



Corporate Law newsletter

Outstanding regulation developments

General State Budget. Law 22/2021, of December 28th, on the General State Budget for the year 2022. [Full text.](#)

Minimum vital income. Law 19/2021, of December 20th, which establishes the minimum living income. [Full text.](#)

Urgent measures. Royal Decree-Law 32/2021, of December 28th, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market. [Full text.](#)

Food chain. Law 16/2021, of December 14th, which amends Law 12/2013, of 2 August, on measures to improve the functioning of the food chain. [Full Text.](#)

For further information, please consult [here](#) the section of the BOE dedicated to the COVID-19 crisis with the consolidated regulations.

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 development

Legal regime for animals. Law 17/2021, of December 15th, amending the Civil Code, the Mortgage Law and the Law on Civil Procedure, on the legal regime of animals. [Full text.](#)

State Financial Fund for Tourism Competitiveness. Royal Decree 1072/2021, of 7th December, which regulates the State Financial Fund for Tourist Competitiveness, F.C.P.J., within the framework of the Recovery, Transformation and Resilience Plan. [Full Text.](#)

Credit institutions. Circular 5/2021, of 22 September, of the Banco de España, amending Circular 2/2016, of 2 February, to credit institutions, on supervision and solvency, which completes the adaptation of the Spanish legal system to Directive 2013/36/EU and Regulation (EU) no. 575/2013. [Full text.](#)

Pensions. Law 21/2021, of 28th December, on guaranteeing the purchasing power of pensions and other measures to reinforce the financial and social sustainability of the public pension system. [Full text.](#)

Housing. Law 3/2021, of 10 November, to promote and expedite the processing of aid and other actions in the area of housing. [Full Text](#)

Fund for the recapitalisation of companies affected by COVID-19. Resolution of December 13th, 2021, of the Secretary of State for Trade, publishing the Agreement of the Council of Ministers of December 7th, 2021, amending the Agreement of June 15th, 2021, establishing the operation of the Fund for the recapitalisation of companies affected by COVID-19, F.C.P.J. [Full text.](#)

Urgent measures. Royal Decree-Law 29/2021, of December 21st, adopting urgent measures in the energy sphere for the promotion of electric mobility, self-consumption and the deployment of renewable energies. [Full text.](#)

Taxes. Order HFP/1430/2021, of 20 December, approving form 237 "Special tax on undistributed profits of listed public limited companies investing in the real estate market". Corporate Income Tax. Self-assessment" and determining the form and procedure for its filing. [Full Text.](#)

Employment. Royal Decree 1069/2021, of 4 December, approving the Spanish Strategy for Active Support for Employment 2021-2024. [Full Text.](#)

Administrative measures. Law 4/2021, of 1 December, on Urgent Administrative Measures. [Full Text.](#)

Please [click here](#) to access our analysis of key aspects in the labor, tax, corporative or financial field that companies will have to face, prepared by our specialist of Mazars, and also to our Covid Talks.

Please also visit our **Global Tax** and **Law Tracker**. Mazars' global tax and legal experts from more than **70 countries** have created this interactive tool to help you access and understand the Covid-19 legislation and tax measures that impact you and your business, wherever in the world you operate.

Please click [HERE](#) to have access to the Global Tax and Law Tracker.

Remarkable General Directorate of Legal Security and Public Faith resolutions

DGSJFP. Remuneration of administrators. Resolution of 16 November 2021. [Full Text.](#)

The DGSJFP rules on the refusal to register a deed to convert corporate resolutions of an S.L. into a public deed, which is based on two issues. Firstly, the lack of specification of the number of directors or their minimum and maximum number. The DGSJFP does not confirm this defect since, at the time of registration of the clause in question, the law did not require the statutory specification of the number of directors or their maximum and minimum number, so that the company is entitled to preserve that system on the basis of the date of registration. The second defect refers to the system of directors' remuneration, as the registrar considers that the clause in question is not clear, since it states that the office of director is free of charge for the performance of the powers inherent to that office, but provides for the possible existence of remuneration for services other than those inherent to that office. The DGSJFP points out that the system of directors' remuneration must be clearly established in the bylaws and that the bylaws, after proclaiming that the post is free of charge, may provide for the director's remuneration for other services or activities outside the exercise of the powers inherent to the post, provided that it is sufficiently clear that these are other duties. This should not be seen as an indication of hidden remuneration for administration, but as a peculiarity to which administrators must be subject. The DGSJFP therefore also overturns this second defect and upholds the appeal.

DGSJFP. Activities included in the corporate purpose. Resolution of 17 November 2021. [Full text.](#)

The DGSJFP clarifies if an activity that requires authorisation in order to be carried out without having previously obtained the corresponding administrative authorisation from the competent authority may form part of the activities comprising

the corporate purpose of a company. According to the DGSJFP, the company must, from the time of its foundation or the modification of its corporate purpose, meet all the requirements that make the full development of any of the activities that make up its corporate purpose viable. When, as in this case, the performance of an activity requires an administrative authorisation to be obtained as the enabling title, its absence means that such activity will not be possible or lawful, and this absence is not made up for by the fact that the article of the articles of association whose registration is sought includes the provision that if the law requires an administrative authorisation or licence, such activity may not be commenced without obtaining it. Therefore, as stated in art. 84 RRM, the registration in the RM of activities whose inclusion in the object requires a licence or administrative authorisation cannot be carried out if it is not accredited that it has been obtained. The DGSJFP therefore dismisses the appeal.

DGSJFP. Liquidation of a company. Resolution of 2 December 2021. [Full text.](#)

The DGSJFP clarifies whether a deed of liquidation and extinction of a company whose registration history consists of a marginal note of revocation of NIF and another of deregistration in the index of entities can be registered. The DGSJFP dismissed the appeal and confirmed the nullity of the registration on the basis of the provisions of DA 6 of the LGT, which implies the notary's abstention from authorising any public instrument unless the NIF is revoked. Furthermore, it points out that the revocation of the NIF is the subject of a different procedure to that which triggers the marginal note of closure provided for in Art. 119.2 LIS and that, as established in Art. 96 RRM, once the closure has been carried out on the register page, it can only be extended to the entries ordered by the judicial authority or to those that must contain the acts that are a necessary prerequisite for the reopening of the page, as well as those relating to the deposit of the accounts.

Remarkable Case Law

Judgment of the General Court of December 1st, December 2021. Registration of Community designs. [Full Text](#).

The General Court ruled on the EU registration of the design of the head of a doll, in the context of a dispute between a Chinese company applicant for registration and the company that owns a EU design similar to the one for which registration was intended. In this context, the General Court of the European Union upheld the previous decision of the EUIPO as it considered that the design sought to be registered lacked individual character. According to the Court, the designer enjoyed a large amount of freedom when designing dolls' heads, so that the aim of creating an appealing doll did not require copying the facial expression of an earlier design, as this freedom was not limited by market preferences concerning the appearance of 'model dolls'. Moreover, the set of features of the face of the doll in question and their positioning contributed to create the expression of an identical face in both designs (oval-shaped face, identical features and proportions, similar make-up, identical expression), so that the competing designs did not cause a different overall impression on the informed user.

Judgment of the Supreme Court of December 21st, 2021. Directors' liability and duty of loyalty. [Full text](#).

The Supreme Court ruled on a liability action against the directors of a company on the basis that they had transferred certain amounts to their own accounts without cause and had indebted the company in order to continue with the undue outflow of company funds for the benefit of certain shareholders or company directors. This was contrary to the principle of diligence, loyalty and good faith. On this basis, the SC argues that, although it is true that the payments to directors were made in an unorthodox manner, the company's reality was the performance of this corporate activity, so that the conduct of the

defendant directors was in line with what was agreed by the shareholders and with the company resolutions adopted unanimously, and therefore the company's interests had not been harmed. In this way, it states that the plaintiffs cannot hide behind the defence of the corporate interest, insofar as some of them had participated in this conduct and, furthermore, their continuation had been agreed by themselves, as they did not question this conduct insofar as it benefited them. Moreover, the SC indicated that, in this case, there were proven reasons for the disposal of the funds in question, and therefore dismissed the appeal.

Judgment of the General Court of the European Union of 1 December 2021. Trademarks. Likelihood of confusion. [Full Text](#).

The General Court rules on the possibility of registering the name of a trademark with a reputation in Spain for goods and services related to food, catering and the sale of food, in the context of the opposition filed by an Italian company which is the proprietor of several earlier trademarks with similar names. In that regard, the General Court concludes that the goods and services covered by the marks at issue are identical or similar to varying degrees and that, moreover, those marks, taken as a whole, have a high degree of similarity due to the presence of the same word element in them, that being the most distinctive element in the Italian company's earlier marks. There may therefore be a likelihood of confusion between the marks in question, since the relevant consumers will draw a link between them. In conclusion, the General Court upholds EUIPO's decision and refuses registration of the trademark for goods and services relating to food, catering and the sale of foodstuffs.

Review – New Guides on the interpretation of EU consumer law.

On December 17th, the European Commission published a series of guides with the aim of clarifying how EU consumer law should be interpreted, taking into account the developments that have taken place in certain areas of consumer law.

First, the Commission has published the **Guide on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market** ([Full Text](#)).

This Guide replaces the previous one, published in 2016, facilitating the correct application of the Unfair Commercial Practices Directive, and including the amendments introduced by Directive 2019/2161 on better enforcement and modernisation of EU consumer protection rules, which will start to apply from 28 May 2022.

One of the sections of this Guide is devoted to analysing the [relationship between the Unfair Commercial Practices Directive and self-regulation](#), clarifying the role of codes of conduct ("*compliance*") within company bodies, and indicating that, if these codes of conduct are rigorously enforced and with defined mechanisms for their monitoring, they will significantly reduce administrative and judicial actions. Furthermore, the Commission notes that these rules can become a benchmark for competent national authorities and courts in assessing whether a commercial practice is anti-competitive.

In addition, the Guide clarifies aspects related to the [use of environmental claims in advertising and the so-called "dual quality effect"](#) (i.e. the marketing of apparently identical goods, with the same packaging and branding, but whose composition varies depending on the EU Member State in which they are sold). [The Guide also devotes a section to the digital](#)

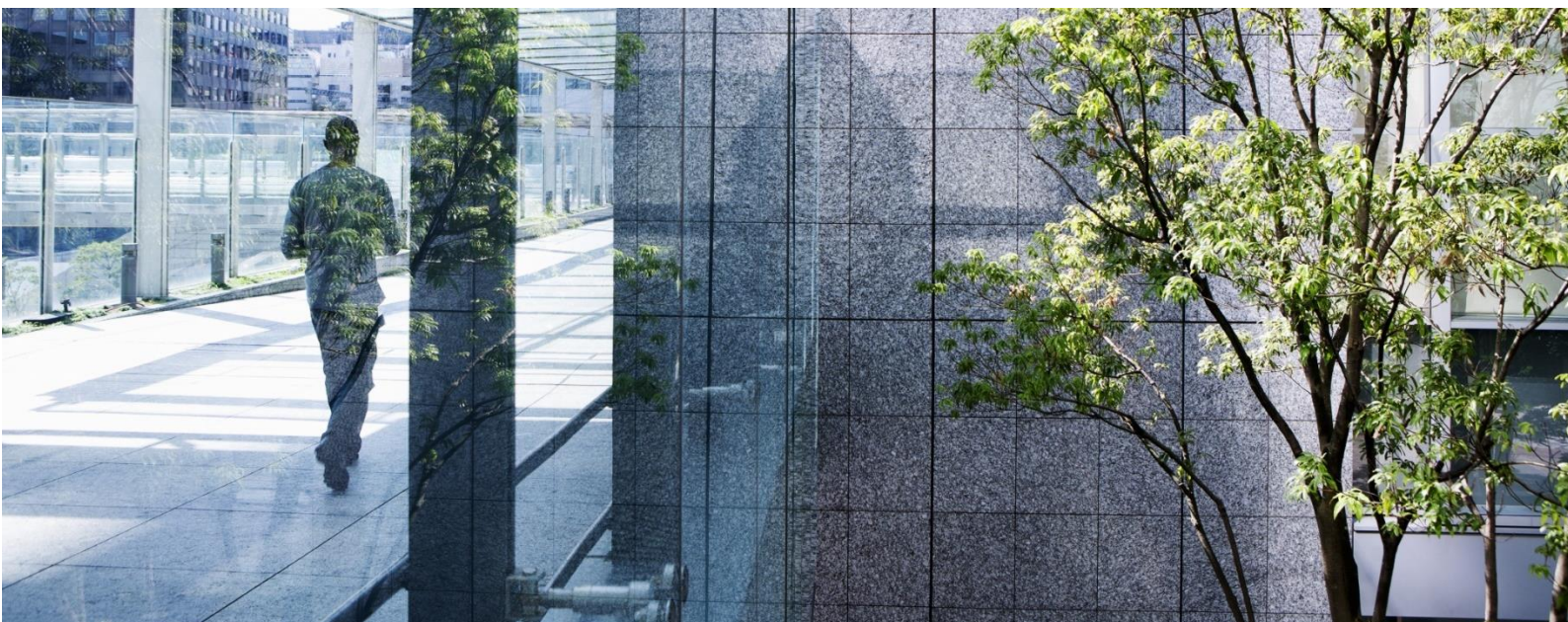
[sector](#) in which it analyses the identification obligations of advertising by influencers, gaming practices, online platforms and marketplaces, with an emphasis on transparency requirements for searches on such internet platforms, the use of reviews by users and user-based personalisation. In addition, the Guide analyses so-called "dark patterns", i.e. a technique that seeks to influence the consumer's discretion to buy one particular product or another without having clear information about the products they are buying.

Secondly, the Commission has published the **Guide on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights** ([Full Text](#)). This Guide analyses, among others, [the scope of the provisions governing off-premises contracts](#), including examples on the use of advertising, as well as the requirements that must be met in any information addressed to consumers who conclude their off-premises contracts. The most essential ones are regulated in the pre-contractual section, stating that if information is provided before the conclusion of the contract, the trader must also comply with the unfair competition rules of Directive 2005/29/EC, in particular Article 7 paragraph 4.

Finally, the Commission has published the **Guide on the interpretation and application of Article 6a of Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products** ([Full Text](#)). This Guide provides guidance aimed at explaining how to interpret the transparency requirements in cases where price [reduction offers, or special offers are made](#).

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