# EU RegCORE Client Alert

**Financial Services**

June 2026

# CJEU ruling clarifies borrowing rate must exclude credit costs — what EU lenders need to do now

## QuickTake


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The Court of Justice of the European Union (**CJEU**) judgment on 23 April 2026 in Case C-744/24 (the **Judgment**) has practical significance beyond the Polish consumer-credit dispute from which it arose.[1] The CJEU confirmed that, under Directive 2008/48/EC (the **Consumer Credit Directive**), the borrowing rate may be applied only to the amount of credit actually made available to the consumer, not to amounts used to finance costs such as insurance premiums that form part of the total cost of credit.[2]

For EU financial services firms, the issue is therefore not only whether legacy wording is technically compliant, but whether product design, pricing logic, APR calculations and customer documentation reflect the CJEU's separation between (i) the amount of credit actually made available and (ii) the costs of obtaining that credit.

- **What changed.** Credit-financed costs – including insurance premiums linked to more favourable loan terms – must be kept outside the interest-bearing credit base and cannot become interest-bearing merely because they are financed by the lender.[3]

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[1] CJEU, Judgment from 23.04.2026 - C-744/24 (P.W. v Bank Polska Kasa Opieki S.A.), ECLI: EU:C:2026:337, (available here).
[2] Judgment, para 55-58.
[3] Judgment, paras. 40-43.

- **Who is affected.** The Judgment is binding as a matter of EU law across all Member States and is directly relevant to all EU-regulated credit institutions, consumer credit providers, and firms providing consumer lending — including motor finance, personal loans, retail credit, and point-of-sale finance — where the borrowing rate is applied to financed costs forming part of the total cost of credit. It applies equally to agreements currently in force and new agreements, with no transitional period.

- **What to do now.** Firms should consider conducting a targeted review of affected consumer-credit products, pricing logic, APR disclosures and legacy portfolio exposure.

# Key takeaways

The core point is that the Consumer Credit Directive draws a clear distinction between (i) the amount of credit made available to the consumer and (ii) the costs associated with obtaining that credit. This distinction is not merely technical: the CJEU's reasoning rests on the interlocking definitions in Article 3 of the Consumer Credit Directive.

Under Article 3(l), the "total amount of credit" represents the ceiling or total sums made available under a credit agreement — the credit principal actually available to the consumer. Under Article 3(g), the "total cost of credit" encompasses all costs, including interest, commissions, taxes and fees payable in connection with the credit, as well as ancillary service costs (especially insurance) if compulsory to obtain credit or the marketed terms. Article 3(h) defines the "total amount payable" as the sum of the total amount of credit and the total cost of credit — proving the mutual exclusivity: if a sum is in total cost of credit, it cannot simultaneously be in total amount of credit.[4]

The borrowing rate (Article 3(j)) is defined as the interest rate applied annually to the amount of credit drawn down, which corresponds to the total amount of credit and excludes sums used by the lender to pay costs connected with the credit that are not actually paid to the consumer. The APR (Article 3(i)) expresses the total cost of credit as an annual percentage of the total amount of credit and therefore relies on correct categorisation of amounts to produce comparable figures. This is an autonomous concept of EU law, uniform across all Member States.

The commercial consequence is not that lenders cannot recover the economics of ancillary products. Rather, the CJEU indicates that lenders may reflect those economics through a proportionally higher borrowing rate applied to the amount actually made available, instead of expanding the interest-bearing base to include financed costs.[5]

The risk is also backward-looking. Consumer-credit products involving financed payment-protection insurance, credit insurance, processing fees, commissions or other third-party payments should be mapped against the interest calculation base, APR methodology and standard-form contractual wording.

### *Background — the dispute in brief*

The case leading to the Judgment arose from a non-negotiated Polish consumer-credit agreement with Bank Polska Kasa Opieki S.A. Part of the loan amount was used to pay a credit-insurance premium described as "optional", and the borrowing rate was applied to both the amount disbursed to the borrower and the insurance premium.[6]

The customer challenged that structure by invoking Polish law's "cost-free credit" sanction and disputing both the interest calculation base and the APR disclosure. The referring court therefore asked, in substance, whether interest may be charged on credit-cost components that are not actually disbursed to the consumer.[7]

[4] Judgment, paras. 49–53 and 55–58.
[5] Judgment, para. 60.
[6] Judgment, paras. 19-20.
[7] Judgment, paras. 21-25.

### *Why this matters under EU law*

The CJEU's reasoning turns on classification. Polish "credit costs independent of interest" were treated as a sub-category of the total cost of credit under Article 3(g) of the Consumer Credit Directive, and the insurance premium fell within that category where taking the insurance was necessary to obtain the more favourable terms offered to the borrower, even if the insurance was labelled "optional". Where insurance is required to obtain the credit on the marketed terms (in this case, reduced-rate terms), the insurance premium falls within the total cost of credit regardless of voluntary or optional labelling.[8]

That makes substance more important than form. Whether the amount is routed through the borrower or paid directly to a third party does not change the analysis: if it is a credit cost, it sits outside the interest-bearing credit base.[9]

The CJEU expressly rejected the argument that classification depends on whether funds were paid into the borrower's bank account. Whether the lender pays sums to the consumer's account (for the consumer to pay onward) or pays directly to a third-party creditor (such as an insurer) is "of a contingent nature" and does not affect classification as a credit cost. The relevant question is whether the sum constitutes a cost of obtaining the credit or obtaining it on the marketed terms — not the payment mechanics.

The pan-EU relevance follows from the Consumer Credit Directive's harmonised terminology. The Judgment applies autonomous EU concepts that national courts, supervisors and firms must use consistently across Member States, so the decision should not be treated as a Poland-only development.[10]

The Judgment consolidates and extends prior CJEU authority: in *Radlinger* (C-377/14), the CJEU established that the amount of credit drawn down equals the total amount of credit and excludes sums used to pay credit costs not paid to the consumer, establishing mutual exclusivity. In *Mikrokasa* (C-779/18), non-interest credit costs were confirmed as a subcategory of total cost of credit under Article 3(g). In *Soho Group* (C-686/19), the CJEU confirmed that total cost of credit and total amount of credit are mutually exclusive autonomous EU law concepts requiring complete definition and breakdown of amounts. The present Judgment extends this line to confirm that the borrowing rate may not be applied to sums within total cost of credit, including financed insurance premiums, and that classification does not depend on payment mechanics.

The CJEU also left lenders with room to structure pricing. It did not ban the underlying cost components. Rather, it rejected their treatment as an additional interest-bearing credit base. Lenders retain commercial freedom to impose insurance premiums, commissions, arrangement fees and other charges; to finance those charges as part of the overall credit facility; and to apply a proportionally higher borrowing rate that reflects the economics of not receiving interest on credit-cost amounts — provided the borrowing rate is applied to the correct base (the true total amount of credit/amount drawn down) and not to sums classified as total cost of credit. This leaves pricing options open while making legacy contracts that blurred the line between principal, costs and total amount payable more vulnerable to challenge.

There is also an unfair terms dimension that is important to note. Although the CJEU did not need to answer the second question on transparency, the Judgment's reasoning has implications under Directive 93/13/EEC on unfair terms in consumer contracts (the **Unfair Terms Directive**): standard-form terms applying interest to credit costs will be subject to the unfairness test under Article 3(1) of that Directive (significant imbalance, contrary to good faith, to the detriment of the consumer); the plain and intelligible language requirement (Article 5 of the Unfair Terms Directive) reinforces that the interest base must be clearly and accurately disclosed; and national courts must assess ex officio whether such terms are unfair, which creates additional litigation risk for back-book agreements.

# Practical recommendations

**What to do now.** Affected firms should consider testing current products and legacy portfolios, review APR, SECCI and contract-disclosure logic and determine whether pricing changes, customer remediation or

[8] Judgment, paras. 38–39 and 40 - 42.
[9] Judgment, paras. 42-43.
[10] Judgment, paras. 47-48.

Member State sanctions analysis is required. In practice, the response will likely be organised around four workstreams:

- **Product inventory and contract mapping:** Identify consumer-credit products where premiums, fees, commissions or other costs are financed, and test whether those amounts are excluded from the borrowing-rate base.

- **Pricing, APR and disclosure controls:** Align pricing engines, APR calculations and SECCI/contract outputs so that only the amount actually made available is interest-bearing, while any economic re-pricing is reflected transparently in the borrowing rate applied to that smaller base.[11]

- **Legacy exposure and remediation:** Review live and historic portfolios for interest charged on financed cost components, quantify potential civil-law sanctions and consumer-claim exposure by Member State, and decide whether customer remediation is required.

- **Governance and implementation planning:** Feed the same classification logic into Consumer Credit Directive II (Directive 2023/2225) projects, product approval controls and internal policies, so that new products do not recreate the same interest-base issue.

- **Firms should also address specific contractual priorities**. The borrowing rate must be applied exclusively to the true total amount of credit and not to any sum forming part of the total cost of credit. This requires reviewing all consumer credit templates to identify the contractual definition of the interest base; confirming that the interest base excludes all sums classified as total cost of credit (including financed insurance premiums, commissions, arrangement fees, broker fees, and other ancillary service costs); clearly separating the credit principal component from the financed cost component where the lender finances credit costs; and ensuring repayment schedules, amortisation tables and worked examples reflect interest calculated only on the correct base.

- **Consumer credit agreements should include clear, compliant definitions**. The “Total Amount of Credit” or “Credit Principal” should be defined as the net amount actually made available to the consumer, excluding all sums allocated to credit costs. The “Total Cost of Credit” should encompass all costs including interest, commissions, taxes, fees and ancillary service costs. The “Borrowing Rate” should be expressed as a fixed or variable annual percentage applied to the amount of credit drawn down. Drawdown clauses should clearly specify what amount is drawn down by the consumer and distinguish it from amounts retained or applied by the lender to pay credit costs.

- **Firms should also avoid recharacterisation risk**. Specifically, they should not reclassify insurance premiums, commissions or fees as “additional credit” or “facility components” in order to apply interest to them; should not use artificially separate facility tranches where one tranche (bearing interest) is used to pay credit costs; and should be aware that national courts will look at substance over form — the economic effect of the arrangement, not merely its contractual label. Article 22(3) of Directive 2008/48 expressly prevents circumvention through the way agreements are formulated.

# Outlook

The Judgment is likely to become a reference point for consumer bodies, claims-management activity and national courts reviewing bundled credit insurance and similar financed-cost structures across the EU. The litigation and enforcement risk is substantial.

On the consumer side, individual claims may seek restitution of overcharged interest (the difference between interest paid on the inflated base and interest that would have been paid on the correct base). The Representative Actions Directive (Directive 2020/1828) and national collective redress mechanisms may

[11] Judgment, para. 60.

facilitate group claims, particularly given the standard-form nature of the affected agreements. National implementing legislation may also provide for enhanced consumer remedies — as illustrated by the Polish "free-credit" sanction, where the consumer may be entitled to repay credit without interest where the lender breaches disclosure obligations. Similar mechanisms exist in other Member States. Additionally, national courts must assess ex officio whether standard-form terms are unfair under the Unfair Terms Directive — terms found unfair are void and not binding, with restitution following.

National competent authorities responsible for consumer credit supervision may require firms to conduct portfolio reviews and remediate non-compliant products; issue supervisory directions regarding template amendments; impose administrative penalties for breaches of Directive 2008/48 disclosure requirements (incorrect APR, incorrect total amount of credit); and use the judgment as the basis for thematic reviews across the consumer credit sector. Limitation periods vary by Member State (typically 3-10 years depending on jurisdiction and claim type), and aggregate exposure across the portfolio may be material, particularly for firms with high volumes of financed-fee or financed-insurance products. Provisioning and financial reporting implications should be assessed under IAS 37 (Provisions, Contingent Liabilities and Contingent Assets).

National competent authorities may also coordinate through the EBA or national consumer protection authorities on cross-border enforcement, which is particularly relevant for firms operating consumer credit businesses across multiple Member States.

Firms may seek to rely on mitigating factors: the CJEU's acknowledgement that alternative pricing structures (higher rate on the correct base) are permissible may reduce the net economic impact of any remediation; and proactive remediation and regulatory engagement may serve as mitigating factors in enforcement proceedings. However, arguments regarding consumer awareness or agreement to the terms are unlikely to override the mandatory nature of the Consumer Credit Directive.

Firms should therefore avoid treating the ruling as a narrow case-law update. Immediate triage may be warranted, followed by structured template remediation, policy and control build-out, and back-book risk assessment. Boards and senior management should be briefed and should oversee the remediation programme with appropriate urgency. A focused review of product families, calculation logic and customer communications can identify necessary changes before the issue appears in complaints, litigation or supervisory thematic work. For ongoing Consumer Credit Directive II projects, the same principle should be treated as a design requirement. Financed cost components should be clearly classified, disclosed and controlled so that future products do not recreate the same interest-base issue under the new regime.

# Polish Outlook

Poland is likely to be one of the jurisdictions significantly affected by the Judgment. The case itself arose from the Polish consumer-credit market and the Court's reasoning aligns closely with concepts already familiar to Polish litigation, including the statutory "free-credit" sanction (*sankcja kredytu darmowego*).

The immediate significance of the Judgment is not limited to future product design. Consumer representatives and claims-management firms in Poland are likely to rely on the ruling when challenging legacy agreements where interest was calculated on financed insurance premiums, commissions or other financed credit-cost components. Given the increasing level of consumer-credit litigation in Poland, the Judgment may accelerate claims activity and portfolio reviews across the sector.

From a civil-law perspective, lenders may face arguments that charging interest on amounts constituting the "total cost of credit" results in non-compliance with the disclosure and calculation requirements of the

Polish Consumer Credit Act. Depending on the circumstances of the individual case, borrowers may seek application of the statutory free-credit sanction, restitution of overcharged amounts and other remedies available under Polish law.

The Judgment may also attract regulatory attention. The Polish Financial Supervision Authority (**KNF**) and the Office of Competition and Consumer Protection (**UOKiK**) have historically focused on consumer-credit transparency, disclosure standards and product governance. The “free credit sanction” cases are also perceived by Polish authorities as a challenge for the Polish judicial system. Institutions operating significant legacy consumer-credit books in Poland may wish to assess potential litigation exposure, remediation options and provisioning implications at an early stage.

While the ultimate impact will depend on how Polish courts apply the Judgment in individual disputes, Poland is likely to become one of the key testing grounds for the practical implementation of the CJEU’s interpretation.

# About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from relevant related developments. We have assembled a multi-disciplinary and multijurisdictional team of sector experts to support clients navigate challenges and seize opportunities as well as to proactively engage with their market stakeholders and regulators.

Moreover, we have developed a number of RegTech and SupTech tools for supervised firms, including PwC Legal's Rule Scanner tool, backed by a trusted set of managed solutions from PwC Legal Business Solutions, allowing for horizon scanning and risk mapping of all legislative and regulatory developments as well as sanctions and fines from more than 2,500 legislative and regulatory policymakers and other industry voices in over 170 jurisdictions impacting financial services firms and their business.

Equally, in leveraging our Rule Scanner technology, we offer a further solution for clients to digitise financial services firms' relevant internal policies and procedures, create a comprehensive documentation inventory with an established documentation hierarchy and embedded glossary that has version control over a defined backward plus forward looking timeline to be able to ensure changes in one poli-cy are carried through over to other policy and procedure documents, critical path dependencies are mapped and legislative and regulatory developments are flagged where these may require actions to be taken in such policies and procedures.

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If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our website.


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