



Corporate Law newsletter

Outstanding regulation developments

Workers' Statute. Law 12/2021, of September 28th, which amends the consolidated text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October, in order to guarantee the labour rights of persons dedicated to delivery in the field of digital platforms. [Full Text.](#)

Urgent measures. Royal Decree-Law 17/2021, of September 14th, on urgent measures to mitigate the impact of rising natural gas prices on the retail gas and electricity markets. [Full Text.](#)

Minimum interprofessional wage. Royal Decree 817/2021 of 28 September, which sets the minimum interprofessional wage for 2021. [Full Text.](#)

For further information, please consult [here](#) the section of the BOE dedicated to the COVID-19 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

- **Urgent measures.** Royal Decree-Law 18/2021 of September 28th, on urgent measures for the protection of employment, economic recovery and improvement of the labour market. [Full Text](#).
- **Independent Fiscal Accountability Authority. Organic Statute.** Royal Decree 793/2021, of 14 September, amending the Organic Statute of the Independent Authority for Fiscal Responsibility, approved by Royal Decree 215/2014, of 28 March. [Full Text](#).
- **Civil Registry. Computerised management.** Instruction of September 16th, 2021, of the Directorate General for Legal Security and Public Faith, which establishes the guidelines and criteria to support the effective entry into service of the Dicireg computer application, as of the entry into operation of the first office in accordance with the provisions contained in Law 20/2011, of 21 July, on the Civil Register. [Full Text](#).
- **Agreements.** Resolution of September 22nd, 2021, of the Directorate of the Planning and Institutional Relations Service, of the State Tax Administration Agency, publishing the Agreement with the Association of Property, Mercantile and Movable Property Registrars of Spain, for the transmission of registry information of a census nature, the improvement of electronic communications and access through the Internet to information from the property and mercantile registries. [Full Text](#).
- **National Employment System.** Royal Decree 818/2021, of 28 September, which regulates the common activation programmes for employment of the National Employment System. [Full Text](#).
- **Cadastral information.** Resolution of 28th September 2021, of the Directorate General of Cadastre, determining the terms and conditions for the processing of the communication procedures foreseen in the revised text of the Law of Real Estate Cadastre, approved by Royal Legislative Decree 1/2004, of 5th March. [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 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 Case Law

Ruling of the Supreme Court, of September 9th, 2021. Debtors' files. [Full Text.](#)

The Supreme Court rules on whether or not the inclusion of a person's data in the information file on financial solvency is in accordance with data protection legislation. In this regard, the SC emphasizes the importance of the prior requirement of the payment request with a warning of inclusion in a register of defaulting debtors so that the LOPD is not violated and, consequently, the person's right to honor. It understands that the attribution to a person of the status of defaulter and the communication of this circumstance to third parties affects the honor of the person to whom the imputation is made. Likewise, it considers that, in order to include personal data of a decisive nature for assessing the financial solvency of the affected party in the debtors' files, it is necessary that the debtor has previously been requested to pay and has been informed that, if payment is not made, the data relating to the non-payment may be communicated to the debtors' register. In this case, the request had not been made prior to, but after the inclusion of the data in the information databases, and therefore the requirements for the inclusion of the data in the file were not met.

Ruling of the Supreme Court, of September 14th, 2021. Insolvency proceedings. [Full Text.](#)

The Supreme Court rules on the difference between the persons affected by the guilty classification in an insolvency proceeding and the accomplices and analyses the consequences of this declaration of complicity. In this regard, the Supreme Court states that the accomplice is a third party who cooperates with the debtor or those acting on his behalf in the conduct that determines the guilty classification of the insolvency proceedings. Therefore, the person who intervenes in the performance of this conduct cannot at the same time be declared to be a person affected by the classification. In these cases in which the actions of the third party accomplices are directly related to the conduct

that has led to the classification of the bankruptcy as guilty and in which their willfulness is also established (intent to defraud or connivance with the bankrupt party in the guilty conduct), as is the case analysed in the judgement, the bankruptcy complicity must be declared, with the consequent sentence to the liabilities that by law are applicable.

Ruling of the Supreme Court, of September 14th, 2021. Industrial Design. [Full text.](#)

The Supreme Court rules on the use of product design and on the distinct impression that its uniqueness must produce on the user. The court was confronted with the question of whether comparisons of product design should be made between designs or between the products in which they are incorporated. Ruling based on art. 7 of the Industrial Design Law, the SC determined that art. 7.1 IDL does not make the novelty of a design dependent on the products in which it can be incorporated or applied. What is relevant is that the use of the design on a given product does not produce a different overall impression on the informed user of the products in which the registered design is incorporated. The design does not protect the idea of applying an already known design to a different kind of product, whatever it may be, but protects the design itself: the design conceived as a type of formal innovation referring to the appearance characteristics of the product itself or its ornamentation. The legal reference to the sector is in relation to the informed user and the overall impression produced. The same design applied to another kind of product would not be unique, so if the overall impression is not different from that of the product in question, there will be no uniqueness when the pattern is applied to one product or another, if it does not produce a different overall impression for the informed user of these products

Review – Ruling of the Court of Justice of the European Union of September 9th, 2021 about Protected Designations of Origin.

The Court of Justice of the European Union (CJEU) rules on the scope of Protected Designations of Origin (PDO) and establishes the criteria for defining the concept of "evocation" and its assessment in the context of a conflict between a distinctive sign and a PDO.

In this regard, the CJEU states that the protection of a PDO must be understood in a broad sense, covering conduct relating both to similar products and to services linked to the (direct or indirect) distribution of those products. Otherwise, the reputation of a product covered by a PDO could be taken unfair advantage of when the activity of a third party relates to the provision of a service. Moreover, the CJEU states that the concept of evocation does not require as a prerequisite that the product covered by the PDO and the product or service covered by the contested designation be identical or similar.

On the other hand, the CJEU notes that the essential element in determining whether or not there is evocation is that the use of a designation brings to the mind of the average European consumer a sufficiently direct and unambiguous link between the term used to designate the product in question and the PDO. According to the CJEU, this concept of the average European consumer *"must be interpreted in such a way as to ensure effective and uniform protection of registered designations in the territory of the Union against evocation"*.

In this respect, the CJEU mentions as examples for determining whether or not there is evocation the fact that the sign used to designate products incorporates part of a PDO and, in view of the name of the product, the consumer is led to believe that the product benefits from this PDO, or cases in which, when faced with products of similar appearance, there are phonetic and visual

similarities between the PDO and the sign in question. However, the CJEU states that *"neither the partial incorporation of a PDO in a sign which appears on products or services which are not covered by that designation nor the identification of a phonetic and visual similarity of that sign with that designation constitute mandatory requirements for the existence of an evocation of that same designation to be assessed. The evocation may indeed be the result of a 'conceptual proximity' between the protected designation and the sign at issue"*.

Therefore, in order to establish the existence of evocation, there are not a series of objective and standardised factors, but rather an overall assessment of all the elements present in each specific case must be made.

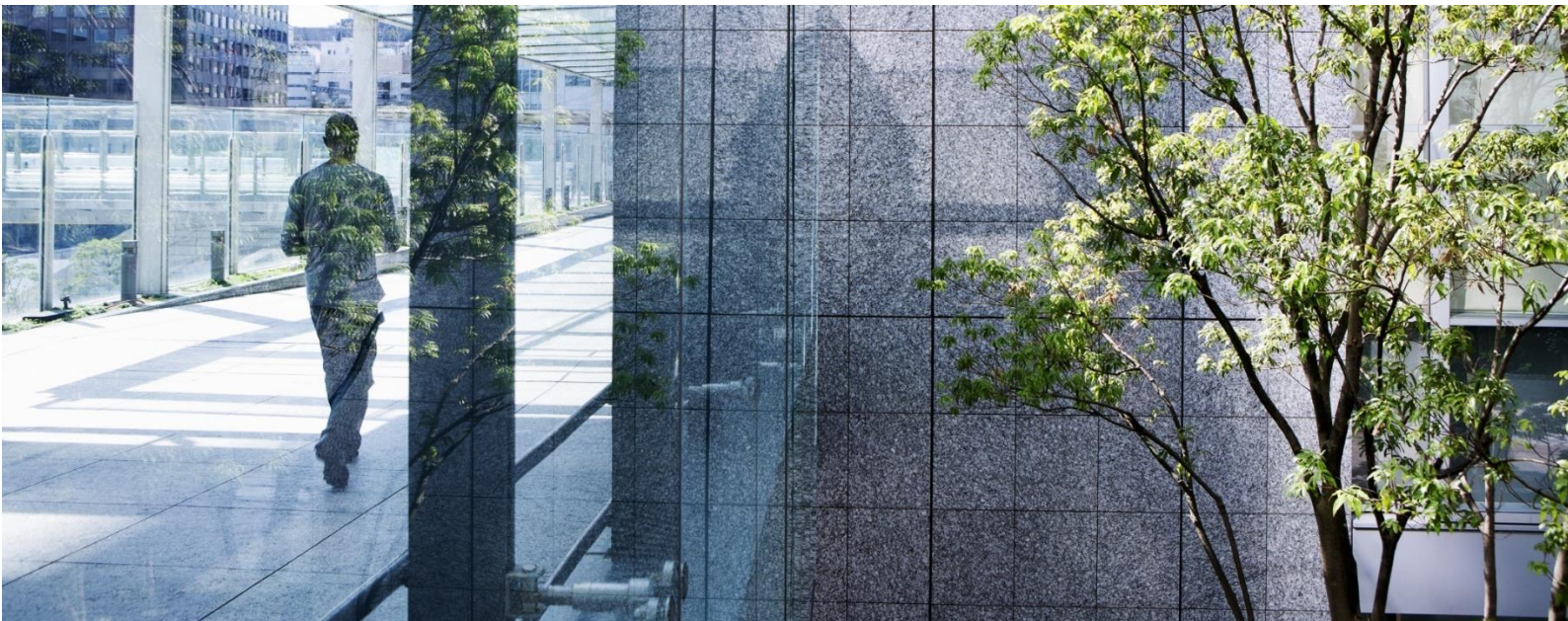
Finally, the CJEU indicates that the evocation is not linked to a finding of unfair competition, since the system of protection provided for in the legislation for PDOs is objective and does not require proof of intent or fault, but rather has its own specific protection which applies independently of the provisions of national law relating to unfair competition. Moreover, according to the CJEU, this protection *"is not conditional on proof of the existence of a competitive relationship between the products protected by the registered name and the products or services for which the sign in question is used or of a likelihood of confusion on the part of the consumer as regards those products or services"*.

According to these indications, the corresponding national court (in this case, the Barcelona Provincial Court) will have to determine, on the basis of all the elements characterising the PDO in question and its context, whether there is an evocation and, therefore, infringement of the PDO at issue.

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

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