



## Corporate Law newsletter

### Outstanding regulation developments

**Invoicing processes.** Royal Decree 1007/2023, of 5 December, approving the Regulation that establishes the requirements to be adopted by the computer or electronic systems and programmes that support the invoicing processes of businesspersons and professionals, and the standardisation of formats for invoicing records. [Full text.](#)

**Digital transformation of the public justice service.** Royal Decree-Law 6/2023, of 19 December, approving urgent measures for the execution of the Recovery, Transformation and Resilience Plan in matters of public service of justice, civil service, local system and patronage. [Full text.](#)

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## Other outstanding regulation development

**CNMC. Electricity system.** Resolution of 30 November 2023, of the Comisión Nacional de los Mercados y la Competencia, which establishes a maximum reserve price for the annual auction for the assignment of the active demand response service for the 2024 season. [Full text.](#)

**Ministerial departments.** Royal Decree 1009/2023, of 5 December, which establishes the basic organic structure of ministerial departments. [Full text.](#)

**Personal and corporate income tax.** Royal Decree 1008/2023, of 5 December, amending the Personal Income Tax Regulations, approved by Royal Decree 439/2007, of 30 March, in relation to payments in kind, deduction for maternity, obligation to declare, payments on account and special regime applicable to workers, professionals, entrepreneurs and investors travelling to Spanish territory, and the Corporation Tax Regulations, approved by Royal Decree 634/2015, of 10 July, in relation to withholdings and payments on account. [Full text.](#)

**Unemployment protection.** Royal Decree-Law 7/2023, of 19 December, adopting urgent measures to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the reconciliation of family and professional life for parents and carers and repealing Council Directive 2010/18/EU, and for the simplification

and improvement of the level of unemployment protection. [Full text.](#)

**Intellectual Property Commission.** Royal Decree 1130/2023, of 19 December, which develops the composition and operation of the Second Section of the Intellectual Property Commission and which amends Royal Decree 1023/2015, of 13 November, which regulates the composition, organisation and exercise of functions of the First Section of the Intellectual Property Commission. [Full text.](#)

**Agricultural policy.** Royal Decree 1177/2023, of 27 December, amending various royal decrees issued for the application in Spain of the Common Agricultural Policy. [Full text.](#)

**Investor protection.** Royal Decree 1180/2023, of 27 December, amending Royal Decree 948/2001, of 3 August, on investor compensation systems, and the Regulations for the implementation of Law 35/2003, of 4 November, on collective investment institutions, approved by Royal Decree 1082/2012, of 13 July. [Full text.](#)

**VAT.** Royal Decree 1171/2023, of 27 December, amending the Regulation on Value Added Tax, approved by Royal Decree 1624/1992, of 29 December; the Regulation on Excise Duties, approved by Royal Decree 1165/1995, of 7 July, and the Regulation on amicable procedures for direct taxation, approved by Royal Decree 1794/2008, of 3 November. [Full text.](#)

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

### **DGSJFP. Resolution of 29 November 2023. Annual accounts. [Full text.](#)**

The DGSJFP dismisses the appeal filed against the negative classification of the Commercial Registrar in relation to the filing of annual accounts for the financial year 2022. The Registrar decided not to register the annual accounts for the financial year 2022, since the company's accounts sheet was temporarily closed until the accounts for the financial year 2021 had been filed. For its part, the appellant argues that the annual accounts for the financial year 2021 should not be filed, since the company was incorporated on 30 December of that year and was not registered until February 2022, which it understands to be the date to be taken into account for the commencement of the obligation to file the annual accounts. The DGSJFP states that although no commercial activity has been carried out, the appellant must submit the annual accounts for the financial year 2021, since its Articles of Association state the date on which its operations commenced as the date of its incorporation.

### **DGSJFP. Resolution of 30 November 2023. Company name. [Full text.](#)**

The DGSJFP dismissed the appeal brought against the refusal certificate issued by the Central Commercial Registrar II in relation to the application for a negative name certificate. The Registrar justified his decision on the grounds of the notorious phonetic similarity between the proposed company name and two other registered names and suggested the addition of a distinguishing term. For its part, the appellant argues that the non-registration of one and the provisional closure of another of the companies with the same name would contribute to allowing the reservation of the company name applied for. The appellant also points to the presence of numerous companies with similar names which co-exist without

problems on the market, which reinforces the idea that there is no risk of confusion as to the identity of those names, and that the difference in the objects of the companies helps to avoid confusion in legal transactions. The DGSJFP points out that the alleged closure of the registration does not automatically lead to the cancellation of the company name and that the minimal grammatical differences, as well as the graphic and phonetic similarity of the names analysed constitute a case of substantial identity in accordance with article 408.1 RRM.

### **DGSJFP. Resolution of 4 December 2023. Administrators. [Full text.](#)**

The DGSJFP dismisses the appeal brought against the negative classification issued by the Commercial Registrar in relation to the registration of a clause in the articles of association. The registrar held that that clause did not comply with Articles 23, 217 and 218 of the LSC, which require that the system of remuneration be clearly determined in the articles of association, and that the choice between the various forms of remuneration provided for therein cannot be left to the discretion of the general meeting. The appellant submits that the Registrar's interpretation of Article 217 of the LSC is erroneous and cites the decision of 9 August 2019 of the DGSJFP in which, according to the appellant, a similar factual situation is analysed favourably. In ruling on the present appeal, the DGSJFP states that the decision cited by the appellant constitutes a different factual situation, since in that case the articles of association clearly laid down two specific remuneration systems, whereas in the present case they are left to the discretion of the general meeting. The DGSJFP also stresses that the 2014 reform of the LSC reinforces the obligation for the articles of association to determine the system of directors' remuneration.

## Remarkable Case Laws.

**Judgment of the General Court of the European Union (GCEU), Sixth Chamber, of 6 December 2023. Registration as a trade mark, nature of the product. [Full text.](#)**

The General Court dismisses the appeal in a case concerning the registration of a trade mark for toy 'minifigures' in human form. A competing company applied for a declaration of invalidity of the three-dimensional trade mark for such figures on two grounds; first, on the ground that the minifigures were not to be regarded as a toy but as a 'constructional nesting' figure. Secondly, because, according to the appellant, the minifigures did not contain any element going beyond their technical function. As regards the first plea, the General Court considers that the minifigures have a dual nature, being constructional toy figures. As regards the second plea, the General Court of Justice of the European Union overruled the appellant, concluding that there are indeed decorative elements which go beyond the technical function of the product. It therefore dismissed the appeal and held that the registration of a trade mark of the shape at issue does not prevent third party competitors from marketing or distributing goods with similar shapes which share that dual nature.

**Judgment of the Supreme Court (SC). First Chamber, of 24 October 2023. Non-existence of disbursement in a share subscription. [Full text.](#)**

The SC dismissed the appeal in cassation in a case concerning simulation of payment in the subscription of shares in a company that had changed its corporate form. Several shareholders filed a lawsuit against other shareholders and against the company itself requesting the nullity of the subscription of the shares in question and the consequent reduction of capital through the redemption of

the shares due to the simulation of payment without real contribution. The court of first instance recognised the simulation of the payout, but the redemption of shares was unsuccessful. After the appeal was dismissed, one of the plaintiffs filed an appeal in cassation requesting the nullity of the company itself, as it had been incorporated with the minimum legal amount of share capital and without a real contribution. The SC resolved the issue by declaring the nullity of the subscription on the grounds that the creation of shares that did not correspond to a real contribution was null and void, but not the nullity of the company itself.

**Judgment of the Court of Justice of the European Union (CJEU) of 21 December 2023. Consumer protection. *Leasing contract.* [Full text.](#)**

The CJEU gives a preliminary ruling on this question and clarifies the rights of consumers in relation to car *leasing* contracts. In this case, several consumers withdrew months after the conclusion of their *leasing contracts* without obligation to purchase. They applied to the Regional Civil and Criminal Court of Ravensburg (Germany) for recognition of their right of withdrawal on the grounds that the 14-day time limit laid down in Art. 6 of Directive 2002/65 had not expired because they had not been properly informed of their rights at the time of conclusion of the contracts. The Regional Court referred the matter to the CJEU. The CJEU declared that a consumer who concludes a *leasing contract* without an obligation to purchase does not have a right of withdrawal when the contract states that there is no obligation to purchase the vehicle at the end of the *leasing period*, since in the case of these contracts the main object is the rental of the vehicle, and they cannot be classified as a financial credit service contract for the purposes of the Directive, and the right of withdrawal does not arise.



## Review of Interest: Judgment of the High Court of Justice of the European Union (Grand Chamber) of 21 December 2023 (Case C-333/21). Abuse of dominant position.

The Court of Justice of the European Union ("CJEU") is examining several questions referred for a preliminary ruling by the Commercial Court of Madrid concerning the application of European competition law in the field of sport.

Those questions arise in connection with the rules of the *Fédération Internationale de Football Association* ('FIFA') and the *Union des Associations Européennes de Football* ('UEFA'), which make teams' membership of any proposed new club football competition subject to the prior authorisation of both institutions, prohibiting them and their own players from taking part in it and providing for sanctions in the event of non-compliance.

Specifically, the dispute arose from the decision of 12 European clubs to launch, through the Spanish company *European Superleague Company*, a project for a new football competition, known as the 'Superliga'. FIFA and UEFA opposed that project and reacted by threatening sanctions against those clubs and their players, including exclusion from any competition organised by those institutions.

In the face of that opposition, the *European Superleague Company* brought an action before the Commercial Court, in an action against FIFA and UEFA, on the grounds that their rules on prior authorisations, bans and sanctions for competitions may constitute an abuse of a dominant position.

In the context of that litigation, the Commercial Court referred a number of questions to the CJEU in order to examine whether the system of prohibitions and sanctions provided for in

UEFA's and FIFA's regulations are compatible with EU competition law.

In this regard, the CJEU considers that both the organisation of sporting events and the exploitation of broadcasting rights constitute economic activities. Consequently, they must comply with the competition rules and are therefore subject to EU competition law.

This is without prejudice to the fact that sport, as an economic activity, has certain specific characteristics, such as the existence of sporting institutions or associations with regulatory, control or sanctioning powers.

The CJEU also states that where an undertaking or institution, such as FIFA or UEFA, is in a dominant position, it has the power to determine the conditions under which potentially competing undertakings may enter the market. However, such rules must be transparent, objective, non-discriminatory and proportionate.

The CJEU confirms that FIFA's and UEFA's eligibility (prior authorisation) rules are not subject to any such criteria, and consequently it is abusing its dominant position.

Similarly, it provides that its rules on authorisation, monitoring and penalties, given their arbitrary nature, must be regarded as an unjustified restriction on the freedom to provide services.

Consequently, the judgment concludes that the disputed internal rules of FIFA and UEFA amount to a restriction of competition as a result of an abuse of their dominant position, and are therefore not compatible with EU law.

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

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