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BRIEFING

EURIBOR Manipulation and Loan Agreements: CJEU Rules Against Automatic Invalidity

The CJEU's landmark judgment in Livronsa (Case C-60/25) definitively closes the debate?

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In recent years, EURIBOR-related litigation has emerged as one of the most significant areas of banking disputes across Europe. Following the European Commission's decisions finding that a group of banks had manipulated EURIBOR in the euro interest rate derivatives sector (the "**EIRD Decisions**"), borrowers have brought a wave of claims arguing that EURIBOR-referenced interest clauses in loan agreements are automatically void.

In Italy, this litigation has been particularly intense. In 2023, the Italian Supreme Court endorsed the borrowers' position by holding that the Commission's decisions constituted "reinforced evidence" (*prova privilegiata*) of the nullity of EURIBOR-referenced interest clauses, triggering a wave of serial claims across the country. A 2024 judgment of the same court took a markedly different view. The matter was ultimately referred to both the Joint Sections of the Italian Supreme Court and the CJEU.

The CJEU's judgment of 3 September 2026 in Case C-60/25 (*Livronsa*) (the "**Judgment**") brings authoritative clarity. The Court held that the EIRD Decisions do not automatically render void the interest clauses contained in loan agreements that merely reference EURIBOR as a benchmark. The Judgment is set to affect not only mortgage loan agreements, but the entire range of legal relationships — financial leasing, variable-rate financing, current account agreements — that reference EURIBOR for the determination of interest.

Key Issues

- The CJEU has confirmed the objective scope of the Commission's decisions, which were limited to the EIRD sector, leaving limited room for interpretation for national courts seeking to extend the effects of those decisions to other downstream contracts referencing EURIBOR.
- The automatic nullity under Article 101(2) TFEU[1] of an agreement contrary to Article 101(1) TFEU[2] and the subject of a Commission decision cannot entail the nullity of clauses in a contract concluded by parties that were not party to the infringement and that relates to a product in a market distinct from that identified by the Commission as the relevant market.
- A loan agreement merely referencing EURIBOR cannot be rendered automatically void on the basis of the EIRD Decisions, and national courts are bound to take those decisions into account only within the limits of the "*material, personal, temporal and territorial scope*" of the infringements established in those decisions.
- The manipulation of the EURIBOR rate found in the EIRD Decisions must be regarded as established as regards the euro interest rate derivatives market. However, since the infringement was classified as a restriction of competition by object, the conduct found by the Commission to be contrary to Article 101(1) TFEU does not, by itself,

[1] Article 101(2) TFEU provides: "*Any agreements or decisions prohibited pursuant to this Article shall be automatically void*"

[2] Article 101(1) TFEU provides: "*The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts*"

permit the conclusion that there were precise effects on the level of EURIBOR in other markets.

- The forthcoming ruling of the Joint Sections of the Italian Supreme Court which is expected to implement these EU principles as a matter of the primacy of EU law, should bring definitive clarity to litigation at the domestic level. More broadly, since the Judgment is a preliminary ruling under Article 267 TFEU, its interpretation is binding on all national courts across the EU, with a consequential stabilising effect on EURIBOR-related litigation throughout Europe.

No automatic nullity: EURIBOR clauses in loan agreements are not void under EU law

The central question before the CJEU was whether the automatic nullity provided for in Article 101(2) TFEU — which renders void agreements prohibited under Article 101(1) TFEU — extends to clauses in loan agreements that merely reference a benchmark rate found to have been manipulated in a different market.

The Court’s answer is unequivocal. The nullity referred to in Article 101(2) TFEU can be relied on by anyone, and since it is absolute, it is capable of having a bearing on all the effects, either past or future, of the agreement concerned. However, the automatic nullity under Article 101(2) TFEU of an agreement contrary to Article 101(1) TFEU and the subject of a Commission decision "*cannot entail the nullity of clauses in a contract concluded by parties that were not party to the infringement and that relates to a product in a market distinct from that identified by the Commission as the relevant market*" (paragraph 37 of the Judgment). It does not extend to contracts concluded on the basis of an agreement coming within Article 101(1) TFEU. The consequences for all other parts of the agreement, or for other obligations flowing from it, are not a matter for EU law: it is for national courts to determine, in accordance with the law of their Member State, the extent and consequences of any prohibition of certain terms under Article 101 TFEU for the contractual relations as a whole.

In the case at hand, the credit institution that concluded the mortgage loan agreement had not participated in the cartel covered by the EIRD Decisions, and the contractual term at issue did not come within the agreements declared incompatible with Article 101(1) TFEU. The Commission’s decisions could not, therefore, render that term automatically void under Article 101(2) TFEU.

The Court further recalled that, although Article 16(1) of Regulation No 1/2003 requires national courts to refrain from adopting decisions that run counter to a Commission decision, that decision is binding only "*within the limits of the nature and the material, personal, temporal and territorial scope of the infringement established therein*" (paragraph 42 of the Judgment). In the case at stake, the contractual term merely referred to EURIBOR as the relevant benchmark for a consumer mortgage loan and was not a constituent element of the infringements found in the EIRD Decisions, nor could the loan agreement be considered as concluded in order to implement the anticompetitive agreements found by the Commission. The Court therefore concluded that "*it cannot be inferred from Article 16(1) of Regulation No 1/2003 that, in the light of the EIRD Decisions, a court hearing an application for a declaration of nullity of a term of a loan agreement such as that at issue in the main proceedings is required to find that term invalid on the basis of that provision*" (paragraph 45 of the Judgment).

The CJEU therefore held as follows (paragraph 46 of the Judgment):

"Article 101(2) TFEU and Article 16(1) of Regulation No 1/2003 must be interpreted as meaning that the decision by which the Commission found the existence of a cartel prohibited by Article 101(1) TFEU and that an interest rate benchmark had been manipulated on a specific market, first, does not render automatically void every term of a contract referring to that interest rate where that contract relates to a different market and the parties to that contract did not participate in the cartel and, second, must be taken into account by a national court or tribunal called upon to rule on the validity of such a term only within the limits of the nature and the material, personal, temporal and territorial scope of the infringement established in that decision, with the result that, where that term is not a constituent element of that infringement and the contract containing it was not concluded in order to implement or give effect to the anticompetitive conduct covered by that decision, which concerns a different market from that to which that contract relates, that decision cannot lead to the invalidity of such a term."

The "downstream contract" doctrine rejected at EU level

The Judgment is of particular significance for the Italian litigation landscape, where the central question has been whether a loan agreement referencing EURIBOR constitutes a "*downstream contract*" (*contratto a valle*) that implements the anticompetitive conduct sanctioned by the Commission.

In Order no. 34889 of 13 December 2023, the Third Civil Section of the Italian Supreme Court held that the 2013 EIRD Decision constituted "*reinforced evidence*" (*prova privilegiata*) supporting a claim for the declaration of nullity of "*manipulated*" interest rates and the recalculation of interest during the EURIBOR manipulation period (29 September 2005 to 30 May 2008). In doing so, the Order extended the effects of the prohibition on anticompetitive practices to "*any downstream contract or transaction that constitutes the implementation of unlawful upstream agreements*", regardless of whether the lending bank had itself participated in the unlawful agreement. This triggered a wave of serial claims across Italy.

The Judgment definitively forecloses this approach as a matter of EU law. The principle is clear-cut: the nullity under Article 101(2) TFEU concerns the anticompetitive agreement itself, but does not automatically extend to contracts concluded "downstream", let alone to contracts entered into by institutions that were not party to the cartel and relating to distinct markets.

The European Commission itself, in its submissions in the preliminary reference proceedings, had emphasised that "*the interpretation of Article 101(2) TFEU cannot be overridden in this regard by extending its application to situations which are not themselves contrary to Article 101(1)*", also in consideration of "*the particular gravity of the sanction of radical nullity*".

The Judgment is consistent with the principles set out in Italian Supreme Court judgment no. 12007 of 3 May 2024, in which the Third Civil Section conducted a more thorough analysis and clarified that EURIBOR clauses cannot be regarded as void in general, and that the burden of proving that the EURIBOR benchmark was "*objectively, effectively and significantly altered* in *practice*" in relation to the specific contract remains with the borrower.

Evidentiary limitations: no proven impact on EURIBOR rates in other markets

A further dimension of the Judgment concerns the evidentiary value of the EIRD Decisions in national proceedings. The CJEU, expressly following Advocate General Medina's Opinion (points 32 and 33), drew three conclusions:

First, the manipulation of the EURIBOR rate found by the Commission must be regarded as established in relation to the market for Euro Interest Rate Derivatives and the banks involved in the cartel in respect of which penalties were imposed.

Second, since the infringement was classified as a restriction of competition by object, "*the conduct found by the Commission to be contrary to Article 101(1) TFEU does not, in itself, support the conclusion that it had any specific effects on the level of EURIBOR*" (paragraph 44 of the Judgment). In practical terms, the manipulation could have been upwards, downwards, or even neutral in its effects on the index itself.

Third, the EIRD Decisions "*concern only the market for Euro Interest Rate Derivatives, which is distinct from the market to which the loan agreement relates*" (paragraph 44 of the Judgment). The simple indexation to EURIBOR does not make a loan agreement an instrument for the implementation of the anticompetitive conduct sanctioned by the Commission.

These findings significantly limit the scope of the Commission's decisions as a basis for nullity claims in national proceedings: borrowers wishing to challenge EURIBOR clauses will need to adduce specific, concrete evidence that the relevant rate was actually manipulated in a way that materially affected their specific contract — a high evidential burden.

Residual exposure: what remains open under national law

While the Judgment represents a decisive step forward for banks, it may not close every door. The CJEU makes clear that validity assessments remain governed by domestic standards, and a number of areas of potential residual exposure may warrant consideration.

Nullity claims. National courts retain jurisdiction to assess the validity of EURIBOR-referenced clauses under domestic law (e.g., Articles 1346 and 1418 of the Italian Civil Code), applying their own rules on the lawfulness and determinability of the subject matter of contracts. The mere fact that a loan agreement references EURIBOR does not, absent further evidence, render the relevant clause void as a matter of EU law. However, national courts retain a duty to consider the Commission's findings of manipulation when assessing the validity of such clauses under domestic law.

Damages claims. The Judgment does not address the question of damages directly. A damages claim would however require proof of the existence and quantum of the loss, as well as a causal link between the sanctioned conduct and the alleged harm — a burden that cannot be discharged on the basis of the EIRD Decisions alone.

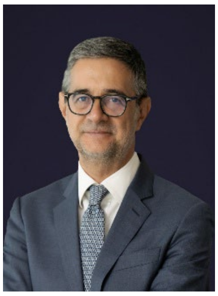
Limitation objections. Claims for damages arising from anticompetitive conduct are subject to a five-year limitation period running from the date the claimant becomes aware of the conduct. Taking the publication of the summary of the 2013 EIRD Decision in the Official Journal (30 June 2017) as the relevant date, such claims would have become time-barred on 30 June 2022. As regards claims for repayment of interest allegedly paid in excess ("*ripetizione di indebito*"), which are subject to a ten-year limitation period, the key issue is whether the *dies a quo* runs from each individual payment or from the maturity of the last instalment. Since the interest payments at issue relate to the EURIBOR manipulation period (*i.e.* 29 September 2005 to 30 May 2008), if the *dies a quo* were to run from each individual payment, a substantial proportion of such claims would already be time-barred. This interpretation is supported by the structural distinction between the action for repayment of interest and the action for restitution of the principal. However, it conflicts with the prevailing case law on mortgage loans, which treats the repayment obligation as unitary, with limitation running from the final instalment. A case-by-case assessment is therefore necessary.

Next steps: the Joint Sections ruling and stabilisation of pending litigation

The next step at the Italian level will be to see how the Joint Sections of the Italian Supreme Court rule on the matter. By interlocutory order no. 19900/2024, the First Section had referred to the Joint Sections two key questions: (i) whether a loan agreement containing an EURIBOR clause constitutes a "*downstream*" agreement in relation to the EIRD Decisions; and (ii) whether the manipulation of EURIBOR constitutes a cause of nullity of the interest-rate clause for indeterminacy of its subject matter, or rather an element capable of assuming relevance only in the context of the process of formation of the parties' consent (where it may have induced a false representation of reality), or as a fact giving rise to damages. The Joint Sections suspended their decision pending the Judgment.

We expect the Joint Sections to conform to the principle established by the CJEU. The Joint Sections ruling, which will be required to implement the Luxembourg principles by virtue of the primacy of EU law, should bring definitive closure to this chapter at the Italian level, with consequential stabilisation of all pending litigation.

Although this briefing focuses on Italy, the Judgment has broader implications. As a preliminary ruling under Article 267 TFEU, the Court's interpretation of Article 101(2) TFEU and Article 16(1) of Regulation No 1/2003 is binding on all national courts across the EU. In any Member State where similar claims have been or may be brought, courts will be required to apply the principles established in *Livronsa*, with a consequential stabilising effect on EURIBOR-related litigation throughout Europe.



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