



Corporate Law newsletter

Outstanding regulation developments

Telecommunications. Royal Decree 442/2024, of 30 April, which amends the Regulation establishing the requirements for the marketing, commissioning and use of radio equipment, and regulating the procedure for conformity assessment, market surveillance and the system of penalties for telecommunications equipment, approved by Royal Decree 188/2016, of 6 May. [Full text.](#)

Influencers. Royal Decree 444/2024, of 30 April, which regulates the requirements for the purpose of being considered a user of special relevance of video exchange services through a platform, in development of article 94 of Law 13/2022, of 7 July, General Law on Audiovisual Communication. [Full text.](#)

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Other outstanding regulation developments

Principle of financial prudence. Resolution of 4 April 2024, 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.](#)

Transport. Royal Decree 368/2024, of 9 April, on the transfer to the Autonomous Community of the Basque Country of the functions of the State Administration corresponding to local rail passenger transport services. [Full text.](#)

Public procurement. Royal Decree 364/2024, of 9 April, which creates the Interministerial Commission for the incorporation of innovation criteria in public procurement and regulates the Plan for Innovation in Public Procurement. [Full text.](#)

Auditing. Resolution of 11 April 2024, of the Spanish Accounting and Audit Institute, which publishes the update of the Technical Auditing Standards, resulting from the adaptation of the International Standards on Auditing for their application in Spain (ISA-ES), the Internal Quality Control Standards, resulting from the adaptation of the International Standards on Quality Management 1 and 2 for their application in Spain (ISA 1-ES and ISA 2-ES) and the Glossary of Terms, resulting from the adaptation of the one published together with these International Standards for their application in Spain. [Full text.](#)

International treaties. Resolution of 15 April 2024, of the General Technical Secretariat,

on the application of article 24.2 of Law 25/2014, of 27 November, on Treaties and other International Agreements. [Full text.](#)

Ministry of Economy. Royal Decree 410/2024, of 23rd April, which develops the basic organic structure of the Ministry of Economy, Trade and Enterprise. [Complete text.](#)

Central Register of sex offenders. Royal Decree 407/2024, of 23 April, amending Royal Decree 1110/2015, of 11 December, which regulates the Central Register of Sex Offenders. [Full text.](#)

Sectorial Conferences. Royal Decree 440/2024, of 30 April, on criteria for the functioning of the Sectorial Conferences. [Full text.](#)

5G. Royal Decree 443/2024, of 30 April, approving the National Security Scheme for 5G networks and services. [Full text.](#)

Banco de España. Resolution of the Executive Commission of the Banco de España of 30 April 2024 amending the Resolution of 11 December 1998 approving the general clauses applicable to the Banco de España's monetary policy operations.

Canary Islands. Royal Decree 436/2024, of 30 April, which amends the Regulations for the implementation of Law 19/1994, of 6 July, amending the Canary Islands Economic and Fiscal Regime, in matters relating to tax incentives in indirect taxation, the reserve for investments in the Canary Islands and the Canary Islands Special Zone, approved by Royal Decree 1758/2007, of 28 December. [Full text.](#)

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Resolution of 11 March 2024. Extension of the corporate purpose. [Full text.](#)

The DGSJFP dismissed the appeal filed against the refusal of the Commercial Registrar to register the deed of extension of the corporate purpose and amendment of the articles of association of a limited liability company, whose resolutions were adopted by a 94.47% majority at the General Meeting. The initial object of the company was the cleaning and maintenance of buildings. With the extension, disinfection services were added, and the following mention was included: "*road transport, transport agency*". The registrar suspended the registration because the deed did not show that the shareholders in favour of the resolution had been informed of it, as provided for in art. 348 LSC, as well as the declaration by the directors that no shareholder had exercised the right to withdraw from the company. In this respect, the company appealed, arguing that there was no substantial modification of the corporate purpose, but rather a mere specification of the same. The DGSJFP confirmed the qualification note, stating that to the extent that the corporate purpose is extended to an activity other than the one it carried out, as in this case, it falls under the concept of substantial modification of the corporate purpose and therefore gives rise to the right of separation, and to that effect must comply with art. 348 of the LSC.

DGSJFP. Resolution of 22 March 2024. Agenda. [Full text.](#)

The DGSJFP partially dismisses the appeal filed against the qualification note issued by the Commercial Registrar, refusing to register a deed of conversion into public deed of corporate resolutions of dissolution and liquidation. The Registrar refused registration on the grounds: (i) that the notice was not sent directly by the administrator, (ii) that the cause of dissolution and

liquidation was not specified, and (iii) that the company had been dissolved (iii) that the agenda did not authorise the liquidation of the company. The DGSJFP overturns the first two defects and confirms the third. In relation to the first, it clarifies that the sending of the notice of meeting by a third party is valid if it is signed by the administrator. Therefore, the notice must come from the administrator, even if the sending of the notice is handled by a third party. In relation to the second, the DGSJFP states that it is not necessary to specify the specific cause of dissolution in the agenda. However, in relation to the third alleged defect, it considers that the content of any resolution dealing with the winding up of the company must be specified. Thus, the DGSJFP concludes that the agenda must be clear and precise, and that the resolutions on the dissolution and liquidation of the company must be clearly defined therein.

DGSJFP. Resolution of 9 April 2024. Deposit of annual accounts. [Full text.](#)

The DGSJFP dismisses the appeal brought against the refusal to file the annual accounts for the financial year 2022 of a company. The Registrar refused the filing because the company's tax number had been revoked by the Tax Agency. Pursuant to AP 6 of the General Tax Law, a marginal note had been made on the company's registration page, stating that the page had been closed. In this respect, the company appealed, claiming that the qualification note did not specify the details of the marginal note made. For its part, the DGSJFP points out that, if the marginal note of closure due to revocation of the NIF is in force, no entry can be made on the sheet open to the offeree company. Therefore, acts that have been formalised previously cannot be registered, in application of the principle of priority (art. 10 RRM), confirming the Registrar's note of qualification.

Relevant case law

Judgment of the Supreme Court, Civil Division, of 10 April 2024. Trademark infringement. [Full text.](#)

The Supreme Court upheld an appeal in cassation brought by a company engaged in textile design and production in proceedings for trademark infringement and unfair competition against a competitor in the market. These proceedings were initiated as a result of a lawsuit brought by the former against the competitor company, on the grounds that it was making use of the renowned trademark "ZARA", infringing the exclusive rights that the plaintiff has over that trademark. The claim having been dismissed at first instance, the plaintiff appealed, reiterating the alleged infringement of the trademark rights dismissed at first instance. Once the appeal was dismissed, the plaintiff filed an appeal in cassation against this decision based on articles 477.1 of the LEC for infringement of art. 34.2.c) of Law 17/2001 of 7 December, on Trademarks and the case law of the Supreme Court in judgments 505/2012 of 23 July and 63/2017 of 11 March case law. The Supreme Court emphasises (i) that there is no doubt that the trademark "ZARA" is renowned and (ii) that the defendant used this sign in its promotional campaign in 2010, advertising a prize draw for 1,000 euros in a "ZARA" gift card. From the above, the Supreme Court concludes that, although no goods or services were offered under the trademark, its image was used as a prize in the prize draw. This conduct, according to art. 34.2.c) of the LM, constitutes taking unfair advantage of the distinctive character and notoriety of "ZARA", which implies an unlawful transfer of its image and prestige, unduly benefiting from its reputation. The Supreme Court also clarifies that the defendant's conduct is not covered by the limits of trademark law, and therefore declares infringement of the "ZARA" trademark.

Judgment of the General Court of the European Union of 17 April 2024. Refusal to register a trademark. [Full text.](#)

The General Court of the European Union dismisses the appeal brought against the refusal by the European Intellectual Property Office to register the trade mark 'Pablo Escobar'. The appellant challenges the EUIPO's decision on three grounds. First, incorrect application of Article 7(1)(f) of Regulation (EU) 2017/1001 on the European Union trade mark (EUTMR). The appellant criticises the Board of Appeal of EUIPO for failing to examine whether the majority of the Spanish public would consider the mark to be immoral. The General Court dismisses this plea in its entirety. On the **basis** that, for that purpose, any person who may incidentally come across the mark in the exercise of his rights as an average consumer must be considered. Furthermore, it states that it must be based on the criterion of a 'reasonable person with average sensitivity and thresholds of tolerance'. The appellant's second ground of appeal alleges infringement of Article 94(1) EUTMR on the ground that the obligation to state reasons was not complied with, since the Board did not sufficiently specify the grounds on which registration was refused. The GC also rejects the plea. It emphasises that EUIPO set out its reasons and gave sufficient thought to the matter, coming to the conclusion that the name Pablo Escobar would be perceived as a symbol associated with organised crime. The third ground relied on by the appellant is the infringement of the fundamental right to the presumption of innocence, enshrined in Article 48 of the Charter, since Mr Pablo Escobar was never convicted. The General Court dismisses the plea in law in its entirety. It held that, despite the fact that he had never been "convicted" and had entered prison voluntarily, he was perceived as a symbol of organised crime.

Review of Interest Royal Decree 444/2024, of 30 April, which regulates the requirements for the purpose of being considered a user of special relevance of video exchange services through a platform, in development of article 94 of Law 13/2022, of 7 July, General Law on Audiovisual Communication.

The approval of Law 13/2022, of 7 July, General Audiovisual Communication Law (hereinafter, the "Audiovisual Communication Law"), meant the incorporation into Spanish law of Directive (EU) 2018/1808 on the provision of audiovisual communication services. Both regulations were created with the aim of adopting a [legal framework updated to the evolution of the audiovisual market, providing all the actors participating in it](#) with the "same rules of the game", also applicable to the figure of "influencers".

In this context, given that influencers carry out their activity in conjunction with other players in the audiovisual and advertising market, they should be [subject to the same obligations as audiovisual media service providers](#), consolidating basic principles of audiovisual communication and ensuring the protection of the general public and minors from audiovisual content.

The need to provide the figure of "influencers" with a legal framework applicable to the rest of audiovisual media service providers is the basis for the approval of [Royal Decree 444/2024, of 30 April, which regulates the requirements for the purpose of being considered a user of special relevance of video exchange services through a platform](#) (hereinafter "RD on influencers"), which defines "users of special relevance" ("influencers") according to two simultaneous criteria.

Firstly, the economic criterion, which requires these providers to have an [annual income of more than 300,000 euros](#) derived from their audiovisual activity as a whole. Secondly, the audience criterion, which requires that they have [more than one million followers on a video-sharing platform](#) or two million followers in their overall activity - all platforms taken together - and that they have published 24 or more videos per year.

All service providers that meet the criteria described above must register within two months in the [State Register of Audiovisual Providers as users of special relevance](#). If they already meet the aforementioned requirements on 1 May, they will have until 2 July 2024 to register.

As they are considered to be users of special relevance, "influencers" will also have to comply with the obligations set out for such subjects in the Audiovisual Communication Law and in [Law 34/1988, of 11 November, General Advertising Law](#) (hereinafter "General Advertising Law").

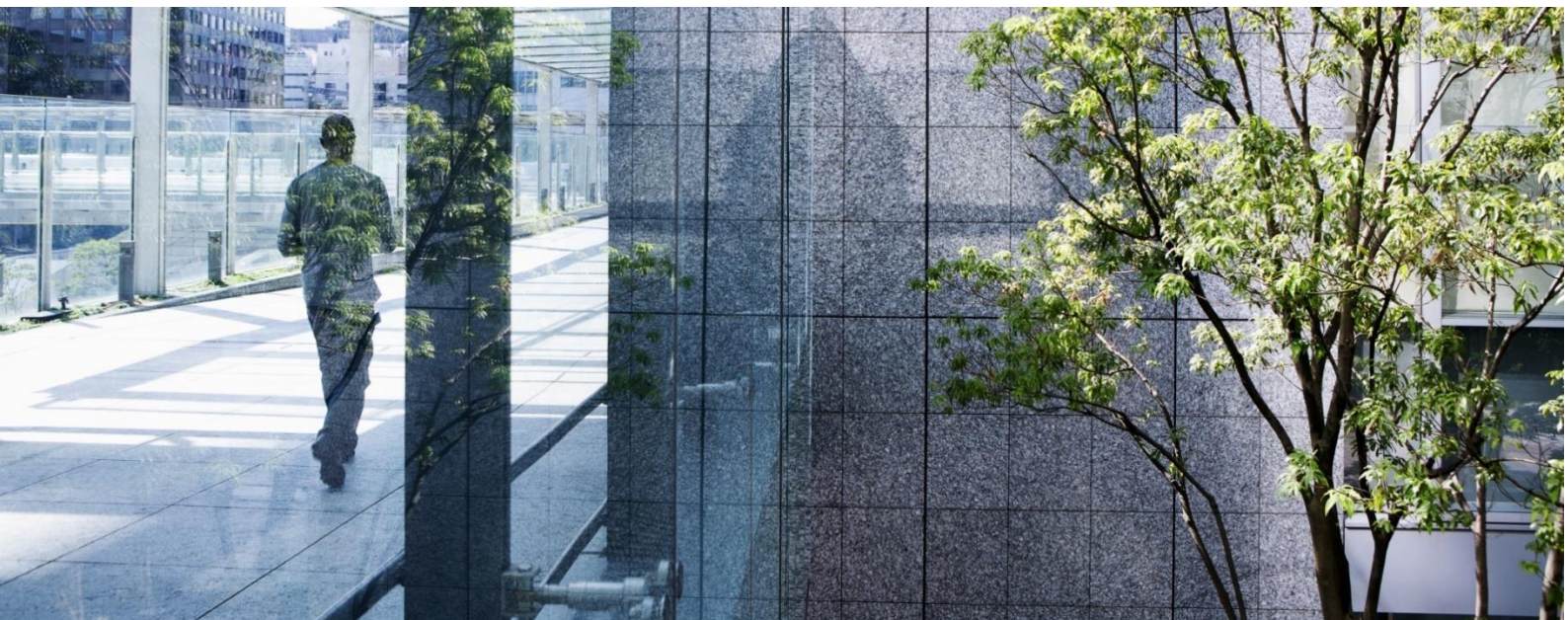
In this regard, they must comply with the provisions of Title I of the Audiovisual Communication Law - among other aspects, promoting the use of the Codes of Conduct for Self-Regulation and Corregulation of the [National Securities Market Commission \(CNMC\)](#). Likewise, they must comply with the provisions of the General Law on Advertising, [prohibiting content on tobacco products, alcoholic beverages, medicines, etc.](#), which do not comply with advertising regulations. They must also include [symbols that make it possible to identify the advertising nature](#) of the content produced.

This Royal Decree entered into force on 1 May 2024.

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

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