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Banking litigation—WIBOR, the free credit sanction, and judgments from the Court of Justice

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JULY 2025

A LEGAL AND COMMERCIAL PERSPECTIVE

Introduction

The rapid growth in the WIBOR index, from 0.25% in January 2021 to a peak of 7.43% in July 2022, has spurred many borrowers to challenge the legality of this benchmark.

Meanwhile, a liberal interpretation of the regulations on the "free credit" sanction, relied on by law firms seeking compensation for their clients and by debt collection companies buying up claims, has unleashed a wave of cases in which assignees of consumer claims are attempting to obtain economically advantageous rulings from the courts. As aptly pointed out by representatives of the banking sector and regulators (including the Polish Financial Supervision Authority—KNF), this is an example of impermissible weaponisation of consumer protection law, as the sanction of free credit was not intended to undermine lawfully concluded credit agreements.

In this report we present a comprehensive legal analysis of these issues from the perspective of the stability of the banking system and protection of the legitimate interests of lenders. We point out that neither the objections to the Warsaw Interbank Offered Rate as a benchmark, nor attempts to excessively expand the use of the free credit sanction, are justified under the applicable law.

Key takeaways

Legality of WIBOR. Since 16 December 2020 WIBOR has functioned as a "critical benchmark" under the Benchmark Regulation, which means that it is fully compliant with EU requirements. KNF has issued a legally final administrative decision confirming the legality of the methodology for determining WIBOR, which is binding on the civil courts under the longstanding jurisprudence of the Supreme Court of Poland.

Lack of abusiveness of WIBOR-based clauses. In the case of mortgage loans issued under the Mortgage Credit Act, the use of WIBOR arises directly from statutory provisions (e.g. Art. 29(2) of the act), which excludes the possibility of examining the alleged abusiveness of such provisions under Art. 1(2) of Directive 93/13/EEC. In the case of other consumer loans, WIBOR-based clauses meet the test of clarity and do not cause an imbalance in the parties' contractual rights.

Proportionality of the free credit sanction. In the groundbreaking judgment of 13 February 2025 in C-472/23, *Lexitor*, the Court of Justice held that

the sanction of free credit in the Polish Civil Code must reflect the principle of proportionality. The mere inclusion of abusive clauses affecting the stated APRC does not justify automatic resort to this drastic sanction. It is necessary to show that the infringement had an actual impact on consumers' ability to assess the scope of their obligations.

Permissibility of charging interest on capitalised borrowing costs. The Polish lower courts more and more frequently recognise that charging interest on capitalised costs of credit (such as origination fees) does not violate the Consumer Credit Act or Directive 2008/48/EC as implemented into Polish law. This position is supported by the case law from the Supreme Court of Poland.

Significance of European rulings

We are currently awaiting a ruling by the Court of Justice in C-471/24, *PKO BP*, concerning the alleged abusiveness of WIBOR clauses, and in cases C-566/24, *Helpfind Recovery*, and C-744/24, *Bank Pekao*, concerning interest charged on capitalised credit expenses. These cases will provide vital guidance for future rulings by the Polish courts.

However, the existing case law suggests that the Court of Justice will take a balanced approach, taking into account not only the protection of consumers, but also the stability of the financial system. A good example of this approach is the judgment issued by the court on 9 June 2025 in C-396/24, *Lubreczlik*. In its ruling, the Court of Justice not only rejected the theory of "two claims" (applied in the Polish case law since 2021, replacing the previously applied "balance theory"), but also stressed the need to maintain the equality of the parties.

Conclusions for banking practice

The legal analysis presented in the report confirms that the banking sector in Poland has solid legal arguments at its disposal in litigation over the WIBOR benchmark and the free credit sanction. However, it is crucial to scrupulously fulfil informational obligations towards consumers and to ensure that the contractual provisions are clear and understandable.

The legal system protects the legitimate interests of both parties to credit transactions, and excessive expansion of consumer sanctions could threaten the stability of the financial market and households' access to credit.

WIBOR litigation, part 1: Can the WIBOR benchmark be challenged as the basis for setting variable interest rates?

Variable interest rate loans based on the WIBOR benchmark are a major part of the Polish financial market. For years the WIBOR rate remained at a low level, but it shot up in 2022. The WIBOR 6M stood at 0.25% in January 2021, but by July 2022 it had hit a peak of 7.43%. Currently the WIBOR 6M is a little lower (5.05% as of 10 June 2025), but it has yet to retreat to its earlier low values.

This sudden jump translated into much higher loan repayment instalments, which sparked a broad debate on the legality of using WIBOR as an element for setting the interest rate on loans to consumers, as well as banks' compliance with their informational obligations.

Litigation to date in Poland

Some consumer borrowers resort to the courts in an effort to undermine the provisions of credit agreements using variable interest rates based on WIBOR, hoping that the courts will recognise these interest provisions as impermissible contractual clauses under Civil Code Art. 385^1. If successful, such challenges could result in a finding that credit agreements as a whole, or specific WIBOR provisions, are ineffective, leading to an advantageous economic result for borrowers similar to that achieved in earlier litigation over credit denominated in Swiss francs, issued by Polish banks to consumers.

According to media reports, as of the end of March 2025 there were 1,755 cases pending in Polish courts concerning WIBOR-based mortgage loans. This is not very many compared to the overall number of variable-interest loan agreements based on WIBOR. One reason may be that dozens of rulings have already been issued in WIBOR cases, with the great majority coming down against the borrowers (see T. Nowakowski, "Overview of current rulings in WIBOR cases," LEX/el. 2025). But some of those proceedings have been stayed while the national courts wait for the Court of Justice of the European Union to take a position on this issue, as the Częstochowa Regional Court (in case no. I C 1226/23) decided to submit a request for a preliminary ruling to the Court of Justice concerning allegedly abusive contractual clauses using WIBOR as the basis for setting variable interest rates.

The Court of Justice will consider the issue of WIBOR loans in light of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (Case C-471/24, PKO BP). Because Directive 93/13/EEC was implemented into Polish law via Civil Code Art. 385^1, among other provisions, and the Polish courts have an obligation to interpret national regulations consistently with EU law, how this directive is interpreted by the Court of Justice will—as in the case of CHF-denominated loans—be of key importance for Polish courts deciding WIBOR cases.

The allegations raised by borrowers against credit agreements with variable interest rates based on WIBOR can be divided into two main categories. The first concerns the WIBOR benchmark itself, the legality of using it in credit agreements with consumers, and the supposed irregularities in how WIBOR is set. The second group focuses on the alleged abusiveness (under Civil Code Art. 385^1) of contractual clauses basing variable interest rates on WIBOR, including the banks' alleged failure to comply with their duty to provide information to customers.

We will discuss the Civil Code provisions on abusive clauses in a separate article.

What is WIBOR?

Given the objections being asserted to the legality of using the WIBOR benchmark, as well as the legality of how it is determined, it is worth exploring some basic issues related to this benchmark.

WIBOR (the Warsaw Interbank Offered Rate) is a benchmark derived from the Polish interbank market. It indicates the interest rate at which banks could deposit funds with other banks for a definite period. It is commonly used to set variable interest rates on loans—both consumer credit and mortgage credit. WIBOR is also used in other financial instruments, such as treasury bonds and corporate bonds, instalments in finance leases, and investment instruments, and consequently it is crucial for the whole Polish financial system.

WIBOR has functioned since the 1990s. Since 30 June 2017 WIBOR has been administered by GPW Benchmark S.A., a subsidiary of the company operating the Warsaw Stock Exchange. Before that it was administered by ACI Polska.

Since 16 December 2020 WIBOR has also been a "critical benchmark" for purposes of the Benchmark Regulation or BMR (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). The BMR was intended to ensure the accuracy and integrity of indices and benchmarks used in the European Union, while achieving a high level of protection of consumers and investors and efficient functioning of the internal market, in particular financial markets (see J. Sewerynik, "WIBOR: The legal characteristics of the benchmark in the context of the Benchmark Regulation and selected objections to the legality of applying it," Przegląd Prawa Handlowego no. 4/2024, p. 32).

Recognition of WIBOR as a critical benchmark under the BMR carries a series of legal and regulatory consequences. The BMR also sets forth the requirements for the input data from which the given benchmark is calculated.

How is WIBOR set?

WIBOR is determining using a methodology strictly defined in GPW Benchmark's "Regulations for the WIBID and WIBOR Reference Rates." The process for determining the WIBOR for a given day is referred to as the "fixing." On each business day, the biggest banks operating in Poland, which are participants in the WIBOR panel, submit declarations of the interest rate at which they would be willing to lend money to other banks for specified periods. This data is used to set the WIBOR for various terms: overnight (O/N), tomorrow/next (T/N), one week (1W), one month (1M), three months (3M), six months (6M), and one year (1Y).

As a rule, the data for calculating WIBOR should involve real transactions, but if such data is not available or adequate, verifiable non-transactional data may be used instead (Sewerynik, p. 33). From the quotes submitted by the banks on the panel, the extreme values (highest and lowest) are excluded, and the arithmetic mean of the remaining values is determined. This result constitutes the WIBOR for the given period. On each fixing date, the indicator is published on the GPW Benchmark S.A. website. However, if fewer than six banks participating in the fixing submit quotes, no indicator is set.

This procedure has been used to set the WIBOR since its reform in connection with implementation of the BMR, i.e. since 16 December 2020. But this does not mean that the WIBOR from before that date was defective (in this article we do not discuss the earlier method of calculating WIBOR).

Significantly, the characteristics of the WIBOR benchmark described above are also noted by the Polish courts rejecting consumers' challenges to the legality of WIBOR and the correctness of the method used to calculate it.

Objections to WIBOR

One of the allegations raised against WIBOR is that it is based not on actual transactions on the interbank market, but on arbitrary quotes from banks who have a conflict of interest (Sewerynik, p. 34). This questions WIBOR's compliance with the EU's Benchmark Regulation. But there are serious doubts whether the civil courts have any authority to examine the correctness of the method for calculating the benchmark, because the courts are bound by a legally final administrative decision.

As the Gliwice Regional Court found in July 2024 (case no. I C 308/24), the jurisprudence from the Supreme Court of Poland is unequivocal in this respect: a final administrative decision is binding on the civil courts, and if it is stated in a final decision by the Polish Financial Authority (KNF) that the methodology for determining WIBOR meets the requirements of the BMR, the court cannot re-examine the issue of the type of data a given benchmark was based on (see KNF decision of 16 December 2020 and the related KNF communiqué of 17 December 2020). Thus it is sometimes argued that the legality of WIBOR is not subject to review by the civil courts in disputes between consumers and their lenders.

Generally the Polish courts also reject the claim that banks are in a position to unilaterally set the WIBOR indices (echoing claims in the litigation by CHF borrowers that banks had latitude when setting the forex rates which carried over to the amount of instalments that mortgage borrowers had to pay). The courts point out that the process of determining the WIBOR (fixing) has multiple stages and is based on data submitted by numerous banks belonging to the panel, greatly restricting the influence of any one participant (see Sewerynik, p. 36). And banks that are not on the panel have no influence over the level of the benchmark.

For example, as the Olsztyn Regional Court held: "The market reference rate WIBOR 3M is not subject to negotiation by the parties, nor is it set arbitrarily by the plaintiff bank, but it arises on the basis of the interbank market and is dependent on factors such as inflation and the interest rates set by the Monetary Policy Council" (case no. I C 162/22, and similarly in cases I C 523/23 and I C 425/23).

The Poznań Court of Appeal stressed (case no. I ACa 368/22) that the WIBOR is a value over which neither of the parties to a credit agreement have any direct influence. Thus the court recognised that the mechanism for establishing WIBOR is too complicated and regulated to allow any arbitrary influence by a single bank on the WIBOR, the value of which is determined on the basis of objective, external market factors.

Request to the Court of Justice for a preliminary ruling (C-471/24, PKO BP)

As mentioned in the introduction, many courts in Poland are anticipating an interpretation of Directive 93/13/EEC by the Court of Justice (which is solely empowered to interpret EU law). The ruling should resolve doubts about the alleged abusiveness of contractual provisions adopting WIBOR as the basis for determining variable interest rates.

In this respect, the Częstochowa Regional Court filed a request for a preliminary ruling with the Court of Justice on 3 July 2024. The Polish court posed four questions:

1. Must Art. 1(2) of Council Directive 93/13/EEC 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 Art. 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 Art. 3(1) of Council Directive 93/13/EEC 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 Art. 6(1) of Council Directive 93/13/EEC, in conjunction with Art. 3 (1) and (2), second sentence, and Art. 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?

The answers from the Court of Justice will be crucial for the Polish courts seeking to resolve WIBOR cases. Although Directive 93/13/EEC is not directly applied in the Polish legal system, it was transposed into Polish law by (among other provisions) Civil Code Art. 485^1, concerning prohibited contractual clauses. Under the well-established precedent of the Court of Justice, national courts applying internal law, particularly provisions transposing a directive into national law, should as far as possible interpret national law in a manner consistent with EU law (e.g. C-14/83, von Colson). This means that Polish courts applying Civil Code Art. 485^1 in the WIBOR cases are obliged to interpret this provision consistent with the wording and purpose of Directive 93/13/EEC.

The hearing in the case before the Court of Justice initiated by the request from the Częstochowa Regional Court was held on 11 June 2025. It was the first hearing before the Court of Justice in a WIBOR case. After considering the positions of the parties, as well as representatives of the European Commission, the Polish government, and the Portuguese government, the court decided to seek an opinion from the advocate general, which is to be presented on 11 September 2025. A judgment in C-471/24, PKO BP, should thus be expected no earlier than mid-2026.

Summary

In light of the nature of the WIBOR benchmark and the EU's Benchmark Regulation, consumers' challenges to the legality and the correctness of calculation of WIBOR should not be upheld.

The national courts sometimes point out, correctly, that they cannot even examine whether the method of calculating the benchmark is lawful, because the regulatory body (KNF) has issued a legally final administrative decision recognising the process of setting the WIBOR benchmark as consistent with the requirements imposed by EU law (e.g. Gliwice Regional Court judgment of 8 July 2024, case no. I C 308/24).

In turn, the allegation that certain banks could arbitrarily influence the level of the WIBOR is inconsistent with the nature of this benchmark, particularly the "fixing" process for calculating it (see Sewerynik, p. 36). Here we should also mention the assessment of the WIBOR critical benchmark carried out by KNF for the period of 1 December 2022 – 31 December 2024, which found that "WIBOR maintains the capacity to measure the market, and the economic realities which it was established to measure."

The argument that applying WIBOR to the interest rates on consumer credit results in an unequal allocation of risk is also unfounded. As the Polish courts have correctly pointed out, "the risk of a change in the WIBOR benchmark is borne equally by both parties to the contract, and not just the borrower" (Gdynia District Court judgment of 30 September 2024, case no. I C 654/23).

On the issue of the possibility of applying Art. 385^1 §1 of the Polish Civil Code to contractual provisions adopting WIBOR as the basis for determining variable interest rates, the final word lies with the Court of Justice and its answer to the request for a preliminary ruling submitted by the Polish court.

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WIBOR litigation, part 2: Can basing variable interest rates on WIBOR be deemed an abusive clause?

Some consumers are attempting via the Polish courts to undermine provisions in credit agreements setting variable interest rates on the basis of the WIBOR benchmark. They hope that the courts will hold these clauses to be impermissible under Civil Code Art. 385¹. This would allow their credit agreement as a whole, or the specific WIBOR provisions, to be set aside. But does Polish law empower the courts to examine the alleged abusiveness of such provisions?

Under **Civil Code Art. 385¹ §1**, "Provisions of a contract with a consumer and not individually negotiated shall not be binding on the consumer if they frame the consumer's rights and obligations in a manner contrary to fair practice, grossly infringing the consumer's interests (impermissible contractual provisions). This does not apply to provisions defining the parties' principal consideration, including price or remuneration, if they are worded unambiguously."

This provision directly corresponds to:

- **Art. 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**, which provides, "A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer," and
- **Art. 4(2) of Directive 93/13/EEC**, which provides, "Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplie[d] in exchange, on the other, in so far as these terms are in plain intelligible language."

And although not directly reflected in the Polish regulations, **Art. 1(2) of Directive 93/13/EEC** is also key for determining the scope of application of Civil Code Art. 385¹ §1 and the corresponding provisions of the directive. Under that provision, "The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions" are not subject to the directive. This follows from the assumption stated in the preamble to the directive that "the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms…."

This assumption applies to regulations of mandatory applicability, as well as regulations of optional applicability (i.e. which the parties are allowed to contract around), so long as the parties have not made any changes to them (M. Korpalski & W. Nowak, commentary on Art. 1, in Unfair terms in consumer contracts: Commentary on Council Directive 93/13/EEC (Warsaw: Lex, 2024)).

For this reason as well, in litigation over WIBOR (the Warsaw Interbank Offered Rate), the Polish courts will often verify at the outset whether the contractual provisions in question reflect applicable statutory or regulatory provisions. Whether the court is allowed to review the alleged abusiveness of a clause at all depends on the answer to this question.

Consumer mortgage loans

According to the dominant view in the rulings of the Polish courts, in the case of consumer mortgage credit concluded under the Mortgage Credit Act (Act on Mortgage Credit and Supervision of Mortgage Credit Brokers and Agents), basing the interest rate on WIBOR arises out of provisions of law.

This is because under Art. 29(2) of the Mortgage Credit Act, if the parties have not agreed on a fixed rate of interest, the manner of setting the interest rate is determined as **the value of a benchmark** and the margin established in the mortgage credit agreement. In turn, under Art. 4(28), a benchmark is an index referred to in the Benchmark Regulation or BMR (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).

Under the BMR, WIBOR has the status of a critical benchmark. This leads to the conclusion that Polish lawmakers provided for application of WIBOR in the interest rates on consumer mortgage loans, and thus **these provisions are not subject to review for abusiveness** (see judgments of the Łomża Regional Court of 21 June 2024 (case no. I C 405/23), Gdynia District Court of 30 September 2024 (case no. I C 654/23), and Piotrków Trybunalski Regional Court of 3 April 2024 (case no. I C 209/24), and of the Warsaw Regional Court in cases no. XXV C 192/23, IV C 1097/23, IV C 999/23 and IV C 1160/23).

Other consumer credit

However, these conclusions cannot easily be carried over to other types of credit issued to consumers. Thus it is worth considering what in that case might be the result of an examination of the abusiveness of clauses in other credit agreements incorporating WIBOR as the basis for variable interest rates.

The examination of whether a contractual clause is impermissible should begin with determining whether the clause was **individually negotiated** (see Civil Code Art. 385^1 §3 and Art. 3(2) of Directive 93/13/EEC). In nearly all consumer credit agreements, the provisions for determining the level of variable interest rates are not individually negotiated. Rather, the interest-rate mechanism is an element of the bank's offer over which the consumer has no real influence. Most often, the interest-rate mechanism is also part of a contractual template proposed to the consumer by the bank. Thus the condition of lack of individual negotiation is met, and an examination of abusiveness is potentially allowed.

The next step is to determine whether **the clause defines the parties' principal consideration** and was worded unambiguously (see Civil Code Art. 385^1 §1, second sentence, and Art. 4(2) of Directive 93/13/EEC).

In the case of credit agreements and clauses on the interest rate charged by the bank, the prevailing view in the decisions from the Polish courts to date is that a variable interest rate clause defines the principal subject of the parties' agreement (i.e. it is potentially examinable for abusiveness). As the Gliwice Regional Court reasoned in the judgment of 8 July 2024 (case no. I C 308/24), "It appears that a variable interest rate clause defines the main subject matter of the contract within the meaning of Art. 4(2) of Directive 93/13/EEC. The variable interest rate clause relates directly to the borrower's principal consideration, because a credit agreement is always a transaction for paid consideration" (see also Łomża Regional Court judgment of 21 June 2024 (case no. I C 405/23) and Warsaw Regional Court judgment of 23 October 2023 (case no. XXV C 192/23)).

It should then be determined whether **the variable interest rate clause based on WIBOR was worded unambiguously** (see Civil Code Art. 385^1 §1, second sentence, and Art. 4(2) of Directive 93/13/EEC). If it is unambiguous, there are no grounds for examining the abusiveness criteria set out in the first sentence of Civil Code Art. 385^1 §1 or Art. 3(1) of Directive 93/13/EEC.

Under the case law from the Court of Justice of the European Union, in assessing whether a contractual provision is plain and intelligible, the linguistic layer should be considered (a bank using a contractual template should draft it in simple, clear and understandable language), but also whether the bank has complied with its informational obligations to the consumer so that the consumer can estimate the economic consequences flowing from the transaction (T. Nowakowski, "Abusiveness of variable-interest clauses based on a benchmark under the case law of the Court of Justice," Europejski Przegląd Sądowy no. 5/2025, p. 16).

The rulings to date from the Polish courts mostly recognise that the banks have fulfilled these conditions for clarity, considering such arguments as:

- The universal access to information on WIBOR, published for example of the website of the benchmark's administrator
- Simulations of credit repayment instalments, which the banks have presented to consumers
- The banks' compliance with the recommendations of the Polish Financial Supervision Authority (KNF) on the rules for informing borrowers of the risk arising from the use of WIBOR
- Declarations signed by consumers acknowledging their understanding and acceptance of the risk of a change in interest rates (T. Nowakowski, "Overview of current rulings in WIBOR cases," LEX/el. 2025).

The case law from the Court of Justice has also confirmed that banks are exempt from the duty to provide consumers with commonly and easily accessible information about a benchmark (Nowakowski, "Abusiveness," p. 16).

However, whether language is plain and intelligible is evaluated individually in the case of each credit agreement. Therefore, even if in practice WIBOR-based variable interest rate clauses generally meet the criterion of being unambiguous, in individual cases—if the bank has not met its informational obligations—**the alleged abusiveness of such clauses can be examined**. Nonetheless, it should be stressed that in the cases decided to date by the Polish courts, **this stage is usually not reached**.

And even if an ambiguous WIBOR-based variable interest rate clause is examined for abusiveness, it is unlikely to be found abusive in light of the existing case law from the Court of Justice, which indicates significant factors preventing WIBOR-based clauses from being found to be abusive.

One factor is that for determining variable interest rates, for many years there was no viable alternative for the WIBOR benchmark existing on the Polish

market. This means the bank can assert that, based on the law, it acted in good faith, which excludes a finding that the clause was abusive (Nowakowski, "Consequences," p. 19). Another factor is tied to the method adopted by the Court of Justice which requires a comparison between the variable interest rate mechanism in the challenged agreement, against the method most commonly used on the market (Nowakowski, "Abusiveness," p. 19). Since WIBOR is in fact the most commonly used benchmark in credit agreements in Poland, it would be hard to justify the claim that if the consumer had the possibility of individually negotiating the terms, the consumer would not have accepted the use of WIBOR in the specific contract (Nowakowski, "Abusiveness," p. 20).

Summary

All of this leads to the conclusion (also in light of the rulings to date by the Polish courts) that regardless of the stage of examination reached by the court, WIBOR-based variable interest rate provisions should not be found to be impermissible under Civil Code Art. 385^1 §1 or the corresponding Art. 3(1) of Directive 93/13/EEC.

In the case of consumer mortgage loans (issued under the regime of the Mortgage Credit Act), contractual provisions using WIBOR as the basis for calculating variable interest rates cannot be reviewed for abusiveness in light of Art. 1(2) of Directive 93/13/EEC, which bars examination for abusiveness of provisions that "reflect mandatory statutory or regulatory provisions." Here, the Mortgage Credit Act (in connection with the BMR) is the immediate basis for applying WIBOR in such agreements.

In the case of other credit agreements with consumers, the examination for abusiveness should end either at the stage of determining whether the clause is unambiguous (a finding that the bank met the conditions for clarity ends the matter), or at the stage of examining the criteria for the abusiveness of an ambiguous clause defining the main subject matter of the contract, which category includes variable interest rate clauses (the risk that such a provision will be found to be abusive is extremely low).

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Court of Justice: The sanction of free credit must be proportionate

In C-472/23, *Lexitor*, the Court of Justice of the European Union held that the sanction of "free credit" must reflect the principle of proportionality, and need not be applied simply because of the presence of abusive provisions in the credit agreement having an impact on annual percentage rate.

On 13 February 2025 the Court of Justice issued a judgment pursuant to a request for a preliminary ruling from a Polish court on the possibility to applying the "free credit" sanction, meaning that the borrower must repay only the nominal amount of the credit received from the lender, without any additional costs—in other words, just repaying the principal without interest or fees.

The ruling was issued in the context of a Polish debt-collection agency which had bought out consumers' claims for damages and then pursued these claims against the bank, under the sanction of free credit, for refund of interest paid and other costs incurred under the loan agreement.

Assignee accuses the bank of violating informational obligations

The case before the Court of Justice arose out of a dispute before the Warsaw District Court between a bank and a company (Lexitor sp. z o.o.) that acquires and enforces claims. The company was the assignee of the rights of a consumer who had concluded an agreement with the bank to take out a loan of PLN 40,000.

In performance of the disputed agreement, the bank charged interest not only on the principal which was actually paid out to the consumer, but also on amounts advanced to cover costs associated with the loan.

The assignee alleged in this respect that:

- If the interest were calculated solely on the amount of the disbursed loan principal, the annual percentage rate of charge (APRC) would actually be lower than the APRC stated in the credit agreement. In this regard, it was pointed out that the provision of the disputed agreement which allowed the lender to receive interest not only on the amount of loan principal actually disbursed, but also on the costs of the credit (which the consumer

was required to pay), constituted an unfair term under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

- Under Art. 6(1) of Directive 93/13/EEC and Art. 385[1] of the Polish Civil Code, this term is not binding on the consumer and should be disregarded in calculating the APRC. For this reason, the APRC stated in the contract was incorrect (it was too high), as it was calculated assuming that interest would also be charged on the costs of the credit charged to the consumer.

Consequently, the assignee cited Art. 30(1) of the Consumer Credit Act of 12 May 2011, in conjunction with Art. 45 of that act, which provide respectively:

> "Subject to Art. 31–33, a consumer credit agreement must indicate: … the [APRC] and the total amount payable by the consumer set on the date on which the consumer credit agreement is concluded, including all the assumptions used in order to calculate that charge; … information on the other costs which the consumer is required to pay in connection with the consumer credit agreement, in particular charges, including charges for maintaining one or several accounts recording both payment transactions and drawdowns, together with charges for using a means of payment for those transactions and drawdowns, commissions, margins and the costs of ancillary services, in particular insurance, if known to the creditor, and the conditions under which those costs may change."
>
> "In the event of failure by the creditor to comply with Arti. 29(1), Art. 30(1)(1)–(8), (10), (11), and (14)–(17), Art. 31–33, Art. 33a and Art. 36a–36c, the consumer shall, after submitting a written declaration to the creditor, repay the credit, without interest and any other credit charges due to the creditor, within the time limit and in the manner laid down in the agreement."

The Consumer Credit Act was adopted to implement into Polish law Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers. Thus the grounds for issuance of Directive 2008/48/EC are also critical, as they guide the interpretation of the regulations primarily by the EU courts, but are also taken into account by national courts.

Warsaw court seeks interpretation by the Court of Justice

Because it had doubts about the interpretation of EU regulations, the Warsaw District Court sought a preliminary ruling from the Court of Justice on the following questions:

> "Must Article 10(2)(g) of [Directive 2008/48/EC], read in the context of recitals 6, 8 and 31 thereof, be interpreted as meaning that where, because some of the terms of a consumer credit agreement are deemed to be unfair, the [APRC] stated by the creditor on conclusion of the agreement is higher than if it is assumed that the unfair contractual term is not binding, the creditor has failed to fulfil its obligation under that provision?"
>
> "Must Article 10(2)(k) of [Directive 2008/48/EC], read in the context of recitals 6, 8 and 31 thereof, be interpreted as meaning that it is sufficient to inform the consumer of how often, in what situations, and by what maximum percentage charges related to performance of the agreement may be increased, even if the consumer is unable to verify whether a particular situation arises and the charge[s] may consequently be doubled?"
>
> "Must Article 23 of [Directive 2008/48/EC], read in the context of recitals 6, 8, 9 and 47 thereof, be interpreted as precluding national law which provides for only one penalty for failure to fulfil the obligation imposed on the creditor to provide information, irrespective of the degree of the failure to do so and the effect thereof on the consumer's decision to conclude the credit agreement, where that penalty involves making the credit free of interest and charges?"

The answer from the Court of Justice

After hearing the parties, the Court of Justice ultimately held as follows:

> "Article 10(2)(g) of Directive 2008/48/EC … must be interpreted as meaning that the fact that a credit agreement refers to an annual percentage rate of charge, which proves to be overstated because certain terms of that agreement are subsequently found to be unfair, within the meaning of Article 6(1) of Council Directive 93/13/EEC …, and, therefore, are not binding on the consumer, **does not constitute, in itself, an infringement of the obligation to provide information laid down in that provision of Directive 2008/48**."
>
> "Article 10(2)(k) of Directive 2008/48 must be interpreted as meaning that the fact that a credit agreement lists a certain number of circumstances justifying an increase in the costs connected with the performance of the agreement, without, however, a reasonably well-informed and reasonably observant and circumspect consumer being in a position to ascertain whether they have arisen and their effect on those costs, constitutes an

> infringement of the obligation to provide information laid down in that provision, **where that indication is liable to call into question the possibility for that consumer to assess the extent of his or her liability.**"
>
> "Article 23 of Directive 2008/48, read in the light of recital 47 of that directive, must be interpreted as not precluding national legislation which provides, in the event of infringement of the obligation to provide information imposed on the creditor in accordance with Article 10(2) of that directive, for a uniform penalty, consisting of depriving the creditor of its right to interest and charges, irrespective of the individual level of seriousness of such an infringement, where that infringement is capable of calling into question the possibility for the consumer to assess the extent of his or her liability."

Effects of the ruling—APRC and informational issues for consumer borrowers

In responding to the first question, the Court of Justice correctly observed, and consequently held, that under Art. 19(3) of Directive 2008/48/EC the APRC is calculated under the assumption that **the credit agreement will remain in force for the agreed term and that both the lender and the borrower will comply with their obligations in compliance with the conditions and time specified in the agreement**.

Another way of looking at this is that the APRC is calculated as of the time the credit agreement is signed. Moreover, in calculating the APRC it is assumed that the agreement will remain in force for the agreed term. It is thus justified to conclude that indicating in the agreement an APRC that later proves to be overstated (because some provisions of the agreement are found to be legally non-binding) does not in itself infringe the informational obligation. Therefore, the sanction of "free credit" referred to in Art. 45 of the Consumer Credit Act cannot be applied in this case.

Undoubtedly this response from the Court of Justice is advantageous for consumer lenders. This is because, even if the agreement includes a non-binding provision impacting the stated APRC, this does not mean per se that the lender has infringed its informational obligations under Directive 2008/48/EC or the Consumer Credit Act.

On the second question, the Court of Justice actually stressed the authority of the national court ruling on allegations of the lender's infringement of its

informational obligations. The court observed that if the credit agreement provides for changes in the costs of performing the agreement based on variable economic indicators (including indicators under the bank's own control), or vaguely described indicators, then the existence of these circumstances can be hard for the consumer to verify, whether before signing the agreement or over the course of performance. However, the court stressed that it cannot automatically be concluded from the use of such indicators that the lender has infringed its informational obligations under Directive 2008/48/EC or the Consumer Credit Act. Rather, the individual assessment by the referring court is crucial.

Consequently, the referring court must examine to what extent the borrower was in a position to evaluate when, and under what criteria, their obligations to the lender might increase in the future (assuming that the borrower is an average consumer who is reasonably well informed and reasonably observant and circumspect). This assessment will be made individually in each case.

The Court of Justice also pointed out that in this respect, the national court must take into account, among other things, the following aspects of the case:

- What factors were the fees dependent on, and to what extent could they change?
- What events are subject to fees charged by the lender (i.e. whether these are fundamental or ancillary, initiated at the consumer's own request or arising out of the consumer's neglect or failure, etc)?

Effects of the ruling—the sanction of free credit and the principle of proportionality

This issue was raised in the final grounds for the judgment, in par. 48–58.

First it was explained that in interpreting Directive 2008/48/EC, and particularly Art. 23, it is vital to consider recital 47 of the preamble to the directive, which provides: "Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive."

In other words, while the choice of sanctions lies within the discretion of the member states, the sanctions must be not only an effective deterrent (as stressed by the debt collection companies buying up claims against lenders),

but also **proportionate**. In this respect, it is recognised that the severity of the sanction must be appropriate to the seriousness of the infringement and comply with the principle of proportionality (which is also a core principle of the Polish legal system, enshrined in Art. 31(3) of the Constitution). The referring court therefore cannot take an automatic approach in applying the sanction of free credit to each and every infringement of informational obligations under the Consumer Credit Act.

This assessment must always be not only individual (i.e. made on the grounds of the specific case and the specific infringement), but also conducted applying the principle of the proportionality and adequacy of the sanction. The guidance from the Court of Justice that the referring court should verify whether the infringement of these duties impacted the consumer's assessment of the scope of their obligations under the credit agreement is useful in this respect. Moreover, in par. 58 of the ruling, the Court of Justice expressly indicated that only an infringement capable of calling into question the possibility for the consumer to assess the extent of his or her liability entitles the member state to apply the sanction of "free credit."

In other words, if the infringement of informational obligations did not impact the consumer's decision to enter into the agreement, the sanction of free credit cannot be applied, because it would violate the principle of proportionality.

Therefore, a minor infringement of informational obligations cannot lead to application of the sanction of free credit by the referring court.

Summary

The ruling by the Court of Justice in C-472/23, *Lexitor*, is extremely important for the consumer credit market. On one hand, it seems to reassure banks and other lenders that not every infringement of informational obligations involving the annual percentage rate of charge will result in the sanction of free credit. On the other hand, it gives each consumer whose rights in this respect were violated the ability to pursue an individual challenge and determine in the specific court case whether the infringement of these duties impacted the consumer's decision to take on a credit obligation or not. It essentially opens up a full range of potential resolutions, depending on the nature of the infringement and the specific contractual provisions used by the lender, and requires all market participants to take this risk into account.

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Interest on capitalised costs of credit, and the sanction of free credit

Following the high-profile judgment of the Court of Justice of 13 February 2025 in C-472/23, *Lexitor*, the issue of the sanction of "free credit" has become more and more dynamic. In that judgment, the Court of Justice did not address the legality of charging interest on capitalised costs of credit, i.e. charging interest also on the portion of the loan drawn down but earmarked for payment of the costs of issuing the loan (e.g. commissions). This issue will be addressed by the Court of Justice in subsequent cases where Polish courts have decided to seek preliminary rulings.

Requests for preliminary rulings have been filed with the Court of Justice of the European Union by the District Court for Łódź-Śródmieście (C-566/24, Helpfind Recovery) and the Włodawa District Court (C-744/24, Bank Pekao).

In those cases, the Court of Justice will assess the charging of interest on capitalised credit costs in light of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.

Polish courts have taken the lenders' view

These cases before the Court of Justice will have a major impact on future rulings in Poland and on the sanction of "free credit" as such. Nonetheless, we should not overlook the existing jurisprudence from the Polish courts, which have frequently taken a position advantageous for lenders.

In addition, the Poznań Regional Court has submitted questions on key legal issues surrounding application of the sanction of free credit to the Supreme Court of Poland (case no. III CZP 3/25). Regardless of the case law from the CJEU, the future resolution by the Supreme Court will also exert a major influence on litigation over the sanction of free credit.

It should be pointed out that the Supreme Court previously addressed the possibility of charging interest on the portion of credit earmarked for financing the costs of the credit. In its order of 15 June 2023 (case no. I CSK 4175/22), the court held:

> "If the agreement is structured in this way, and the borrower agrees to these conditions and decides to pay the origination fee not by transferring it from the borrower's own funds, but out of the funds which the bank has agreed to make accessible, the funds applied to this purpose of the borrower increase the borrower's credit indebtedness, which is to be repaid in accordance with the schedule and **charged with the interest agreed by the parties**."

Some Polish lower courts have decided this issue on their own. In the judgment of 5 December 2024 (case no. II Ca 1590/24), the Kielce Regional Court held that it

> "does not share the plaintiff's position on the impermissibility of charging interest on the capitalised costs of the credit in consumer credit agreements. **There is no statutory provision excluding charging such interest. … If obtaining the credit is tied to incurring additional costs**, such as commissions, origination fees etc, and the borrower does not have the funds to cover them or does not wish to do so out of their own funds, **such amounts may also be made available by the lender, i.e. loaned**. In that situation as well, the borrower is using someone else's capital, and the lender is authorised to collect interest on this basis if both parties mutually declare this intention in the agreement. This is a reasonable solution, economically justified, essentially falling within the contractual relationship and not infringing the principle of freedom of contract (Civil Code Art. 353 §1 and 3531). … Contrary to the plaintiff's argument, **this possibility** of charging interest on the capitalised costs of the credit (e.g. commissions) **is not precluded by the Consumer Credit Act of 12 May 2011 or Directive 2008/48/EC … implemented therein**. It does not follow from these laws that interest can be collected only on the amount made available to the consumer for his or her own purposes (unrelated to financing of the granting of credit), i.e. solely on the total amount of credit, which under Art. 5(7) of the Consumer Credit Act is the maximum amount of all funds not including the capitalised costs of the credit, which the lender makes available to the consumer under the credit agreement, or in the case of an agreement for which such a maximum amount is provided, the sum of all funds not including the capitalised costs of the credit, which the lender makes available to the consumer based on the credit agreement (defined by Art. 3(l) of the directive as 'the ceiling or the total sums made available under a credit agreement')."

The court backed its analysis with an extensive historical interpretation of Art. 5(10) of the Consumer Credit Act. Significantly, a change in the wording of this provision indicates that allowing interest to be charged on capitalised costs was a deliberate move by the parliament.

In turn, in the judgment of 7 April 2025 (case no. V Ca 3280/24), the Warsaw Regional Court correctly pointed out that Art. 45(1) of the Consumer Credit Act, concerning the sanction of free credit, must be construed narrowly because it is an exceptional provision:

> "The interpretation of Art. 45(1) cannot lead to expansion of the sanction of free credit to cover instances of infringements that were not clearly indicated there. Contrary to the plaintiff's suggestions, **consumer protection—however special and however much a priority—cannot lead to an interpretation contra legem, conflicting with the principle of legal certainty and the equilibrium between the parties to the contractual relationship**."

Various district courts have also taken a similar view. As the Częstochowa District Court held in its judgment of 7 April 2025 (case no. I C 1176/24):

> "The permissibility of charging interest on the capitalised costs of credit is not precluded by the Consumer Credit Act nor by Directive 2008/48/EC implemented therein."

And the Pisz District Court held in its judgment of 29 April 2025 (case no. I C 145/25):

> "In this instance, if the parties have so provided in the agreement, the lender has **the right to charge interest on the amounts allocated (credited) by it to the costs of the credit**, from which the borrower benefits (Civil Code Art. 359 §1). This possibility of collecting interest on the capitalised costs of the credit (e.g. commissions) is not precluded by the Consumer Credit Act nor by Directive 2008/48/EC implemented therein. … It does not follow from these laws that interest can be collected only on the amount made available to the consumer for his or her own purposes (unrelated to financing of the issuance of credit), i.e. solely on the total amount of credit. … Thus, neither a literal reading of the cited regulations, nor a systemic interpretation thereof, argues in favour of restricting the possibility of charging interest solely to the total amount of credit. **Excluding this possibility in the case of consumer credit would require an express statutory provision, but there is none.** Neither does a purposive

> interpretation justify a ban on providing in the agreement for interest on capitalised costs of the credit."

Summary

Although the reasoning from the Polish lower courts cited above has a justified legal basis—on both systemic and axiological grounds—it can hardly be said for now that there is a uniform line of judicial holdings on this issue.

Opposing positions also crop up, rejecting these arguments. Thus it will be necessary to wait for a definitive resolution on the permissibility of charging interest on capitalised costs of credit (and the ability to apply the sanction of free credit in this instance) until rulings are issued by the Court of Justice and the Supreme Court of Poland.

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A tale of two claims: The Court of Justice questions Poland's rules for unwinding invalid credit agreements

On 19 June 2025 the Court of Justice of the European Union issued an important ruling for Polish legal practice in C-396/24, Lubreczlik, responding to a request for a preliminary ruling from the Kraków Regional Court on the rules for settling accounts between the parties to an invalidated credit agreement.

The Polish court had doubts in such cases about how to apply the doctrine established in national jurisprudence known as the "theory of two claims" (*kondykcje*, from the Latin *condictiones*). Under the theory of two claims, when a credit agreement is set aside, the bank and the consumer each hold a claim for return of the entire monetary consideration exchanged in performance of the invalidated credit agreement.

The state of facts and the questions posed by the Kraków court

The request for a preliminary ruling was submitted in a pair of disputes brought by borrowers against a Polish bank, seeking the refund of amounts paid under a mortgage loan agreement indexed against the exchange rate of the Swiss franc, which was held to be invalid because it contained unfair terms.

In the joined cases, the referring court pondered how the return of the consideration exchanged by the parties should be handled. In this respect, the court questioned whether the theory of two claims, applied by Polish courts since 2021, conflicted with Art. 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, which provides: "Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers."

In two questions referred to the Court of Justice, the court in Kraków sought to determine whether Art. 7(1) of Directive 93/13/EEC should be interpreted as precluding national case law according to which, if a loan agreement is cancelled because it is found to contain an unfair term, the lender is entitled to demand from the consumer reimbursement of the entire nominal amount of the loan (1) irrespective of the value of the repayments made by

the consumer in performance of the contract and (2) irrespective of the actual amount remaining to be repaid.

Consistency of the theory of "two claims" with EU law undermined

In its judgment, the Court of Justice pointed out that "the consequences that should follow from the finding that a term in a contract concluded between a seller or supplier and a consumer is unfair must allow two objectives to be achieved. First, the court must ensure that the equality between the parties, which would have been undermined if a term of the contract that was unfair as regards the consumer was applied, is restored. Second, it is necessary to ensure that the seller or supplier is deterred from including such terms in contracts with consumers."

The Court of Justice pointed out that the determination by a court that a loan agreement is invalid on account of the presence of an unfair term in that agreement has the consequence, under Polish law, that payments made in performance of that agreement, whether by the borrowers or by the financial institution, constitute undue payments, and as such they must be repaid. The Court of Justice also cited the remarks by the referring court that under the case law of the Supreme Court of Poland—based on the "two claims" theory—that each party to such an agreement may claim full repayment of the sums paid in performance of the contract, irrespective of the amount of the repayments made and the amount remaining due under the loan.

It was explained that the case law under the "two claims" theory replaced an earlier line of case law in which most Polish courts adopted the "balance theory." Under that approach, after the mutual settlement made by the parties to the invalid loan agreement had been determined, a single claim would be retained in favour of the party who had made the largest payment under the agreement.

Under the "balance theory," in effect, if the borrower has repaid the bank an amount higher than the amount of principal paid out by the bank to the borrower, the borrower should be refunded the difference. In other words, the "balance theory" balances out the amounts due in advance, excluding a separate setoff, which under Polish law always requires some initiative by the entitled party to assert the setoff.

The Court of Justice also pointed out that "national courts must do whatever lies within their jurisdiction, taking the whole body of national law into consideration and applying the interpretive methods recognised by it, with a view to ensuring that Directive 93/13 is fully effective and to achieving an outcome consistent with the objective pursued by it." The Court of Justice stressed "the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive."

To put it another way, "a national court cannot validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law."

This reasoning led the Court of Justice to conclude that settling the accounts between the parties to an invalid loan agreement using the "two claims" theory is inconsistent with Art. 7(1) of Directive 93/13/EEC.

Consequences of the judgment

A lively public debate has arisen presenting numerous view on the potential impacts of the ruling in C-396/24, *Lubreczlik*. But there is no doubt that the judgment will diametrically change the current line of case law.

The most likely consequence of the judgment will be the necessity for the Polish courts to return to applying the "balance theory" when settling accounts between the parties to invalidated loan agreements. This theory predominated in the Polish case law until 2021, when a seven-judge panel of the Supreme Court decided to back the "two claims" theory.

The balance theory consists in comparing the amount of the enrichment of both parties to the invalidated loan agreement, and ordering payment from one party to the other only of the excess arising on one side. This method is simpler, and does not generate a series of unnecessary legal steps. It also avoids, at least, the problems connected with one of the claims potentially having become time-barred.

In earlier cases, some of the lower courts explained the essence and advantages of the balance theory. For example, in the judgment of 28 February 2020 (case no. I ACa 50/19), the Łódź Court of Appeal stated: "The invalidity of a contract involving monetary consideration from each of the parties does not

give rise to a duty to mutually return the consideration, whether by transferring certain amounts of money in cash or by conducting the relevant banking operations, nor, finally, by asserting mutual declarations of setoff—but only *the duty by one of the parties to actually pay the excess on its side*."

And in the judgment of 23 September 2019 (case no. XXV C 13/18), the Warsaw Regional Court held: "There can be said to be undue consideration only in a situation where it was paid without a valid and effective legal basis. Meanwhile, the plaintiff fulfilled the performance consisting of returning funds to the defendant which were received from it. The court has no doubt that the performance on the part of the plaintiffs [i.e. the borrowers] should be regarded as the reimbursement of the previously received funds. That is the only way it could objectively be understood by the defendant [i.e. the bank]. Thus, in this situation, even given that the agreement has been held to be invalid, a legal relationship does exist which constitutes the basis for the asset transfers that were made. This basis is the cited regulations on unjust enrichment. It must be pointed out that *if there is a necessity to perform on the basis of a credit agreement, and to return the consideration received on the basis of an invalid credit agreement, there is an identity in the purpose of the performance, that is, the borrower's return of funds previously received from the bank*. … For this reason as well, the monetary consideration in Polish currency paid by the plaintiffs to the defendant has a legal basis, and does not constitute an undue performance until the point where the amount exceeds the sum which the plaintiffs received from the defendant."

Summary

The return to the "balance theory" should be regarded as advantageous for both lenders and borrowers. This method undoubtedly allows for restoring the equality between the parties, as stressed by the Court of Justice. This change may even reduce the burden on the courts considering cases involving mortgage loans from Polish banks to Polish consumers denominated in Swiss francs. We must observe the further developments in the case law, but the first signals do point to implementation of the balance theory.

The judgment in C-396/24, *Lubreczlik*, should also be taken into consideration in drafting the "Swiss franc act" to streamline and expedite these types of proceedings.

The current draft provides for the possibility of a one-off settling of claims by the bank and the consumer in a single proceeding, which should improve

the efficiency of the courts. Nonetheless, further changes may still be made during the consultation stage (including work in Sejm and Senate committees). In this respect, the future law should also implement the principle of the equality of the parties stressed by the Court of Justice.

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