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BRIEFING

# Legal bites on consumer protection in Spain (II)

The Court of Justice of the European Union (CJEU) redefines the financial structure of consumer credit: implications for business models, litigation risk and regulatory strategy in SPAIN.

CJEU Judgment of 23 April 2026 (C-744/24)

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In recent years, the Spanish consumer credit market has been marked by growing litigiousness and case law that has progressively raised the standards of control over financial products aimed at consumers. From disputes relating to interest rate "floor" clauses (*cláusulas suelo*) and cost clauses, which opened the discussion on contractual transparency and economics, to the most recent developments in revolving credit cards, judicial analysis has moved away from the mere formulation of a contract to its economics: how the product operates in practice, what financial result it produces, and what impact it might have on the customer in terms of debt. In Spain, this trend has become particularly visible with the most recent rulings from the Supreme Court, including Judgment 257/2026 of 17 February 2026, handed down in a suit regarding the revolving payment method and control over transparency (including in collective terms).

## Key issues

1. A new approach: from transparency to control over the product's financial structure
2. Practical implications: adjustments to consolidated models
3. The role of linked insurance: of particular sensitivity
4. Litigation risk: continuity rather than interruption
5. Outlook at medium term: gradual market adjustment
6. Three key decisions in the short term: product architecture and pricing, portfolio exposure, and defence and governance strategy

The recent CJEU judgment, dated 23 April 2026 (case C-744/2024), continues this trend, while introducing an important change in approach. The debate is no longer only about how much is charged or how it is explained, but about something more structural: what items can accrue interest, whether or not the consumer has been fully informed of the items included in the calculation.

Specifically, the CJEU holds that it is incompatible with EU law to charge interest on not only the capital actually made available to the consumer – the total amount of credit – but also to amounts intended to cover costs associated with the loan, such as insurance premiums and other expenses, even where those amounts are financed under the contract.

## A new approach: from transparency to control over the product's financial structure

The most relevant contribution of the CJEU's ruling lies not so much in the principle – which follows from prior EU case law – as in its operational application, insofar as it places the focus of the analysis on the internal structure of consumer credit. We are also seeing this in the most recent rulings from Spain's Supreme Court (for example, in the aforementioned Supreme Court Judgment 257/2026 on revolving credit).

Taking up and developing the case law started in *Radlinger*, the Court insists that the "principal of the loan", i.e. what is actually made available to the consumer, and the "total cost of the loan" are separate, mutually exclusive concepts. The upshot is clear: interest can only be charged on the former, and cannot be extended to the latter.

This approach represents a qualitative leap with respect to the standard hitherto applied in Spanish jurisprudence. While the Spanish Supreme Court has required the consumer to understand the cost of the product and its economic implications, the CJEU goes a step further and requires the financial structure of the contract itself to respect that logic. The CJEU's judgment introduces a criterion with a direct bearing on this: the requirement to maintain a clear separation between the "total amount of credit" (the total sums made available to the consumer) and the "total amount payable by the consumer" (which includes interest, commissions, taxes, insurance and any other kind of fees, with the exception of notary fees). In practice, this means that interest can only be charged on the former and cannot be extended to the latter, even where costs are financed as part of the transaction.

From this perspective, the ruling should not only be interpreted as a restriction on the accrual of interest, but also as a redefinition of the structural rules for the product, necessitating a review of how the various price components are economically integrated and transferred.

In fact, the Judgment itself states that the lender may choose not to apply the contractual interest rate to amounts corresponding to the cost of credit, whilst avoiding a gradual depreciation of the value of money over time, by applying a proportionally higher borrowing rate that reflects the cost of not receiving interest on amounts corresponding to the cost of credit. In that way, the CJEU states, the lender can make credit accessible even to consumers who have no initial capital to finance the costs incurred by entering into the credit agreement.

## Practical implications: adjustments to consolidated models

This ruling directly affects widespread practices in the Spanish and European markets, namely:

- the financing of insurance premiums and other ancillary products;
- the integration of fees and costs in the capital; and
- the charging of interest on all such amounts.

In many cases, these structures are not just an operational design, but are part of the product's profitability model based on commercial logic and loan accessibility (e.g. avoiding up-front customer outlays). The charging of interest on financed costs – especially on products with tight margins at the nominal rate – has historically been an important structural part of such products from an economic perspective.

The Judgment does not call the legitimacy of these costs into question, nor does it prevent them from being financed, but it does force a rethink of this approach. Although, as we have stated, the CJEU expressly recognises that the lender can adjust the rate to reflect the cost structure, it still introduces a substantial change: monetisation can no longer be achieved simply by broadening the items included in the calculation of interest, but must be made explicit. In other words, what could previously be integrated into the financed capital must now, it seems, be passed on at an explicit price (interest or fee)

This introduces a level of tension in certain models, insofar as:

- it forces the profit structure to be made more explicit;
- it may require adjustments to the interest rate or fee mix; and
- it reduces flexibility in distributing the price of the product among its various components.

## The role of linked insurance: of particular sensitivity

This effect is particularly marked on linked insurance. The CJEU holds that sums described as "voluntary" are part of the cost of credit if they are required to access better conditions. This approach reduces the scope for structuring products based on bundles or cross-selling strategies with an indirect impact on the price of the loan when there is material economic interdependence between the loan and the ancillary product.

## Litigation risk: continuity rather than interruption

From a litigation perspective, the Judgment contains elements reminiscent of early phases of other recent cycles in Spain. As with revolving litigation – and particularly the collective element reflected in Supreme Court Judgment 257/2026 –, the CJEU's criterion is based on objective parameters of the contract (the line between capital and costs, and the interest calculation base) that can be transferred to standardised models and thus to broad portfolios.

However, in contrast to the discussion focused exclusively on the interest rate, the focus here shifts to the product's internal consistency. This opens

up the potential for challenges not only to the price, but also to the way in which the price is constructed, especially when ancillary costs are financed and functionally integrated in the transaction.

In practice, this may facilitate litigation strategies aimed at challenging not only specific clauses, but also the very financial structure of the transaction, with a particular impact on products in which the financing of insurance or ancillary costs is a structural part of the offer. Recent experience in Spain suggests that such criteria, once established, tend to generate litigation slowly but surely.

## Outlook at medium term: gradual market adjustment

In the medium term, the Judgment points to a clear evolution in the market: simpler products, even more transparent cost structures and less tolerance for implicit monetisation schemes.

This trend is consistent with regulatory and jurisprudential developments in recent years, both at European and national level. The annual percentage rate (APR), conceived as a mechanism for comparison, takes on a pivotal role once more, insofar as its reliability depends on the proper separation of capital and costs.

Against this backdrop, we can expect to see the following:

- pricing models revised to explicitly pass on costs;
- tighter pre-contractual and contractual documentation;
- greater oversight of the consistency between a product's financial design and its legal presentation; and
- increased litigation in market segments less well adapted to this new standard.

## Conclusion: three decisions banks must make in the short term

Beyond the strict legal reading, in practical terms the Judgment poses a strategic question that many banks were already starting to consider in a post-revolving world: how to ensure the product's sustainability when it is no longer required only that it be transparent, but also structurally "clean", in the sense that interest is charged on the principal and not on components that the CJEU classifies as "total cost of the credit to the consumer".

In this new world, the important decisions are on three levels. First, a decision on product architecture and pricing: if banks want to maintain credit accessibility without initial disbursement while also adjusting for profit under the new restrictions, they must decide whether to rebalance the margin through a different borrowing rate, through explicit fees or through a reconfiguration of the package of ancillary products, assuming that the Judgment itself allows for adjustment of the rate to reflect this economic reality.

Second, a decision on portfolio risk and exposure: the CJEU's criterion will be applied especially to standard form documentation, so it is advisable to

quickly identify where there are financing structures for costs (insurance, fees, other) that have accrued interest, in order to assess exposure and prioritise responses.

Third, a decision on litigation strategy and governance: the combination of a more demanding European standard and a national environment already familiar with large-scale litigation (as illustrated by Supreme Court Judgment 257/2026 in the context of the revolving payment method) suggests that banks should prepare for increased scrutiny, ensuring they have consistent documentation and submissions and looking at defences aligned with European jurisprudence (*Radlinger*, *Mikrokasa*, *Soho Group*) in terms of the conceptual separation of principal and costs.

In short, the CJEU's Judgment introduces significant criteria as to how certain consumer loans can be structured, while giving a clear signal that Europe is moving towards a model that favours more explicit pricing structures that are less dependent on broadening the items included in the calculation of interest. This will require banks to make adjustments without disruptions, while preserving competitiveness, regulatory consistency and procedural strategy.

**María Guinot**
Partner,
L&DR, Madrid

Email: maria.guinot@cliffordchance.com
Mobile: +34 656288015

**Jaime Almenar**
Partner,
Public Law, Madrid

Email: jaime.almenar@cliffordchance.com
Mobile: +34 680602966

**Laura del Campo**
Senior Associate,
L&DR, Madrid

Email: laura.delcampo@cliffordchance.com
Mobile: +34 657417662

**Laura García-Valdecasas**
Associate,
L&DR, Madrid

Email:
laura.garciavaldecasa@cliffordchance.com
Mobile: +34 649145586



cliffordchance.com

Clifford Chance, Paseo de la Castellana 110, 28046 Madrid, Spain