



## Corporate Law newsletter

### Outstanding regulation developments

**Procedural and organizational measures.** Administration of Justice. Law 3/2020, of September 18<sup>th</sup>, on procedural and organizational measures to deal with COVID-19 in the Administration of Justice. [Full Text.](#)

**Social measures.** Royal Decree-Law 30/2020, of September 29<sup>th</sup>, of social measures in defence of the employment. [Full Text.](#)

**Urgent measures.** Royal Decree-Law 29/2020, of September 29<sup>th</sup>, of urgent measures in the field of teleworking in the Public Administrations and human resources in the National Health System to face the health crisis caused by COVID-19. [Full Text.](#)

**Remote working.** Royal Decree-law 28/2020, of September 22<sup>nd</sup>, on distance working. [Full text.](#)

**Use of Data.** Terrorism and other serious crimes. Organic Law 1/2020, of September 16<sup>th</sup>, on the use of data from the Passenger Name Register for the prevention, detection, investigation and prosecution of terrorism and serious crimes.

**For further information, please consult [here](#) the section of the BOE dedicated to the COVID19 crisis with the consolidated regulations.**

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## Other outstanding regulation development

- **Urgent measures.** Royal Decree-law 31/2020, of September 29<sup>th</sup>, adopting urgent measures in the field of the non-university education. [Full Text.](#)
- **Urgent measures.** Resolution of September 10<sup>th</sup>, 2020, of the Congress of Deputies, ordering the publication of the derogation Agreement of the Royal Decree-law 27/2020, of August 4<sup>th</sup>, on financial measures, of an extraordinary and urgent character, applicable to local entities. [Full Text.](#)
- **Borders.** Sanitary control. Order INT/913/2020, of September 29<sup>th</sup>, extending the Order INT/657/2020, of July 17<sup>th</sup>, amending the criteria for the application of a temporary restriction on non-essential travel from third countries to the European Union and associated Schengen countries for reasons of public order and public health due to the health crisis caused by COVID-19. [Full Text.](#)
- **Subventions.** Royal Decree 866/2020, of September 29<sup>th</sup>, which regulates the direct granting of subventions to various bodies and entities in the tourism sector by the Ministry of Industry, Trade and Tourism, during the financial year 2020. [Full Text](#)
- **Administrative procedures.** Computerized management. Resolution of September 10<sup>th</sup>, 2020, of the General Directorate of Cadastre, approving the standard document of representation in tax procedures. [Full Text.](#)
- **AEPD.** The AEPD has published a technical note with recommendations to minimize the risks to privacy when surfing the internet. [Full Text.](#)
- **Bank of Spain. Delegation of powers.** Resolution of September 8<sup>th</sup>, 2020, of the Executive Commission of the Bank of Spain, amending the one of December 10<sup>th</sup>, 2019, approving the system of delegation of powers. [Full Text.](#)
- **Administrative Procedures. Computerized management.** Order ISM/903/2020, regulating the notifications and electronic communications in the field of the Social Security Administration. [Full Text.](#)
- **National Commission of the stock market.** Technical Guide 2/2020, regarding the requirements for considering certain currency derivatives as means of payment and not as financial instruments, of September 28<sup>th</sup>. [Full Text.](#)
- **European Central Bank.** The ECB amends the guidelines on the implementation of the monetary policy. [Full text.](#)

Please [click here](#) to access our analysis of key aspects in the labor, tax, corporative or financial field that companies will have to face prepared by our specialist of Mazars, and to our Covid Talks.

Please also visit our Global Tax and Law Tracker. Mazars' global tax and legal experts from more than **70 countries** have created this interactive **tool** to help you access and understand the **Covid-19** legislation and tax measures that impact you and your business, wherever in the world you operate.

Please click **HERE** to have access to the Global Tax and Law Tracker

## Outstanding resolutions of the Directorate of Legal Certainty

**DGRN. Deposit of annual accounts of a limited liability company. [Full Text.](#)** Resolution of January 7<sup>th</sup>, 2020. By means of this resolution, it is discussed whether or not the qualification made by the Mercantile Registrar suspending the deposit of the annual accounts of a company because it has its Tax Identification Number (NIF) revoked by Resolution of the Department of Tax Management of the State Agency of the Tax Administration is based on law. The Company's sheet was closed due to the sixth additional provision of the General Tax Law, which provides that the publication of the revocation of the NIF for legal persons or entities in the BOE determines that the corresponding public register, depending on the type of entity, shall issue a marginal note to the entity on the open sheet stating that no registration may be made that affects it, unless the said NIF is reinstated or a new one is assigned. In this sense, the DGRN confirms the qualification of the Registrar, concluding that the effect of the total closing of the corporate sheet is the same in the event of provisional deregistration from the Entity Index as well as in the event of revocation of the tax identification number, without prejudice to the practice of each of the marginal notes, as well as their cancellation, under different titles.

**DGRN. Constitution of a limited liability company. [Full text.](#)** The appellant intended the registration of a provision of the by-laws of a limited liability company, under the heading "Governing Bodies" by which, "the company shall be governed at the election of the Board: c) By two joint directors. d) By several joint directors, with a minimum of three and a maximum of seven, always acting jointly, all those appointed. e) By several joint directors, with a minimum of three and a maximum of seven, of which two shall act, any one of them jointly". The Registrar rejected this inscription since it considered that in the drafting of such article of the corporate by-laws, sections d) and e) were contradictory to each other, citing exclusively articles 210 and 233 of the LSC and 185 of the RRM. However, in his mandatory report, he indicated that the statutory provision inevitably grants the general meeting the decision on how to exercise the power of representation without the need to amend the statutes, contrary to the provisions of Article 233.2 of the LSC. Notwithstanding the above, the DGRN estimates the appeal presented, since the contradiction invoked by the Registrar is not appreciated, and it is not possible to address the reasons alleged by him in his report, since this would cause the appellant to be unprotected, who based his argument on the fact that it is possible to agree, alternatively, on different modes of joint administration, within the scope of the freedom allowed by the Law.



## Remarkabel case law

**Ruling of the European Justice Court., Grand Chamber of July 16<sup>th</sup>, 2020.** [Full Text.](#) The TJUE decides about the applicability of the RGPD to the personal data transfers based on standard protection clauses provided in the Decision 2010/87, about the required protection level in the RGPD in relation to a transfer of data to a third country and on the obligations imposed on the supervisory authorities. It declares invalid the Decision 2016/1250, on the adequacy of the protection conferred by the EU-US Privacy Shield, by establishing that the Union law, and in particular the RGPD, applies to a transfer of personal data carried out for commercial purposes by an economic operator established in a third country even if, in the course of or after the transfer, such data may be processed for national security, defence and State security purposes by the authorities of the third country. Furthermore, the level of protection required must be substantially equivalent to that guaranteed within the Union. Therefore, the assessment of the level of protection should consider the contractual provisions agreed between the Union exporter and the recipient of the transfer established in the third country. However, when examining the validity of Decision 2010/87, it considers that it is not questioned by the mere fact that the standard data protection clauses contained therein are not binding, due to their contractual nature, on the authorities of the third country to which the data might be transferred. However, the TJUE clarifies that this validity depends on whether the decision includes effective mechanisms that make it possible in practice to ensure that the level of protection required by Union law is respected and that transfers of personal data based on such clauses are suspended or prohibited in the event of their violation or that it proves impossible to comply with them. In this sense, the ECJ notes that the Decision establishes these mechanisms, since it obliges the exporter of the data and the recipient to verify, in advance, that the level of protection is respected in the third country and that it obliges the recipient to inform the exporter of the data of its eventual incapacity to comply with the standard clauses of protection.

**Ruling of the Supreme Court, of June 24<sup>th</sup>, 2020.** [Full Text.](#) The TS sustains the contentious administrative appeal against the Royal Decree 1517/2018, of December 28<sup>th</sup>, amending the Regulations on the conditions for the

provisions of electronic communications services, the universal service and user protection, approved by Royal Decree 424/2005, and declares the second additional provision of the Royal Decree 1517/2018 to be null and void. The objected provision extended the period designated by Order ETU/1974/2016, of December 23, which named the appellant company as the "operator in charge of providing the element of universal telecommunications service relating to the supply of a sufficient offer of public payphones". The appellant company claims that the provisions of this second additional provision are contrary to Article 26.2 of the General Telecommunications Law, which establishes that "the designation of the operator for the provision of an element of the universal service shall be carried out in all cases through a public bidding mechanism". The direct designation of the operator should only be agreed if the bidding process has been abandoned.

**Ruling of the mercantile court of Pamplona, of August 25<sup>th</sup>, 2020.** [Full Text.](#) The Mercantile Court of Pamplona rules that in the event of the damage caused because of a collusive conduct by cartels, article 1902 of the Civil Code (action for extra contractual liability) is applicable. The plaintiffs filed a lawsuit exercising the social action of extra-contractual liability in order to claim compensation for damages caused by the conduct sanctioned in the Decision of July 19, 2016 by the European Commission after the acquisition of three trucks from an entity to which the decision was addressed, among others. The Mercantile Court decides that the application of Article 1902 CC for damages caused by the collusive conduct is appropriate because the three necessary requirements for its application are met: (i) unlawful action or omission: the collusive conduct; (ii) causal link: incidence of the conduct on the prices of the vehicles; (iii) damage: the trucks were acquired within the geographical and temporal scope in which these collusive practices took place. However, it establishes that the provisions of Directive 2014/104 "on certain rules governing actions for damages under national law, relating to infringements of the competition law of the Member States and the European Union", known as the "Damages Directive", and the application of the principle of conforming interpretation are not applicable due to the non-retroactivity of such rules.

## Review – Published in the BOE the Royal Decree-law 28/2020, 22<sup>nd</sup> September, on Distance Working.

The Spanish Council of Ministers has approved the Royal Decree-law 28/2020 (hereinafter, "RDL"), of September 22<sup>nd</sup>, of distance working. Published in the BOE on September 23<sup>rd</sup> (the day following its approval) and will enter into force 20 days after its publication in the Official Gazette. However, the first transitory provision regulates that the RDL will be fully applicable to the current employment relationships which were regulated, prior to its publication, by collective agreements on the conditions for the provision of remote services, from the moment that these lose their validity. .

***We may indicate that, in general terms, this RDL introduces as its main innovations the regulation of the rights of people who work remotely, together with the obligations acquired by the worker and the company.***

The most important innovations of this RDL are summarized below.

First of all, the RDL establishes that regular distance work is understood to be work that is provided, "**within a reference period of three months, at least 30% of the working day** or the equivalent proportional percentage depending on the duration of the employment contract". In contracts with minors and in internship and training contracts, a minimum of 50% of the work must be done in person. However, there is one exception, since the third transitional provision of the RDL establishes that the distance work that has resulted from Covid-19 is regulated by the previous labour legislation.

Secondly, the **voluntary nature** of distance work is reinforced. For both the company and the worker, distance work will be voluntary, and a distance work agreement will be signed and must be kept in writing. The employee's refusal of this type of work shall not be grounds for termination or "substantial" modification of the working

conditions. Furthermore, this decision to work at a distance will be reversible for both the company and the worker.

The distance working agreement must be signed in writing before it is initiated.

Likewise, the decision to distance work from a presential work modality will be **reversible** for both parties in the terms established in the collective negotiation or in those fixed in the distance work agreement.

Thirdly, as for the rights of distance workers, **they have the same rights as those employees who provide their services in a presential way**, except for those inherent to the presential work.

Among the rights guaranteed to the distance worker are time flexibility and digital disconnection. As to the former, the employee will be entitled to flexible hours, but the employer may set mandatory availability times, in compliance with the regulations on rest periods. This timetable must be included in the distance working agreement. In addition, the employee must record his working hours, including the time at which the working day begins and ends. In relation to digital disconnection, the employer must guarantee it by limiting the use of technological means of business and work communication during rest periods and respecting the maximum duration of the working day.

**Other rights that must also be guaranteed are:** the right to remuneration, job stability, working time, training, and professional promotion.

On the other hand, the employer will cover the costs related to distance working, that is, the costs related to the means, equipment and tools linked to the development of the work activity. The distance working agreement shall contain an inventory of the means, equipment and tools

required for the performance of the distance working and an indication of the expenses that the worker may have for providing his services at a distance. Additionally, the mechanisms to establish the determination and compensation or payment of these expenses shall be established in the agreements or collective bargaining agreements.

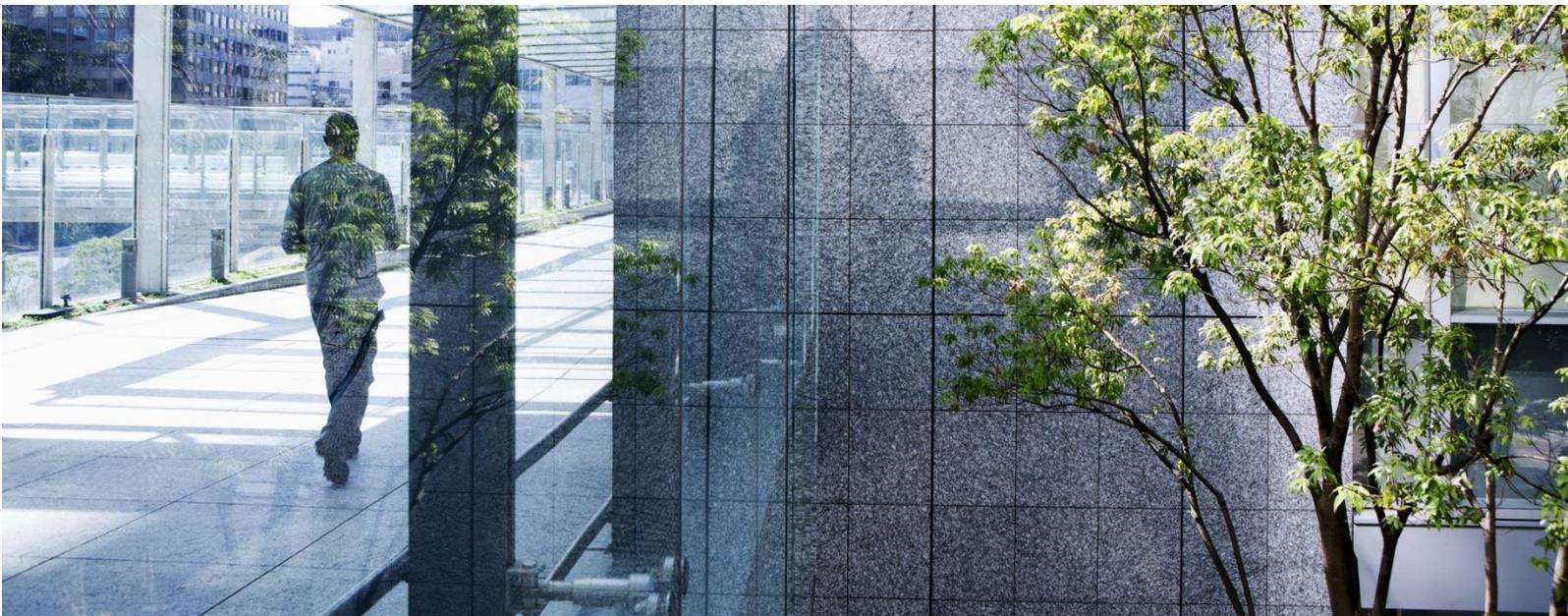
Lastly, the second additional provision states that this RDL will not apply to employees working for public authorities, since they are governed by its specific regulations.

The full text may be consulted in the [following link](#).



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