



Corporate Law newsletter

Outstanding regulation developments

Consumer and user protection. Law 4/2022, of 25 February, on the protection of consumers and users in situations of social and economic vulnerability. [Full text.](#)

Urgent Measures. Royal Decree-Law 3/2022, of 1 March, on measures to improve the sustainability of road freight transport and the functioning of the logistics chain, and transposing Directive (EU) 2020/1057, of 15 July 2020, establishing specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for the posting of drivers in the road transport sector, and exceptional measures regarding price revision in public works contracts. [Full text.](#)

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Other outstanding regulation development

Intellectual Property. Resolution of 24 February 2022, of the First Section of the Intellectual Property Commission, publishing the Resolution determining the tariff for the collection of royalties corresponding to acts of public communication of audiovisual recordings in catering establishments, in revision of those established by the collecting society EGEDA, putting an end to the tariff determination procedure E-2018-001. [Full text.](#)

National Commission for Markets and Competition. Announcement of the National Commission for Markets and Competition by which the Resolution dated 24 February 2022 is made public, determining the operators obliged to contribute to the National Fund for the Universal Service of Electronic Communications for the financial year 2018 (SU/DTSA/001/21/FNSU 2018). [Full text.](#)

Subsidies. Royal Decree 210/2022, of 22 March, which establishes the rules governing the Bono Cultural Joven. [Full Text.](#)

Administrative procedures. Computerised management. Resolution of 19 March 2022, of the General Secretariat for Innovation and Quality of the Public Justice Service, which establishes the conditions of use of the electronic certificate for natural persons, as a mechanism for identification and signature of persons interested in actions carried out by means of telematic presence with judicial bodies and others belonging to the Administration of Justice. [Full Text.](#)

Gender violence. Organic Law 2/2022, of 21 March, on the improvement of the protection of orphans who are victims of gender violence. [Full Text.](#)

Urgent measures. Royal Decree-Law 6/2022, of 29th March, adopting urgent measures within the framework of the National Plan of response to the economic and social consequences of the war in Ukraine. [Full Text.](#)

Compulsory Secondary Education. Royal Decree 217/2022, of 29th March, which establishes the organization and minimum teachings of Compulsory Secondary Education. [Full Text.](#)

Reception system for international protection. Royal Decree 220/2022, of 29th March, which approves the regulations governing the reception system for international protection. [Full Text.](#)

Urgent measures. Royal Decree-Law 7/2022, of 29th March, on requirements to guarantee the security of fifth generation electronic communications networks and services. [Full Text.](#)

Internal Regulations. Resolution of 28 February 2022, of the Board of the National Securities Market Commission, modifying the Internal Regulations of the Commission. [Full Text.](#)

Advocacy. Order PCM/219/2022, of 21 March, by which the professional aptitude assessment test for the practice of the legal profession for the year 2022 is announced. [Full text.](#)

Urgent measures. Resolution of 10 March 2022, of the Congress of Deputies, ordering the publication of the Agreement on the validation of Royal Decree-Law 2/2022, of 22 February, adopting urgent measures for the protection of self-employed workers, for the transition to structural mechanisms for the defence of employment, and for the economic and social recovery of the island of La Palma, and extending certain measures to deal with situations of social and economic vulnerability. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 14 February 2022. Deposit of accounts without certification.

[Full Text](#)

Resolution of the DGSJFP rejecting the appeal lodged against the note of qualification of the Commercial and Movable Property Registrar I of A Coruña rejecting the deposit of the accounts of a company corresponding to the financial year 2020. Once they had been filed, the registrar qualified them negatively because they were not accompanied by the certificate of the corporate resolutions approving the accounts and the proposed application of the result (art. 366.1.2º of the RRM). Once the appeal has been lodged, said documentation is provided, alleging that it was previously presented. This defect cannot be remedied by means of an appeal, in accordance with the provisions of art. 326 of the L.H., and in previous resolutions, as documents not qualified by the registrar cannot be taken into consideration. Without prejudice to this, the document and the rest of the required documentation may be deposited and obtain a qualification.

DGSJFP. Resolution of 7 March 2022. Notice of General Meeting. [Full Text](#)

Appeal lodged against the qualification note of the Mercantile registrar XII of Madrid and his refusal to register the corporate resolutions of the appellant company. Once these resolutions, which resolve to dissolve and liquidate the company, had been made public, the registrar gave them an unfavourable classification on the grounds that the manner of convening the meeting was not accredited, on the basis of the provisions of the Capital Companies Act and the company's Articles of Association. The company appealed, alleging error in the determination of the form of the notice of meeting by the Mercantile Registrar, as well as infringement of the principle of free competition

by requiring a single form for convening the General Meeting. In this respect, the DGSJFP recalls that, according to settled doctrine, if there is a provision in the Articles of Association, this must prevail over any other system of communication, referring to the normative and imperative nature of the Articles of Association. However, in this case, given that the deed does not contain the necessary data to check whether or not the communication is in accordance with the Articles of Association, the DGSJFP dismisses the appeal and confirms the qualification note.

DGSJFP. Decision of 10 March 2022. Capital increase. [Full Text](#)

Appeal lodged against the qualification note of the property registrar suspending the registration of a deed relating to an increase in capital. A public deed was presented at the Registry whose purpose was to formalise an increase in capital by contribution of certain registered properties. These properties were encumbered by various charges, including an annotation on the prohibition to dispose of them in favour of the Treasury. The prohibition to dispose of the encumbered assets goes hand in hand with the purpose of securing the collection that justifies the encumbrance of the property. This is provided for in art. 170.6 of the LGT, which imposes a prohibition on the disposal of a taxed asset. Based on the above, the registrar explains the impossibility of carrying out the registration; in addition to emphasising that the aim is to prevent the value of the shares from depreciating by increasing the share capital with an asset that is encumbered. Therefore, in order to be able to register these assets as a way of increasing the share capital, it is an essential requirement that the encumbrance imposing the prohibition of disposal be lifted. Consequently, the appeal is dismissed and the qualification note is confirmed.

Remarkable Case Laws

Judgment of the Court of Justice of the European Union of March 24th (Case C-723/20). Application for bankruptcy and change of COMI. [Full text.](#)

Question referred to the CJEU for a preliminary ruling on whether the Member State in which an application for insolvency is filed retains exclusive jurisdiction to rule on the insolvency, insofar as the centre of economic interests has been transferred to another Member State after the application for insolvency proceedings has been filed, and before that court rules on the insolvency, on the basis of Article 3.1 of Regulation 2015/848. This paragraph is interpreted on the basis of avoiding the use of the laws of different Member States, on the grounds that the applicants, in order to transfer assets or litigation from one Member State to another, obtain a more favourable legal position. Such a transfer of jurisdiction, says the Court, would be contrary to the objective of a more efficient and effective functioning of cross-border insolvency proceedings. The Court therefore rules that, in so far as that regulation remains applicable to such an application, the court of another Member State before which an application with the same subject-matter has subsequently been lodged cannot declare that it has jurisdiction to open main insolvency proceedings as long as the first court has not given its ruling and declined jurisdiction.

Judgment of the Court of Justice of the European Union of 3 March 2022 (Case C-421/20). Industrial property. Community designs. [Full text.](#)

The Court rules on the question referred for a preliminary ruling on the jurisdiction of the German courts in relation to an infringement of intellectual property in respect of Community designs. These designs were distributed by an Italian company, which conflicted with the distribution by a German company. Articles 83(2) and 82(5) of Regulation 6/2002 give jurisdiction

over IP infringements to the courts of the State where the infringement was committed; thus establishing an alternative forum of jurisdiction in view of the fact that Article 81 gives exclusive jurisdiction to the Community design courts and Article 8(2) of Regulation 864/2007 designates the law of the country in whose territory the damage occurs. The Court resolves the question by stating that Regulation 6/2002, as well as the aforementioned provision of Regulation 864/2007, must be interpreted in such a way that the courts hearing these cases must examine the related claims in each action for which damages are sought, the information, documentation and so on, as well as the infringing products with a view to their destruction, with the law of the Member State of those courts, in this case the German courts, governing.

Judgment of the Court of Justice of the European Union of 24 March 2022 (Case C-433/20). Industrial property. Copyright. [Full Text.](#)

The CJEU resolves the question referred for a preliminary ruling on the interpretation to be given to article 5.2 b) of Directive 2001/29. The main question is whether the making of a back-up copy of a work on a storage space made available to a user in the context of a cloud computing service constitutes a reproduction of that work. In that regard, the Court has held that the making of such a copy by a natural person acting in a private capacity, without seeking the prior authorisation of the holder of the exclusive right of reproduction of a protected work, is considered to be an act which is liable to cause prejudice to that holder and must therefore receive financial compensation for that act. Thus, it considers that Member States which apply the private copying exception, an exception permitted by the Directive, must provide for a system of fair compensation aimed at compensating rightholders.

Review of Interest on the Preliminary Draft of the Law Regulating the Protection of Persons Reporting Regulatory Offences and the Fight against Corruption:

On March, 4th of 2022, the Council of Ministers approved the Preliminary Draft Law on the Protection of Persons Reporting Regulatory Offences and the Fight against Corruption. This Preliminary Draft is a transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law or known as the "Whistleblowing Directive".

The main purpose of the legislation is to provide appropriate protection in the working and professional environment for those who have reported possible infringements and to set minimum requirements for the characteristics of reporting channels.

Infringements of EU law regulated in Directive EU 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of EU law and serious or very serious criminal or administrative offences, as well as any breach of the legal order insofar as it undermines the general interest, are protected.

The scope of protection of this Law extends to those persons whose professional relationship has ended, is in the process of beginning, or is temporary, or even to those who provide technical assistance to the company in question, and even includes group's companies.

The Internal Information Systems must comply with certain requirements. These include the guarantee of affordable access and use,

confidentiality, especially of the informant or third party, by any verbal or written means; the existence of different internal channels for communications, and proper monitoring and protection to be carried out and implemented by a specifically designated person in charge, and the possibility of outsourcing this channel. [The maximum period for implementing these systems for companies with more than 250 workers will be 3 months from the entry into force of the law and until 1 January 2023 for smaller companies.](#)

The great novelty of the Draft Bill is the establishment of an External Channel under the control of the [Independent Authority for the Protection of Whistleblowers, which is public in nature](#) and which may also be set up by the Autonomous Communities, to whom any person may apply, regardless of whether the reported entity is public or private, and also, [it has to be implemented within six months after the entry into force of the Law.](#)

Whistleblower protection measures must meet the necessary conditions to ensure that they are effective and truthful and must be carried out in accordance with the requirements set out in the Law itself. A very specific regime against possible reprisals towards the "whistle-blower" should be articulated.

[The Preliminary Draft modifies certain aspects of Organic Law 3/2018 of 5 December, on Personal Data Protection and guaranteeing digital rights](#), including the right to complete erasure of the data by the Data Controller and that all those entities obliged to have an internal communications system, whether external or internal, must designate a Data Protection Delegate.

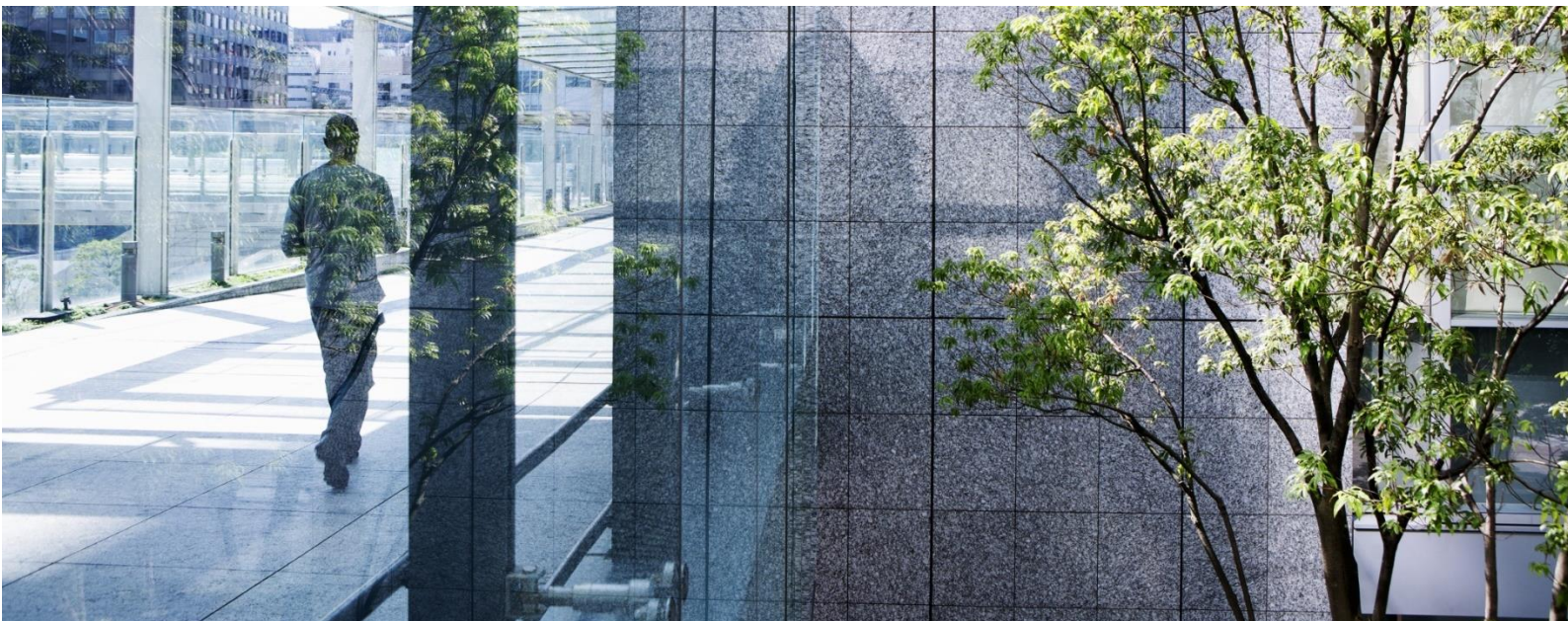
You can consult the full text at the following [link](#).

Contacts

Clementina Barreda, Partner, Mazars

Tel: 915 624 030

clementina.barreda@mazars.es



Newsletter coordinated and edited by Clementina Barreda and María Vicedo

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