



Corporate Law newsletter

Outstanding regulation developments

Urgent measures. Consumers. Royal Decree-Law 1/2021, of January 19th, on the protection of consumers and users in situations of social and economic vulnerability. [Full Text.](#)

Urgent measures. Royal Decree-Law 2/2021, of January 26th, on the reinforcement and consolidation of social measures in defence of employment. [Full Text.](#)

Account Auditing. Regulation. Royal Decree 2/2021, of January 12th, approving the Regulations for the development of Law 22/2015, of July 20th, on Account Auditing. [Full Text.](#)

CNMC. Circular 1/2021, of January 20th, of the National Markets and Competition Commission, establishing the methodology and conditions for the access and connection to the transmission and distribution networks on electricity production facilities. [Full Text.](#)

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

The present newsletter is merely informative and non-exhaustive and does not constitute any type of legal advice. If you wish to receive the present newsletter, please send an e-mail to the sender: mazars.taxlegal@mazars.es

Other outstanding regulation development

- **Computer Security.** Royal Decree 43/2021, of January 26th, which implements Royal Decree-Law 12/2018, of September 7th, on the security of networks and information systems. [Full Text.](#)
- **Credit and financial institutions.** Circular 1/2021, of January 28th, of the Bank of Spain, amending Circular 1/2013, of May 24th, on the Risk Information Centre, and Circular 5/2012, of June 27th, to credit institutions and payment service providers, on transparency on banking services and responsibility in the granting of loans [Full Text.](#)
- **Financial measures.** Resolution of January 5th, 2021, of the General Secretariat of the Treasury and International Finance, updating the Annex of the Resolution of July 4th, 2017, of the General Secretariat of the Treasury and Financial Policy, defining the principle of financial prudence applicable to the debt and derivative operations of autonomous communities and local entities. [Full Text.](#)
- **Taxes. Computerized management.** Resolution of January 13th, 2021, of the Secretary of State of the Treasury, dictating instructions for the implementation of a new computerized management model in the Economic-Administrative Courts and in the General Directorate of Taxes with the collaboration of the State Agency of Tax Administration and regulating stable channels of collaboration in the exchange of information. [Full Text.](#)
- **State Debt.** Order ETD/27/2021, of January 15th, which provides the issuance of State Debt during 2021 and January 2022. [Full Text.](#)
- **Energy.** Resolution of December 29th, 2020, of the Secretary of State for Energy, approving certain operating procedures for the adaptation to the conditions related to the balance sheet. [Full Text.](#)
- **AEPD.** The AEPD publishes the Digital Pact for the Protection of Individuals. [Full Text.](#)

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

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Refusal to register the modification of bylaws. Resolution of December 17th, 2020. [Full Text.](#)

The DGSJFP upholds the appeal filed against the refusal of the Registrar to register the amendment of the bylaws of a Limited Liability Company. The amendment introduced states that the limited liability company does not have a profit motive. The registrar considered that the profit motive of a company consists of the obtaining of dividends to be divided among the shareholders, and this constitutes an essential element of the companies, which has its origin in the onerous nature of the corporate agreement. Furthermore, it is contradictory to the structural configuration of a capital company to claim that its purpose specified in the activities that constitute its corporate purpose, lacks a profit motive. However, the appellant alleges, among other matters, (i) that the company is a non-profit entity, whose profits are reinvested entirely in the development of its corporate activity, without there being any distribution of profits whatsoever, and (ii) that the profit motive does not necessarily have to be for the company itself, but to obtain profits in the development of the corporate purpose, without the distribution of such profits among the shareholders but only to reconvert them into the corporate purposes established in the bylaws. The DGSJFP upholds the appeal because, interpreting the bylaws, concludes that they only exclude the subjective profit motive, understood as the obtaining of distributable profits and personal profit of the shareholders, but do not exclude the objective profit motive, which is the obtaining of profits or patrimonial advantages that are not distributed among the shareholders but are destined to the corporate purpose, so that the profits derived from the economic activity must be reinvested for the achievement of its corporate purpose.

DGSJFP. Refusal to register a deed of resignation as director of a company. Resolution of January 15th, 2021. [Full Text.](#)

The DGSJFP confirms the refusal of the mercantile registrar to register a deed by which a joint and several directors of a company resigns from her position. The director requested the Notary Public of the company to notify the resignation at the registered address indicated in the Mercantile Registry, which is not the company's headquarters, also indicating other address. The Notary went to the latter address, where the person to whom the diligence was to be delivered refused to take charge of the notification letter. For this reason, the Notary sent such document by registered mail with acknowledgement of receipt to the address that according to the Mercantile Registry constitutes the registered office, notifying in the receipt that it could not be carried out since it was "unknown". The registrar did not execute the registration because, since the notification of the resignation by registered mail with acknowledgement of receipt was unsuccessful, the Notary must notify the resignation in person (article 202 of the Notarial Regulations), and such notification in person must be made in the address shown in the Register. The DGSJFP dismisses the appeal, concluding that in the present case a double notarial action was necessary, in the place that according to the registry entries constitutes the registered address, which would cover at least two attempts of notification with delivery of the corresponding document, one made by the Notary in person at the address where the notification was to be made, and the other by sending it by registered mail with acknowledgement of receipt (or by any other procedure that would allow a reliable proof of delivery. In the present case, only the notification letter had been sent by registered mail with acknowledgement of receipt to the registered address recorded in the Mercantile Registry, but not the attempt of personal notification at the same address. Therefore, the DGSJFP confirms the challenged qualification.

Remarkable Case Law

Ruling of the National High Court of November 24th, 2020. [Full Text.](#)

The Contentious-Administrative Chamber of the National High Court has ruled that doping data are an athlete's health data and, therefore, a breach of data protection in this area constitutes a very serious infringement. An athlete complained to the AEPD that the publication of a resolution of the Administrative Court of Sport (TAD) by the Spanish Agency for Health in Sport (AEPSAD) had revealed his medical data by adding his allegations to the file he had opened for doping. In this regard, the AEPD sanctioned the AEPSAD for the commission of a very serious infringement by violating article 7.3 LOPD, which states that personal data on health can only be collected, processed, and transferred for reasons of general interest, when so provided by law or the affected party expressly consents it. However, the AEPSAD understood that the published data were not health data. The National High Court rejects this pretension. It understands that, analyzing the Spanish, European and international regulations, the data on doping in sport are health data of the athlete, without prejudice to the fact that in the fight against doping the determination of the existence of infractions and their publicity is regulated in order to avoid the distortion of competitions, and, in short, to try to ensure the fairness of the game. However, these rules do not mean that data protection breaches may not be classified as serious for particularly protected categories of data, such as health data.

Ruling of the 5th Mercantile Court of Barcelona of January 19th, 2021. [Full Text.](#)

By means of the present ruling, the Mercantile Court of Barcelona has determined that the patent of a well-known food processor has full protection in Spain for the features of the food processor. In 2019, the patent holder sued a well-known supermarket chain for infringement of the invention patent protecting the technology consisting of its cooking machine. Such chain commercialized another very similar food processor. In addition, the plaintiff alleged that the patent was infringed by the commercialization and design of another robot. In this sense, the Court considers that the patent is valid, since it meets the requirements of novelty and inventive activity, and since no defect of affliction of matter was found. Furthermore, the ruling makes a comparison with the supermarket chain's food processor to see if the latter infringes the scope of protection of the patent. In this sense, only when all the features of the claimed invention are reproduced by the allegedly infringing product, it can be concluded that there has been a violation or invasion of the scope of protection of the patent. The Court concludes that the supermarket chain's food processor reproduces each and every one of the features of the patent and is performing acts of direct exploitation of the said invention prohibited by article 15 of the Patent Law. Finally, the infringer is ordered to cease the commercialization, to withdraw from the market all samples and to refrain from offering and commercialization through any channel kitchen machines that respond to the characteristics claimed in the infringed patent.

Review – Royal Decree-Law 1/2021, of January 19th, on the protection of consumers and users in situations of social and economic vulnerability.

Last January 20th, Royal Decree-Law 1/2021, on the protection of consumers and users in situations of social and economic vulnerability (hereinafter, “RDL”) was published in the BOE.

This RDL seeks to guarantee a higher degree of protection to a certain number of consumers who are in a situation of vulnerability that may affect their decision making and even force them to accept certain contractual conditions that in another situation they would not accept.

Therefore, it introduces the figure of the **vulnerable consumer**. It is defined as the natural person who, individually or collectively, due to his/her characteristics, needs or personal, economic, educational or social circumstances, is in a special situation of subordination, defenselessness or lack protection that prevents them from exercising their rights as a consumer under equal conditions. This is a variable concept, since a vulnerable person may be so due to age, knowledge, income, access to information, etc.

The purpose of this regulation is no other than to adapt to state legislation issues that had already been dealt with in the royal decrees-laws that had been approved as a result of the pandemic, and it opens the door for public administrations to establish higher levels of protection for these people.

The RDL amends, among others, several articles of the General Law for the Defense of Consumers and Users (LGDCU), granting greater rights to this group. We can highlight:

Labeling and presentation of goods and services (article 18 LGDCU): it is amended in order to determine that, without prejudice to the specific requirements to be established by regulation and the applicable sectorial regulations, which shall pay special attention to vulnerable consumers, all goods and services made available to the consumer must be easily accessible and understandable and, in any case, incorporate or accompany or, ultimately, allow to obtain in a clear and

understandable manner, truthful, effective and sufficient information on their essential characteristics.

Commercial practices: the RDL modifies article 19 LGDCU to provide that the legitimate economic and social interests of consumers must be respected and incorporates the reference that the commercial practices of businesses are subject to the Unfair Competition Law and the Retail Commerce Law, without prejudice to the applicable sectorial regulations.

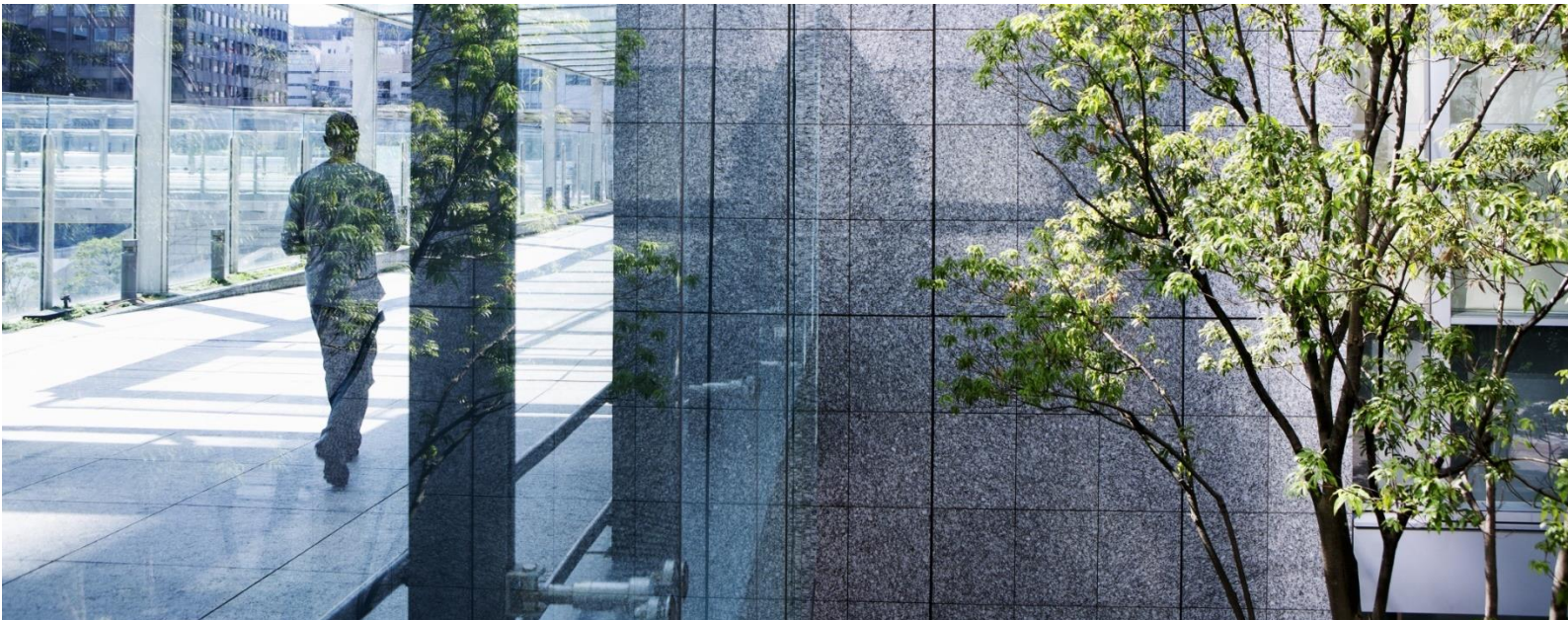
In addition, **commercial practices directed to vulnerable consumers** shall be designed to anticipate and remove the circumstances that generate a situation of vulnerability and to mitigate its effects, particularly in relation to commercial communications or pre-contractual information provided, post-contractual attention or access to basic goods or services.

Necessary information in the commercial offer of goods and services (article 20 LGDCU): it is added that the necessary information to be included in the commercial offer must be provided to consumers or users, mainly in the case of vulnerable consumers, in a clear, understandable, and truthful terms and in an easily accessible format, in order to ensure their proper understanding and allow them to make decisions that are in their best interests.

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

Contacts

Clementina Barreda, Partner, Mazars
Tel: 915 624 030
clementina.barreda@mazars.es



Newsletter coordinated and edited by Clementina Barreda and Paula Mos Rivademar

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in over 90 countries and territories around the world, we draw on the expertise of 42,000 professionals – 26,000 in Mazars' integrated partnership and 16,000 via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.

*where permitted under applicable country laws.

www.mazars.com