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Strengthening Anti-Fraud Protection: A Brief Overview of the New Developments in Payment Services

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A significant reform of the payment services framework is on the horizon. On 17 April 2026, the Council of the European Union published a note presenting the preliminary compromise texts for both the new Payment Services Directive (commonly referred to as PSD3) and the new **Payment Services Regulation (PSR)**. Together, these measures will establish a new legal framework, replacing the current regime set out in Directive (EU) 2015/2366 (**PSD2**), as implemented in Spain by Royal Decree-Law 19/2018 (further developed by Royal Decree 736/2019), and Directive 2009/110/EC on electronic money institutions, transposed into Spanish law by Law 21/2011 and Royal Decree 778/2012.

Pending their formal adoption by the European Parliament and the Council, and their subsequent entry into force—scheduled for the twentieth day following publication in the Official Journal of the European Union (expected during the summer of 2026)—PSD3 will provide for a transposition period of 21 months from its entry into force. The PSR will become directly applicable from the same date, with the exception of the beneficiary name-and-identifier verification regime, for which a longer implementation period of 27 months has been established. Significantly, this verification requirement will apply to all credit transfers, rather than only SEPA transfers, thereby extending the regime introduced by Regulation (EU) 2024/886.

This new legislative framework represents more than a mere formal restructuring. Unlike its predecessor, it combines a directive with a directly applicable regulation, reserving the key conduct of business rules for the latter. The objective is to reduce the divergent national interpretations that arose under PSD2 while also introducing substantial changes to the regulation of payment services.

One of the most notable developments concerns fraud prevention, with a clear shift of risk towards payment service providers. In response to the growing prevalence of fraud under the PSD2 regime—including phishing, smishing, vishing, spoofing and other forms of social engineering and identity impersonation—the proposed Regulation fundamentally reshapes the existing legal framework. It expressly provides that a payment transaction will not be regarded as authorised where the payer has been manipulated through social engineering into initiating a payment to a third party other than the intended beneficiary, or where the transaction has been executed by a third party without the payer's consent using credentials obtained fraudulently. This reform comes against the backdrop of official statistics published by the Spanish Ministry of the Interior, which indicate a worrying increase in this form of cybercrime.

The proposed Regulation also introduces a specific right to reimbursement for consumers who fall victim to identity impersonation. Where a third party unlawfully uses the name, email address, telephone number, website or application of a payment service provider to deceive a consumer into making a fraudulent payment, the consumer will be entitled to claim full reimbursement of the amount from the payment service provider.

That said, reimbursement will be excluded where the consumer has acted with gross negligence. However, the Regulation introduces a series of non-exhaustive and non-binding criteria intended to assist in determining whether such gross negligence exists.

Alongside these anti-fraud measures, and beyond the wider regulatory and supervisory reforms, the new legal framework pursues greater harmonisation by:

- **expanding and strengthening Strong Customer Authentication (SCA)** through a more adaptive, risk-based approach that combines behavioural biometrics with traditional physiological biometric authentication;
- **promoting open banking**, facilitating the electronic exchange of data between software systems;
- **enhancing transparency** regarding fees and contractual terms while introducing mandatory integration with the **European Digital Identity Wallet (EUDI Wallet)**;
- **establishing a stricter regulatory regime for NFC (Near Field Communication) payments**; and
- **improving consumers' access to cash**, allowing retailers to provide cash withdrawals of between €100 and €150 (depending on how each Member State implements the legislation), thereby offering an alternative to traditional cash withdrawals through bank-operated ATMs.

Taken together, these reforms will have significant implications for both consumers and small and medium-sized enterprises. The strengthening of open banking, combined with enhanced fraud prevention measures and greater consumer protection, points towards a future payment services ecosystem that is not only more secure but also more convenient for economic operators. At the same time, the reforms are expected to create particularly attractive opportunities for the rapidly evolving fintech sector.



The Supreme Court Limits the Tax Consequences of Corporate Law Defects in Directors' Remuneration

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The deductibility of directors' remuneration for Corporate Income Tax purposes is one of those issues that never seems to disappear from the tax agenda. Just when it appeared that the Spanish Supreme Court had made it sufficiently clear that such remuneration could not automatically be classified as a gratuitous payment (*liberalidad*), Judgment No. 615/2026, of 18 May, introduces a further nuance of considerable practical importance.

The case arose in circumstances that could have made the taxpayer's position difficult to defend. The company's articles of association expressly provided that the members of the board of directors were entitled to remuneration, and service agreements had been entered into with its managing directors. Subsequently, however, the board resolved to increase each managing director's annual remuneration from €18,000 to €60,000 without obtaining the express approval of the general shareholders' meeting. In addition, a minority shareholder had opposed both the remuneration scheme and the subsequent increase.

Against this background, the Spanish Tax Agency (AEAT) argued that the company had breached corporate law requirements and therefore denied the deductibility of the expense. In doing so, it relied not only on the traditional argument that the remuneration could constitute a gratuitous payment, but also on Article 15(f) of the Corporate Income Tax Act, which disallows the deduction of expenses arising from acts contrary to the legal system.

It is precisely here that the judgment makes its most significant contribution. The Supreme Court does not merely reaffirm that directors' remuneration which is genuine, effectively paid, properly recorded in the accounts and adequately substantiated cannot, in itself, be regarded as a gratuitous payment. It goes one step further by clarifying that a possible breach of corporate law formalities cannot automatically be treated as an act contrary to the legal system for tax purposes.

In other words, the existence of a potential corporate law irregularity does not, by itself, entitle the tax authorities to deny the deductibility of the expense. The AEAT cannot assume functions that properly belong to the commercial courts, nor may it use Corporate Income Tax as an indirect mechanism for resolving internal corporate disputes.

The Supreme Court emphasises that the tax authorities did not dispute that the remuneration had been properly recorded in the company's accounts, recognised in the appropriate tax period, supported by documentary evidence and paid in consideration of services that had actually been rendered. These factors are significant because they establish the existence of a genuine business expense connected with the company's activities. Once this has been established, it is for the tax authorities to identify and

justify the specific tax adjustment that would prevent the expense from being deductible.

The judgment also clarifies the scope of Article 15(f) of the Corporate Income Tax Act. The concept of "acts contrary to the legal system" must be interpreted restrictively and reserved for conduct of a more serious nature, such as bribery or other comparable unlawful activities. Extending the provision to encompass any formal or corporate law irregularity would open the door to an excessively broad interpretation, potentially giving rise to tax adjustments that would be difficult to reconcile with the principle of legal certainty.

Another particularly important aspect of the judgment concerns the position of the minority shareholder. The tax authorities attempted to justify their assessment on the basis that it protected the interests of the dissenting shareholder. However, the Supreme Court rejected this argument, holding that the AEAT cannot assume such a role. The protection of shareholders' rights falls, where appropriate, within the scope of company law remedies and the jurisdiction of the commercial courts, not within the framework of a tax reassessment under the Corporate Income Tax regime.

From a practical perspective, the judgment strengthens the position of companies facing tax adjustments based solely on defects in compliance with corporate law. Where directors' remuneration corresponds to genuine services, is authorised under the company's articles of association, has been properly accounted for and is adequately supported by evidence, the tax authorities cannot automatically deny its deductibility.

That said, the judgment should not be interpreted as an invitation to relax corporate governance or documentation standards. Properly drafted articles of association, duly approved service agreements, clearly established maximum remuneration limits and comprehensive documentation of the services provided remain essential. The judgment protects taxpayers against automatic tax adjustments, but it does not transform poor corporate governance into a tax advantage.

Ultimately, the Supreme Court consolidates its taxpayer-friendly case law on the deductibility of directors' remuneration while introducing an important clarification: although the tax authorities remain entitled to review and adjust tax returns, they may do so only where there is a sufficient tax law basis for the adjustment. They cannot simply convert every corporate law dispute into a non-deductible expense for Corporate Income Tax purposes.

Supreme Court Judgment (Plenary) No. 444/2026, of 23 April: The Supreme Court Strengthens the Protection of Remote Workers and Employers' Working Time Monitoring Obligations

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Supreme Court Judgment (Plenary) No. 444/2026, of 23 April (Appeal No. 2505/2024), is arguably the most significant decision handed down to date by the Spanish Supreme Court in relation to remote working and occupational accidents. The importance of the judgment lies not only in its classification of the death of an employee working from home as a workplace accident, but also in the fact that it establishes authoritative case law on matters of considerable practical importance for employers. These include the application of the presumption that an accident is work-related in remote working scenarios, the scope of working time recording obligations in flexible working environments, and the allocation of the burden of proof when an accident occurs during remote working.

The case concerned an employee of Accenture who worked remotely from home several days a week and died at her residence as a result of an acute myocardial infarction. The legal dispute arose because she worked under a flexible working hours arrangement, leading the employer's insurance mutual (Mutua) to argue that it had not been established that the cardiac event had occurred during actual working time.

Rejecting that interpretation, the Supreme Court begins from a fundamental premise: remote working is not exempt from the legal framework governing occupational accidents. On the contrary, the Court recalls that no statutory provision excludes the application of Article 156.3 of the General Social Security Act (Ley General de la Seguridad Social - LGSS) to employees working remotely and expressly states that the presumption that an accident is work-related remains fully applicable in this form of employment. The judgment notes that this presumption has a clear "general scope" and applies equally where professional activities are carried out from the employee's home.

The decision is particularly significant because it resolves one of the principal legal uncertainties arising from the expansion of remote working: the identification of the workplace. The Supreme Court holds that, where services are provided from home pursuant to a remote working agreement, the employee's home fully constitutes the workplace for the purposes of Article 156.3 LGSS. Consequently, the focus of the analysis should no longer be the location where the accident occurred, but rather whether it took place during working time.

It is precisely on this point that the judgment makes its most significant contribution. The Court rejects the notion that flexible working hours may operate to the detriment of employees. In other words, the fact that an employee enjoys a degree of autonomy in organising their working day does not eliminate the employer's monitoring obligations, nor does it automatically shift onto the employee the burden of proving that they were working at the time of the accident.

The judgment also introduces a particularly important distinction for future remote working cases by differentiating between activities carried out online and

those performed offline for the purposes of determining the burden of proof. Where work is carried out using IT systems or technological tools that enable the employee's activity to be monitored, it is for the employer to produce the relevant records and monitoring systems available to establish whether the employee was providing services at the time of the accident. Conversely, where activities are performed offline, without objective systems capable of tracing or monitoring the employee's work, the burden of proving the connection between the accident and the employment rests with the party asserting that the incident constitutes an occupational contingency. This clarification reinforces the importance of working time recording systems and activity monitoring mechanisms in remote working arrangements and provides valuable guidance for determining whether accidents occurring in remote working environments qualify as occupational accidents.

The Court further emphasises that employers remain under an obligation to comply with the requirements laid down in Article 34.9 of the Workers' Statute and Article 14 of Law 10/2021 on Remote Working, meaning they must implement mechanisms capable of accurately recording employees' working time. In this regard, the Supreme Court reiterates that working time recording systems must faithfully reflect the time devoted to work, including the start and end of the working day as well as any rest periods.

The Court considered it particularly significant that the employer failed to produce the employee's detailed working time records or the information generated by the activity monitoring tools provided for in the remote working agreement itself. The judgment also highlights that there was no documentary evidence showing that the employee had begun her lunch break or had finished work before suffering the fatal cardiac event.

From both a preventive and organisational perspective, this finding is of considerable importance, as the Supreme Court effectively establishes that the absence of reliable and comprehensive records may prevent an employer from rebutting the presumption that an accident is work-related. The organisational flexibility inherent in remote working does not remove the need to properly document working hours; rather, it reinforces the importance of having systems capable of accurately demonstrating when work is being performed and when an employee is taking a break or rest period.

Another particularly noteworthy aspect of the judgment is the Court's assessment of the factual evidence in the specific case. The Court attached significance to the autopsy findings showing that the employee's stomach was empty, considering this consistent with the conclusion that she had not yet begun her lunch break. Likewise, the Court emphasised that there was no objective evidence indicating that she had ceased working before her death.

On the basis of these factors, the Supreme Court concludes that any uncertainty arising from flexible working arrangements cannot be resolved to the detriment of the employee. The judgment states that it was for the employer to prove that the employee had stopped working or was genuinely taking a break when the heart attack occurred, rather than requiring the employee (or her representatives) to prove the opposite.

The judgment is particularly significant for the preventive management of remote working because it directly links protection against occupational accidents with the employer's proper organisation of remote work. In practice, it demonstrates that matters traditionally regarded as organisational—such as working time recording, monitoring of breaks and the traceability of working hours—also acquire an occupational health and safety dimension and may prove decisive in determining whether an incident constitutes an occupational contingency.

Moreover, the doctrine established by the Court is fully consistent with the recent line of Supreme Court case law concerning remote working, in which the Court has progressively strengthened employers' obligations regarding working time monitoring, the right to disconnect, psychosocial risk assessments, documentary traceability and the protection of employees' health in flexible working environments.

In conclusion, Supreme Court Judgment (Plenary) No. 444/2026 of 23 April represents a significant development in the legal framework governing remote working. The judgment confirms that flexible working hours neither diminish employees' legal protection nor alter the general rules governing occupational accidents. On the contrary, the Supreme Court reinforces the requirement for employers to implement effective systems for organising, monitoring and documenting working time, since the absence of such mechanisms may have decisive consequences both from an occupational health and safety perspective and in relation to Social Security matters and the classification of occupational contingencies. In doing so, the judgment consolidates a fundamental principle: remote working requires greater organisational control and documentary traceability, but never a lower level of legal protection for employees.



The Criminal Law Boundary of Real Estate Transactions Involving Future Construction

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Complex real estate transactions frequently occupy the intersection of civil, commercial and, on occasion, criminal law. Supreme Court Judgment (STS) No. 2287/2026, of 21 May (ECLI:ES:TS:2026:2287), delivered by Justice Leopoldo Puente Segura, revisits that boundary in the context of a transaction in which a plot of land had been transferred under an agreement requiring the future delivery of a residential property and was subsequently sold to a third party without effectively incorporating that prior obligation into the subsequent transfer.

The significance of the judgment does not lie in treating every contractual breach as a criminal offence. Rather, it lies in clarifying the circumstances in which a subsequent disposal of property may give rise to criminal liability by affecting rights that had already been contractually committed.

A Disposition Giving Rise to Criminal Liability

The distinction between a civil breach of contract and criminal wrongdoing requires careful analysis. As the Supreme Court observed in STS No. 3264/2022, of 15 September (ECLI:ES:TS:2022:3264), delivered by Justice Javier Hernández García:

“The boundary between civil and criminal liability lies precisely in the strict requirements of criminal typification.”

The same judgment further explains that not every breach of civil obligations amounts to fraud unless there is evidence of:

“the existence of a prior intention not to perform and the use of deceptive conduct as the causal factor inducing the transfer of assets.”

This distinction is important. However, STS No. 2287/2026 addresses the specific offence of **improper fraud** (*estafa impropia*) under Article 251.2 of the Spanish Criminal Code, which follows a different legal rationale. In this context, it is not necessary to establish the prior deception that characterises the ordinary offence of fraud under Article 248. Instead, the focus shifts to the disposal of an asset as though it were free from encumbrances when it had already been subject to a prior transfer, encumbrance or other legally relevant commitment.

The Court states this expressly:

“It is clear that this particular offence does not require any deception. Nor does it require the existence of any concealment from the third party of the prior exchange agreement.”

It continues:

“The offence therefore does not require the implementation of any deceptive scheme or conduct.”

The critical issue is therefore not whether the transaction ultimately failed. Rather, it is whether the asset was disposed of in disregard of pre-existing rights that were known or had been assumed, thereby placing the affected party in a legally contentious position. As the judgment succinctly explains:

“Once the second sale or encumbrance has taken place, the offence has already been completed, since the harm consists in the legal uncertainty affecting the injured party’s rights.”

Accordingly, the dividing line is found not in the failure of the transaction itself, but in the subsequent disposal of property that is incompatible with an existing legal position.

Future Construction and Pre-existing Rights

Perhaps the most interesting aspect of the judgment concerns transactions involving future construction. At the time of the initial agreement, the promised dwelling had not yet been physically built. It could therefore be argued that the original purchaser had not acquired ownership of something that neither existed nor had been delivered.

The Court does not ignore this civil law difficulty. However, it rejects the argument that it is determinative from a criminal law perspective. Although the dwelling had not yet been constructed, the contractual rights arising from the earlier transaction already existed. Those rights could be frustrated if the property were subsequently transferred as though no such prior commitment had ever been made.

The judgment therefore concludes that there is no obstacle to applying the doctrine of improper fraud:

“even where the dwelling which the developer had undertaken to build off-plan and deliver had not yet been constructed.”

This reasoning has significant practical implications. In transactions involving land-for-development exchanges, off-plan sales, land contributions to development projects, real estate developments or successive transfers of property, criminal liability does not depend solely on formal ownership or on the physical existence of the future asset. It may also arise where a subsequent transaction effectively deprives previously assumed contractual obligations of their practical effect.

In other words, assets that have not yet been registered, delivered or constructed may nevertheless be subject to legal commitments that materially restrict their availability for subsequent disposal.

Corporate Criminal Liability and Property Development Companies

The judgment is also noteworthy from the perspective of corporate criminal liability. STS No. 2287/2026 does not examine in detail the requirements of Article 31 bis of the Spanish Criminal Code. Instead, it addresses an appeal that was based primarily on the argument that the underlying offence attributed to the individual defendant had not been established.

The Court therefore reasons:

“Having dismissed the previous ground of appeal, this second ground must necessarily meet the same fate, since it was presented merely as the inevitable consequence of the possible success of the first.”

The practical lesson is clear, albeit one that should be approached with appropriate caution. Where a company's defence rests exclusively on denying the existence of the underlying criminal offence, confirmation of that offence may significantly undermine the company's own position.

For property developers, directors and investors, this reinforces the importance of treating prior contractual commitments as more than merely civil contingencies. Before transferring real estate assets, companies should identify any outstanding contractual obligations, unregistered burdens, commitments relating to future delivery, private agreements, ancillary documentation and other relevant communications. Equally important is maintaining a clear audit trail of corporate decision-making, the due diligence undertaken and the safeguards incorporated into the transaction.

The Amount Defrauded and the “Encumbered Asset”

The judgment also provides useful guidance regarding the quantification of the offence. The defence argued that the corporate fine should be calculated by reference only to the value of the dwelling that had not been delivered. The Supreme Court disagreed, holding that the fraudulent conduct related to the transfer of the land as though it were free from encumbrances, rather than merely to the value of the promised dwelling.

The Court explains:

“The issue is not to quantify the loss suffered by Florencia's heirs or by the third-party purchaser, but rather the nature and extent of the fraud objectively committed by disposing of an encumbered asset as though it were unencumbered.”

The expression “encumbered asset” should be understood here in a functional rather than a purely technical sense. It does not refer exclusively to a registered proprietary charge, but more broadly to an asset whose availability had already been limited by a prior legal obligation. This is an important clarification,

confirming that legal analysis cannot be confined to the information recorded in the Land Registry alone.

The judgment also illustrates how, in economic crime, the amount relevant for determining criminal penalties, fines or corporate liability does not necessarily coincide with the amount recoverable by way of civil damages. Civil liability seeks to compensate the loss suffered, whereas the criminal assessment focuses on the objective scope of the fraudulent transaction and the incompatible disposal of rights previously granted to another party.

A Criminal Law Boundary That Begins Before the Transaction Is Signed

STS No. 2287/2026 does not criminalise ordinary real estate disputes. Its significance lies precisely in defining the limits of criminal liability. It is not enough that a transaction ultimately fails, nor that one party breaches its contractual obligations. Equally, however, parties cannot avoid criminal scrutiny merely by presenting a transaction as an ordinary civil matter where, in reality, the asset has been transferred in disregard of rights that had already been legally committed to others.

For companies, developers, directors and investors, the judgment offers a practical lesson. Before transferring any real estate asset, it is essential to review not only its registered legal status but also its contractual history, existing commitments, outstanding obligations and the documentation that will be relied upon in dealings with third parties.

In transactions of this nature, criminal risk management begins well before the agreement is signed. It starts with maintaining a clear documentary record of the decision-making process, ensuring transparency throughout the transaction and properly identifying the legal limits affecting the availability of the asset. The criminal law boundary is crossed not because a transaction proves unsuccessful, but because an asset is disposed of as though it were free from restrictions when, in fact, it was already legally burdened by the rights of others.

Administrative Intervention in the Housing Market

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Access to housing is currently one of Spain's most pressing social and legal challenges. A shortage of supply, growing demand and, as an inevitable consequence, soaring purchase prices and rental costs have elevated the issue to the forefront of the public agenda. Against this backdrop, the role of public authorities has become increasingly significant, particularly through administrative law, urban planning and housing policy.

There is little doubt that the public administration has an important role to play in this field, not only in safeguarding the public interest but also in ensuring the proper functioning of the housing market. The real debate, however, is not whether the State should intervene, but where the limits of that intervention should lie. In recent years, a number of legislative measures have been enacted that many regard as excessively protective of tenants, significantly restricting landlords' rights and, in doing so, affecting the right to private property protected under Article 33 of the Spanish Constitution.

Public authorities intervene directly in the housing sector through a range of legal mechanisms.

The first of these is urban planning, which enables the authorities to regulate land use and determine where, how and to what extent development may take place. Through planning regulations, building permits and administrative authorisations, public authorities influence the supply of housing while ensuring that construction and the use of real estate comply with planning legislation.

However, this form of intervention is not without its drawbacks. Excessively burdensome or lengthy administrative procedures can delay the construction of new housing, thereby exacerbating the very shortage they are intended to address.

The administration also intervenes in relation to specific housing-related issues, such as vacant properties, through incentives and measures designed to bring them back onto the market, and short-term tourist accommodation, the proliferation of which in certain cities has reduced the availability of long-term rental housing and placed further upward pressure on prices. These measures illustrate that housing is not merely a private matter between landlord and tenant but also a question of urban planning, social cohesion and public policy.

One of the most controversial aspects of public intervention concerns the regulation of the rental market and the designation of so-called "**stressed housing markets**" (zonas tensionadas) under legislation such as the Urban Leases Act (Ley de Arrendamientos Urbanos) and, more recently, **Law 12/2023 of 24 May on the Right to Housing**.

The latter introduces measures including the designation of stressed housing areas, rent controls, increased obligations for large-scale property owners and tighter restrictions on eviction proceedings.

Although these measures were intended to curb speculation and facilitate access to adequate housing, they may ultimately produce the opposite effect if they are not designed in a proportionate manner. Excessive regulation may discourage investment in residential property, create legal uncertainty and interfere with citizens' economic freedom. Public intervention must therefore be assessed not only in terms of its social objectives but also in light of its effectiveness and its compatibility with other constitutional rights and principles.

Article 47 of the Spanish Constitution recognises the right to decent and adequate housing. However, this provision is framed as one of the guiding principles of social and economic policy rather than an immediately enforceable individual right, meaning that its effectiveness depends upon legislative development and public policy implementation.

By contrast, Article 33 guarantees the right to private property, albeit subject to its social function. While it is accepted that private property serves a social purpose, it is legitimate to question whether stringent rent controls can be justified solely by invoking that social function. The social function of property undoubtedly allows limitations to be imposed on ownership rights, but any such restrictions must pursue a legitimate public interest and satisfy the constitutional principle of proportionality.

Accordingly, it is open to debate whether strict rent controls can be justified simply by reference to the social function of property. If a measure reduces the supply of housing, makes access to rental accommodation more difficult or disproportionately shifts the burden of public housing policy onto particular categories of property owners, it is difficult to argue that it genuinely serves the public interest it purports to protect.

Useful guidance may be drawn from comparable experiences in other jurisdictions, such as Berlin and San Francisco, where rent control measures introduced in 2020 and 1979 respectively demonstrate that excessive restrictions can produce outcomes contrary to those originally intended.

In Berlin, the so-called Mietendeckel introduced a rent freeze together with maximum rent caps. The measure led to a reduction in the supply of rental housing and was ultimately struck down by the German Federal Constitutional Court on the grounds that the regional legislature lacked the necessary legislative competence.

Similarly, in San Francisco, long-standing rent control legislation succeeded in protecting existing tenants but also reduced the availability of rental accommodation, contributing to higher market prices and making it more difficult for new tenants to access housing.

These examples demonstrate that public intervention in the housing market must be carefully designed. Without complementary measures aimed at increasing housing supply and providing legal certainty, restrictive

regulation may ultimately worsen the very shortages it seeks to address.

It should also be remembered that, for many individuals, purchasing residential property for rental purposes represents an important form of investment, savings and long-term financial security. Excessively restrictive or unpredictable regulation may significantly undermine legitimate investment expectations and reduce incentives for property owners to keep homes available on the rental market.

In light of these considerations, there is little doubt that public intervention is necessary. Housing is a basic social need and cannot be left entirely to market forces. Government action is essential to protect vulnerable individuals and prevent abusive market practices and speculation.

That intervention, however, must be carried out without losing sight of private property rights, economic freedom and legal certainty.

The right to housing cannot be realised solely by imposing increasing restrictions on property owners. Rather, it requires a comprehensive public policy combining appropriate regulation with measures to increase housing supply, expand public and affordable housing, introduce targeted tax incentives, encourage public-private partnerships and streamline urban planning procedures.

Experience in other countries demonstrates that rent controls, when implemented in isolation and with excessive rigidity, may reduce housing supply and indirectly contribute to rising market prices. The challenge for administrative law is therefore not to choose between market forces and public intervention, but to design a regulatory framework that is effective, proportionate and predictable—one that reconciles access to housing with respect for constitutional rights and the fundamental principle of legal certainty.

Prohibited Financial Assistance: When the Infringement Does Not Lead to Nullity

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The prohibition on financial assistance is one of those legal institutions where the legislation says relatively little, while the courts have provided most of the substantive guidance. The Spanish Companies Act (*Ley de Sociedades de Capital*) establishes the prohibition but does not exhaustively regulate the consequences of its infringement. It has therefore fallen to the courts to define its scope. In this regard, the recent Supreme Court Judgment (STS) No. 673/2026, of 5 May, revisits an issue of considerable practical importance: the breach of the prohibition on financial assistance does not necessarily render the transaction null and void. This is not the first time the Supreme Court has reached this conclusion, having already done so in STS No. 190/2025, of 6 February. The significance of this doctrine lies in the fact that it recognises a degree of judicial discretion and requires financial assistance arrangements to be assessed on the basis of more than the mere wording of the statute.

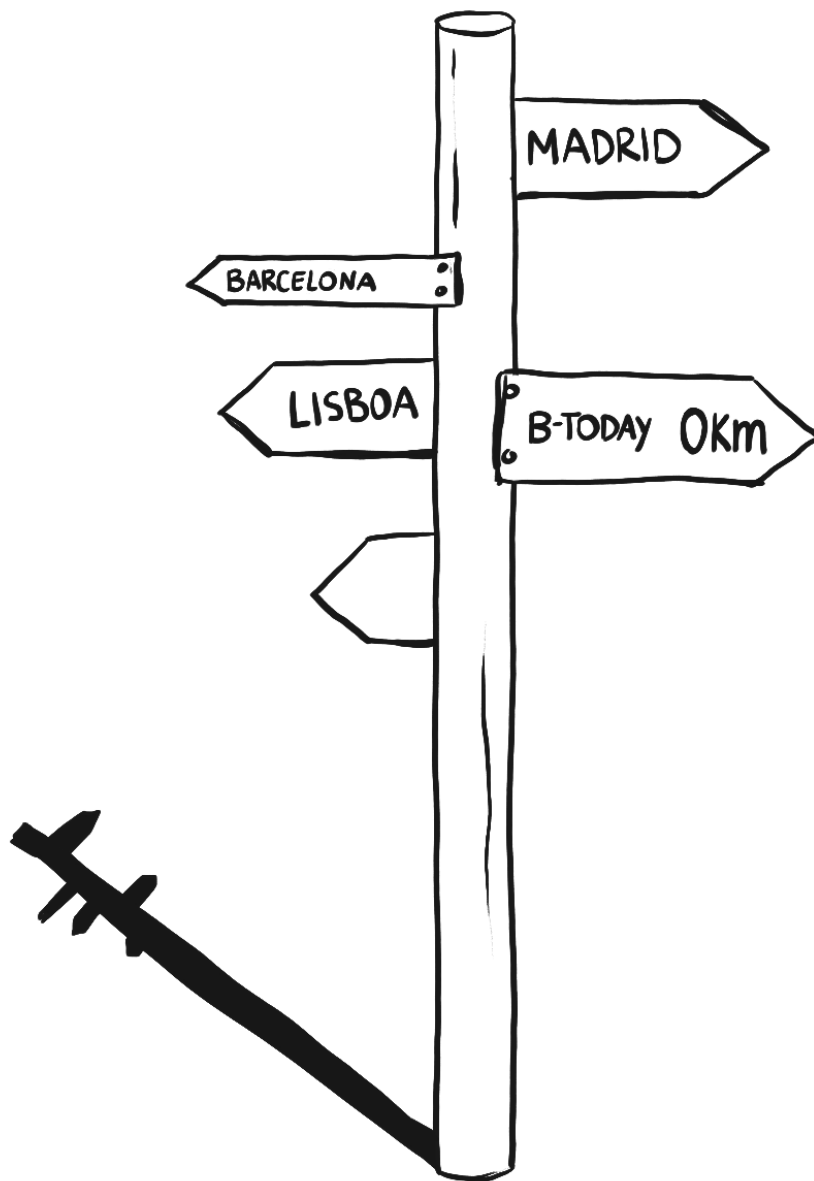
As a starting point—and although it is not the purpose of this note to examine the concept in detail, given the extensive academic commentary already devoted to the subject—it is worth recalling what the law provides. Financial assistance essentially occurs where a company finances or otherwise assists a third party in acquiring its own shares or equity interests. To define the concept, reference may usefully be made to STS No. 582/2023, of 20 April, which identifies its three essential elements: (i) an act of financing or assistance provided by the company in favour of a third party; (ii) the acquisition by that third party of shares or equity interests in the assisting company itself; and (iii) a causal link between those two elements, such that the financing is intended to facilitate or promote the acquisition.

Having established the above, the issue of real interest is a different one. Even where a breach of the prohibition is established, the courts retain a degree of discretion as to whether the transaction should be declared null and void, and may decline to do so where there are substantive reasons justifying such an outcome. STS No. 673/2026 is particularly illustrative because the existence of financial assistance was beyond dispute: the company offered all its shareholders the opportunity to acquire treasury shares, allowing half of the purchase price to be deferred for one year without interest or security. Despite finding that prohibited financial assistance had occurred, the Supreme Court refused to declare the transaction void in light of the specific circumstances of the case. The arrangement pursued a legitimate objective—preserving the existing shareholder structure and preventing a direct competitor from acquiring control of the company; the financing terms were not unduly burdensome for the company; the transaction enabled the company to dispose of its treasury shares; and it did so on fair terms by ensuring equal treatment of all shareholders. Having regard to the rationale underlying the prohibition, the Court concluded that the transaction had only a minimal impact on the interests protected by the statutory provision and that, accordingly, nullity was not justified.

This is not an isolated decision. In STS No. 190/2025, the Supreme Court had already refused to declare void a mortgage granted in connection with a transaction that constituted prohibited financial assistance. The Court reasoned that declaring the security void would not protect the parties whom the statutory prohibition seeks to safeguard; instead, it would benefit those who had participated in the prohibited arrangement while prejudicing the financial institution, which had played no part in the unlawful purpose.

In both cases, although the courts found that the prohibition had been infringed, they declined to impose the sanction of nullity on substantive grounds. Both judgments also emphasise the technical legal basis supporting this approach. Nullity is not an automatic consequence expressly provided for by company law but is instead inferred from Article 6.3 of the Spanish Civil Code as the general sanction for acts carried out in breach of a mandatory or prohibitive legal rule. It is precisely because this sanction is implied rather than expressly prescribed that the courts retain the ability to assess whether declaring the transaction void is appropriate in the particular circumstances of the case.

These judgments have important practical implications for the advice typically sought in relation to financial assistance. It is no longer sufficient simply to determine whether the three traditional elements of prohibited financial assistance are present. The analysis must also address a second and equally important question: namely, whether, notwithstanding the existence of prohibited financial assistance, there are sufficiently compelling reasons to conclude that nullity should not follow. This is an area in which judicial discretion assumes increasing importance, and where legal advice cannot be confined to the literal wording of the legislation but must also anticipate how a court is likely to assess the commercial purpose of the transaction, its financial impact on the company, and its effect on the interests that the statutory prohibition is designed to protect.



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