

# Current Legislation

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## I. Environment

On this subject, we consider to be of interest the following new pieces of legislation:

1. **Decree 72/2016 of 9 June authorising and regulating certain systems to dispose of animal by-products not intended for human consumption in Galicia, and specifying certain health aspects as regards pig farms**<sup>1</sup>. In the exercise of the powers assumed by the Galician devolved region (*comunidad autónoma*) regarding livestock farming and health, this decree aims to ensure the proper management and disposal of the carcasses of pet animals as the waste that it is.

In this regard, on the one hand, it tries to prevent certain animal by-products from entering the food chain as undeniably they may present a potential risk for animal health, public health and the environment, as was the case with the 'mad cow' disease. On the other hand, taking into account the particularities of horse

farming and breeding in the area, it tries to ensure the proper disposal of carcasses of certain animals, either by burial (horses, bees, pets), or by in situ degradation, in the case of carcasses of horses that grazed freely and died on pastureland.

Lastly, this decree uses the second additional provision to clarify, by defining what is meant by 'metropolitan area' (*casco urbano*), the rules on distances for new pig farms laid down in basic national legislation.

2. **Decree 69/2016 of 19 May creating the Network of Galician Natural Reserves**<sup>2</sup>. In the exercise of powers conferred to the regional government (*Xunta*) under the Galicia (Devolution) Act<sup>3</sup>, this Decree aims to facilitate the coordinated management of the six areas categorised as Natural Reserves in Galicia, whilst contributing to greater disseminated knowledge regarding these spaces, and thus their better protection and conservation.

Pilar López Torralba

## II. Agri-food

Here we should highlight **Royal Decree 277/2016, of 24 June, regulating professional organisations in the fishery and aquaculture industry**<sup>4</sup>, including: (1) fish producer organisations (POs); (2) associations of fish producer organisations (APOs); and (3) interbranch organisations in the fishery industry (IBOs).

Part I regulates the requirements for each of the foregoing.

Essentially, fish producer organisations must fulfil the following conditions: (a) they must comprise at least two (national or from other Member States) producers; (b) they must have a minimum membership period of one calendar year; (c) they must provide proof, in the manner provided in art. 3(3), of economically viable activity; (d) their members must pay, pro rata, an annual fee of at least € 40,000, and (e) where producers of other Member

States are members, they must have a transnational nature.

Meanwhile, associations of fish producer organisations are subject to the following requirements: (a) they must comprise at least three fish producers; (b) they must have the legal form of an association; (c) the average production of their members must exceed twenty million euros per year; (d) a fish producer organisation with its registered office in Spain may not be the member of more than one association of fish producer organisations with registered office in Spain, and (e) their members must pay, pro rata, an annual fee of at least € 40,000.

Lastly, interbranch organisations in the fishery industry must meet the following conditions: (a) they must be formed by associations representative of production, processing and, where appropriate, marketing; (b) they

<sup>1</sup> *Decreto 72/2016, de 9 de junio, por el que se autorizan y se regulan determinados sistemas de eliminación de subproductos animales no destinados al consumo humano en Galicia y se concretan determinados aspectos sanitarios de las explotaciones porcinas.*

<sup>2</sup> *Decreto 69/2016, de 19 de mayo, por el que se crea la Red de Parques Naturales de Galicia.*

<sup>3</sup> *Ley Orgánica 1/1981, de 6 de abril, del Estatuto de Autonomía de Galicia.*

<sup>4</sup> *Real Decreto 277/2016, de 24 de junio, por el que se regulan las organizaciones profesionales en el sector de los productos de la pesca y de la acuicultura.*



must meet the requirements laid down in the Interbranch Agri-Food Organisations Act 38/1994 of 30 December<sup>5</sup>; (c) they must be not-for-profit; (d) they must represent 51% of each and every one of the professional branches covered by the organisation, and (e) their members must pay, pro rata, an annual fee of at least € 40,000.

Among the measures professional organisations in the fishery industry may take (regulated in Part II of Royal Decree 277/2016), special attention should be given to the extension of rules. According to art. 11, "POs and the APOs that are representative of production may request the competent authority to make binding rules agreed within their organisations on non-member producers that market their products in the territory where such rules are recognised".

This measure is subject to certain restrictions, in particular that the organisation taking the same must

be "representative". A fish producer organisation or association of fish producer organisations shall be deemed 'representative' when, in the area where the extension of rules will apply, its members have marketed - during the previous year - at least 55% (fishing) or 40% (aquaculture) of the products or species concerned.

Neither fish producer organisations nor associations of fish producer organisations may request approval of an extension of rules until a calendar year has elapsed since the date on which they were recognised by the competent authority. Moreover, the extension of the rules is subject to prior authorisation from the European Commission (authorisation will be deemed granted if the Commission does not reply within one month).

Finally, with regard to interbranch organisations in the fishery industry, Royal Decree 277/2016 refers to the provisions of Act 38/1994

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### III. Tax

In the last quarter, new legislation has also been passed in the field of taxation:

1. In the 'historical territory' of Gipuzkoa, **Provincial Act 3/2016 of 20 June, introducing certain amendments to adapt the regional tax system to various agreements reached within the OECD, as well as to European Union directives and judgments**<sup>6</sup>, whose measures affect the corporate income tax, the insurance premium tax and the Tax Provincial Act 2/2005 of 8 March, and **Provincial Act 13/2016, of 28 June, amending various regulations in order to bring them in line with new tax consolidation rules**<sup>7</sup>.
2. In the 'historical territory' of Biscay, **Provincial Act 5/2016, of 20 July, approving certain amendments concerning tax matters**<sup>8</sup>. In the field

of personal income tax: (1) several tax measures are included with regard to exemptions; (2) the creation of annuities insured by persons over the age of sixty-five is incentivized; and (3) unlike the Corporate Income Tax Act 27/2014, Bizkaia legislation does not change the tax treatment of business partnerships with a commercial object, so their income will remain subject to the rules on income allocation. In the field of corporate income tax, changes are made: (1) in international tax transparency for both natural and legal persons; (2) regarding related-party transactions, most notably requiring country-by-country information as from 2016, restricting the scope of relationship and allowing other measurement methods and techniques in addition and in the alternative; and (3) to the patent box regime. Note, too, **Provincial Decree 129/2016, of 26 July, introducing amendments to the Non-Residents' Income Tax Regulations**<sup>9</sup>.

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<sup>5</sup> *Ley 38/1994, de 30 de diciembre, reguladora de las organizaciones interprofesionales agroalimentarias.*

<sup>6</sup> *Norma Foral 3/2016, de 20 de junio, por la que se introducen determinadas modificaciones para adaptar el ordenamiento tributario foral a diversos acuerdos alcanzados en el seno de la OCDE, así como a directivas y sentencias de la Unión Europea.*

<sup>7</sup> *Decreto Foral 13/2016, de 28 de junio, por el que se modifican diversos reglamentos para su adecuación al nuevo régimen de consolidación fiscal.*

<sup>8</sup> *Norma Foral 5/2016, de 20 de julio, por la que se aprueban determinadas modificaciones en materia tributaria.*

<sup>9</sup> *Decreto Foral 129/2016, de 26 de julio, por el que se introducen modificaciones en el Reglamento del Impuesto sobre la Renta de las Personas Físicas y en el del Impuesto sobre la Renta de no Residentes.*

3. In the 'historical territory' of Araba/Álava, **Tax Emergency Decree 3/2016, of 19 July, of the Provincial Cabinet, to incorporate in the provincial tax system various commitments agreed within the OECD and to comply with various EU directives**<sup>10</sup>, which introduces amendments to the Corporate Income Tax Provincial Act 37/2013 of 13 December<sup>11</sup> and the (*lex generalis*) Tax Provincial Act 6/2005 of 28 February<sup>12</sup>. Note, too, **Provincial Decree 55/2016, of 27 July, of the Provincial Cabinet, amending the Non-Residents' Income Tax Regulations**<sup>13</sup>.
4. In view of its importance, we must also highlight the **Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, made in Berlin on 29 October 2014,**

**and Spain's announcement on the effective date for the automatic exchange of information under said Agreement.** Spain committed itself to exchanging information for the first time before 30 September 2017 (on 2016 data) with those countries that have made similar announcements, regardless of the recipient jurisdiction's taxable periods or tax obligations to which such information relates.

5. And last but not least, we should note at the European level **Council Directive (EU) 2016/1164 of 12 July<sup>14</sup> 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market**, which provides, in this regard: limitations to the deductibility of interest, exit taxation, a general anti-abuse rule, controlled foreign company rules and rules to tackle hybrid mismatches.

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## IV. Accounting

Regarding accounting law, we should note the **Spanish Auditing and Accounting Standards Board's Decision of 15 July**, which makes the amendments to the Technical Standards for Auditing, resulting from adapting

the International Standards on Auditing for the Spanish context, as well as the changes to the glossary of terms, publicly available for objections.

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## V. Employment and labour

The main legislative changes in employment and social security matters over the last quarter can be summarised as follows:

1. In the field of employment law we should note the approval of **Royal Decree 311/2016 of 29 July, amending Royal Decree 1561/1995, of 21 September, on special working hours regarding night work**<sup>15</sup>. As a result of an incorrect transposition into national law of art. 8 of Directive 2003/88/EC of the European Parliament and of the Council

of 4 November 2003 concerning certain aspects of the organisation of working time, Spain has had to amend its legislation on the subject. By way of this new piece of legislation, a new provision (art.33) is added to Royal Decree 1561/1995, according to which night workers whose work involves 'special hazards or heavy physical or mental strain' – as defined by collective agreements or, failing that, agreements concluded between the two sides of industry, taking account of the specific effects and hazards of night work – shall not work more than eight hours in any

<sup>10</sup> *Decreto Normativo de Urgencia Fiscal 3/2016, de 19 de julio, del Consejo de los Diputados, para la incorporación al ordenamiento tributario foral de diversos compromisos acordados en el seno de la OCDE y para el cumplimiento de diversas directivas de la Unión Europea.*

<sup>11</sup> *Norma Foral 37/2013, de 13 de diciembre, del Impuesto sobre Sociedades.*

<sup>12</sup> *Norma Foral 6/2005, de 28 de febrero, General Tributaria.*

<sup>13</sup> *Decreto Foral 55/2016, de 27 de julio, del Consejo de Diputados, que modifica el Reglamento del Impuesto sobre la Renta de no Residentes.*

<sup>14</sup> *Resolución, de 15 de julio del 2016, del Instituto de Contabilidad y Auditoría de Cuentas.*

period of 24 hours during which they perform night work.

2. **Royal Decree 299/2016, of 22 July, on the protection of workers' health and safety against electromagnetic field exposure hazards**<sup>16</sup>,

approves new rules concerning workers who are or may be exposed in their line of work to risks arising from exposure to electromagnetic fields, covering both known direct biophysical effects and indirect effects of such exposure. Although the possible long-term effects or the risk of effects caused by contact with live conductors are not included, this new piece of legislation regulates both exposure limit values - such as risk assessments, information and training to workers - and, more importantly, the measures to eliminate or reduce exposure risks, among others.

3. The **State Secretariat for Employment's Decision, of 22 August 2016, publishing the Cabinet's Decision, of 5 August 2016, approving the 2016 Annual Employment Policy Plan, as provided for in art. 11(2) of the Employment Act, recast by Royal Legislative Decree 3/2015 of 23 October**<sup>17</sup>.

The aforementioned Plan sets out the objectives for this year in the whole of Spain and in each of the different devolved regions, as well as the indicators to be used to assess the fulfilment of said objectives. Thus, the Plan is conceived as an instrument to assess the active labour market policies' services (actions) and programmes (measures) of the National and Regional Employment Service. In addition, to achieve the above objectives, it contains the active labour market policies and job matching services to be carried out by devolved regions in their implementation of the same and by the National Employment Service in its allocation from the budgeted working capital reserve. The Plan is structured around context analysis of the labour market's current situation,

the strategic framework's design with the National Employment System's Core Services and the reform of the Vocational Education and Training System, the recapitulation of the planned structure and objectives, the preparation criteria, the active labour market policies' services and programmes, funding thereof and assessment formulae. Among other schedules, it includes a general overview of the services and programmes to be undertaken by each devolved region and the planned budgetary appropriation.

4. The **Directorate-General for Employment's Decision, of 10 February 2012, registering and publishing the 5<sup>th</sup> Agreement on Autonomous Industrial Dispute Resolutions (Out-of-Court System)**<sup>18</sup>,

contains the amendment and repudiation of the same in order to instigate its renewal with the changes and adjustments social agents with a legitimate interest see fit.

5. Regarding Social Security, we should note the **State Secretariat for Social Security's Decision, of 19 July 2016, setting the date as of which the acts in the procedure for the refunding to the Social Security undue payments received and the credit balances shall be notified electronically**<sup>19</sup>.

In this regard, as from 1 October 2016, the following actions related to Social Security shall be notified or communicated through electronic notification by appearance at the 'electronic office' of the State Secretariat for Social Security: (a) all administrative procedure acts for the refunding to the Social Security of undue payments received and credit balances issued by the Spanish Social Security Agency<sup>20</sup>, addressed to the liable persons referred to in art. 3(2) of Order ESS/485/2013, of 26 March, regulating notifications and communications by electronic means in the field of Social Security, once initially made obligors, as well as to the natural or legal persons, or entities without legal personality, under art. 3(3) of the aforementioned

<sup>15</sup> *Real Decreto 311/2016, de 29 de julio, por el que se modifica el Real Decreto 1561/1995, de 21 de septiembre, sobre jornadas especiales de trabajo, en materia de trabajo nocturno.*

<sup>16</sup> *Real Decreto 299/2016, de 22 de julio, sobre la protección de la salud y la seguridad de los trabajadores contra los riesgos relacionados con la exposición a campos electromagnéticos.*

<sup>17</sup> *Resolución de 22 de agosto del 2016, de la Secretaría de Estado de Empleo, por la que se publica el Acuerdo del Consejo de Ministros de 5 de agosto del 2016, por el que se aprueba el Plan Anual de Política de Empleo para el 2016, según lo establecido en el artículo 11.2 del Texto Refundido de la Ley de Empleo, aprobado por el Real Decreto Legislativo 3/2015, de 23 de octubre.*

<sup>18</sup> *Resolución de 10 de febrero del 2012, de la Dirección General de Empleo, por la que se registra y publica el V Acuerdo sobre Solución Autónoma de Conflictos Laborales (Sistema Extrajudicial).*

<sup>19</sup> *Resolución de 19 de julio del 2016, de la Secretaría de Estado de la Seguridad Social, por la que se fija la fecha a partir de la cual los actos del procedimiento de devolución de ingresos indebidos a la Seguridad Social y saldos acreedores se notificarán electrónicamente.*

<sup>20</sup> *Tesorería General de la Seguridad Social.*

order who choose this type of service, and to mutual societies collaborating with the Social Security and its entities and joint centres; (b) acts aimed at the reimbursement of the cost of the guarantees under art. 30 of the Social Security Collection Regulations to the extent that the procedure applicable to these is the return of undue receipts.

6. Lastly, and in general, we should mention the Spanish Council for the Judiciary's<sup>21</sup> Decision, of 19 May 2016, publishing the Governing Body of the Supreme Court's<sup>22</sup>

Decision, of 20 April 2016, on the maximum length and other extrinsic conditions of written procedural submissions relating to 'Cassation' Appeals<sup>23</sup> before the Third Chamber of the Supreme Court. The same provides, among other rules of interest, a maximum length for these procedural submissions of fifty thousand "characters including spaces", equivalent to twenty-five pages on one side (front), including in said length any footnotes, charts or graphics, using 12-point Times New Roman font for body text and 10-point Times New Roman font for the footnotes.

Lourdes López Cumbre

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## VI. Data protection

On this subject we should at least mention **Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and**

**information systems across the Union**, which imposes data security and protection-related obligations on companies in various sectors (energy, telecommunications, railway...).

Ana I. Mendoza Losana

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## VII. Audiovisual

In the audiovisual sector, we must highlight the publication of the **Public Broadcasting and Television Service Owned by the Regional Government of Valencia Act (Valencia) 6/2016 of 15 July**<sup>24</sup>, which recovers this devolved region's public television. This new piece of legislation regulates the provision of the public audiovisual service owned by the Valencian regional government<sup>25</sup>, lays down the legal regime of the entities charged with the direct management of this public service (*Corporación Valenciana de Medios de Comunicación* and *Sociedad Anónima de Medios de Comunicación de la Comunitat Valenciana*) and regulates parliamentary control over the same. This public service

comprises the production, publication and distribution of content for radio and television through the different fixed or mobile digital transmission systems, as well as for Internet multicasting using different technologies or platforms and the development of new related or interactive services likely to enhance or supplement the content offered in an open and accessible broadcast in Valencian. The broadcast in Valencian will be completed with the issuance of multilingual audiovisual work in Castilian and English or, where appropriate, in its original language version, in which case the existence of subtitles in Valencian and Castilian must be ensured.

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<sup>21</sup> Consejo General del Poder Judicial.

<sup>22</sup> Sala de Gobierno del Tribunal Supremo.

<sup>23</sup> Translator's note: A "recurso de casación" is an appeal on the grounds of a breach of the rules governing the determination of disputes.

<sup>24</sup> Ley 6/2016, de 15 de julio, del Servicio Público de Radiodifusión y Televisión de Ámbito Autonómico, de titularidad de la Generalitat.

<sup>25</sup> Generalitat Valenciana.



## VIII. Telecommunications

In this regard, **Royal Decree 330/2016, of 9 September, concerning measures to reduce the cost of deploying high-speed electronic communications networks**<sup>26</sup>, has been passed. This piece of legislation transposes into Spanish law Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks and implements arts. 35-38 of the Telecommunications Act regarding access to physical infrastructure capable of housing high-speed electronic communications networks, the coordination of civil works and the publication of information

on licensing. It applies to physical infrastructure (pipes, masts, ducts, towers...) intended to provide gas, electricity or heating production, transport or distribution services, among others, capable of housing high-speed public electronic communications networks and (fixed or mobile, capable of providing broadband access at speeds of at least 30 Mbps per subscriber) and to civil work related to such infrastructure. The owners of such physical infrastructure must facilitate access to them by operators interested in deploying broadband networks in the terms regulated by the royal decree of reference.

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## IX. Energy

Next we highlight important legislation passed on the subject of energy:

1. **Order IET/980/2016, of 10 June, setting out the remuneration of electricity distribution companies for 2016, and Order IET/981/2016, of 15 June, setting out the remuneration of companies owning electricity transmission facilities for 2016.**
2. **Order IET/1209/2016, of 20 July, setting out the values of remuneration for the operation in the second calendar semester of 2016 and approving a standard facility and its remuneration parameters.**
3. **Spanish Competition and Markets Authority's Rules Instrument 2/2016, of 28 July**<sup>27</sup>, **on requests for information from suppliers and distributors on complaints from consumers of electricity and natural gas.** Electricity and gas distribution companies, regulated electricity suppliers, regulated gas suppliers and also those operating in one or the other open market, provided they have reached the thresholds laid down in the rules instrument, are required to provide on a quarterly basis information relating to complaints received by their customer services to the Spanish Competition and Markets Authority.
4. Two decisions modify the regime of the demand-side interruptible load management service. The **State**

**Secretariat for Energy's Decision, of 1 August 2014, approving the procedures of operation of the electricity system 14.11 "Settlement and invoicing of the demand-side interruptible load management service" and 15.2 "Demand-side interruptible load management service", and the State Secretariat for Energy's Decision, of 5 August 2016, approving the rules of procedure of competitive calls for applications for the allocation of the demand-side interruptible load management service and the standard agreement of adherence to the legal framework to apply in calls for applications.**

5. **Order IET/1451/2016, of 8 September, approving the distribution percentages of the amounts relating to the social energy tariff for 2016 that must be financed.** Most of the cost of the social energy tariff (reduced price of electricity supply applied to vulnerable consumers) is financed by three companies: Endesa (over 41%), Iberdrola (close to 38%) and, to a lesser extent, Gas Natural (close to 15%).

Although not legislation, on account of their impact on the regulation of the electricity sector, we should also mention a couple of judgments of the Supreme Court, both dated 20 June 2016, which quash some of the provisions that regulate electricity facilities under the special regime. These are **Judgment no. 1463/2016, which nullifies schedules II and VIII to Order IET/1045/2014,**

<sup>26</sup> Real Decreto 330/2016, de 9 de septiembre, relativo a medidas para reducir el coste del despliegue de las redes de comunicaciones electrónicas de alta velocidad.

<sup>27</sup> Circular 2/2016, de 28 de julio, de la Comisión Nacional de Mercados y la Competencia.

**of 16 June, approving the remuneration parameters for standard facilities applicable to certain facilities that produce electricity from renewable energy sources, cogeneration and waste**, as to the part referring to facilities treating and reducing slurry in terms of values and parameters relating to investment and operating costs and the weighting of other operating income and consumption, and **Judgment no. 1462/2016, which nullifies art. 49(1)(m) of Royal Decree 413/2014, of 6 June, regulating the production of electricity from renewable energy sources, cogeneration and waste, and schedules II and VIII to the aforementioned Order IET/1045/2014**, as to the part referring to facilities treating and reducing slurry in terms of values and

parameters relating to investment and operating costs and the weighting of other operating income and consumption. In both cases, the Administration must approve the regulatory replacement within four months. In addition, the claimant company in the second case was recognised the right to compensation for damage and loss suffered from the application of the voided remuneration parameters.

Lastly, we should at least to mention that the regulation of the gas market has been completed with the approval of the **State Secretariat for Energy's Decision, of 2 August 2016, approving the framework agreement for access to the facilities of the Spanish gas system**<sup>28</sup>.

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## X. E-Commerce

As part of its digital single market strategy for Europe, on 25 May 2016 the European Commission submitted a three-pronged legislative proposal: **(a) Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market; (b) Proposal for a Regulation on cross-border parcel delivery services; and (c) Proposal for a revision of the Regulation of the European Parliament and of the Council on cooperation between national**

**authorities responsible for the enforcement of consumer protection laws.**

This package of proposals supplements two legislative proposals on the supply of digital content and on online and other distance sales of goods which the Commission proposed in December 2015, and the upcoming VAT simplification proposal planned for autumn 2016. Note that this package of proposals is also accompanied by Guidance on the implementation/application of the Directive on Unfair Commercial Practices.

Ángel García Vidal

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## XI. Intellectual property

In this area we draw attention to the following pieces of legislation:

1. **Royal Decree 224/2016, of 27 May, implementing the legal regime of orphan works**<sup>29</sup>, seeks to implement art. 37 *bis* of the Copyright (Recast) Act, which regulates the procedure to have works declared orphan and thereby allow their digitisation and making them available online, to conduct diligent searches in order to determine the orphan status of a work, to determine the end of the orphan status and the fair

compensation the intellectual property right holders of the work should receive. The permitted uses of the works involving limits on the right of reproduction and of making available to the public, in the manner provided in art. 20(2)(i) of the Copyright (Recast) Act, are also regulated.

2. On 21 June 2016, the European Commission opened for signature by stakeholders a **Memorandum of Understanding (MoU) on the sale of counterfeit goods**, which is presented as a continuation of the

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<sup>28</sup> *Resolución de 2 de agosto del 2016, de la Secretaría de Estado de Energía, por la que se aprueba el contrato marco de acceso a las instalaciones del sistema gasista español.*

<sup>29</sup> *Real Decreto 224/2016, de 27 de mayo, por el que se desarrolla el régimen jurídico de las obras huérfanas.*



previous one of 2011 and has already been signed by online platforms and other important trade mark owners. The MoU provides for a one-year assessment period from signature, during which time the parties undertake not to initiate litigation concerning matters

covered by it. Moreover, it establishes a mechanism for notification of offers of counterfeit goods and their take-down by the platforms. It also provides for the commitment of platforms to carry out proactive work, especially with respect to repeat infringers.

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