



Corporate Law newsletter

Outstanding regulation developments

Price of electricity in the wholesale market. Production cost adjustment mechanism. Resolution of 9 June 2022, ordering the publication of the Resolution validating Royal Decree-Law 10/2022, which temporarily establishes a production cost adjustment mechanism to reduce the price of electricity in the wholesale market. [Full Text](#)

Defence of competition. Communication 1/2022, of 24 May, of the National Commission on Markets and Competition, on the holding of hearings in the proceedings provided for in the Law on the Defence of Competition. [Full Text](#)

Architecture Quality. Law 9/2022, of 14 June, on the Quality of Architecture. [Full Text](#)

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Other outstanding regulation development

Organisation. Order PCM/494/2022, of 31 May, which creates the National Trade Facilitation Committee and determines its composition and functions. [Full Text](#)

Oil sector. Resolution of 1 June 2022, of the Secretary of State for Energy, publishing the Agreement of the Council of Ministers of 17 May 2022, by which 4 million barrels of minimum security stocks of petroleum products are released within the framework of the second coordinated action of the International Energy Agency in response to the war in Ukraine. [Full text](#)

Securities market. Newsletter 2/2022, of 26 May, of the National Securities Market Commission, which approves the notification forms of significant shareholdings, issuer transactions on their own shares, and market makers. [Full Text](#)

Medicines. Resolution of 17 May 2022, of the Spanish Agency of Medicines and Health Products, modifying that of 19 June 2020, which establishes the list of medicines considered essential in the management of the health crisis caused by COVID-19, under the article 19.1 of Royal Decree-Law 21/2020, of 9 June, on urgent measures of prevention, containment and coordination to deal with the health crisis caused by COVID-19. [Full Text](#)

Budgets. Order HFP/535/2022, of 9 June, which lays down the rules for the preparation of the General State Budget for 2023. [Full Text](#)

State Debt. Resolution of 10 June 2022, of the General Directorate of the Treasury and Financial Policy, ordering certain issues of State Bonds and Obligations in the month of June 2022 and calling the corresponding auctions. [Full Text](#)

International Treaties. Instrument of accession to the Convention concerning the elimination of violence and harassment in the world of work, done at Geneva on 21 June 2019. [Full text.](#)

Urgent measures. Decree-Law 2/2022, of 10th February, which adapts the exceptional tax measures on the island of La Palma to Decree-Law 1/2022, of 20th January, which adopts urgent measures in town planning and economic matters for the construction or reconstruction of permanent homes affected by the volcanic eruption on the island of La Palma and which amends the aforementioned Decree-Law. [Full text](#)

International treaties. Provisional application of the Agreement between Spain and the North Atlantic Treaty Organisation concerning the NATO summit that will be held in Madrid on 28, 29 and 30 June 2022, done in Brussels on 20 June 2022. [Full text](#)

State debt. Resolution of 21 June 2022, of the General Secretariat of the Treasury and International Finance, which publishes the effective annual interest rate for the third calendar quarter of the year 2022, for the purpose of tax classification of certain financial assets. [Full Text](#)

Principal operators in the energy sectors. Resolution of 9 June 2022. It establishes and publishes, for the purposes of the provisions of article 34 of Royal Decree-Law 6/2000, the list of main operators in the electricity sector. [Full text](#)

Multilateral convention to apply measures related to tax treaties to prevent the erosion of tax bases and profit shifting. Multilateral Convention on the application of tax treaty measures to prevent base erosion and profit shifting, done at Paris on 24 November 2016. Notification made by Spain to the General Secretary of the Organisation for Economic Co-operation and Development (OECD), as depositary of the Convention, in accordance with the provisions of article 35.7 [Full Text](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of May 13th, 2022. Decisions of the sole shareholder in insolvency proceedings with suspended powers of administration. [Full Text](#)

The commercial registrar suspends the registration of the sole shareholder's decision to dissolve the company because the sole shareholder's powers to dispose of his assets have been suspended due to his having been declared bankrupt (arts. 106 and 413 TRLC). The sole shareholder requests the correction of the defect due to the fact that he is obliged to dissolve the company by mandate of 363.1 LSC. Once the insolvency situation had been verified, the DGSJFP determined that the acts carried out by the sole shareholder could not be registered without confirmation and/or validation by the insolvency administrator, or the finality of the judicial decision of the judge in charge of the insolvency proceedings. The DGSJFP confirms the qualification note, concluding that under no circumstances may a sole shareholder with suspended powers take this decision alone, or any other decision affecting the company or its assets.

DGSJFP. Resolution of May 9th, 2022. Legitimation of the administrator's signature. [Full text](#)

The DGSJFP resolved the appeal lodged against the registrar's negative assessment rejecting the appointment of an auditor on the grounds that the provisions of art. 426.1 RRM had not been complied with, as regards the obligatory provision of the corresponding funds, and that art. 142.1 RRM had not been complied with, according to which the authorship of the document presented must be duly accredited in the procedure by means of a signature authenticated before a notary public. As the appellant did not carry out these mandatory formalities, the DGSJFP

dismissed the appeal and confirmed the registrar's note of qualification.

DGSJFP. Resolution of June 6th, 2022. Telematic attendance at the General Meeting of an S.L. [Full Text](#)

The DGSJFP upholds the appeal against the commercial registrar's note of qualification with regard to the wording of an article of the articles of association of an S.L. relating to electronic attendance at general meetings. The decision rules on telematic attendance at the general meetings of an S.L., and on whether it is permitted for the company to provide for different physical locations other than the company's main offices, all of which are connected telematically, and thus allow the shareholders to attend the meetings remotely; and whether in such cases, the meeting will be deemed to be held at the place indicated as the main location in the notice of meeting. In this respect, the DGSJFP points out that the preparation of premises in places other than the registered office is done for the sole purpose of facilitating remote attendance by members when they are unable to travel to the place where the meeting is to be held. The fact that the members are offered different locations to attend the meeting telematically does not mean that the meeting will take place in several locations, but rather that it will be held in the single location designated in the corresponding notice of meeting, with the possibility for members to connect telematically to the meeting through the mechanisms set up by the company in other locations in a telematic manner. The article of association is therefore registrable and suspends the negative qualification.

Remarkable Case Laws.

Judgment of the Court of Justice of the European Union of 2 June 2022. Consumer protection. [Full Text](#)

The Court of Justice of the European Union has given a ruling in Case C-122/21 concerning the interpretation of Article 1 of Council Directive 87/357/EEC of 25 June 87/357/EEC. That directive refers to products which endanger the safety or health of consumers as products like foodstuffs, thereby creating confusion. The case in question concerns a dispute between a cosmetics company which markets products with an appearance like that of foodstuffs and the National Office for the Protection of Consumers' Rights on the grounds of the prohibition imposed by that Directive on the marketing of certain types of products. In this regard, the CJEU states that Article 1.2 of Directive 87/357/EEC must be interpreted as meaning that it is not necessary to establish on the basis of objective evidence that there is a possibility that products which are not foodstuffs but which, by reason of their appearance, size or volume, are likely to be mistaken for foodstuffs and therefore ingested by consumers, which may involve a risk of suffocation or intoxication, may be ingested. However, it states that it is for the competent national authorities to assess on a case-by-case basis whether a product complies with the requirements listed in that provision and may take such measures as they deem necessary to prohibit the placing on the market, importation or manufacture of such products.

Judgment of the Court of Justice of the European Union of 2 June 2022. Liability of airlines in the event of accidents. [Full Text](#).

The Supreme Court ruled on the interpretation of articles 51 and 54 of the Insolvency Act, relating to the standing to appeal when one of the parties has been declared in insolvency proceedings during the pendency of the proceedings at first instance and its patrimonial powers have been suspended. The SC points out that, in the event that the insolvency administration does not carry

out its function of acting in the judicial proceedings in substitution of the debtor, the aforementioned art. 51.3 LC allows the insolvent debtor to maintain its procedural capacity in that lawsuit, although its standing is conditional on the authorisation system provided for in this provision. Therefore, any subsequent judicial intervention will require the agreement of the insolvency administration, as provided for in art. 54.2 LC. However, in order to protect the interests of the insolvency proceedings and the insolvent party, as long as the insolvency administration does not appear and request the procedural substitution of the insolvent party, the latter will continue to have standing to continue with the proceedings, with authorisation always being necessary to appeal.

Judgment of the General Court of the European Union of 22 June 2022. Trademark likelihood of confusion. [Full Text](#).

The General Court ruled on the likelihood of confusion between two trademarks for electric batteries, in particular on a possible infringement of Article 94 (1) of Regulation 2017/1001 and Article 8 (1)(b) of Regulation 207/2009. In this regard, the General Court states that the likelihood of confusion includes the likelihood of association with the earlier trademark and that it constitutes a likelihood of confusion if the public might believe that the goods or services covered by the conflicting trademarks come from the same or economically-linked companies. In addition, the Court states that there may be considered to be a degree of similarity between the conflicting trademarks if the goods and services in question are likely to be offered in the same points of sale and use the same distribution channels or if there is a complementary connection between the goods and services in question. On this basis, the General Court concludes that the goods and services in question are not similar and that there is therefore no likelihood of confusion between the conflicting marks and thus upholds the appeal.

Review of Interest: New Vertical Block Exemption Regulation (BEREC) and new Vertical Guidelines

The European Commission has adopted [the new Vertical Block Exemption Regulation \("RECAV", for its Spanish acronym\)](#) accompanied by the new Vertical Guidelines, which enters into force on 1 June. The rule makes it possible to assess the compatibility of supply and distribution agreements with EU competition rules on vertical agreements, adapting it to a business environment reshaped by the rise of e-commerce and online sales. As a result, as of 1 June this year, new distribution contracts will have to be drafted in accordance with the new competition aspects of the new regulation. However, it provides for a transitional period between this date and 31 May 2023 so that those vertical agreements in force on 31 May 2022 that do not comply with the provisions contained in the new RECAV can be adapted to the new regime.

The previous regulation (Regulation 330/2010) established those vertical agreements were exempt from the prohibition of agreements between undertakings restricting competition provided for in Article 101.1 of the TFEU, provided that they met certain conditions. Thus, agreements adopted for the distribution of goods and services were not considered restrictive of competition if they fulfilled these conditions and were justified from the perspective of Article 101(3) TFEU. The new RECAV updates this exemption and [establishes new prohibitions in relation to clauses agreed in relation to Internet sales and in relation to what it calls dual distribution](#). Thus, in relation to internet sales, (i) contractual clauses preventing the distributor from effectively using the internet or from using a certain online advertising channel are prohibited; (ii) clauses agreed between a supplier and an online intermediation platform obliging the former not

to offer or sell its goods or services on more favourable terms on other online intermediation platforms are prohibited; (iii) and the possibility is provided for the supplier to: (i) set quality or appearance requirements for the distributor's website; (ii) require the distributor to have a physical shop; for example, as a condition for the distributor to be part of a selective distribution system; and (iii) implement a dual pricing system for physical and online sales, provided that they reflect the different cost structures of the two types of sales.

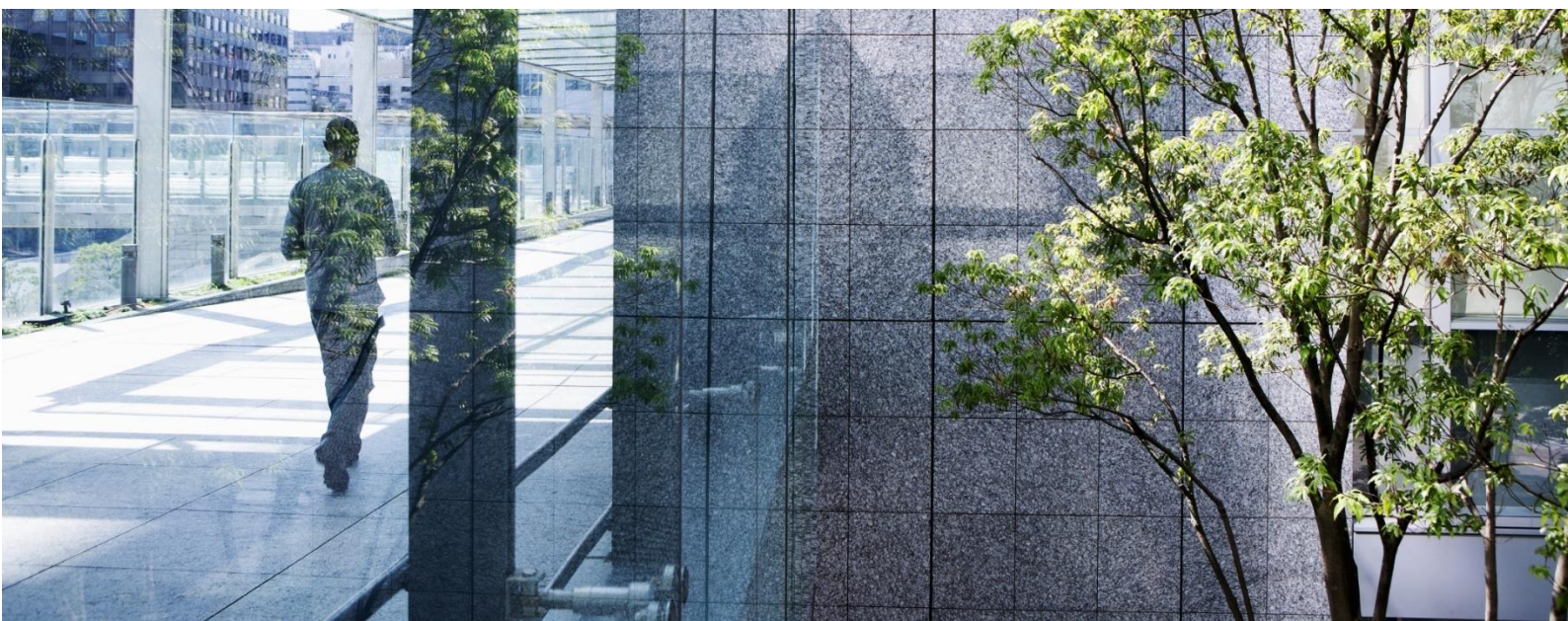
On the other hand, as regards dual distribution, i.e. situations where a manufacturer distributes its products directly on the market, in addition to selling them to other distributors (so that the manufacturer competes with its own distributors), two exceptions are introduced: (i) exchanges of information between manufacturer and distributor that are not directly related to the implementation of the agreement or are not necessary to improve the distribution of the goods and services covered by the agreement are not exempted; and (ii) distribution agreements where the supplier is an online intermediary service which, in addition, competes with the distributor in the sale of the intermediated goods or services are not exempted.

In conclusion, [the new RECAV adapts the treatment of vertical agreements to the current reality of the markets](#) and to the rise of e-commerce, resolving various issues that had been raised throughout the term of the previous Regulation 330/2010, in view of the evolution of the digital economy.

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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