

Corporate Law newsletter

Outstanding regulation developments

Digital transformation. Order TDF/1461/2023, of 29 December, which approves the regulatory bases and announces the call for applications for the granting of aid, in the field of digitalisation, for the digital transformation of strategic productive sectors through the creation of demonstrators and use cases of Data Sharing Spaces, within the framework of the Recovery, Transformation and Resilience Plan-Next Generation EU (Sectorial Data Spaces Programme). [Full text.](#)

Foreign investments. Order ECM/57/2024, of 29 January, establishing the procedures applicable to foreign investment declarations. [Full text.](#)

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mazars.taxlegal@mazars.es

Other outstanding regulation development

Insurance Entities. Order ECM/1450/2023, of 22 December, on administrative authorisation for the transfer of the portfolio of life and accident insurance contracts of Previsión Vida y Seguros, Mutuality de Previsión Social, to Hermandad Nacional de Arquitectos, Arquitectos Técnicos y Químicos, Mutuality de Previsión Social, and revocation of the administrative authorisation for the exercise of the insurance activity of the transferring entity. [Full text.](#)

Social Security. Royal Decree 1133/2023, of 19 December, which regulates the calculation of periods worked in international intergovernmental organisations for the purposes of recognition and calculation of certain pensions of the Social Security system in its contributory modality. [Full text.](#)

Subsidies. Royal Decree 2/2024, of 9 January, amending Royal Decree 949/2021, of 2 November, establishing the regulatory bases for the granting of subsidies for investments in biosecurity for the improvement or construction of centres for the cleaning and disinfection of livestock road transport vehicles, as well as for investments in biosecurity in nurseries, undertaken by certain producers of reproductive plant material, within the framework of the Recovery, Transformation and Resilience Plan. [Full text.](#)

Tobacco. Regulation and control. Royal Decree 47/2024, of 16 January, amending Royal Decree 579/2017, of 9 June, regulating certain aspects relating to the manufacture, presentation and marketing of tobacco products and related products. [Full text.](#)

Digital transformation. Order TDF/1461/2023,

of 29 December, which approves the regulatory bases and announces the call for applications for the granting of aid, in the field of digitalisation, for the digital transformation of strategic productive sectors through the creation of demonstrators and use cases of Data Sharing Spaces, within the framework of the Recovery, Transformation and Resilience Plan-Next Generation EU (Sectorial Data Spaces Programme). [Full text.](#)

Statistical Plan. Royal Decree 51/2024, of 16 January, approving the Annual Programme 2024 of the National Statistical Plan 2021-2024. [Full text.](#)

State Debt. Order ECM/25/2024, of 19 January, providing for the creation of State Debt during the year 2024 and January 2025. [Full text.](#)

Common Agricultural Policy. Royal Decree 92/2024, of 23 January, amending various royal decrees relating to the fruit and vegetable, viticulture and apiculture sectors, and to the regulation of different aspects of the exercise of agricultural activity and the management of the Common Agricultural Policy. [Full text.](#)

Taxes. Order HAC/56/2024, of 25 January, modifying the ministerial orders approving self-assessment forms 123, 210, 216, and information return forms 193 and 296 and Order EHA/1658/2009, of 12 June, establishing the procedure and conditions for the direct debit of payment of certain debts the management of which is attributed to the State Tax Administration Agency. [Full text.](#)

Foreign investments. Order ECM/57/2024, of 29 January, establishing the procedures applicable to foreign investment declarations. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

Self-monitoring Jury. Resolution of 12 January 2024. Publicity. [Full text.](#)

The Seventh Section of the AUTOCONTROL Jury dismisses the complaint filed by an individual against a mobile telephone company for an advertisement showing a scene of an elderly man with his granddaughter under a parody of emotive messages which are then replaced by an offer of products. The complainant alleged that the advertising in question violated the dignity of the elderly, as it conveyed a message of abandonment towards the grandfather. The Jury concludes that the complained advertising does not infringe the rule of AUTOCONTROL's Code of Advertising Conduct which includes the principle of discriminatory advertising. The purpose of this principle is to ensure that commercial communications that may be discriminatory, in this case on the grounds of age, are avoided. The Jury of Autocontrol concludes that the complained advertising is a parody of Christmas advertisements where there is no appeal to abandon but an appeal to emotive messages that are replaced by an attractive and consistent product offer.

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 deposit of the accounts for the financial year 2022. The registrar decided not to make the requested deposit because the certification of the minutes of the meeting for approval of the accounts was issued by two of the three joint administrators who make up the administrative body. For their part, the appellants

argue that the exercise of the power of representation is governed by the LSC, by virtue of which, if there are more than two joint administrators, the power of representation shall be exercised jointly by at least two of them in the manner determined in the articles of association. Consequently, there is an express reference to the statutory regulation of the power of representation which, in this case, regulates the following: "*c) by several joint administrators, with a minimum of two and a maximum of seven, who shall always act jointly*", from this provision in application of article 109 of the RRM, all of them, the three in this case, must issue the certification. The appeal is therefore dismissed and the registrar's note of qualification is confirmed.

DGSJFP. Resolution of 28 November 2023. Audit of accounts [Full text.](#)

The DGSJFP dismisses the appeal filed against the qualification note issued by the commercial registrar, rejecting the partial cancellation of a registration of the appointment of an auditor. The registrar decided not to carry out the requested registration on the grounds that the revocation of the auditor when he had already carried out a previous financial year infringed the right granted to minority shareholders under Article 265 of the LSC. For their part, the appellants argue that the minority shareholders agree with the abolition of the obligation to have the accounts reviewed by the auditor, as well as the absence of affected corporate rights and the infringement of Article 263.2 of the LSC. The DGSJFP confirms the rating note as regards the revocation of the auditor's appointment for the verification of the ACS for financial year 2022, but rectifies the rating for financial year 2023, whose financial year is not closed at the date of adoption of the resolution, so there is no detriment whatsoever. Consequently, the DGSJFP agreed to partially dismiss the appeal and partially confirm the registrar's note.

Remarkable Case Laws.

Judgment of the Supreme Court, Civil Division, of 9 January 2024. Liability of insolvency administrators. [Full text.](#)

The Supreme Court upheld an appeal in cassation brought by a company in the context of proceedings in which a liability action was brought against the insolvency administrators for damages. This proceeding was initiated by a claim brought by a creditor against the insolvency administrators of a company, as the latter had not respected the ordinary order of payment of claims against the assets. The claim being upheld at first instance, the defendant appealed, reiterating the already alleged statute of limitations of the action (one year from the communication to the creditors of the company's liquidation plan by the insolvency administrators), which had been rejected at first instance. The appeal being upheld on the grounds that the action was time-barred, the plaintiff lodged an appeal in cassation against this decision on the grounds of articles 1.968.2 and 1.969 of the CC and its case law, on the grounds that the calculation of the time limit for the exercise of the action was erroneous. The Supreme Court concludes that until the injured party has precise knowledge of the damages suffered, the limitation period should not begin to be calculated. In this sense, it emphasises that, although the court of second instance understands that this circumstance was fulfilled at the time of the communication of the liquidation plan in which the creditors against the estate were ordered to pay their claims, it was also necessary to carry out the liquidation operations to ascertain the existence, content, scope and effects of the present action (art. 1969 CC), which would not have been possible to know until the liability proceedings had already begun. The Supreme Court therefore understands that the action is not time-barred and proceeds to uphold the appeal.

Judgment of the Supreme Court, Civil Division, of 17 January 2024. Scope of the power of representation and nullity of contracts. [Full Text](#)

The Supreme Court partially upheld an appeal in cassation brought by a technology cluster in the context of proceedings in which it sought the declaration of nullity of an agreement and the reimbursement of an amount that had been paid under the agreement. In its application, the plaintiff considered that the agreement contravened an imperative rule contained in an autonomous regional law, since the amount paid under the agreement (money from the collection of taxes) had been used for a purpose not provided for in that law, for which reason it sought the nullity of the agreement, together with the reimbursement of that amount. Having rejected the claim by the court of first instance, the plaintiff lodged an appeal with the court of second instance, reiterating its claim, which was upheld at second instance on the grounds that the agreement was null and void for having given the tax fees a use not provided for in the aforementioned law. For its part, the defendant lodged an appeal in cassation against the second instance judgment, alleging, among other grounds, infringement of Article 6.3 of the CC and its case law. After examining the appeal, the Supreme Court concluded that the court of second instance did not take into account that the autonomous community regulations excluded tax rates from their scope of application and that, therefore, the mandatory rule alleged by the plaintiff had not been infringed. Thus, the Supreme Court declared that the agreement signed was fully valid and effective, and therefore the reimbursement of the amount paid by virtue of the agreement was not appropriate, and it proceeded to set aside the judgment under appeal, confirming the first instance judgment..

Review of Interest: Judgment of the Supreme Court, December, 19th, 2023 (Judgment no. 1755/2023). Intellectual Property.

The Supreme Court ruling of December 19th 2023 resolves the controversy that arose following a lawsuit brought by a company against the creators of some drawings that were the subject of the controversy on the grounds that they had infringed its reproduction and transformation rights (arts. 18 and 21 of the LPI).

The appellant company had acquired the intellectual property rights to the drawings by virtue of various assignment contracts from the creators. Specifically, the creators assigned the reproduction rights over the specific drawings (not over the characters that could represent drawings similar to those assigned), as well as the transformation rights over the audiovisual works. The conflict between the parties arose following the defendants' (creators') entrepreneurial initiative in which they made use of the drawings through the unauthorised sale of products containing drawings similar to those assigned to the plaintiff.

The Commercial Court upheld the claim brought against the defendants urging them to cease any of the conducts of infringement of the rights of reproduction, distribution, communication to the public, transformation, etc.

The defendants appealed and the Provincial Court partially upheld the appeal on the grounds that the prohibition of reproduction or transformation of the drawings in any scene was unlawful, as it prevented the defendants from using other drawings and characters in their illustrations that had not been the subject of the assignment.

The company appealed in cassation on the grounds mainly of infringement of the reproduction and transformation rights and on the grounds that the judgment under appeal

incorrectly considered the content and scope of the rights retained by the authors.

The Supreme Court, after the appropriate analysis of the question, concludes that at no time is it disputed whether or not the defendants have infringed the assigned rights, but rather the extent of the assignment and whether or not it can cover the activities carried out by the defendants.

By virtue of the foregoing, the SC, in order to determine the extent of the assignment of the rights, differentiates between the drawings, whose rights were assigned, and the characters depicted in each drawing, whose rights were not assigned.

Thus, the SC establishes that as regards the right of reproduction of the drawings, there will not be an infringement of that right if the drawings are sufficiently different not to be considered plagiarism. In other words, even if it is the same character, as long as the drawing is sufficiently different, plagiarism will not have been committed.

As regards the transfer of the right of transformation of the transferred designs, the Court considers that it must be made in respect of a specific work and for a specific transformative act, i.e. the injunction to cease and desist must be limited only to the adaptation to audiovisual works.

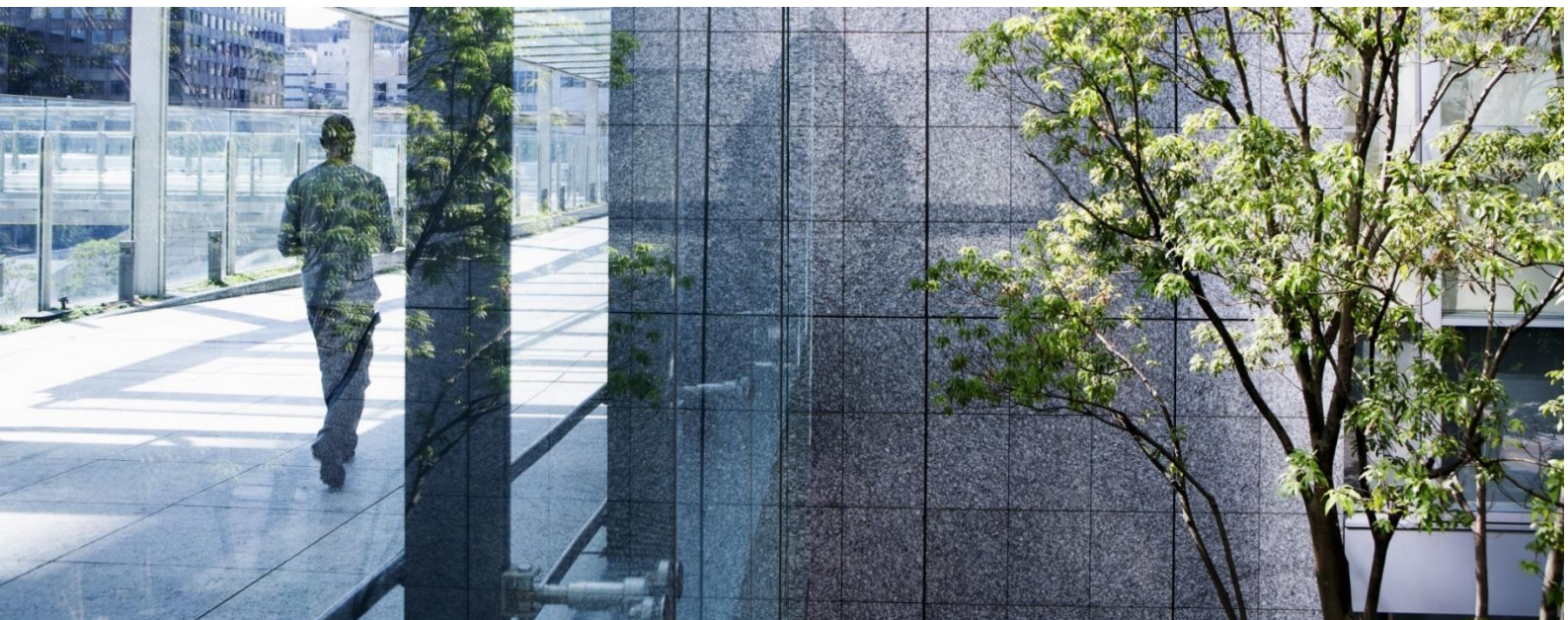
Despite the SC's acknowledgement of the assignment of the reproduction and transformation rights in the aforementioned terms, it ruled out condemning the defendants on the grounds that they had not committed an infringement in the terms alleged by the plaintiff, and therefore dismissed the plaintiff's appeal and adjusted its ruling to the conviction handed down by the Provincial Court.

Contact

Clementina Barreda, Partner, Mazars

Tel: 915 624 030

clementina.barreda@mazars.es



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

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