



# Corporate Law Newsletter

## Outstanding regulation developments

**Cooperation for sustainable development.** Law 1/2023, of 20 February, on Cooperation for Sustainable Development and Global Solidarity. [Full text.](#)

**Fight against corruption.** Law 2/2023, of 20 February, regulating the protection of persons who report regulatory infringements and the fight against corruption, transposing Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. [Full text.](#)

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## Other regulation developments

**Electricity system.** Circular 1/2023, of 7 February, of the National Markets and Competition Commission, amending Circular 4/2019, of 27 November, which establishes the methodology for the remuneration of the electricity system operator. [Full text.](#)

**Regulations of the Legal Profession.** Royal Decree 64/2023, of 8 February, approving the Regulations of Law 34/2006, of 30 October, on access to the legal profession. [Full text.](#)

**Harmful tax regimes.** Order HFP/115/2023 of 9 February. Determines the countries and territories, as well as the harmful tax regimes, that are considered non-cooperative jurisdictions. [Full text.](#)

**Presidency of the Government.** Royal Decree 97/2023 of 13 February amending Royal Decree 662/2022 of 29 July restructuring the Presidency of the Government. [Full text.](#)

**Minimum interprofessional wage 2023.** Royal Decree 99/2023 of 14 February. Sets the minimum interprofessional wage for 2023 at 36 euros/day or 1080 euros/month, depending on whether the wage is set by days or by months. It also sets the minimum wage for temporary workers and seasonal workers, whose services to the same company do not exceed 120 days, for whom in no case may the amount of the wage be less than 51.15 euros per day. In the case of the special employment relationship of the family home service, the minimum wage for hourly domestic workers is set at 8.45 euros per hour actually worked. This increase applies retroactively to 1 January 2023. [Full text.](#)

**Subsidies.** Royal Decree 114/2023, of 21 February, establishing the regulatory bases for the direct award, in accordance with Article 22.2. c) of Law 38/2003 on General Subsidies, of state subsidies aimed at supporting companies and self-employed workers legally exercising their activity in Spanish territory, negatively affected by the withdrawal of the United Kingdom from the European Union, to compensate for the additional costs they have had to assume as a result of this process and which are included within Article 5 of Regulation (EU) 2021/1755 establishing the reserve for adaptation to Brexit. [Full text.](#)

**Human rights.** Council Implementing Regulation (EU) 2023/430 of 25 February implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious violations and abuses of human rights. [Full text.](#)

**CNMV.** The CNMV adopts guidelines for applying for permission to operate a market infrastructure based on decentralised registration technology (DTL / TRD). [Full text.](#)

## Remarkable General Directorate of Legal Security and Public Faith resolutions

### **DGSJFP. Resolution of 16 January 2023. Reservation of denomination. [Full text.](#)**

The DGSJFP dismisses the appeal filed against the refusal of the commercial registrar to reserve a company name on the grounds of absolute identity with another registered name. The company requested a negative certificate regarding the name it wished to register and the Registry refused it in accordance with the provisions of art. 408.1 RRM, given the existence of another registered name identical to the one requested. The company appealed against this decision, arguing that the name was that of the sole shareholder and that it had his consent. In this respect, the DGSJFP confirmed the qualification note, stating that the identity between two company names is an objective limit imposed by law on the principle of freedom of choice of name, which in no case disappears with the consent of the company. In other words, consent can never override the legal mandate provided for in art. 408 RRM. In view of the foregoing, the DGSJFP dismisses the appeal and confirms the registrar's note of qualification.

### **DGSJFP. Resolution of 30 January 2023. Universal meeting requirements. [Full text.](#)**

The DGSJFP dismisses the appeal lodged against the registrar's negative classification of the constitution of a general meeting. In this case, the company in question held a general meeting of a universal nature before a notary, and the attendance of the entire share capital was recorded in the minutes. However, it was not specified in the minutes that the attendees unanimously agreed to make the meeting universal, nor were the items on the agenda. Although one of the shareholders requested that the meeting be cancelled due to irregularities in the convening of the meeting, the resolutions were adopted. For its part, the registrar suspended its registration on the

grounds that it did not meet the requirements of art. 178 LSC, a decision that the company appealed against on the grounds that the meeting was attended by the entire share capital. The DGSJFP confirms the qualification note, reiterating that the mere attendance of all the shareholders does not meet the requirements of art. 187 LSC, for which it is required that all the shareholders unanimously agree to hold the meeting as a universal meeting together with the agenda. Consequently, it confirms the criterion of the registry and therefore dismisses the appeal.

### **DGSJFP. Resolution of 28 February 2023. Capital increase. [Full text.](#)**

The DGSJFP dismisses the appeal filed against the registrar's refusal to register a deed of company agreements to increase capital and amend the articles of association. This was a deed in which a company increased its capital with a charge to reserves by an amount greater than the reserves appearing in the balance sheet, and also reflected losses that left the net assets below the figure corresponding to the aforementioned increase. By virtue of the above, the registrar suspended the registration on the grounds that the balance sheet did not show sufficient reserves to cover the capital increase. In this respect, the DGSJFP confirms the qualification note, arguing the need to prove that the value of the net book equity exceeds the figure for the share capital and the legal reserve by an amount at least equal to the amount of the increase. This is because it is not possible to increase capital against reserves if the balance sheet does not show that there is a sufficient amount of equity for capitalisation. The DGSJFP thus dismisses the appeal and confirms the registrar's note of qualification.

## Remarkable Case Laws

### **Judgment of the Court of Justice of the European Union of 12 January 2023. Package travel. [Full text.](#)**

The CJEU rules on a question referred for a preliminary ruling under Article 14(1) of Directive 2015/2302 concerning the traveller's right to a reduction in the price of a package holiday contracted for non-conformity. The case concerns two travellers who contracted a package holiday with a travel organiser and, due to restrictions imposed at their destination by COVID-19, were forced to return home earlier than planned. Faced with this situation, they requested a reduction in the price of the trip due to lack of conformity, and in this regard, the CJEU states that the organiser's obligations are not only those explicitly stipulated in the contract, but also those linked to it arising from the purpose of the contract, and therefore, in the event of a breach of services, the organiser is obliged to reimburse part of the cost of the trip.

### **Judgment of the Provincial Court of Madrid, Section 28, dated 3 February 2023. [Full text.](#)**

The Provincial Court of Madrid resolved the appeal filed by a shareholder of a limited liability company requesting the nullity of the corporate resolution in which two of the company's directors were dismissed. At first instance, the Commercial Court upheld the claim and declared the resolution null and void for abuse of rights in accordance with articles 204.1 2nd and 223 LSC. However, the Provincial Court confirmed the validity of the resolution based on previous case law pronouncements in relation to the interpretation of art. 223 LSC, by virtue of which the possibility of agreeing the termination "ad nutum" is foreseen, without the need for it to be included in the agenda. This power does not require any reasonable justification in any case, so that it is possible to The Court of Appeal also states that the Board of Directors can dismiss the directors without stating the reasons for the

dismissal. The Court also states that the abuse of rights cannot alter the regime foreseen for the dismissal of directors, since, otherwise, the revocation of the director by decision of the majority of the Meeting would be prevented. In view of the above, the Court of Appeal upheld the validity of the resolution adopted, overturning the first instance judgement.

### **Judgment of the Court of Justice of the European Union of 9 February 2023. Data protection officer. [Full text.](#)**

The CJEU has ruled on a reference for a preliminary ruling on the interpretation of Article 38 of the GDPR, which sets out the obligations relating to the appointment of a data protection officer (DPO). In that regard, the CJEU points out that, first, each Member State is free to lay down more protective provisions on the removal of the DPO, provided that they are compatible with EU law and the GDPR. However, such enhanced protection cannot prevent the removal of a DPO who no longer has the professional qualities required to perform his or her duties independently due to a conflict of interest. Secondly, it notes that a 'conflict of interest' within the meaning of Art. 38 GDPR may exist where a DPO is entrusted with other tasks or duties which would lead him or her to determine the purposes and means of the processing of personal data. The CJEU concludes that this question must be determined by the national court in each case, taking into account all the relevant circumstances and, in particular, the organisational structure of the controller or processor as well as its policies and the applicable law.



## Review of Interest: Law 2/2023 of 20 February 23 regulating the protection of persons who report regulatory infringements and the fight against corruption ("Law 2/2023")

On 21 February 2023, [Law 2/2023 of 20 February](#) regulating the protection of persons who report regulatory infringements and the fight against corruption ("[Law 2/2023](#)") was published, in force since 13 March 2023, which aims to protect persons who, in a professional context, detect serious administrative or criminal infringements and report them through the mechanisms regulated therein. This Act transposes Directive 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 ("[Whistleblowing Directive](#)").

The Directive already regulated the need to establish [internal reporting channels](#) for many companies and entities on the understanding that information on irregular practices should be known by the organisation itself. [It also required the establishment of other external information channels](#) in order to provide the public with a means of communication with a specialised public authority and to avoid possible reprisals by the entity being reported.

With regard to the [objective scope](#) of the Law, all communications that revolve around actions or omissions that could be [infringements of European Union law](#) will be protected, provided that they (i) fall within the scope of application of the European Union acts listed in the Whistleblowing Directive, (ii) affect the internal market or (iii) even the financial interests of the Union according to art. 325 TFEU. All acts or omissions that may constitute a [serious or very serious criminal or administrative offence](#) are also covered. As regards the [subjective scope](#), the Law will apply to [whistleblowers working in the private or public sector](#) who have obtained information on infringements in a professional context and therefore include: (i) persons having

the status of public employees or employees, (ii) the self-employed, (iii) shareholders and persons belonging to the management body, (iv) or any person working under the supervision of contractors.

Among the main novelties introduced by the law are the following<sup>1</sup>:

Firstly, [the obligation to implement an internal information system for public and private entities](#) that comply with certain characteristics. The body in charge of implementation will be the administrative or governing body of each entity, and it will have to designate a person responsible for the internal information system. Secondly, the Law requires the internal reporting system to comply with certain guarantees such as (i) preserving the confidentiality of the whistleblower's identity, (ii) preventing retaliation, as well as (iii) ensuring the effective processing of communications.

Thirdly, the Law creates an [external information channel](#) that will be managed by the Independent Whistleblower Protection Authority, which will be able to impose sanctions in this area.

Finally, the [adoption of protection measures](#) relating to the prohibition of reprisals, assistance to the whistleblower (including the possibility of legal assistance, financial support) and even, in certain cases, public disclosure of infringements, are noteworthy.

In case of [non-compliance](#) or incorrect implementation of the systems, entities could face sanctions of varying severity.

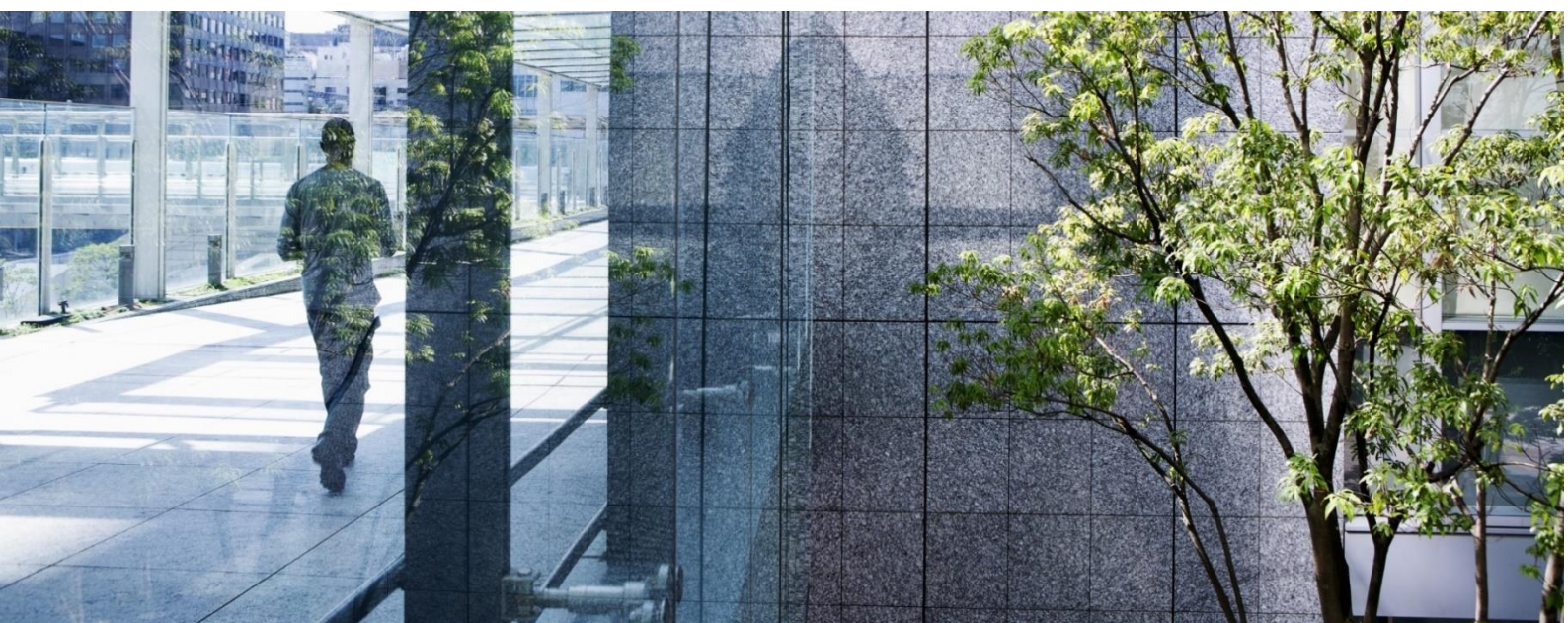
The full text can be found at the following [link](#).

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<sup>1</sup> You can consult the new features introduced by the Law, as well as the main characteristics of the MAZARS internal channel management service, in the following [link](#).

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