



C/2024/5786

7.10.2024

Request for a preliminary ruling from the Sąd Okręgowy w Częstochowie (Poland) lodged on 3 July 2024 – J.J. v PKO BP S.A.

(Case C-471/24, PKO BP)

(C/2024/5786)

Language of the case: Polish

Referring court

Sąd Okręgowy w Częstochowie

Parties to the main proceedings

Applicant: J.J.

Defendant: PKO BP S.A.

Questions referred

1. Must Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽¹⁾ be interpreted as permitting examination of contractual clauses concerning a variable interest rate based on the WIBOR reference index?
2. If the answer to the first question is in the affirmative, must Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as permitting examination of contractual clauses concerning a variable interest rate based on the WIBOR reference index?
3. If the answers to the first and second questions are in the affirmative, must Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a contractual clause concerning a variable interest rate based on the WIBOR reference index may be regarded as contrary to the requirement of good faith and causing a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer, on account of the failure duly to inform the consumer of his or her exposure to the risk of a variable interest rate, in particular the failure to indicate how the reference index, which forms the basis for determining the variable interest rate, is determined and what uncertainties are associated with its non-transparency and the uneven distribution of that risk between the parties to the contract?
4. If the answers to the previous questions are in the affirmative, must Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in conjunction with Article 3(1) and (2), second sentence, and Article 2 thereof, be interpreted as meaning that, if a contractual clause concerning a variable interest rate based on the WIBOR reference index is found to be unfair, there can be continued operation of a contract in which the interest rate on the amount of the loan capital will be based on a second component determining the interest rate included in the contract, that is to say the bank's fixed margin, which will change the interest rate on the loan from variable to fixed?

⁽¹⁾ OJ 1993 L 95, p. 29.