



Corporate Law newsletter

Outstanding regulation developments

Doping. Royal Decree 792/2023, of 24 October, approving the Regulations for the implementation of Organic Law 11/2021, of 28 December, on the fight against doping in sport. [Full text.](#)

Consumer credit agreements. Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC Law 31/2022, of 23 December, on the General State Budget for the year 2023. [Full text.](#)

Legal Alert! Law 11/2023, of 8 May, on the digitalisation of notarial and registry proceedings. As we announced a few months ago, on **9 November** this law came into force, the main objective of which is to enable telematic notarial and registry intervention without physical presence for certain acts. In this sense, in the corporate sphere, it will be possible, among other things, to set up limited liability companies telematically. It will also be possible to execute certain instruments by videoconference and electronic appearance. For more information, see the [full text.](#)

The present newsletter is merely informative and non-exhaustive and does not constitute any type of legal advice. If you wish to receive the present newsletter, please send an e-mail to the sender:

mazars.taxlegal@mazars.es

Other outstanding regulation developments

Gas sector. Order TED/1072/2023, of 26 September, which establishes the gas system charges and the remuneration and fees for basic underground storage facilities for the gas year 2024. [Full text.](#)

Food safety. Royal Decree 773/2023, of 3 October, regulating technological adjuvants used in the processes of preparation and obtaining of foodstuffs. [Full text.](#)

National Employment System. Royal Decree 774/2023, of 3 October, amending Royal Decree 1130/2003, of 5 September, which regulates the remuneration system of the Corps of Court Clerks, and Royal Decree 2033/2009, of 30 December, which determines the standard posts assigned to the Corps of Court Clerks for the purposes of the general post allowance, the initial allocation of the specific allowance and remuneration for substitutions involving the joint performance of another function, in order to comply with the agreement between the State Administration and the strike committee of Law Clerks of the Administration of Justice. [Full text.](#)

Organisation. Order DEF/1110/2023, of 4 October, modifying Order DEF/710/2020, of 27 July, which develops the basic organisation of the Defence Staff. [Full Text.](#)

Indebtedness of the Autonomous Communities. Resolution of 4 October 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.](#)

Subsidies. Royal Decree 780/2023, of 10 October, amending Royal Decree 81/2015, of 13 February, which establishes the regulatory bases for state subsidies for livestock health defence groups and Royal Decree 82/2015, of 13 February, establishing the regulatory bases for the granting of subsidies for the repopulation of holdings in the event of depopulation in the framework of national programmes for the control or eradication of bovine tuberculosis, bovine brucellosis, ovine and caprine brucellosis, bluetongue and transmissible spongiform encephalopathies. [Full text.](#)

Government bonds. Order ETD/1135/2023, of 18 October, which publishes the results of the issue and completes the characteristics of the fifteen-year State Bonds indexed to European inflation to be issued in the month of October 2023 by means of the syndication procedure. [Full text.](#)

Aids. Royal Decree 786/2023, of 17 October, amending Royal Decree 956/2017, of 3 November, establishing the regulatory framework for aid to professional organisations in the fisheries and aquaculture sector, co-financed by the European Maritime and Fisheries Fund, and its regulatory bases at State level, and amending Royal Decree 418/2015, of 29 May, which regulates the first sale of fisheries products, and Royal Decree 277/2016, of 24 June, which regulates professional organisations in the fisheries and aquaculture products sector. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 5 September 2023. Capital increase. [Full text.](#)

The DGSJFP upheld the appeal lodged against the Registrar's negative classification, in relation to the validity of the bank certificate evidencing the payment of the cash contributions made in a capital increase. It is a bank certificate issued more than two months before the date on which the deed was executed, but not before the date on which the general meeting at which the increase was decided was held. In this respect, although art. 62.3 LSC establishes that the validity of the certificate is two months from its date, art. 189.1 RRM provides that the date of the deposit cannot be more than two months prior to the date of the deed of incorporation of the resolution to increase the share capital. In view of the discrepancy between the two provisions, the DGSJFP maintains that it is the date of the certificate that effectively accredits the monetary contribution, which must be no more than two months prior to the date of the deed of increase.

DGSJFP. Resolution of 11 September 2023. Incorporation of an S.L. [Full text.](#)

The DGSJFP dismisses the appeal lodged against the negative classification issued by the Commercial Registrar in relation to the monetary contribution made by the sole shareholder of a company. In this case, the contribution was handed over to the notary for deposit in accordance with the terms of Art. 62.1 LSC. However, once the period of 5 days stipulated in Art. 132.2 RRM had elapsed, the notary added a correction to the deed in accordance with the terms of the aforementioned article, by virtue of which he amended the deed, stating that the contribution would finally be made on the basis of the credit that the contributor had against the notary. The registrar suspended the registration of the deed on the grounds that the contributor had not consented to the conversion of the money transferred into a claim. In this respect, the

DGSJFP cites the doctrine set out in previous decisions, according to which, although Art. 133.2 RRM provides for the possibility of rectification with the sole intervention of the notary, on his own initiative or at the request of a party, without the concurrence of the grantors; this must be subject to restrictive interpretation, as in no case can it replace the will of the grantors. Therefore, in view of the facts, it concludes that the rectification carried out is not authorised by the aforementioned article, and the contested classification must therefore be revoked.

DGSJFP. Resolution of 18 September 2023. Deposit of accounts. [Full text.](#)

The DGSJFP dismissed the appeal lodged against the negative classification by the Commercial Registrar of the filing of the annual accounts of an S.A. on the grounds that they were not accompanied by the duly completed declaration of identification of the beneficial owner. The appellant claims that the company had already filed the corresponding declaration in previous years using the form previously in force, without the data having changed, and therefore it was not necessary to update it. In this respect, the DGSJFP clarifies the novelty of the obligation to reflect not only the percentage held by the person in control, but also whether that control is exercised through a shareholding in capital or through voting rights. Therefore, given that this latter information was not required in the previous forms (such as the one discussed in this case), it is necessary to complete this new information using the current form. The DGSJFP therefore concludes that the argument that, since there is no change in the situation, it is not necessary to provide additional information cannot be accepted, since if the type of control exercised is not stated in the declaration of beneficial ownership, the absence of essential information such as the type of control exercised would be perpetuated. The DGSJFP therefore dismisses the appeal and upholds the contested classification.

Remarkable Case Law

Judgment of the Supreme Court, Civil Division, of 3 October 2023. Part-time life insurance. [Full text.](#)

The Supreme Court upholds the appeal brought by an insurance company against the second instance judgment, handed down in the context of proceedings in which the interpretation of the "delimiting" clause of the coverage of a part-time life insurance contract is disputed.

The procedure was initiated as a result of the company's refusal to provide death cover to an insured, on the grounds that his policy had lapsed. The disputed clause set the age limit at 65 years of age and established the expiry of the coverage at the end of the annuity in which the insured person reached 65 years of age. Given that the annuities of the contract ended on 15 December and the insured died on 31 December, having already reached 65 years of age, the company refused to pay the coverage.

When the widow of the insured filed a claim, the Court of First Instance upheld it on the grounds that the clause lacked sufficient clarity, it being plausible that the annuity included the calendar year, and indicated that the sense most favourable to the consumer should prevail by virtue of articles 1285 and 1288 CC. Upon appeal by the company, the Provincial Court dismissed the appeal on the basis of the same arguments put forward at first instance.

The insurer lodged an appeal in cassation under art. 3 of the LCS and the doctrine of the Supreme Court which interprets this precept, on the grounds that, contrary to what the second instance judgement maintains, the clause is clear and precise. In this sense, the Supreme Court affirms that the termination of the insurance at 65 years of age constitutes a clearly worded clause, which does not generate interpretative doubts, which determine the application of the *contra proferentem* rule of art. 1288 of the CC and its

jurisprudential interpretation, nor is it possible to reach a different conclusion based on a systematic hermeneutic of the policy (art. 1285 CC).

Judgment of the Court of Justice of the European Union, Seventh Chamber, of 5 October 2023, Case C-565/22. Consumers' right of withdrawal from distance contracts. [Full text.](#)

The CJEU examines the question referred for a preliminary ruling by the Austrian Supreme Court on the interpretation of Article 9(1) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights concerning the right of withdrawal of consumers when concluding distance contracts with traders.

The question referred for a preliminary ruling arises in the context of proceedings in which a consumer association asks an e-learning platform company, after the initial free period of the subscription offered to consumers (trial period) has expired, to recognise once again a time limit for exercising the right of withdrawal.

The Austrian Supreme Court asks the CJEU whether that article guarantees the right of withdrawal only once in respect of a contract for the provision of services which provides for a trial period for the consumer, followed - in the absence of termination or withdrawal - by an extendable payment period, or whether that right is available to the consumer at each of the stages of conversion and extension of that contract. In this regard, the CJEU states that the aforementioned article must be interpreted as meaning that the consumer's right to withdraw from the contract is guaranteed only once in respect of the same contract for the provision of services, since, once the initial period has elapsed, the contractual conditions brought to the consumer's attention do not change.

Review of Interest: Directive (EU) of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers ("Consumer Directive")

On 30 October 2023, the Official Journal of the European Union ("OJEU") published Directive (EU) 2023/2225 of the Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC ("Consumer Directive").

The purpose of this Directive is to strengthen and ensure a high level of consumer protection and to facilitate the cross-border consumer credit market by including certain contracts that had been excluded from the scope of Directive 2008/48/EC.

It extends its scope of application to all credit agreements up to €100,000, irrespective of whether the creditor is a natural or legal person, and excludes from its application all credit agreements listed in Art. 2 of the Directive.

In the area of advertising, it adds provisions relating to credit agreements. Specifically, it stipulates that the basic information conveyed to consumers must be provided in a clear, concise and prominent manner by means of a representative example and shall in any case be free of charge, with particular attention to the needs of people with disabilities.

On the other hand, it establishes an obligation to assess the consumer's creditworthiness, according to which Member States shall require the creditor to carry out an assessment of the consumer's creditworthiness prior to the conclusion of a credit agreement. This assessment of the consumer's creditworthiness, based on information on his financial and economic situation in relation to the nature, duration, value and risks of the credit, must be

carried out in order to avoid irresponsible lending practices and over-indebtedness. The information on the consumer's situation, which the consumer must provide in order to assess his creditworthiness, must therefore contain, as a minimum, the consumer's income and expenditure, the current expenditure of the consumer and of his household and his financial commitments.

Furthermore, in relation to the form of the credit agreement, the rule provides that Member States shall require that credit agreements and any amendments thereto be drawn up on paper or on another durable medium and that a copy of the credit agreement be made available to all contracting parties. However, Member States may adopt or maintain national rules concerning the validity of the conclusion of credit agreements which are in conformity with Union law.

As regards withdrawal and early repayment of the credit agreement, the Directive provides that the consumer may withdraw from the credit agreement without penalty and without giving any reason within a period of 14 calendar days. This period shall start to run: (i) either from the day on which the credit agreement is concluded; (ii) or from the day on which the consumer receives the contractual terms and conditions and information in accordance with the terms provided for in the above-mentioned rule.

Finally, the Directive will enter into force on 19 November, i.e. 20 days after its publication in the OJEU. It also establishes a deadline for Member States to transpose the laws, regulations and administrative provisions necessary to comply with the provisions of this Directive until 20 November 2025, with such measures to be applied from 20 November 2026.

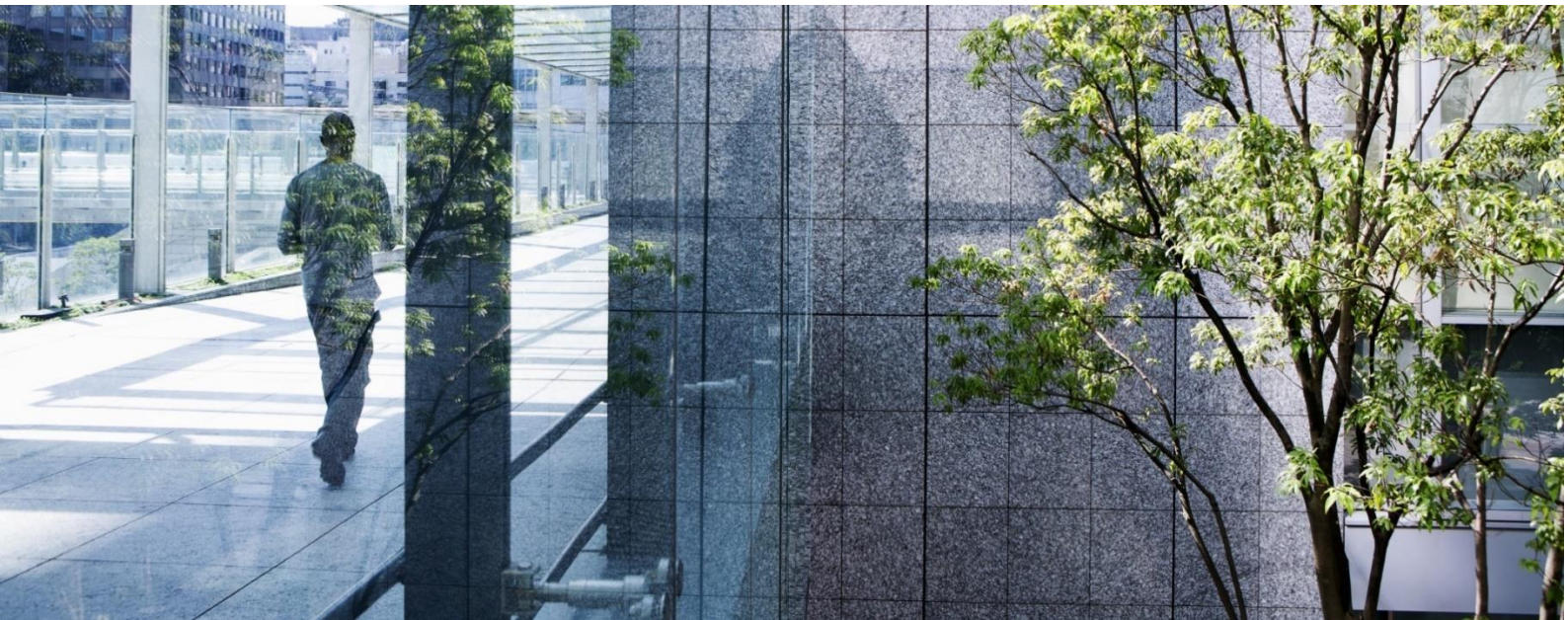
The full text is available at the [following link](#).

Contact

Clementina Barreda, Partner, Mazars

Tel: 915 624 030

clementina.barreda@mazars.es



Newsletter coordinated and edited by Clementina Barreda, Adriana Revelles, Jesús Calavia and Ignacio Sierra.

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services*. Operating in over 95 countries and territories around the world, we draw on the expertise of 47,000 professionals – 30,000 in Mazars' integrated partnership and 17,000 via the Mazars North America Alliance – to assist clients of all sizes at every stage in their development.

* where permitted under applicable country laws.

www.mazars.com