



Corporate Law Newsletter

Outstanding regulation developments

Civil Service. Law 1/2022, of March 23, amending Law 3/1985, of December 26, 1985, on the Organization of the Civil Service in relation to the selective competitive examination system. [Full text](#)

Electric energy. Royal Decree-Law 10/2022, of May 13, which temporarily establishes a production cost adjustment mechanism to reduce the price of electricity in the wholesale market. [Full text](#)

International agreements. Entry into force of the Air Transport Agreement, done at Brussels on April 25, 2007 and in Washington on April 30, 2007. [Full text](#)

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Other outstanding regulation development

Agreements. Resolution of April 23rd, 2022, of the Secretary of State for Commerce, which publishes the Agreement with the Official Chamber of Commerce, Industry, Services and Navigation of Spain, for the development of programs to support the competitiveness of retail trade 2022. [Full text](#)

Government debt. Resolution of April 29th, 2022, of the General Directorate of the Treasury and Financial Policy, ordering certain issues of Bonuses and Obligations of the Government in the month of May 2022 and calling the corresponding auctions. [Full text](#)

International treaties. Instrument of accession to the Agreement on the Establishment of the International Vaccine Institute, done at New York on October 28th, 1996. [Full text](#)

Public Prosecutor's Office. Regulation. Royal Decree 305/2022 of May 3rd, 2022, approving the Regulations of the Public Prosecutor's Office. [Full text](#)

Corporate income tax and non-resident income tax. Order HFP/379/2022, of April 28th, approving the corporate income tax and non-resident income tax return forms corresponding to permanent establishments and entities under the income attribution system incorporated abroad with presence in Spanish territory, for tax periods beginning between January 1st and December 31st, 2021, issuing instructions regarding the procedure for filing and payment and establishing the general conditions and the procedure for electronic filing. [Full text](#)

Urgent measures. Resolution of April 28th, 2022, of the Congress of Deputies, ordering the publication of the Agreement on the validation of Royal Decree-Law 6/2022, of March 29th, 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](#)

Foreign investments. Resolution of April 26th, 2022, of the Directorate General of International Trade and Investments, approving the model of declaration D-8 Annual report on the development of investment abroad. [Full text](#)

Electric energy. Natural gas Resolution of May 5th, 2022, of the National Commission of Markets and Competition, which establishes the value of the Global Ratios Index of 2022 of the companies that carry out the activities of transport and distribution of electric energy and the activities of transport, regasification, subway storage and distribution of natural gas. [Full text](#)

Occupational risks. Royal Decree 395/2022, of May 24th, amending Royal Decree 665/1997, of May 12th, 1997, on the protection of workers against risks related to exposure to carcinogens at work. [Full text](#)

Helps. Resolution of May 19th, 2022, of the Secretary of State for Trade, which publishes the Agreement of the Sectorial Conference of Trade, which sets the distribution criteria, as well as the resulting distribution for the autonomous communities and cities of Ceuta and Melilla, of the credit for the Trade Modernization Program: Technological Fund, for a total amount of 100 million euros for the years 2022 and 2023, within the framework of Component 13 Investment I4.1.2 of the Recovery, Transformation and Resilience Plan. [Full text](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of April 8th, 2022. Request for revocation of power of attorney by joint administrator. [Full text.](#)

The appeal filed against the note of qualification of the commercial registrar, denying the request for unilateral revocation of a power of attorney by means of a private request, is resolved. The appellant alleges that said appointment was made without prior agreement of the General Meeting of the company, understanding that this act had been carried out in an abusive manner. The registrar resolves the appeal and rejects the appellant's claim on the grounds that it is carried out through a private request by a joint administrator, and that the latter is requesting a unilateral revocation of the power of attorney granted by the previous joint administrator. It also points out that this unilateral revocation is the responsibility of the administrative body, relying on the registry principle of rogation, which prevents ex officio actions except in exceptional cases. Furthermore, it points out that the authority to revoke the power of attorney cannot be requested before the Meeting, but before the administrative body, since the commercial registrar cannot cancel a registration ex officio, in violation of the principle of rogation.

DGSJFP. Resolution of April 11th, 2022. Company dissolved by operation of law for failure to adapt to the LSP. [Full text.](#)

The resolution resolves the appeal filed against the negative note of registration of the commercial registrar of a deed on agreements relating to the termination, change in the system of representation and appointment of a sole director of an S.L., as well as its dissolution. This refusal was based on art. 1.1 of Law 2/2007 on professional companies, a regulation to which the company had not adapted, given that its corporate purpose fell within the scope of application of the aforementioned Law. In this regard, it was argued that the consolidated

doctrine according to which an express declaration is required, in the face of a broad corporate purpose, in order to understand that it is a professional or media company. The question then is whether a registrar can dissolve a commercial company without proceedings on the grounds that it is a professional company. The DGSJFP dismisses the appeal and understands that, even if the company is dissolved, nothing prevents it from being reactivated, always in a manner that is in accordance with the legal system. It also points out that the said company was incorporated prior to the entry into force of Law 2/2007 and that the registrar cannot make a cancellation entry without observing the basic requirements of the procedure, thus avoiding unconstitutional situations of defenselessness.

DGSJFP. Resolución de 8 de abril de 2022. Denegación de inscripción de facultad incluida en escritura de poder. [Full text.](#)

The resolution resolves the appeal filed against the refusal to register the power of attorney granted by the Board of Directors of a Company to a private individual. It is argued that the fact that such power of attorney covers an interim situation of absence of a representative does not affect the nature of the power of attorney itself, since the case cannot be equated to a delegation of powers because the attorney-in-fact is not a member of the Board. The question lies in the effective exercise of the power of attorney, due to the difficulty that may arise in actual practice in specifying the acts of administration that the attorney-in-fact may enter into with third parties. The resolution concludes that, since it is a power of attorney with representative powers in general terms, the rules on the appointment of a provisional administrator are not violated, since the powers of the attorney-in-fact are much more limited, and in any case, he holds them in his capacity as such and not as a body. On this basis, the DGSJFP upholds the appeal and agrees to revoke the contested qualification note.

Remarkable Case Laws

Judgment of the Court of Justice of the European Union of May 12th. Determining criteria to qualify a dominant position as abusive. [Full text.](#)

The CJEU has clarified the criteria that qualify as abusive a dominant position in terms of exclusionary practices. In this case, the company holding the monopoly attributed different stages of the production process to its subsidiaries, and this action was declared an abuse of a dominant position, in accordance with Article 102 of the TFEU. In this regard, the CJEU points out that it is up to the competition authority to demonstrate that this position undermines a structure of effective competition, to the detriment of consumers. However, the company can circumvent the prohibition of the provision by demonstrating that the exclusionary effect of the practice is outweighed by the positive effects for consumers. The Court also insists on the need for the abusive practice to produce anti-competitive effects. In addition, it points out that, when the breach is carried out by subsidiaries, the parent company is held directly liable since it is understood that all of them together form an economic unit.

Judgment of the Court of Justice of the European Union of 5th May 2022. Guarantees. [Full text.](#)

The CJEU resolves the issue of the obligation to provide information concerning the commercial guarantee. In this case, the defendant's competitor alleged that the latter did not provide sufficient information on the guarantee offered. In this regard, the CJEU examines Directive 2011/83 of 25th October 2011 on consumer rights. In doing so, the court asks whether Article 6 (1)(m) is to be interpreted as meaning that the obligation to provide information arises from the existence of such a guarantee or whether the trader is obliged to provide information about it only in certain circumstances. Furthermore, the court also asks whether Article 6, paragraph 1(m) must be interpreted as meaning that the information to be

provided to the consumer on the conditions relating to the producer's commercial guarantee corresponds to the information referred to in Article 6(2) of Directive 1999/44 concerning the rights of the consumer, the content of the guarantee and the minimum requirements for lodging a complaint. In this regard, the CJEU states that the obligation to provide information on the guarantee arises when the consumer has a legitimate interest and that this information must provide all the conditions that exist, in such a way as to enable the consumer to decide to enter into a contractual relationship with the trader.

Judgment of the Court of Justice of the European Union of 28th April 2022. Data protection. [Full text.](#)

The CJEU ruled on a question referred for a preliminary ruling on the applicability of Article 80 of the GDPR on the representation of data subjects by a non-profit organisation or association. Specifically, the dispute is between an association for the defence of consumer interests and a technology and social media company. In this regard, the CJEU understands that the action under Article 80 of the GDPR belongs, inter alia, to a non-profit association (such as the present case) and that the purpose of this article is to defend consumers in order to stop processing contrary to the GDPR. Thus, Art. 80 GDPR seeks to enable Member States to exercise the power to empower consumer associations to bring actions against infringements of the rights established by the GDPR by means of rules aimed at protecting consumers. Accordingly, the CJEU finds that Article 80(2) of the GDPR must be interpreted as allowing a consumer interest association to bring actions on behalf of data subjects, irrespective of the specific rights infringement that has taken place, against the alleged infringer of the data protection rule.

Review of Interest

Royal Legislative Decree 24/2021, of 2th November, on the transposition of European Union directives.

On 28th May, the Sixth Book of [RDL 24/2021, of 2 November, on the transposition of European Union directives in the areas of covered bonds, cross-border distribution of collective investment undertakings, open data and re-use of public sector information, exercise of copyright and related rights applicable to certain online transmissions and to radio and television broadcasts, temporary exemptions for certain imports and supplies, for consumers and for the promotion of clean and energy-efficient road transport vehicles, came into force](#). This RDL transposes Directive (EU) 2019/2161 of the European Parliament and of the Council, reforming, among others, the General Law for the Defence of Consumers and Users, Law 3/1991 of 10 January on Unfair Competition (LCD), and Law 7/1996 of 15th January on the Regulation of Consumers and Users.

The reform stands out especially in terms of transparency, the exercise of consumer rights and in sanctioning issues in relation to the [control of "influencers" and the unfair resale of entertainment tickets](#), these are two of the most important aspects due to their novelty and their socio-economic impact. Thus, the RDL has covered the [legal vacuum in the area of e-shopping and social media](#), consumer protection prevails.

In this respect, the new RDL emphasises the [new covert trade practices](#), the new RDL, with particular emphasis on the control of the activity of "influencers", bearing in mind that their work focuses on influencing the media and public opinion. In this respect, the new RDL considers as unfair those [conduct contrary to media reporting forecasts to promote products, reviews and searches, using a broad meaning of media](#), which also includes social networks, acting as

platforms for advertising, product placement and consumer opinions. Furthermore, new disguised and unfair commercial practices are qualified as misleading, among which are those promotional communications, subject to payment by the employer, in the where the promotional nature is not specified in the content or where the consumer knows implicitly that the content is advertising content. With the new reform, marketers will have to make it clear that paid communications are advertising content, thus putting an end to disguised ads on social media.

The reform also adds [unfair conduct due to confusion](#), in particular, [those which claim that reviews of a good or service are added by consumers and users who have actually used or purchased the good or service, without verification of that fact](#). Thus, it is prohibited to add or commission false and paid reviews or endorsements. In relation to this, the entrepreneur must provide access to the reviews, guaranteeing that the publications are real, for which the purchase of the good must be reported.

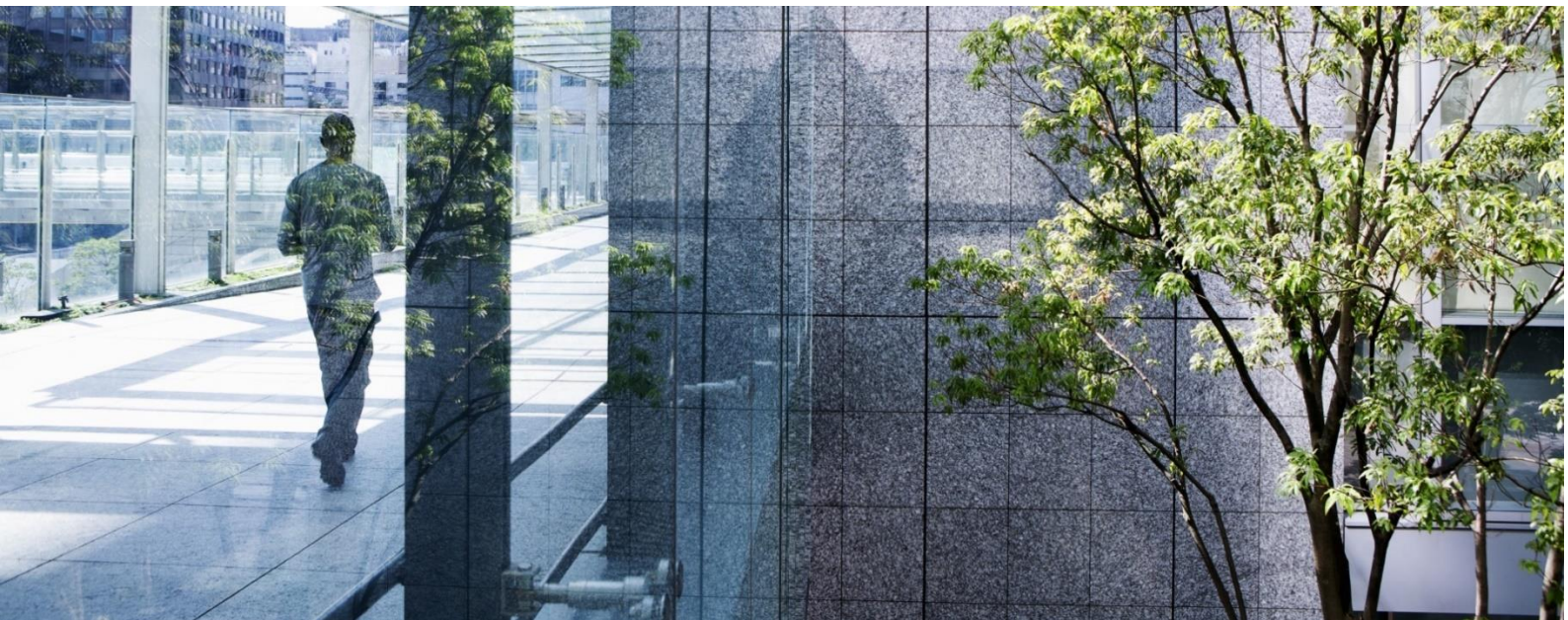
On the other hand, the new RDL regulates the [unfair resale of tickets for events, indicating that the resale of tickets using automated means to circumvent the limits on mass purchases is an unfair practice if the trader acquired the tickets using means that circumvent the imposed limit on the number of tickets that can be purchased by each person](#).

Finally, the reform provides for penalties for such behaviour [ranging from 150 euros to 1,000,000 euros](#). (in case of very serious breaches).

The full text can be found at the [following link](#).

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