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Borrowers' Dispute with Banks over the Use of Variable WIBOR Rate in PLN Mortgage Loans

Abstract:

The article investigates the escalating legal conflicts between mortgage borrowers and financial institutions regarding the application of the variable WIBOR (Warsaw Interbank Offered Rate) reference rate in mortgage agreements. The variability in judicial decisions thus far has heightened the likelihood of an increased number of lawsuits. The research examines the legal, economic and regulatory foundations underpinning borrower claims, as well as the potential repercussions for the mortgage market in the event that WIBOR-based contracts are effectively contested. It delves into macroeconomic determinants such as the escalation of inflation and interest rates, along with the role of monetary policy communication in shaping borrower behaviour. Systemic challenges, including constraints within the mortgage market and efforts to reform the national benchmark, are also examined. The analysis assesses assertions that banks intentionally neglected to offer fixed rate options and investigates

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similarities with previous judgments regarding foreign currency mortgages. Employing case law analysis and statistical techniques, the article rigorously contrasts the arguments of borrowers with the defences of banks, ultimately upholding the validity of WIBOR within both national and EU legal frameworks. The results illuminate systemic deficiencies in mortgage regulation and emphasise the pressing need for reforms in practices related to variable-rate lending.

Keywords: monetary systems, standards, regimes, government and the monetary system, payment systems

JEL: E42, E43, E44

1. Introduction

Over the past 15 years, the Polish mortgage market has undergone significant development characterised by an increase in household debt along with the lowest loss ratios, resulting in a highly profitable range of banking activities (see Feruś, 2024). A significant blemish in the historical evolution of the home loan market has been the extensively debated issue of defective provisions in loans denominated in Swiss francs (see Paxford, 2022). This situation led to a substantial number of lawsuits, resulting in numerous loan cancellations, and prompted some banks to reach settlements offering preferential terms to borrowers. At present, the sector is confronted with an even more formidable challenge, namely the scrutiny of PLN home loans. This paper investigates the increasing legal disputes between mortgage borrowers and banks concerning the utilisation of the WIBOR (Warsaw Interbank Offered Rate) as a reference rate in Polish mortgage agreements. To this end, two research hypotheses were formulated:

Hypothesis 1: The increase in the number of lawsuits concerning home loans based on a variable interest rate is not due to objective flaws in the WIBOR index, but to other factors, such as changes in macroeconomic conditions, increased legal awareness of consumers and precedents in case law.

Hypothesis 2: A possible change in the line of case law in favour of borrowers challenging WIBOR may generate significant systemic risks and pose a threat to the stability of the domestic financial sector.

Recent court rulings in these matters have demonstrated inconsistency, thereby intensifying uncertainty and increasing the likelihood of further legal challenges. As of September 2024, nearly 1,200 lawsuits have been filed, with 33 conclusive judgments favouring lenders, alongside a growing number of verdicts contesting the use of WIBOR. Significantly, certain courts have suspended the application of WIBOR in particular instances, and preliminary inquiries have been submitted to the Court of Justice of the European Union (CJEU), underscoring the increasing legal intricacy and significance of the matter. The legal issues addressed within this study have been partially explored in other publications, including: *WIBOR. Current Legal Problem* (Bełdowski, Szcześniak, 2024) and *Mortgage interest rates in the European Union*

(Dygaszewicz, 2022). Alternative perspectives which contrast with the conclusions delineated herein are also frequently presented. This paper delivers a comprehensive analysis of the legal, economic, and regulatory foundations of these conflicts. It endeavours to identify systemic and macroeconomic factors, such as rising inflation, surges in interest rates, and the dynamics of monetary policy communication, that have precipitated this wave of litigation. The analysis also considers whether restricted access to fixed rate mortgage products and efforts to reform the national benchmark have had an impact as well. By examining case law along with publicly accessible rulings and employing statistical methodologies, the study aims to evaluate the legitimacy of claims and the robustness of the banks' defensive strategies. The article places these developments within the larger framework of financial regulation and legal precedent, drawing parallels with earlier litigation concerning foreign currency loans. Ultimately, this work contributes to the discourse on the stability of the Polish financial system and underscores the need for regulatory reform within the mortgage market. The initial section of the article delineates the research problem, presents the market and regulatory context and characterises the burgeoning phenomenon of legal disputes concerning the WIBOR rate, emphasising the magnitude of the issue and its potential implications for the financial sector. The following section examines the contributing factors, including changes in the macroeconomic landscape, the characteristics of the Polish mortgage market, and the influence of court rulings on foreign currency loans. Thereafter, the paper provides a detailed analysis of the plaintiffs' arguments contesting the legality of the WIBOR rate, especially allegations of inequitable contractual terms, supported by an examination of the stances held by financial supervisory entities. The research process culminates in an evaluation of the legal validity of implementing the WIBOR rate and offers a contribution to the larger discourse on the necessity for regulatory reforms in the mortgage lending market.

2. Sources of the Dispute

In order to understand the reasons for the growing scale of lawsuits against banks that have concluded mortgage loan agreements, it is necessary to pay attention to at least three fundamental issues. Firstly, the economic environment has undergone changes which have led to a substantial rise in the WIBOR rate, and have consequently resulted in a notable increase in the amount of interest instalments. The issue of escalating interest rates has become widespread, primarily due to the marginalisation of the fixed-rate mortgage market, which constitutes the second factor that warrants examination (Mielus, 2017). The third factor contributing to the surge in lawsuits is the prevailing trend in legal rulings and settlements that are favourable to foreign currency borrowers, particularly those who, during the years 2005–2009, secured loans indexed to the Swiss franc exchange rate (hereinafter referred to as foreign currency loans). An in-depth analysis of this issue was carried out by, among others, Pawluć and Szymko (2024). To comprehend the current situation, which threatens the stability of the domestic financial sector, it is

prudent to analyse all the factors mentioned above to determine the extent to which these elements are interconnected with the present situation and, consequently, may lead to significant changes in market conditions.

2.1. Monetary Policy in the Era of Uncontrolled Inflation Preceded by Economic Collapse

During the period 2020 to 2024, there emerged phenomena within the domain of monetary policy that proved challenging for the average consumer to comprehend or anticipate. Furthermore, communication from the monetary authorities lacked sufficient coherence. Initially, as the COVID-19 pandemic proliferated, a prevalent measure adopted globally in the realm of monetary policy was the reduction of interest rates to nearly zero. This action was taken in response to the demand shock within the economy, aiming to boost consumption and mitigate economic costs, particularly during the lockdown phase. As illustrated in Figure 1, the National Bank of Poland (NBP) reference rate along with the associated WIBOR rates underwent several markedly distinct phases. From the standpoint of a consumer encumbered by a mortgage or seeking such financing, those historically low interest rates provided tangible economic advantages, manifesting in relatively low interest payments or improved creditworthiness. A period spanning 18 months, characterised by historically low-interest rate levels to which consumers had grown accustomed, culminated in an equally unexpected, albeit monotonous, phase of monetary policy tightening.

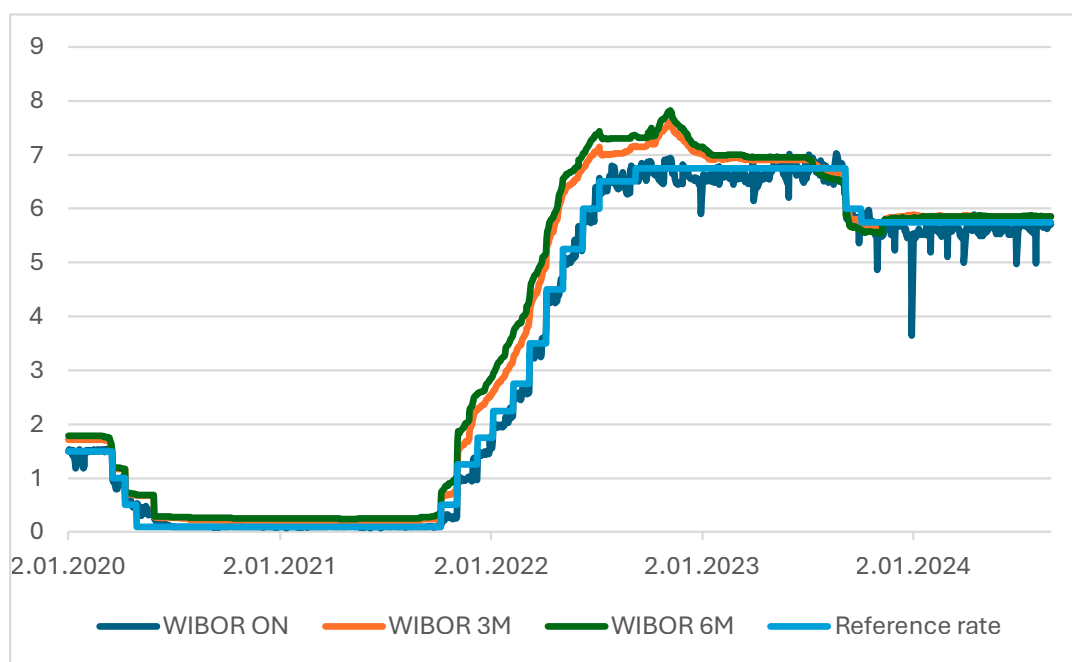


Figure 1. The level of the NBP reference rate and the main WIBOR indices in the period January 2020 – August 2024

Source: in-house analysis based on NBP (2024a) and GPW benchmark data.

The Monetary Policy Council (MPC) initiated a series of interest rate increases in October 2021, as a strategic response to the escalation in domestic price levels. The escalating inflationary pressures resulted in the assertion made by the NBP Governor that a rate hike 'would be a school mistake' (*Szef NBP wyjaśnia...*, 2021). The inflation for 2021 was recorded at 5.1% (NBP, 2024b), which markedly surpassed the NBP inflation target of 2.5% +/- 1% (NBP, 2024a), thus justifying the need for an intensified monetary policy stance. Consequently, the MPC proceeded with a series of interest rate hikes at 11 of the 12 monthly meetings. Thus, by September 2022, the reference rate got elevated to 6.75%, a level unprecedented since the early months of 2003. The rapid escalation of interest rates imposed substantial financial burdens on borrowers, who were not prepared for the marked increase in fiscal obligations (see: Czerniak et al., 2022). The issue concerning the vulnerability in the cost of servicing mortgage loans in Poland due to the escalation in interest rates has been extensively examined in various scholarly articles (see Boda, 2018). Previous assurances negating the need for interest rate hikes were not inconsequential in this regard. As a consequence, certain borrowers faced such a significant surge in interest instalment amounts that it jeopardised the stability of their household budgets. However, global data indicates that such measures have been prevalently adopted in various economies and should not be perceived as unexpected. It is pertinent to acknowledge that the magnitude of the actions taken by the Polish monetary authorities paralleled those of the Czech and Romanian central banks. Given that the inflation rate in Poland for the entire 2022 period was 14.1%, it is apparent that the increase in interest rates was substantially lower than the average price escalation in the economy, justifying counteraction through rate hikes. This is particularly pertinent considering analogous inflation metrics in Hungary during the same period (2021: CPI 5.1%, 2022: CPI 14.6%), where the central bank's primary interest rate increased to 17%. At this point, it should be noted that inflation was mainly caused by cost factors, including, among others, a sharp increase in energy prices, in which the tightening of monetary policy carries a serious risk of triggering recessionary phenomena.

Concurrently, the escalation of financing costs was partially ameliorated by the statutorily enacted 'credit holidays' (Act of 7 July 2022). Individuals who had entered into a mortgage loan agreement denominated in Polish zloty prior to 1 July, 2022 were given the privilege to defer the payment of eight principal and interest instalments in total, with four instalments per annum in 2022 and 2023.¹ The 'credit holiday' scheme was prolonged for an additional year, incorporating an income criterion (Act of 12 April 2024). Approximately 2 million borrowers out of almost 3.4 million qualified households availed themselves of the credit holiday programme, with the programme's estimated value for 2022–2023 approximating PLN 15 billion (ZBP, 2023). In particular, this financial obligation was transferred to the banking sector.

¹ The Act introduced certain restrictions in terms of, among others, the obligation to continue the loan for a minimum of 6 months from the date of entry into force of the Act; the maximum loan amount was set at PLN 1.2 million and one borrower received the right to suspend instalments in only one loan.

Secondly, the increase in interest rates was similar to developments observed in economies comparable to those of Poland. Thirdly, administrative interventions were introduced to systematically alleviate the repercussions of elevated interest instalment liabilities for households with PLN mortgage loans. Ultimately, the financial burden resulting from the stringent monetary policy was borne by numerous economic actors, including both borrowers and banks. Hence, it becomes challenging to raise accusations or expectations against credit institutions regarding the implications of actions undertaken by the NBP, as such actions constitute a statutory initiative to counter inflation. However, it is justifiable to assert that the informational and educational efforts pertaining to that monetary policy were, at best, inadequate, particularly under circumstances where the predominant majority of loan agreements relied on a variable interest rate. Regrettably, a systemic infrastructure for the promulgation of fixed-rate loans was not pre-emptively established, which might have shielded households from unforeseen financial obligations.

2.2. Limitations on the Application of a Fixed Interest Rate in PLN-Denominated Mortgage Loans

Before the onset of the COVID-19 pandemic, the PLN home loan portfolio in Poland was predominantly operated on the basis of the variable interest rate WIBOR 3M or WIBOR 6M. The inaugural introduction of a loan featuring a periodically fixed interest rate was made by ING Bank Śląski in 2018 (Słomski, 2018). A market share of several percent was documented in the subsequent year. In 2020, banks increased the proportion of loans with a periodically fixed interest rate in response to the growing demand of the clientele. Among the factors attributed to the prolonged underdevelopment of the Polish banking market of a comprehensive fixed-rate loan offer, unlike many foreign markets, the most frequently cited issue is the systemic liquidity gap. Specifically, long-term bank assets, such as mortgage loans with durations typically ranging from 20 to 30 years, are predominantly financed by bank deposits with maturities generally not exceeding one year. The absence of long-term liabilities in the balance sheets of credit institutions is a well-documented issue that has been acknowledged and deliberated extensively (NBP, 2018; Kuchno, Niedziółka, 2024). Regrettably, initiatives to popularise covered bonds, which could provide a potentially long-term source of financing, or to transfer home loan portfolios to specialised mortgage banks have not attracted sufficient interest from financial institutions.

In opposition to the apprehensions expressed by the banking sector, the statistical evidence depicted in Figure 3 illustrates that, commencing at the start of 2022, there has been a notable transformation in the methodology of loan issuance, with newly finalised loans featuring a fixed rate subsequently comprising a substantial majority.

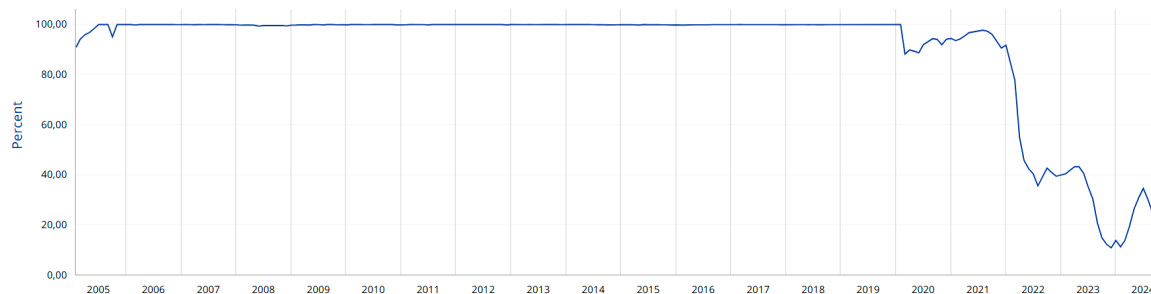


Figure 2. Share of variable rate loans in total loans for home purchase – Poland, Monthly January 2005 – September 2024

Source: European Central Bank, 2025. Share of variable rate loans in total loans for home purchase – Poland, Poland, Monthly

Thus, the Polish mortgage market began to approach the standard observed in the Eurozone countries, where the predominance of home loans with a fixed interest rate has been observed since 2007, as presented in Figure 3.

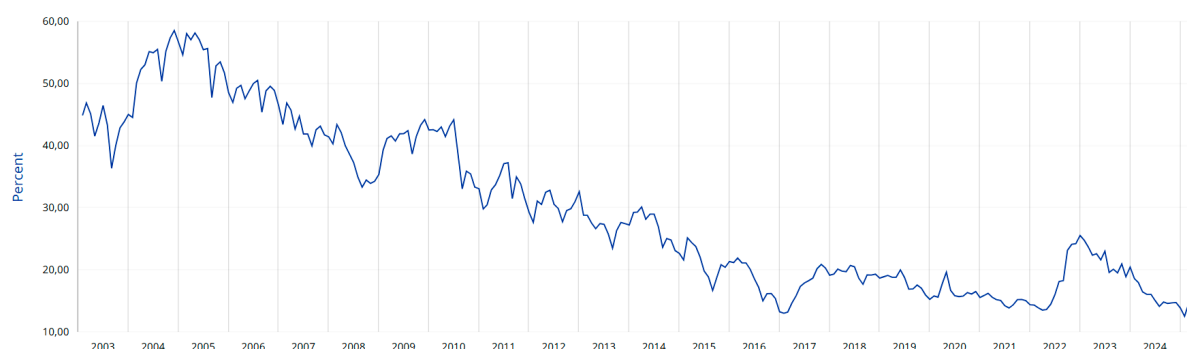


Figure 3. Share of variable rate loans in total loans for home purchase – Euro area January 2005 – September 2024

Source: European Central Bank, 2025. Share of variable rate loans in total loans for home purchase.

In the context of the liquidity gap under consideration, the implementation of a fixed interest rate can alternatively be achieved through the hedging of variable rates using derivatives. The derivative market based on WIBOR rates possesses a capacity nearly ten times greater than the value of the mortgage portfolio, thus endowing banks with the technical capability to complete transactions for customers who anticipate a fixed amount for their interest instalments (KNF, 2024b). However, a notable detriment of conventional hedging instruments is the risk associated with a significant negative valuation. This issue emerges if there is an early loan repayment or contract termination, whereby a negative discrepancy in the valuation of the closed instrument engenders the obligation to reconcile the loss. Article 40 of the Mortgage Loan Act partially addresses this circumstance, allowing compensation for early repayment (Act of 23 March 2017). At the same time, banks express apprehension about the valuation of expenses incurred from the premature closure of a hedging transaction, which could impose an untenable burden on the consumer. The precedent of litigation concerning interest rate risk

hedging instruments in corporate banking serves as a deterrent against undertaking similar risks for the retail loan portfolio. Furthermore, the relatively modest amounts associated with individual mortgage loan exposures further complicate the use of derivatives for the hedging and early settlement of single exposures. It is imperative to acknowledge that the Polish financial market has, since 1990, operated for nearly three decades under conditions characterised by systematically declining interest rates. Such an environment was not favourable for the transition from variable to fixed rates, which, in practical terms, typically proved to be higher than the WIBOR rate, succeeded by interest instalment payments. Consequently, despite pressure from the financial market safety network, commercial banks resisted participating in the development of a fixed-rate mortgage loan market, particularly given the lack of customer applications for this type of loan.

The requirement to incorporate mortgage loans based on a fixed or periodically fixed interest rate into the product offerings was established in December 2019 through an amendment to Recommendation S of the PFSA, which pertains to best practices in the management of mortgage secured credit exposures (Resolution No. 492/2019). Consequently, since the onset of 2020, the banking sector's offerings have experienced a structural alteration. At the same time, it should be noted that the demand side exhibited a persistent lack of enthusiasm for such loan products. For instance, in 2021, the mean interest rate on fixed-rate loans exceeded the then variable rate by 100 to 150 basis points (bps), a discrepancy attributed to a positive yield curve, resulting in less than 2% of new loans being contracted at a periodic fixed rate. It was only when the fixed interest rate converged with the WIBOR rate that there was a marked increase in the sales of fixed-rate loans, with these loans attaining nearly a 20% share of newly granted loans by February 2022. Subsequent to the yield curve inversion, which precipitated forward rate quotes falling below WIBOR, the sales of new fixed-rate mortgages escalated to almost 50% of all agreements finalised in March 2022, a proportion that remained consistent throughout the subsequent months of the year (Kuchno, Niedziółka, 2024: 171). The proportion of fixed-rate financing further augmented with the introduction of the 'First Apartment' initiative in mid-2023, which enabled the banking industry to offer up to 50,000 mortgage products under the label 'safe 2% loan,' (HYPOSTAT, 2024) continued in a modified form in 2024 under the 'Apartment for a Start' title (Act of 26 May 2023). Meanwhile, the rising interest rate trend reinstated a positive yield curve, consequently leading to a deceleration in fixed-rate lending, presumably because these rates surpassed the WIBOR rates at that juncture. The limited share of fixed-rate loans was a systemic issue, especially difficult to address amidst insufficient demand for such instruments from a sufficient number of borrowers. In contrast, some borrowers attribute this situation to banks, alleging that they are culpable for implementing variable interest rates in mortgage loans. In this context, the plaintiff endeavours to challenge the legality of variable interest rates, and, by drawing purported analogies to Swiss franc loans, seeks to diminish their financial obligations.

2.3. Consequences of Extensive Settlements of Mortgage Loans Denominated in Swiss Francs

One of the primary reasons that borrowers initiated legal actions regarding PLN home loan agreements is attributed to the precedent established in the case law involving mortgage and foreign currency loans. Initially, the period of rising interest rates coincided with a surge in judicial decisions favouring Swiss franc loan borrowers. In the first half of 2022, the aggregate number of court judgments surpassed 4,000, with borrowers securing 3,917 favourable outcomes, while courts ruled in favour of banks in only 117 cases (Wysota, 2022). According to estimates by the Polish Bank Associations (PBA), by mid-2024 there were more than 165,000 lawsuits filed in courts by the so-called Swiss franc borrowers. During this period, banks reached approximately 93,000 settlements, conceding significant measures to their clients. The case law in these instances predominantly revolves around three principal issues. Firstly, the delineation of abusive clauses within contracts, that is, provisions that constitute exploitation by banks over borrowers. The compilation of provisions identified so far as abusive, as characterised by judicial bodies, is maintained by the Office of Competition and Consumer Protection (UOKiK, 2024). Furthermore, the Financial Ombudsman (FO) has compiled a list of prohibited clauses based on agreements and bank regulations from 2002–2009 (Rzecznik Finansowy, 2021). Most prohibited clauses pertain to the imposition of methodologies for determining the settlement rates applicable to loan disbursements or the repayment of principal and interest instalments. The abuse primarily involved allowing lenders to exercise an overarching discretion in determining exchange rates without explicit and defined guidelines for doing so. Secondly, in numerous instances related to foreign currency loans, judicial bodies have sided with plaintiffs, particularly regarding the banks' undue transferal of the entire market risk concerning prospective exchange rate fluctuations to borrowers. The jurisprudence echoed the contentions within the lawsuits, highlighting, among others, "[...] gross violation of the interests of borrowers and the lack of a fair and equitable balance between the rights and obligations of the parties to the agreements concluded, manifested in the uneven distribution of currency risk, which de facto burdened the borrowers in full, and the banks freed them from this risk" (Tarcz, 2022).

The third most prevalent allegation posited by the plaintiffs, which is generally upheld by the judiciary, pertains to the inadequate provision of information to consumers regarding the risks associated with monetary settlements contingent upon a future, and hence unpredictable, exchange rate. A multitude of judicial decisions highlight considerable deficiencies in the dissemination of information concerning currency risk by banks, which is particularly crucial when entering into contracts with consumers lacking the expertise and qualifications to accurately assess market risk (Tarcz, 2022). Consequently, several borrowers of PLN mortgage loans, along with their legal representatives, have initiated litigation employing analogous assertions. The plaintiff seeks parallels both in the realm of prohibited clauses, the transference of market risk to the borrower, and the presence of inaccuracies or omissions in informational materials pertaining to the respective risk. The central issue of the dispute is predicated upon a variable interest rate, namely the WIBOR rate, typically set at intervals of three or six months,

the enforcement of which, according to the complainant, contravenes the national and EU legal framework. Additionally, the plaintiff has garnered support from certain politicians who, amidst escalating interest rates, attempted to derive political advantage by criticising the WIBOR rate itself and the banking sector accountable for its determination. A particularly vehement criticism was articulated during the inauguration of the 14th European Economic Congress in Katowice on 25 April 2022, when the then Prime Minister remarked: "We have been calling for a long time for banks to develop an appropriate, more transparent and fair mechanism for calculating credit costs than WIBOR. Unfortunately, this has not happened until now. Therefore, from 1 January 2023, together with the market regulator, but above all in cooperation with the Sejm, we will impose the obligation to use a transparent rate from the interbank overnight deposit market, other than WIBOR" (Skwirowski, 2022).

Amid escalating criticism of the WIBOR rate and prevailing trends in case law regarding foreign currency loans, numerous law firms have commenced encouraging PLN borrowers to initiate legal actions against banks, aspiring to achieve at least partially analogous outcomes. As indicated by published judgments of common courts, borrowers who initiate lawsuits against banks from which they obtained PLN mortgage loans are striving to secure the annulment of the loan agreements. Should the court uphold the mortgage loan agreement, the plaintiff is anticipated to attempt to secure his interest by submitting potential claims for the cancellation of the WIBOR rate and restitution of interest paid on this basis at the initial lawsuit stage. The argumentation extensively draws upon analogies to the allegations directed at foreign currency mortgage loans commonly concluded until 2010.

3. Allegations Raised by Borrowers

The objective of verifying one of the triad of research issues is to conduct a critical examination of the legal foundations of the filed lawsuits, necessitating an analysis of their justification. The essential rationale underpinning the legal actions seeks to establish the claim that the utilisation of a variable WIBOR interest rate in a mortgage loan contract is inconsistent with legal statutes. Demonstrating the validity of this assertion requires a comprehensive critique of the WIBOR index. The initial differentiation that emerges from the examination of legal actions categorises the allegations into those addressing the unauthorised implementation of WIBOR by the lender and the accusations of illicit utilisation of the index itself. Regarding the initial group of allegations, it is pertinent to elucidate the legal provisions upon which the bank formulates the mortgage loan agreement and computes the interest rate. The applicable legal instrument is the Mortgage Loan Act, which, in Article 29(2), permits the application of a variable interest rate.

"If the parties have not agreed on a fixed interest rate on the mortgage loan, the method of determining the interest rate [...] is determined as the value of the reference rate and the amount of the margin determined in the mortgage loan agreement" (Act of 23 March 2017).

The aforementioned provision of the Act is referenced in the position of the PFSA 31/01/2020. It was articulated that, effective from 2 January 2020, banks, as supervised entities, are prohibited from utilising benchmarks other than those prepared by administrators registered with the European Securities and Markets Authority (ESMA). Consequently, it is not the responsibility of the bank, as a contracting party, to ensure the verification and legal compliance of the benchmark; rather, this obligation is incumbent upon the authorised rate administrator. Thus, it becomes prudent to verify which entities have acquired the status of an authorised controller and to examine the variations in the reference rates they provide. This enables us to address another set of allegations which propose that banks should have opted for a different benchmark due to the heightened scrutiny of WIBOR. At this point, it is imperative to note that the banks had minimal manoeuvring space. Before 16 December, 2020, for PLN loans, WIBOR remained the sole benchmark on the ESMA registry, and no legal alternative existed until that time. Subsequently, the Cost-of-Financing Index (CFI) was registered as a second rate. Moreover, the assertion that lending banks did not convert from WIBOR to CFI should be deemed unfounded. The CFI never achieved critical benchmark status under the BMR Regulation, which delineates the benchmark determination rules and outlines the supervision of administrators (Regulation (EU) 2016/1011), unlike the WIBOR rate, which held that status exclusively until 1 December 2022. This status is also significant according to Article 32 of the Mortgage Loan Act, which specifies the characteristics of the variable interest rate index. Therefore, the actual function of the CFI indicator was confined to serving as a proxy indicator employed during the absence of the primary indicator's publication. In practice, no banks employed the CFR as the primary indicator within the executed agreements, including those banks that were panellists of the index itself. Ultimately, the cessation of the CFI publication and the revocation of authorisation to perform administrative activities by the managing entity in November 2023 unequivocally indicate that banks made a prudent decision to continue utilising WIBOR until at least the beginning of 2023. Considering the circumstances as of 20 September, 2024, the most compelling alternative to WIBOR was the WIRON index, introduced in 2022 by the National Working Group on Benchmark Reform (NWGBR). In February 2023, the index attained recognition as a comprehensive interest rate benchmark under the BMR Regulation. Mid-2023 offered prospects of WIRON supplanting the WIBOR rate. However, extensive restrictions and the absence of conversion regulations from WIBOR to WIRON made it evident by the fourth quarter of 2023 that the WIRON rate required reform. Consequently, the only bank offering home loans with the WIRON benchmark withdrew the product from circulation. By late 2023, the WIRON index's market presence was so minimal that the PFSA excluded this index from the domestic market financial indicators data summary (KNF, 2024a). Consequently, the NWGBR resumed consultations on the direction of the indicator's reform. As of 20 September, 2024, there exists no feasible alternative for banks to supplant the WIBOR reference rate.

3.1. Contractual Provisions Prohibited Under the Civil Code

In the rationales presented for the lawsuits submitted, certain plaintiffs contend that WIBOR contravenes the relevant provisions of national law. This assertion is based on the argument that establishing a variable interest rate within a mortgage loan arrangement is inconsistent with Section 385 of the Civil Code (Act of 23 April 1964), which delineates unlawful contractual terms. Initially, it is highlighted that the variable interest rate fails to be articulated in a clear and unequivocal manner, thus not satisfying the requirement of transparency. Moreover, the legal claims incorporate arguments related to the latter part of the article of the Civil Code, where it is specified that: "The provisions of the agreement [...] do not bind (the consumer) if they shape his rights and obligations in a manner contrary to good practice, grossly violating his interests" (Act of 23 April 1964).

Within this framework, efforts are made to demonstrate that the imposition of a variable interest rate engenders a disproportionate distribution of the risk associated with rate fluctuations, purportedly in conflict with good practice and, consequently, significantly infringing upon the interests of the consumer. In elucidations of the allegations in question, one may discern the plaintiff's argument that the totality of market risk is transferred by a professional entity, such as the bank, onto the consumer (Ref. No. XXV C 192/23). This allegation cannot be upheld, as alterations in interest rate levels may also serve to benefit the consumer. In a context of declining interest rates, which persisted for nearly a decade from 2012 to 2021, consumers holding WIBOR variable rate loans experienced financial gain, while the risk of rate volatility manifested to the detriment of lenders. Such a reasoning was echoed by the District Court in Olsztyn, which expressed this view in its justification.

"[...] the risk of a change in WIBOR is borne by both parties to the liability and is independent of the will of each party" (Ref. No. I C 162/22).

An ancillary argument concerning the volatility of interest rates is articulated in the judgment rendered by the district court in Zgierz, which elucidated that the risk associated with an escalation in interest rates is circumscribed in favour of the consumer through discrete regulations that delineate the maximum permissible interest levels. Furthermore, the identical rationale was employed to illustrate the following.

"At the same time, the determination of a variable interest rate is not contrary to the nature of the relationship between the parties, because it does not go beyond the principle of freedom of contract" (Ref. No. C 475/23).

Furthermore, within the framework of the loan's interest rate, an examination of Article 385, paragraph 1, of the Civil Code reveals that the allegation in question appears unwarranted, owing to the third and final portion of the aforementioned article, which states: "(Unlawful contractual provision) **does not apply to** [...] provisions specifying the main performance of the parties, including the price or **remuneration**, if they have been formulated in an unambiguous manner" (Ref. No. XXV C 192/23).

The interest rate applied to the loan represents a fundamental component of the compensation required by the bank, which forms its main advantage. For evident reasons, the plaintiff does not address the issue at the stage of litigation.

3.2. Abusive Clauses in Home Loan Agreements

The potential non-compliance with regulations is exemplified by the invocation of abusive clauses by the plaintiffs. Concerning the WIBOR rate, the principal accusation relates to a lack of transparency, an uneven allocation of risk, and the discretionary authority of the bank to dynamically alter this rate (Ref. No. XXV C 351/23). In fact, it is possible that specific banks may have employed abusive clauses within individual loan agreements or in the associated documentation. For example, the bank may impose limitations on the use of the benchmark, an action that could be legitimately deemed illegal. In this regard, the judiciary should evaluate such contentious provisions in a manner similar to that applied to contested foreign currency loans. Similarly, attributing abusiveness solely to WIBOR appears to lack a substantiated legal foundation. In evaluating the allegations in this domain, prevalent arguments revolve around assertions that the rate lacks transparency, contravenes established good practices, and implicates the banks' role in its determination. However, WIBOR is inherently transparent. Within this framework, the position of the Polish Financial Supervision Authority on the use of benchmarks within the meaning of the BMR Regulation addressed to lenders was as follows: "The factors that are particularly relevant to the assessment which it is for the national court to carry out in that regard consist, first, of whether, by reason of the publication of the method of calculation of that interest rate, the main factors relating to the calculation of that rate are easily accessible to any person wishing to conclude a mortgage loan agreement and, second, the provision of information on the past evolution of that index on the basis of which this interest rate is calculated" (KNF, 2021).

WIBOR is distributed through the administrator's official website, as well as through various information portals and the official communication channels of numerous institutions and organisations. The methodology to determine the rate is publicly accessible and has been examined in numerous publications and studies. Critically, this process is aligned with legal requirements and adapts to evolving market conditions, and every significant reform is subject to public scrutiny from market participants, regulatory bodies, and academic representatives. Therefore, any claim of inconsistency with established good practices is unsubstantiated. Despite increasing criticism, WIBOR continues to be the prevailing index within the Polish financial market. At the end of 2023, more than 80% of the assets of the banking sector, with a cumulative value exceeding PLN 946 billion, were evaluated or settled according to this index.² This stance is supported by the District Court in Warsaw, which remarked: " [...] it cannot be concluded that

² Importantly, the remaining 18% of the market was dominated by foreign interest rates, mainly EU-RIBOR, ESTR, SOFR and SONIA. As of 31st of December 2023, none of the other interest rates in PLN had a market share of even 1% (see KNF, 2024a).

the provisions concerning the determination of the interest rate and the bank's margin constituting the amount of the interest instalment were contrary to good practice and grossly violated the interests of the consumer [...]" (Ref. No. XXV C 351/23).

Regarding the purported abuse associated with WIBOR, the claimant endeavours to establish a correspondence with the legal deficiencies observed in foreign currency loans. In this framework, an allegation arises that financial institutions determine the WIBOR rate, subsequently employing it in transactions with counterparties, encompassing retail clients. Justification for this assertion typically references the WIBOR rate fixing procedure, wherein 10 panellist banks submit the rates they endorse, committing to utilise these within a 15-minute transactional period. It is pertinent to acknowledge that the fixing procedure, along with the operational mechanism of the transaction window, has undergone positive verification through extensive years of WIBOR rate quotations. To mitigate the risk of manipulation within the fixing process, it is imperative for each fixing participant to have a documented methodology to establish the quotes presented in the data cascade process. The actions of data submission for fixing fall under the purview of the reference rate administrator are overseen by the Polish Financial Supervision Authority (PFSa) and are subject to scrutiny by independent auditors. Consequently, banks that incorporate WIBOR in loan contracts should, in good faith, perceive the WIBOR rate as derived from market principles.

3.3. Susceptibility to Manipulation

Within the allegations concerning the purported non-arm's length nature of the WIBOR index, plaintiffs in multiple lawsuits endeavour to demonstrate the alleged susceptibility of WIBOR to manipulation. This argument derives from an analogy with the manipulation of LIBOR rates that occurred in 2012, which, along with changes in the structure of banks' funding, constitute the primary rationale for reforms culminating in the adoption of the BMR Regulation. The reform of global indices, as referred to by the plaintiff, involves the progressive substitution of IBOR rates with Risk-Free Rates (RFR). Based on this premise, the plaintiff posits that the continued use of the IBOR rate in Poland exposes the index to a risk of manipulation. The courts evaluating this accusation consistently dismiss it, first by citing legal provisions concerning benchmark manipulation and second by emphasising the absence of documented instances of WIBOR rate manipulation, as highlighted by the lack of reported abuses to both the rate administrator and the market regulator (Ref. No. XXV C 385/23). In this context, the courts' stance should be broadened to encompass two critical aspects. The first aspect pertains to the regulatory oversight of the WIBOR rate. According to legal mandates, WIBOR, being a key benchmark, is subject to rigorous and systematic regulatory scrutiny. This oversight falls under the purview of the Interest Rate Benchmark Supervisory Committee, which operates within the rate administrator. The Committee comprises representatives from the financial safety net bodies appointed by the Bank Guarantee Fund (BGF), the Ministry of Finance (MF), the NBF, the President of the Office of Competition and Consumer Protection, and other entities essential to the index's

functionality, including a representative of the PBA, a member of the Chamber of Fund and Asset Management, and a representative of the Association of Financial Markets ACI Polska. Audit activities are conducted under the Suspicious Quotes Identification Procedure, which identifies and escalates both quotation errors and potential attempts to manipulate the WIBOR rate. As a key benchmark, the WIBOR is also scrutinised by external authorities. First, an independent auditor performs the audit. Second, the market supervisor, the PFSA, conducts periodic evaluations of the indicator's capacity to reflect market and economic realities. Moreover, the reform of benchmarks, implemented under the BMR Regulation, did not preclude the use of the IBOR rate. This rate is still utilised in various regions, including the EURO zone (EURIBOR), the Czech Republic (PRIBOR), Hungary (BUBOR), and Sweden (STIBOR). Furthermore, the Financial Stability Committee (FSC), a body that encompasses the main institutions of the financial safety net, including the BGF, PFSA, NBP, and MF, has twice addressed allegations of possible manipulation of the WIBOR rate. On 9 December 2022, it articulated its position: "(FSC) finds no legal or economic basis for denying the correctness of the determination of this benchmark. In the Committee's opinion, the requirements of the BMR Regulation, which must be met by the administrator and the banks providing data for the purpose of calculating this ratio, provide adequate protection against possible abuses" (NBP, 2022).

3.4. Detachment of the WIBOR Rate from the Bank's Financing Cost

In order to scrutinise the legitimacy of the index, the plaintiffs present another logical sequence, positing that the WIBOR rate is dissociated from the bank's financing costs. Consequently, the plaintiffs further propose allegations of non-arm's length associated with the ratio, asserting that WIBOR does not accurately reflect the actual cost at which the bank secures the necessary capital for lending purposes (Ref. No. XXV C 351/23). Banks have established that they finance their operations through various elements of their balance sheets, including both equity and borrowed funds. The current configuration of banks' balance sheets, which reveals a significant dominance of acquired deposits over loans, ostensibly substantiates that deposits constitute one of the primary sources of financing for lending activities. Simultaneously, the price of deposits is dictated by supply, demand, and other factors stemming from, among others, multiproduct customer service. It is also accurate that other interest rate benchmarks might consider the prices of the deposit market. However, there is no legal stipulation suggesting that the reference rate should represent the cost incurred by a credit institution. Similarly, it is fallacious to assert that benchmark readings should align closely with the financial institution's own costs. This issue was examined by the Warsaw District Court, among others, which, in its justification on 8.02.2024 for dismissing the lawsuit in full, articulated the following.

"There is no basis for the claim that the sole and only permissible function of applying the WIBOR rate is to cover the costs of financing the loan incurred by the Bank at the stage of its disbursement. The plaintiff's belief that the function of WIBOR is limited to the reimbursement of financing costs is not supported either by the Agreement or by any provision of law" (Ref. No. IV C 1300/23).

Concurrently, the limited direct relationship between the reference rate and the financing costs of the credit institution does not render the index non-marketable. The PFSA, in compliance with Article 23 of the BMR Regulation, periodically evaluates the capacity of the WIBOR interest rate benchmark to reflect market and economic conditions over two-year intervals. The evaluation report for the period from 1 January, 2020 to 31 December, 2022 was made available on the PFSA website on 29 June, 2023 (NBP, 2023a). The study conducted by the market supervisor affirmed the transactionality of the input data used in the determination of the WIBOR index. The representativeness of the data derived from the banking market as well as from the banks of the panellists was corroborated. Additionally, the arm's length nature of the WIBOR rate was adjudged to be suitable with regard to its responsiveness to shifts in the economic environment and within the banking sector itself. In a summary of the evaluation, it was noted that "[...] The key interest rate benchmark WIBOR has the ability to measure the market and economic realities for which it was established. According to the Commission's assessment, WIBOR responds appropriately to changes in liquidity conditions, changes in central bank rates, and economic realities" (NBP, 2023a).

4. Questioning The Compliance of the WIBOR Rate with the BMR Regulation

Given the research issue pertaining to the legal underpinnings of initiated lawsuits, particular emphasis ought to be placed on Community legislation.

The arguments constructed most frequently point to the violation of EU regulations, including, in particular, the BMR Regulation, which came into force on 1 January 2018 (Król, 2023).

"(a) the input data are sufficient to accurately and reliably reflect the market or economic reality that the benchmark aims to measure; input data shall be transaction data, where available and relevant; If the transaction data are not sufficient or adequate to accurately and reliably reflect the market or economic reality that the benchmark is intended to measure, non-transaction inputs, including estimated prices, quotes and validated quotes or other values, may be used" (Regulation EU 2016/1011).

The plaintiff's assertions indicate noncompliance with the provisions of the BMR Regulation, as the determination of the WIBOR rate is based on offers presented by authorised banks, reflective of potential transactions rather than actual completed transactions. Within the justifications for the lawsuits, the plaintiff contends that the process of establishing WIBOR relies on 'hypothetical data' instead of tangible market transactions. Consequently, there arises an allegation that WIBOR constitutes a flawed benchmark, asserting that the bank's usage of it within

loan agreements contravenes EU regulations. In this context, it is pertinent to recall the PFSA's position dated 31/01/2020, as previously discussed, which mandates banks to utilise a benchmark established by an authorised administrator. Within this framework, the assertion that the bank inappropriately implemented WIBOR in loan settlements, acting independently in this matter, lacks substantiation. This perspective is corroborated by judicial bodies, as evidenced by existing rulings. At this juncture, portions of the justification can be cited in the decision by the Warsaw District Court to dismiss the suit, where the Court articulated that: "The methodology for determining the WIBOR 3M index, its compliance with the law and (for) the arm's length nature of the rate is the responsibility of the rate administrator, [...] Therefore, it is not within the competence of the defendant to parameterise the indicator so that it meets the applicable law" (Ref. No. XXV C 351/23).

An analogous line of jurisprudence can be found, among others in the ruling of the District Court in Zgierz, which stated that: "With regard to the mechanism for determining the amount of the WIBOR 6M benchmark, it should be pointed out that it is not the defendant who determines its amount" (Ref. No. C 475/23).

On the contrary, it is prudent to examine whether the procedure for securing the inclusion of WIBOR in the ESMA list of benchmarks was executed in compliance with the provisions of the BMR. In this context, it is pertinent to deliberate on the changes undertaken in the establishment of the benchmark under national conditions. Following the enactment of the BMR Regulation in 2016, the reform process of the WIBOR benchmark was initiated in Poland. To achieve this, in 2017, the rate administrator was altered, with the role assumed by the state-controlled company GPW Benchmark S.A. This administrative change was imperative to fulfil one of the BMR Regulation's stipulations regarding the subordination of the rate administrator to financial supervision (PFSA). The new administrator endeavoured to align the benchmark with regulatory requirements, including enhancing transactionality, ensuring transparency, and safeguarding the interests of financial market participants utilising the benchmark for settling and valuing financial instruments. This reform was preceded by extensive consultations that led to the development of definitive provisions on critical issues, including the determination of the indicator utilising the data cascade method and the fixing procedure. The certification process ended in the first quarter of 2019, and on this basis, WIBOR was designated a key benchmark on 26 March 2019, coinciding with the date of implementation of the BMR Regulation. Consequently, WIBOR was inscribed on the ESMA's list of key benchmarks in 2019, thereby affirming that all conditions mandated by the BMR Regulation were satisfied.

5. Court Decisions Outside the Mainstream of Case Law

The initial adverse stance for financial institutions was assumed by the Katowice District Court, which, on 3 November 2022, ordered the suspension of interest collection on a mortgage loan indexed to WIBOR as security during the trial period (Ref. No. I Co 556/22). This

ruling generated substantial concern within the banking sector. Market analysts anticipated a surge in litigation, despite the absence of an explanatory statement for the decision, making it impossible to understand the underlying rationales. Crucially, the aforementioned decision was annulled by the Katowice District Court on 22 December 2022 after an appellate review conducted by the horizontal instance. The subsequent justification clarified that the Court deemed the application of the benchmark appropriate. Furthermore, the Court adjudicated that referencing the rate administrator's regulations in the agreement was adequate and valid to configure the WIBOR index determination mechanism. The Court further rejected the plaintiff's argument regarding the omission of the WIBOR rate determination guidelines from the loan contract. According to the Court, ascertaining the reference rate is the responsibility of an external entity, that is, the rate administrator, thereby absolving the lender from the obligation to furnish the consumer with this document during the execution of the loan contract. The aforementioned reasoning is critical in light of the preliminary ruling inquiries, which are elaborated on later in the article. As per the knowledge available by September 2024, two additional judiciaries have rendered orders concerning the suspension of loan repayments. On 15 December 2022, the Warsaw-Wola District Court pronounced a decision temporarily halting the entirety of the interest instalment (resulting from both the WIBOR rate and the margin) under the loan agreement dated 4 February 2020 until a final determination is reached (Ref. No. II C 1/22). Additionally, the judiciary mandated the bank to refrain from terminating the loan contract and from providing the Credit Information Bureau or analogous entities involved in arrear documentation with details regarding the delayed repayment of instalments stayed by the Court's decree. In particular, the contract concerned pertains to a cash loan, yet it may set a precedent for matters pertaining to the application of WIBOR in residential loans. An analogous decree was issued on 22 June 2023 by the Poznań district court. Significantly, this latter ruling was the first to be wholly affirmed as final. Although this does not presage the ultimate direction of the ruling, it marks a notable development in the judicial landscape and augments the plaintiffs' prospects of contesting agreements related to home loans.

At the time this thesis was composed, the only favourable judicial decision for the applicant borrower was rendered by the District Court in Zielona Góra on 5 July 2023 (Ref. No. I C 819/23). The court issued a default judgment, ordering the restitution of interest instalments amounting to more than PLN 58,000. In particular, the rationale for this judgment has not been disclosed. It is imperative to acknowledge that this judgment is currently subject to appeal. Furthermore, the nature of the default judgment suggests that the bank, acting as defendant, did not actively participate in the proceedings. Consequently, it is prudent to wait for the anticipated appeal filed by the defendant before formulating definitive conclusions. The awaited response from the CJEU, prompted by the Regional Court in Częstochowa's reference for a preliminary ruling on 31 May, 2024 (Ref. No. I C 1226/23), is poised to exert more profound implications on judicial proceedings. In its correspondence with the CJEU, four queries were posited, none of which have received justification from the Court as of the drafting of this document. The initial query pertains to the matter of delineating the jurisdiction of a national court in adjudicating legal

proceedings within the framework of the Council Directive on unfair practices in consumer contracts (Council Directive 93/13/EEC). Upon scrutinising the essence of this query, it can be inferred that the Court's primary inquiry seeks to ascertain whether a national court possesses the authority to scrutinise the abusiveness of the WIBOR rate.³ In light of the previously elaborated documents, it is pertinent to highlight that the abuse of WIBOR is not substantiated by legal statutes, as affirmed by national courts in the above-referenced decisions. The second query underscores the need perceived by the Court in *Częstochowa* to assess whether the stipulation regarding the interest rate within the mortgage loan agreement was articulated in a language sufficiently simple and comprehensible, a requirement also mandated by the Directive cited.⁴ This question should be construed as the Court's effort to investigate whether the bank adequately informed the consumer about the WIBOR rate in a straightforward and understandable way. Uncertainties may emerge concerning whether the issue of benchmark calculation falls under this provision's scope or is exempt, considering the involvement of a third party, namely the rate administrator. From the perspective of lenders, permitting the CJEU to deliberate on the informational aspects of benchmark mechanisms, including the fixing procedure and data cascade, presents considerable risk. Such circumstances could significantly support the plaintiff's arguments that the procedures instituted by the rate administrator were inadequately explained in the home loan documentation, rendering them obscure to a consumer lacking professional expertise. Similarly, such a stance from the CJEU appears improbable, particularly in view of the jurisprudence emanating from numerous national courts in this domain. The reply to the third inquiry, which indicates: "[...] (whether) the provisions of the agreement concerning the variable interest rate based on the WIBOR benchmark can be treated as contrary to the requirements of good faith and causing a significant imbalance of the rights and obligations of the parties under the agreement to the detriment of the consumer due to the improper information of the consumer regarding exposure to the risk of a variable interest rate [...] tags."⁵

³ In this respect, the compliance of the provisions of the loan agreement is examined in terms of Article 1. Paragraph 2.2., which indicates: "The terms of a contract reflecting the applicable laws or regulations and the provisions or principles of international conventions to which the Member States or the Community are parties, in particular in the field of transport, shall not be subject to the provisions of this Directive."

⁴ This is indicated in Article 2(2): "The assessment of the unfairness of terms shall not concern either the determination of the main subject matter of the contract, or the relation of price and remuneration to the goods or services provided in exchange, as long as these terms are expressed in plain and understandable language."

⁵ The question referred for a preliminary ruling in its entirety reads: "Is Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to be interpreted as meaning that the provisions of a contract relating to a variable interest rate based on the WIBOR benchmark may be treated as being contrary to the requirements of good faith and causing a significant imbalance in the rights and obligations of the parties under the contract to the detriment of the consumer, due to the failure to properly inform the consumer about exposure to the risk of a variable interest rate, including, in particular, failure to indicate how the benchmark underlying the variable interest rate is determined and what doubts are related to its non-transparency and uneven distribution of this risk among the parties to the agreement?"

This inquiry suggests that the Court may identify certain parallels with foreign currency loans, in which the total exchange rate risk assigned to the consumer is a common justification for the annulment of agreements. The fourth query pertains to the procedure for resolving the agreement in the event of acknowledgement of the abusiveness of the index.⁶ This is crucial in terms of financial consequences in the possibility of a decision that could undermine the validity of the loan agreement. The interpretation rendered by the CJEU could potentially alter both the trajectory of national court jurisprudence and the magnitude of claims. Should the Court in *Czstochowa* adopt an affirmative stance regarding the second and third queries, it would provide a compelling argument for plaintiffs to raise objections and seek damages claims.

6. Potential Implications of Contesting WIBOR

In relation to the prospective alteration in jurisprudential direction concerning the application of variable market rates in home loans, it is imperative to undertake an estimation of the potential economic impacts on the banking sector, as well as the subsequent ramifications for the national economy.

Should judicial bodies commence a widespread invalidation of the WIBOR rate, the ensuing financial and economic repercussions are likely to be profoundly significant due to the fact that, as mentioned in the paper, a predominant portion of financial agreements and contracts denominated in Polish zlotys utilise this reference rate. Primarily, the main forms of capital raising and investment could be subject to scrutiny. An analogous situation can be observed in the regulatory measures taken by the banking sector following judicial challenges to loan agreements denominated in foreign currencies. Consequently, numerous litigations regarding Swiss franc contracts led the Polish banking sector to accumulate reserves of at least PLN 80 billion by the end of 2024 (NBP, 2024c). In particular, at its peak, the total value of franc loans constituted less than 25% of the total value of mortgage loans in PLN as of 31 March, 2025 (KNF, 2025). As a result, the potential for disruption in the continuity of debt servicing by domestic entities must be considered, which is likely to precipitate a financial crisis. Under such circumstances, a substantial outflow of foreign capital is highly plausible due to both increased risk and the pressing need to curtail losses. Consequently, the domestic economy would be deprived of a crucial funding source, placing considerable pressure on the national currency and potentially causing a marked devaluation. Moreover, the use of the WIBOR reference rate in determining the current

⁶ The wording of the question referred for a preliminary ruling reads: "Is Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to be interpreted as meaning that the provisions of a contract relating to a variable interest rate based on the WIBOR benchmark may be treated as being contrary to the requirements of good faith and causing a significant imbalance in the rights and obligations of the parties under the contract to the detriment of the consumer, due to the failure to properly inform the consumer about exposure to the risk of a variable interest rate, including, in particular, failure to indicate how the benchmark underlying the variable interest rate is determined and what doubts are related to its non-transparency and uneven distribution of this risk among the parties to the agreement?"

market value of a multitude of financial assets, including investment fund participation units, state and local government bonds, as well as corporate debt securities, demands attention. Should the basis for valuing such financial assets be contested, there exists a considerable risk of liquidity imbalance across numerous financial instruments. In such scenarios, it is reasonable to anticipate a depreciation in asset values, with numerous debtors within the Polish market, including the State Treasury, multiple local governments, and various enterprises and individuals, facing financial distress. A tertiary channel through which a financial crisis may evolve due to challenges to the WIBOR rate is the monetary policy exercised by the central bank. The MPC strives to fulfil its mandates by shaping inflation expectations and stabilising the economy. As previously highlighted, the primary mechanism of monetary policy involves modulating the interest rate levels within the real economy through its impact on the principal reference rate used in financial contracts, the POLONIA rate. The questioning of the WIBOR rate could result in the forfeiture of a vital instrument for the stabilisation of the money market in Poland, particularly when an alternative reference rate is absent. Consequently, a deterioration in confidence toward the Polish currency and national monetary authorities is expected, potentially exacerbating market pressure. This predicament appears increasingly significant, given that, at the time of writing, no alternative such as WIRON or another key benchmark has been effectively instituted. This position is reinforced by statements from the FSC, such as the one articulated on 20 September, 2024, which suggests: "The Committee maintains its assessment, expressed in the communication of December 2022 and March 2023, on the lack of legal grounds for examining the provisions of the loan agreement regarding the variable interest rate based on the WIBOR benchmark under the provisions of Directive 93/13" (NBP, 2023b).

7. Applications

On the basis of scrutinised legal documents, prevailing market practices and extant case law from national courts, it can be ascertained that the implementation of the WIBOR reference rate does not contravene national or Community law. Unlike the extensive invalidation of foreign currency loan agreements, incorporating a reference rate into the loan agreement does not impose forbidden conditions, specifically those that could be manipulated by the bank involved in the loan contract. A substantial majority of national court rulings uphold this perspective. Moreover, the national legal system, which operates without a precedent-based framework, allows civil courts to independently interpret any potential deficiencies associated with the WIBOR rate. In this context, the stance of the CJEU is pivotal, as although it may not completely eradicate the issue, it might either contribute to mitigating the problem or, conversely, trigger a systemic increase in risk within the financial sector, depending on the direction of its decision. Although it cannot be conclusively dismissed that certain loan agreements encompass prohibited clauses, WIBOR *sensu stricto* is not among them. The stability of the indicator, its adaptive evolution to both market demands and evolving legal standards, substantiates a robust defence against precipitate allegations. At the same time, the reformation of the index

market, potentially involving the substitution of WIBOR with an alternative and possibly superior benchmark, may be completely justified to more accurately represent the cost of money regarding the current development phase of the financial market in Poland.

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List of Abbreviations

- BGF – Bank Guarantee Fund
- 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 and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) no. 596/2014.
- BUBOR – Budapest Interbank Offered Rate
- CFI – Cost of Financing Index
- CJEU – Court of Justice of the EU
- CPI – Consumer Price Index – Core inflation on the prices of consumer goods and services
- ESMA – European Securities and Markets Authority
- ESTR – Euro Short Term Rate
- EURIBOR – Euro Interbank Offered Rate
- FO – Financial Ombudsman
- FSC – Financial Stability Committee
- IBOR – Interbank Offered Rate
- LIBOR – London Interbank Offered Rate
- MF – Ministry of Finance of the Republic of Poland
- MPC – Monetary Policy Council
- NBP – National Bank of Poland
- NWGBR – National Working Group on Benchmark Reform
- PBA – Polish Bank Association
- PFSA / KNF – Polish Financial Supervision Authority
- PRIBOR – Prague Interbank Offered Rate
- RFR – Risk Free Rate
- SOFR – Secured Overnight Funding Rate

SONIA – Sterling Overnight Index Average

STIBOR – Stockholm Interbank Offered Rate

UOKiK – Office of Competition and Consumer Protection

WIBOR – Warsaw Interbank Offered Rate

WIRON – Warsaw Interest Rate Overnight

Spór kredytobiorców z bankami z powodu stosowania zmiennej stawki WIBOR w złotych kredytach hipotecznych

Streszczenie:

Niniejszy artykuł poświęcony jest problemowi eskalacji sporów prawnych pomiędzy kredytobiorcami hipotecznymi a bankami w związku z zastosowaniem w wiążących obie strony umowach zmiennej stopy referencyjnej WIBOR (Warsaw Interbank Offered Rate). Dotychczasowe orzeczenia sądów wskazują na niejednorodne stanowiska, co wzmacnia potencjalne ryzyko dalszego wzrostu liczby wnoszonych spraw. W szczególności analizie poddano kwestie prawne, ekonomiczne i regulacyjne dotyczące podstawy pozwów wytaczanych przez kredytobiorców kwestionujących umowy kredytów hipotecznych oparte na WIBOR. Określony został również prawdopodobny scenariusz rynkowy i gospodarczy na wypadek prawomocnego zakwestionowania prawidłowości kolejnych umów.

W pierwszej kolejności podjęto próbę usystematyzowania głównych przyczyn stojących za rosnącą falą pozwów, poprzez ocenę czynników makroekonomicznych, takich jak wyższe odczyty i prognozy inflacji oraz w ich konsekwencji wzrost poziomu stóp procentowych. Zweryfikowano kwestię komunikacji działań podejmowanych w ramach polityki monetarnej oraz gospodarczej, które okazały się nie bez znaczenia dla decyzji części kredytobiorców wybierających moment zawarcia umowy kredytu hipotecznego oraz decydujących o wariacie oprocentowania. Analizę rozszerzono o czynniki systemowe, w tym ograniczenia związane z funkcjonowaniem rynku kredytów hipotecznych. Dodatkowo zbadano, czy i w jakim stopniu próba reformy krajowego wskaźnika referencyjnego miała znaczenie dla wzrostu skali pozwów. Ponadto dokonano oceny innych czynników mających potencjalny wpływ na przedmiotową kwestię, w tym doświadczeń płynących z licznych wyroków unieważniających walutowe kredyty hipoteczne oraz powszechnie zawierane ugody w tym zakresie.

Poprzez krytyczną analizę ostatnich spraw sądowych, precedensów prawnych i ram regulacyjnych zbadano przesłanki stojące za roszczeniami kredytobiorców. Omówione zostały przyczyny, dla których przedmiotowy problem stał się jednym z głównych potencjalnych zagrożeń dla stabilności polskiego sektora bankowego. Następnie dokonano krytycznej analizy argumentów przedstawianych w kontekście zarówno obowiązujących aktów prawnych, działań nadzorca rynkowego, jak i kluczowych praktyk stosowanych na krajowym rynku finansowym.

W procesie badawczym przeanalizowano istotne elementy umów kredytów hipotecznych opartych na zmiennym oprocentowaniu, które stały się zasadniczym przedmiotem składanych pozwów sądowych. Dodatkowo zbadano podnoszony w części pozwów zarzut dotyczący braku należytej rozwiniętej oferty kredytów hipotecznych o stałym oprocentowaniu, które – zdaniem części powodów – było celowym działaniem kredytodawców na szkodę swoich klientów. W pracy zastosowano wielowymiarową analizę przypadków publicznie dostępnych orzeczeń i dokonano syntezy w zakresie trendów w orzecznictwie. Całość została wsparta metodą statystyczną.

W artykule podjęto polemikę z głównymi argumentami prezentowanymi w pozwach sądowych dotyczących złotych kredytów hipotecznych. Argumenty wskazywane przez stronę powodową zostały skonfrontowane z przyjętą linią obrony banków. W tym świetle pozytywnie zweryfikowana została teza wskazująca na bezzasadne kwestionowanie wskaźnika WIBOR zarówno w zakresie krajowego, jak i wspólnotowego porządku prawnego.

Niniejszy artykuł wnosi wkład w dyskurs na temat regulacji finansowych, przedstawiając kompleksową analizę wyzwań stojących przed kredytobiorcami i bankami w związku z kredytami hipotecznymi opartymi na WIBOR. Podkreśla potrzebę reform finansowych i uwypukla krytyczne luki w istniejących strukturach prawnych i regulacyjnych dotyczących produktów hipotecznych o zmiennym oprocentowaniu.

Słowa kluczowe: unijne regulacje dotyczące benchmarków stopy procentowej, klauzule abuzywne w umowach kredytu hipotecznego, kluczowy wskaźnik referencyjny, WIBOR

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