



Corporate Law newsletter

Outstanding regulation developments

Modification of the Penal Code. Organic Law 4/2023, of 27 April, for the modification of Organic Law 10/1995, of 23 November, of the Criminal Code, in crimes against sexual freedom, the Criminal Procedure Act and Organic Law 5/2000 of 12th January, regulating the criminal responsibility of minors. [Full text.](#)

European Union. Royal Decree 331/2023, of 28th April, amending Royal Decree 41/2022, of 12th January. 41/2022, of 12 January, which created the Organising Committee for the Spanish Presidency of the Spanish Presidency of the European Union. [Full text.](#)

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Other outstanding regulation development

Animal protection and welfare. Royal Decree 208/2023 of 28 March amending Royal Decree 638/2019 of 8 November establishing the basic conditions to be met by cleaning and disinfection centres for vehicles used for the transport by road of live animals, products for production animal feed and animal by-products not intended for use on the road and creating the National Register of Cleaning and Disinfection Centres. [Full Text.](#)

Economic Agreement of the Basque Country. Law 9/2023, of 3rd April, which amends Law 12/2002, of 23rd May, approving the Economic Agreement with the Autonomous Community of the Basque Country. [Full Text.](#)

Economic Agreement with Navarre. Law 8/2023, of 3rd April, which amends Law 28/1990, of 26th December, approving the Economic Agreement between the State and the Autonomous Community of Navarre. [Full Text.](#)

Indebtedness. Principle of financial prudence. Resolution of 3 April 2023, of the General Secretariat of the Treasury and International Finance, updating Annex 1 included in the Resolution of 4 July 2017, of the General Secretariat of the Treasury and Financial Policy, defining the principle of financial prudence applicable to the debt and derivative operations of autonomous communities and local entities. [Full text.](#)

Ministerial departments. Royal Decree 250/2023, of 4 April, which amends Royal Decree 39/2020, of 28 January, which establishes the basic organic structure of ministerial departments, and Royal Decree 645/2020 of 7 July, which develops the basic organic structure of the Ministry of Transport, Mobility and the Urban Agenda. [Full text.](#)

Prevention of and fight against tax fraud. Royal Decree 249/2023, of 4 April, amending the General Regulations for the Development of Law 58/2003, of 17 December, on General Taxation, in matters of administrative review, approved by Royal Decree 520/2005, of 13 May; the General Collection Regulations, approved by Royal Decree 939/2005, of 29 July 2005; the General Regulations on tax management and inspection actions and procedures and on the development of the common rules for tax application procedures, approved by Royal Decree 1065/2007, of 27 July 2007; the Regulation on Inheritance and Gift Tax, approved by Royal Decree 1629/1991, of 8 November; the Regulation on Value Added Tax, approved by Royal Decree 1624/1992, of 29 December; the Regulation on Personal Income Tax, approved by Royal Decree 439/2007, of 30 March, and the Regulation on Corporation Tax, approved by Royal Decree 634/2015, of 10 July. [Full text.](#)

Vocational training. Royal Decree 278/2023, of 11 April, which establishes the calendar for the implementation of the Vocational Training System established by Organic Law 3/2022, of 31 March, on the organization and integration of Vocational Training. [Full Text.](#)

Electrical energy. Royal Decree 314/2023, of 25 April, which develops the procedure and requirements for the granting of administrative authorisation for closed electricity distribution networks. [Full Text.](#)

Public Prosecutor's Office. Royal Decree 311/2023, of 25th April, which modifies and expands the staff of the Public Prosecutor's Office to adapt it to existing needs. [Full Text.](#)

Remarkable resolutions

DGSJFP. Resolution of 27 March 2023. Deposit of annual accounts. [Full text.](#)

The DGSJFP dismisses the appeal filed against the negative qualification of the Mercantile Registrar rejecting the deposit of the unaudited annual accounts of the company corresponding to the financial year 2020 due to the fact that the appointment of the auditor for the same financial year appeared as registered in the Register. In the present case, the following circumstances are present: (i) according to the company's registration, the general shareholders' meeting held in 2018 appointed an auditor for the financial years 2018, 2019 and 2020; (ii) the annual accounts for the financial year 2020 were approved without the auditor's report. In this regard, the DGSJFP indicates that, in accordance with art. 279 LSC, provided that the appointment of an auditor to audit the annual accounts is recorded in the Register, whatever the reason for the registration, the deposit cannot be made if they are not accompanied by the report issued by the registered auditor. In view of the foregoing, the DGSJFP dismisses the appeal and confirms the note of qualification.

Resolution of 24 March 2023 of the Fourth Section of the AUTOCONTROL Jury. Covert advertising. [Full text.](#)

The Jury of AUTOCONTROL upholds the complaint filed by an Association of Communication Users ("AUC") against an advertisement issued by an alcoholic beverage company. The complainant alleges that the advertisement is of a commercial nature, and that is of a commercial nature, and as such is unlawful because it does not contain a message appealing to moderate and responsible

consumption, as required by the regulations governing this type of advertising. However, the advertiser argues that the nature of the advertisement is purely corporate, so that the message disseminated is excluded from the regulations. In this respect, the Jury affirms that the advertisement in question directly and indirectly promotes the products of the company in question and that it therefore has a commercial and not merely corporate nature.

This being so, it is concluded that the advertising

in question infringes the regulations in force, and that the company should urge the rectification of the same.

Resolution of 28 April 2023 by the Spanish Data Protection Agency. Access to the patient's clinical history. [Full Text.](#)

The AEPD upholds the complaint filed by the claimant who was denied her right of access to the medical records of her deceased sister. The respondent (a hospital) denied access on the grounds that the deceased had so stated. However, the AEPD recalls that it is necessary to prove this refusal, as the patient's wish not to inform on the state of her illness is not such, a right which is included under art. 5 of the Law Regulating Patient Autonomy. What is relevant in the present case is the existence or not of the express prohibition, and as this has not been accredited, it is not possible to deny said access, and therefore, the AEPD upholds the claim and requires the respondent to prove the will of the deceased to support said refusal.

Remarkable Case Laws.

Judgment of the Court of Justice of the European Union of 20 April 2023. Collective insurance contract. [Full text.](#)

The CJEU resolves the questions referred for a preliminary ruling on the interpretation of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. In the case in question, a consumer had entered into a group insurance contract when taking out a loan agreement. The referring court asks whether that directive must be interpreted in such a way that the consumer must know the content of all the terms before concluding a contract, or whether it is sufficient to know only the terms relating to the main subject-matter. The CJEU concludes that it is necessary for a consumer to be able to know all the terms of the contract before concluding it. In this regard, and for this specific case, it ruled that the limitation of the coverage of the risk will be rendered ineffective if it has not been previously known to the consumer.

Judgment of the Supreme Court of 31 March 2023. Liability of the administrators. [Full Text.](#)

The SC upheld the conviction of the directors of a company for not having adopted the necessary measures to avoid VAT fraud. The AEAT initiated an inspection for VAT fraud which ended in a statement of conformity by the company acknowledging said fraud. Subsequently, the company filed a lawsuit against the administrators, considering that they had not implemented the appropriate controls for a correct tax management, thus failing in their duty of diligence. The appeal judgement partially recognised the company's claims, and the administrators, now appellants, lodged an appeal in cassation, arguing that the judgement made an incorrect assessment of the company's claims. claiming that the judgement made an erroneous assessment between the causality of the omissions and the damage caused, as the infringement was committed by third parties. The SC concludes that the fact that the infringements were

committed by third parties does not prevent the directors from being convicted, as it considers that they did not adopt the necessary measures to prevent the fraud, such passivity constituting a breach of the duty of diligence.

Judgment of the Court of Justice of the European Union of 20 April 2023. Communication to the public [Full Text.](#)

The CJEU examines questions referred for a preliminary ruling in two cases dealing with the concept of communication to the public on trains and aircraft. In both cases, the referring court asks the CJEU questions seeking to resolve, on the one hand, whether the lucrative nature of the broadcasting of background music is sufficient to be considered an act of communication to the public within the meaning of art. 3 of Directive 2001/29, and, on the other, whether the installation of systems allowing the broadcasting of sounds implies per se the effective performance of acts of communication to the public. In relation to the above, the CJEU emphasises that, in order for the broadcasting of background music to be considered an act of communication to the public, two factors must coincide, firstly, that the act is actually carried out and, secondly, that it is directed at the public. In such a way that, both of these factors being present, the lucrative nature of the broadcast is not relevant when determining whether it is an act of communication to the public, as it is already an act of communication to the public in itself. With regard to the installation of sound systems, the CJEU concludes that the mere provision of sound systems cannot be considered an act of communication to the public if the communication has not actually been made.

Review of Interest: Regulation of the European Parliament and of the Council on crypto-asset markets and amending Directive (EU) 2019/1937 ("MiCA Regulation")

The Regulation of the European Parliament and of the Council on crypto-asset markets and amending Directive (EU) 2019/1937 ("MiCA Regulation") was adopted by the European Parliament on 20 April. This Regulation will have to be subsequently approved by the Council and will not enter into force until 20 days after its official publication in the Official Journal of the European Union (OJEU), and can be directly applied by Member States without the need for national transposition laws.

The MiCA Regulation thus becomes [the first regulatory framework for cryptoassets at global level](#), including issuers and service providers, with the aim of protecting consumers and investors and enhancing financial stability and innovation by harmonising Member States' laws in relation to the issuance, trading, safekeeping and provision of cryptoasset services.

Crypto-assets are defined by the MiCA Regulation as *"a digital representation of a security or a right that can be transferred and stored electronically, using distributed ledger or similar technology"*. It also differentiates between: (i) cryptocurrencies (those that can be used as a means of exchange or payment), (ii) stablecoins (cryptocurrencies with price stabilisation mechanisms) and (iii) tokens (digital representations of physical goods, rights or services). However, "non-fungible" cryptoassets (or "NFTs") or so-called decentralised finance or "DeFi" (Decentralized Finance) are outside the scope of the Regulation.

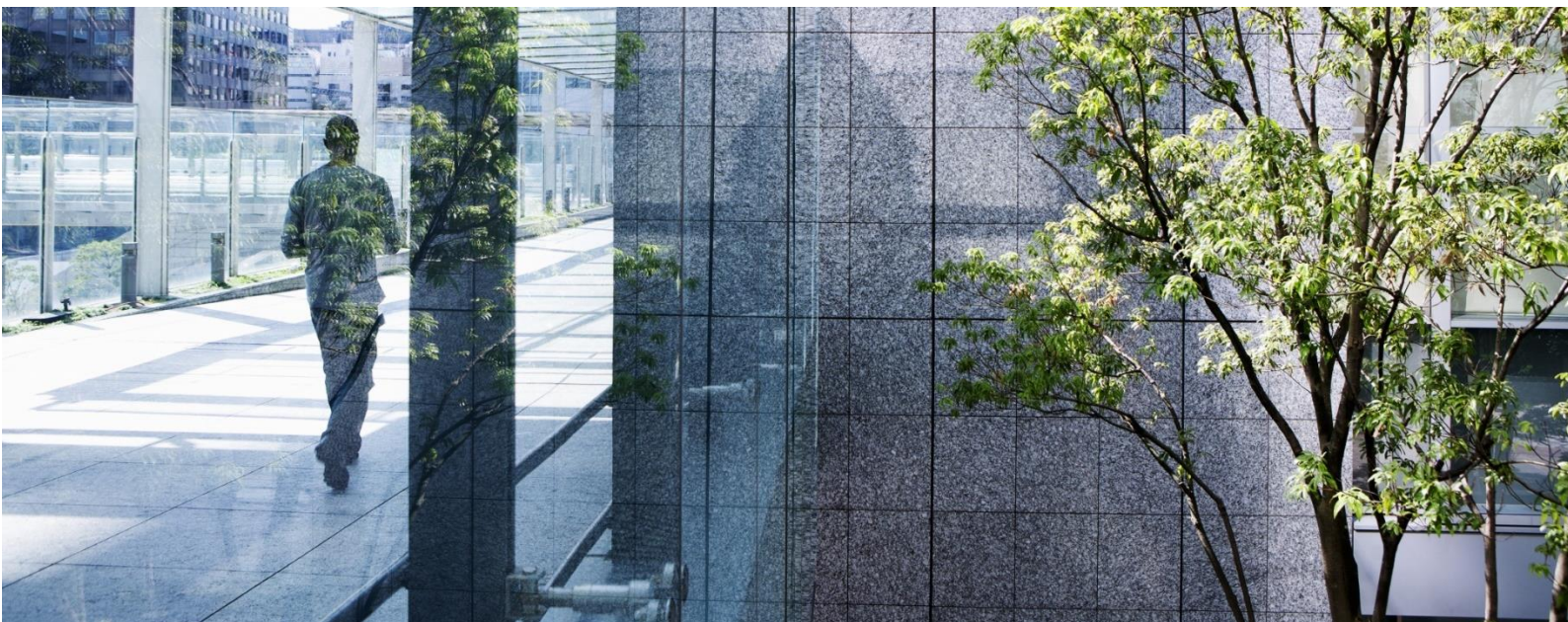
In particular, the Regulation focuses on the following points: (i) establishing transparency and information requirements in relation to the issuance, public offering and admission to trading of cryptoassets on a cryptoasset trading platform; (ii) establish requirements for the authorisation and supervision of cryptoasset service providers (which are required to register, implement security measures and comply with anti-money laundering rules), issuers of asset-backed tokens and issuers of electronic money tokens (which are required to provide complete and transparent information on the cryptoassets they issue, and to comply with disclosure and transparency requirements), as well as rules for their operation, organisation and governance; (iii) establish requirements for the protection of cryptoasset holders at issuance, public offering and admission to trading; (iv) establish requirements for the protection of clients of cryptoasset service providers; and (v) establish measures aimed at preventing insider dealing, unlawful disclosure of inside information and market manipulation in relation to cryptoassets, in order to ensure the integrity of cryptoasset markets.

Finally, it should be noted that the Regulation does not envisage the creation of a new competent authority responsible for monitoring compliance with these regulations, but that each Member State will be responsible for establishing the bodies in charge of this supervision, without specifying whether these authorities can be existing authorities or newly created authorities.

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

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