



Corporate Law Newsletter

Outstanding regulation developments

Guarantees. Resolution of 14 October 2022, of the State Secretariat for Economy and Business Support, publishing the Agreement of the Council of Ministers of 11 October 2022, modifying that of 10 May 2022, establishing the terms and conditions of the first tranche of the line of guarantees for financing granted to companies and the self-employed established by Royal Decree-Law 6/2022, of 29 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.](#)

Foreign investments. Resolution of October 7, 2022, of the Directorate General for International Trade and Investment, approving the model of declaration D-8 Annual report on the development of investment abroad. [Full text.](#)

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Other outstanding regulation development

Urgent measures. Resolution of 29 September 2022, of the Congress of Deputies, ordering the publication of the Agreement on the validation of Royal Decree-Law 16/2022, of 6 September, for the improvement of working conditions and Social Security for domestic service workers. [Full text.](#)

International treaties. Correction of mistakes to the consolidated text of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR), done in Geneva on 1 July 1970. [Full text.](#)

International treaties. Resolution of 6 October 2022, of the General Technical Secretariat, whereby, by virtue of article 24.2 of Law 25/2014, of 27 November, on Treaties and other International Agreements, the bilateral international treaties whose validity has been terminated by the entry into force of the Agreement for the termination of bilateral investment treaties between the Member States of the European Union, done in Brussels on 5 May 2020, are published. [Full text.](#)

Medicines. Order SND/939/2022, of September 29, approving the rules for the correct extemporaneous preparation of radiopharmaceuticals. Complete text. [Full text.](#)

Standard forms. Resolution of 5 October 2022, of the Directorate General of the National Social Security Institute, modifying that of 26 January 2022, which approves the standardised models to be completed by Social Services and Third Sector Social Action Entities to certify compliance with the following requirements the requirements provided for in Law 19/2021, of 20 December, which establishes the minimum living income. [Full text.](#)

Urgent measures. Royal Decree-Law 18/2022, of 18 October, approving measures to reinforce the protection of energy consumers and to contribute to the reduction of natural gas consumption in application of the "Plan + seguridad para tu energía (+SE)", as well as measures relating to the remuneration of personnel in the service of the public sector and the protection of temporary agricultural workers affected by the drought. [Full text.](#)

Health certificates. Resolution of 18 October 2022, of the Directorate General of Public Health, regarding the characteristics of health certificates in the framework of international travel in the context of the COVID-19 pandemic. [Full text.](#)

Borders. Sanitary control. Resolution of 18 October 2022, of the Directorate General for Public Health, which annuls that of 1 April 2022, regarding health controls to be carried out at points of entry into Spain. [Full text.](#)

Persons with disabilities. Royal Decree 888/2022, of 18 October, establishing the procedure for the recognition, declaration and qualification of the degree of disability. [Full text.](#)

Pension plans and funds. Royal Decree 885/2022, of 18th October, amending the Regulations on pension plans and funds, approved by Royal Decree 304/2004, of 20th February, for the promotion of occupational pension plans. [Full text.](#)

Remarkable Case Laws of the Directorate General for Legal Certainty and Public Trust

DGSJFP. Resolution of 2 September 2022. Deed of incorporation of a trading company. [Full text.](#)

The DGSJFP upholds the appeal filed against the negative qualification of the commercial and real estate registrar in relation to the deed of incorporation of a company. In its decision, the DGSJFP states that it is not necessary for the bylaws to express in the rules of convocation who are the persons entitled to convene the board of directors of a company, since in the absence of any provision in the bylaws, Article 246 of the Capital Companies Act applies. However, in the event of including any provision to that effect, it will not be possible to restrict the legal standing to those who are recognized in the aforementioned precept. This is due to the fact that the partial reproduction of legal texts in the bylaws may cause confusion, depriving third parties who consult the registry entries of adequate information. In this specific case, the DGSJFP understands that the bylaws do not restrict said legitimization and therefore, there are no defects that prevent its registration.

DGSJFP. Resolution of 5 September 2022. Public deed of power of attorney. [Full text.](#)

An appeal is resolved against the refusal of the commercial registrar to register a power of attorney in favor of a third party granted by a joint administrator exercising his authority alone. The appellant's argument is rejected because the DGSJFP considers that joint action is essential in a joint body. Therefore, the DGSJFP resolves that it is not feasible to register a power of attorney granted by a joint administrator in favor of a third party in which the latter exercises the organic competence of said position without the other appointed joint administrator, since it is a question

of a joint administrator exercising the organic competence of said position alone. administrator appointed, since it is a case contrary to the contents of the LSC.

DGSJFP. Resolution of 26 September 2022. Refusal of registration as individual entrepreneurs with limited liability. [Full text.](#)

The appeal is resolved against the refusal of the commercial registrar to register as self-employed corporate entities with limited liability those who do not exercise directly, in their own name, the corresponding economic activity, but do so through companies managed by them. The commercial registrar relies on the provisions of Law 14/2013, which states (i) the entrepreneur natural person is the one who exercises the activity in his own name, but limiting his liability for debts and (ii) the entrepreneur with limited liability must have a sheet in the Commercial Registry in which the assets not subject to liability are recorded. Based on the above, the DGSJFP agrees to dismiss the appeal, since it is not attributable the condition of "entrepreneurs" or "corporate self-employed" as they do not exercise their activity through companies that they manage, so they do not have the status of entrepreneurs.

Remarkable Case Laws

Judgment of the Court of Justice of the European Union (Third Chamber) of 13 October 2022.

Insider dealing. [Full text.](#)

The CJEU rules on a preliminary ruling on the interpretation of Article 17(2)(a) of Directive 86/653/EEC, which arises from a dispute in which a sub-agent claims from the principal agent the proportion of the client indemnity corresponding to the clientele brought in by the principal agent. In this regard, after the termination of the agency contract, the sub-agent becomes the new principal agent, and the Court therefore asks whether this indemnity could be equitable. The Court points out that the commercial agent will be entitled to compensation to the extent that he has brought new customers to the principal or has significantly developed the operations with existing customers, provided that such activity is likely to bring substantial advantages to the principal. On this basis, the CJEU ruled that the payment of a client indemnity to the sub-agent cannot be considered equitable when the sub-agent continues to act as a commercial agent for the same clients and products, in the framework of a direct relationship with the principal, replacing the principal agent who had previously engaged him.

Judgment of the Supreme Court (Civil Division) of 11 October 2022. Intellectual property and reproduction rights. [Full text.](#)

The SC ruled on a case in which an association of intellectual rights management considered that the rights derived from the acts of public communication and reproduction of phonograms were infringed. In this context, an appeal in cassation was filed for infringement of article 31.1 of the TRLPI. 31.1 of the TRLPI. The Chamber admits the appeal based on art. 5.1 of Directive 2001/29/EC of May 22, 2001, emphasizing that an

act of reproduction will only be valid, without infringing the aforementioned provision, if; i) it is provisional, ii) transitory, iii) it is an integral part of a technological process, iv) it seeks to transmit in a network between third parties and v) if it has no independent economic significance. The SC considers that the legal security of an intellectual property rights holder cannot depend on a discretionary act, as there is no guarantee that the user will proceed to the effective removal of the reproduction when its usefulness can no longer be justified. The Chamber concludes that the defendant should have justified that the reproduction of those phonograms was part of a temporary technological process through an automated mechanism that did not require human intervention. Based on the foregoing, the appeal is upheld.

Judgment of the Court of Justice of the European Union (Grand Chamber) of 20 October 2022.

Principles of purpose limitation and limitation of the storage period. [Full text.](#)

The CJEU resolves a preliminary question concerning the use of data. In this case, the company made a copy of a parallel database for evidentiary purposes, and subsequently suffered a security problem, which meant that it had to notify the authorities. Once notified, the authorities ruled that the company was in breach of Art. 5.1, b) and e) of the GDPR. This is due to the fact that once the evidentiary use of the data had ended, the company continued to keep them, in violation of the principle of purpose limitation and limitation of the retention period. Therefore, the Court ruled that the purpose limitation and time limitation apply equally to copies made to databases for evidentiary purposes.

Summary of Interest: Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation).

On 27 October 2022, the new Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 laying down the new legal framework for intermediation platforms and services in Europe was published in the OJEU.

The scope of the rule is aimed at providers of intermediary information society services, that is any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient irrespective of the place of establishment of the service provider. Given their importance, service providers with more than 45 million active recipients will have to comply with a number of additional obligations from July 2023.

The new regulation maintains the regime of exclusion of liability of service providers provided for in Directive 2000/31/EC and introduces relevant innovations in terms of transparency and diligence regarding the dissemination of illegal content in the digital environment and the protection of users' fundamental rights.

In relation to the moderation of manifestly illegal content, service providers shall implement processes for detecting and acting against illegal content or information incompatible with their general terms and conditions, which the recipients of the service have provided, by adopting measures affecting the availability, visibility and accessibility of such illegal content, such as relegation, demonetisation of the information, blocking and removal of the information; or through

measures that affect the ability of service recipients to provide such information, such as the deletion or suspension of a service recipient's account.

In relation to the publication of information related to the removal or blocking of content, service providers shall make available to users an annual report on their content moderation activity.

As regards the potential systemic risks associated with the operation and use of intermediary information society services, the regulation identifies four categories of risks associated with the misuse of services: (i) dissemination of manifestly illegal content, including the sale of prohibited products or services; (ii) affecting users' fundamental rights as enshrined in the EU Charter of Fundamental Rights; (iii) affecting democratic processes, civic discourse or public safety; and (iv) affecting the design and operation or use of online platforms through the creation of fake accounts.

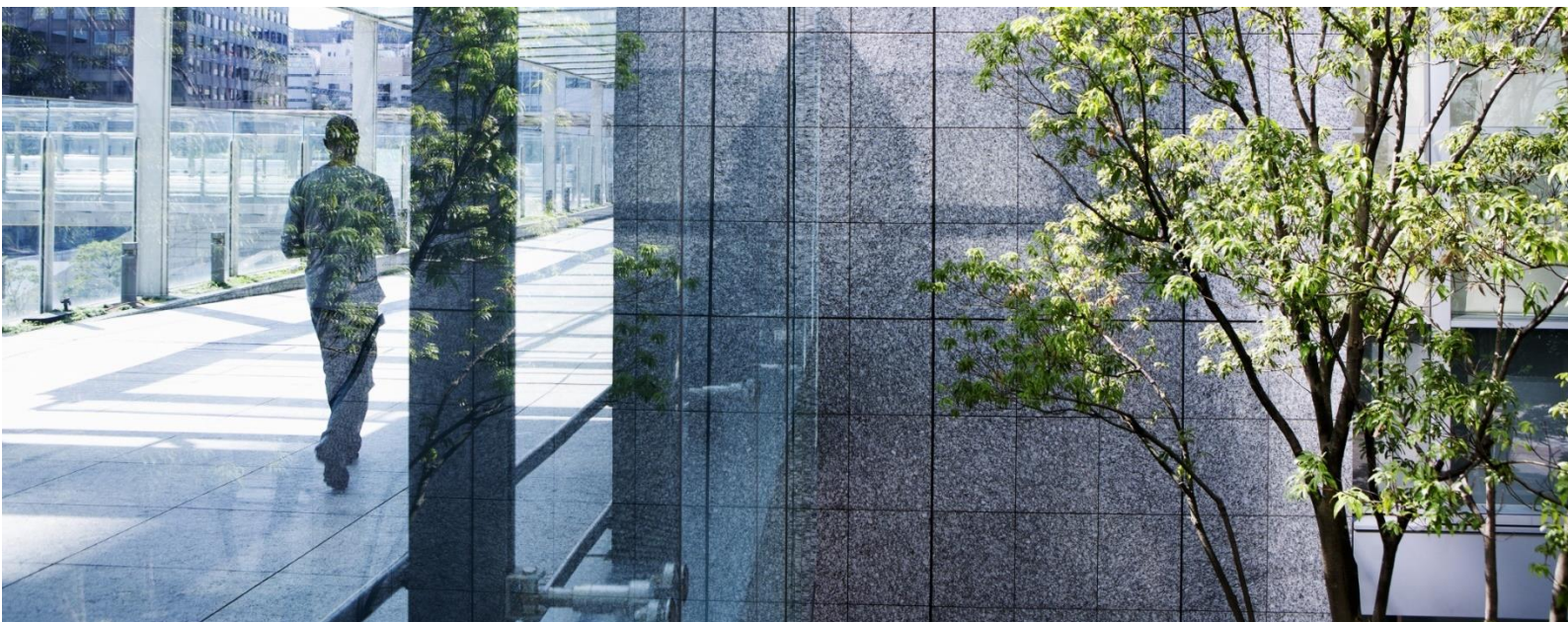
Other new features include the obligation to verify and collect information on traders for online platforms that formalise distance contracts, and the creation of "trusted alerters", who will be responsible for combating illegal content that affects collective interests. As regards advertising, service providers will make available to users the parameters used to determine the presentation of advertising.

The Regulation, except for some provisions which will apply from 16 November 2022, will enter into force in its entirety from 17 February 2024.

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

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