer with specific information on the methodology of the benchmark such as WIBOR.** As regards residential property loans, a bank's duty to provide information is enshrined on several levels in EU law.⁶ However, the obligations of a benchmark administrator are different. The latter is to publish or make available the main elements of the methodology of each index it provides, which the bank may indicate to the consumer. **Any additional information provided by the bank must not give a distorted picture of that index.**

As regards the potential unfairness of the contested term,⁷ the Court recalls that WIBOR is the subject of a comprehensive legal framework at EU level, compliance with which is ensured by the competent national authorities. Thus, **since a benchmark such as WIBOR can be considered to comply with that legal framework, the term incorporating it does not, in principle and on its own, create a significant imbalance between the parties to the detriment of the consumer.**⁸

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ WIBOR 6M (Warsaw Interbank Offered Rate) is a six-month benchmark for placing deposits in zlotys on the interbank market in Poland.

² [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.

³ Commission [Implementing Regulation \(EU\) 2016/1368](#) of 11 August 2016 establishing a list of critical benchmarks used in financial markets, in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council, as amended by Commission [Implementing Regulation \(EU\) 2019/482](#) of 22 March 2019.

⁴ Council [Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.

⁵ According to Directive 93/13, in so far as the term setting the interest rate on a property loan entails the main subject matter of the contract, the potentially unfair nature of that term can only be examined if it has not been presented in a clear and comprehensible manner (transparency requirement).

⁶ [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.

⁷ The assessment of whether the term in question is unfair can only be carried out after it has been established that it does not comply with the transparency requirement.

⁸ This is the case even if the bank that granted the loan provides certain data used by the administrator to calculate the successive values of the benchmark or if they do not always correspond to actual transactions.