

Current Legislation

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I. Environment

On this subject, we consider the following new rules and regulations to be of interest:

1. **Royal Decree 6/2018, of 12 January, creating the Interdepartmental Committee on the Inclusion of Environmental Criteria in Public Procurement¹**. This committee is created with the aim of guaranteeing coordination between the different public authorities in the inclusion of environmental criteria for products and services in the public procurement process, in application of the principles derived from the circular economy.
2. **Royal Decree 7/2018, of 12 January, setting out the documentation, possession and marking requirements concerning trade in endangered species of wild fauna and flora, in accordance with European Union regulations applying the Convention on International Trade in Endangered Species of Wild Fauna and Flora²**. This piece of legislation is passed with the aim of regulating the proof of legal origin of specimens of endangered species of fauna and flora, as well as to ensure legality in all transactions involving a change in ownership.
3. **Order APM/189/2018, of 20 February, determining when agri-food industry waste for animal feed is a by-product, in accordance with the Waste and Contaminated Land Act 22/2011 of 28 July³**. Production waste from the agri-food industry will be a by-product when, meeting all the requirements under Act 22/2011, it is used for animal feed and included in one of the three EU lists of authorised food additives.
4. **Royal Decree 1042/2017, of 22 December, limiting emissions into the atmosphere of certain pollutants from medium combustion plants and updating Schedule IV to the Air Quality and Protection of the Atmosphere Act 34/2007 of 15 November⁴**. In order to reduce and control emissions into the atmosphere and the potential risks of these emissions to human

¹ Real Decreto 6/2018, de 12 de enero, por el que se crea la Comisión Interministerial para la incorporación de criterios ecológicos en la contratación pública.

² Real Decreto 7/2018, de 12 de enero, por el que se establecen los requisitos de documentación, tenencia y marcado en materia de comercio de especies amenazadas de fauna y flora silvestres, de acuerdo con lo establecido por la reglamentación de la Unión Europea en aplicación de la Convención sobre el Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestre.

³ Orden APM/189/2018, de 20 de febrero, por la que se determina cuándo los residuos de producción procedentes de la industria agroalimentaria destinados a alimentación animal son subproductos, con arreglo a la Ley 22/2011, de 28 de julio, de residuos y suelos contaminados.

⁴ Real Decreto 1042/2017, de 22 de diciembre, sobre la limitación de las emisiones a la atmósfera de determinados agentes contaminantes procedentes de las instalaciones de combustión medianas y por el que se actualiza el anexo IV de la Ley 34/2007, de 15 de noviembre, de calidad del aire y protección de la atmósfera.

health and the environment, provisions are set out to control emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO) and particulate matter from medium combustion plants.

Ignacio Álvarez Serrano y Paloma Tuñón Matienzo

II. Agri-food

The **Water (Recast) Act Amendment Act 1/2018 of 6 March**⁵ makes two important alterations to article 112 bis of the recast version of the Water Act:

- On the one hand, the tax rate of the levy on the use of inland waters for the production of electricity is increased from 22% to 25.5%.
- On the other hand, the tax relief for hydroelectric facilities with a capacity of 50 MW or less is increased from 90% to 92%.

In addition, Act 1/2018 provides for a series of support measures (exemptions from levies on water availability, moratoriums on the payment of social security contributions, tax relief, the granting of loans and aid, etc.) for owners of agricultural holdings located in areas affected by drought in the current crop year who have suffered gross production losses in crops or livestock farming of at least 20%.

Finally, the number of actual contribution days required from casual agricultural workers residing in Andalusia and Extremadura for unemployment benefit entitlement under Royal Decree 5/1997 of 10 January or agricultural income entitlement under Royal Decree 426/2003 of 11 April is reduced to twenty.

Ángel García Vidal

⁵ *Ley 1/2018, de 6 de marzo, por la que se adoptan medidas urgentes para paliar los efectos producidos por la sequía en determinadas cuencas hidrográficas y se modifica el Texto Refundido de la Ley de Aguas, aprobado por Real Decreto Legislativo 1/2001, de 20 de julio.*

III. Medical devices

Royal Decree 1083/2017, of 29 December, amending Royal Decree 1662/2000, of 29 September, on in vitro diagnostic medical devices⁶, has provided an exception to the need for prescription for the sale to the public of self-diagnostic medical devices. Also, in addition to allowing the sale of these products to the public without a prescription, advertising of the same is also permitted.

These alterations seek to promote the early diagnosis of human immunodeficiency virus (HIV) in order to reduce the proportion of undiagnosed people.

Ángel García Vidal

IV. Data protection

Since January 2018, 'Autocontrol', the Spanish Advertising Standards Association, offers a mediation system to deal with data protection-related complaints involving the receipt of unwanted advertising, impersonation, data processing for the receipt of invoices after requesting cancellation of service, etc., provided that the events occurred within the twelve months prior to the date of the complaint.

The mediation system has been created in collaboration with the Spanish Data Protection Agency and - without prejudice to being open to new members - all the operators of the MásMóvil Group, Orange, Telefónica and Vodafone have joined the system.

The mediation is carried out by Autocontrol by electronic means and may be requested by individuals who have previously lodged a complaint with one of the member companies. Of course, nothing prevents the individual from lodging a complaint with the Data Protection Agency.

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⁶ *Real Decreto 1083/2017, de 29 de diciembre, por el que se modifica el Real Decreto 1662/2000, de 29 de septiembre, sobre productos sanitarios para diagnóstico in vitro.*

V. Trade secrets

On 8 February 2018, the Ministry of Justice published the **Trade Secrets Draft Bill**⁷ and made it publicly available for objection before formal introduction to Parliament as a Bill proper.

The aim of this legislative proposal is to transpose into Spanish law Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Ángel García Vidal

VI. Tax

In the tax field we can highlight the following:

1. The **Convention between the Kingdom of Spain and the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital and the Protocol thereto**⁸, signed in Madrid on 10 September 2015, published in the Official Journal of Spain (BOE) on 15 December 2017 and valid as of 6 February 2018.
2. **Royal Decree 1075/2017, of 29 December, amending the Value Added Tax Regulations, approved by Royal Decree 1624/1992 of 29 December; the Transfer and Stamp Duty Regulations approved by Royal Decree 828/1995 of 29 May, the Excise Duties Regulations, approved by Royal Decree 1165/1995 of 7 July, the Fluorinated Greenhouse Gases Regulations, approved by Royal Decree 1042/2013 of 27 December, the Invoicing Obligations Regulations, approved by Royal Decree 1619/2012 of 30 November, Royal Decree 3485/2000, of 29 December, on tax exemptions and duty relief within the diplomatic, consular and international organisations scheme and amending the Vehicles Regulations, approved by Royal Decree 2822/1998 of 23 December, and Royal Decree 1065/2007, of 27 July, approving the Tax Management and Compliance Checks and Implementation of Common Rules for Tax Application Procedures Regulations**⁹.

⁷ Anteproyecto de Ley de Secretos Empresariales.

⁸ Convenio entre el Reino de España y el Estado de Catar para evitar la doble imposición y prevenir la evasión fiscal en materia de impuestos sobre la renta, y su Protocolo.

⁹ Real Decreto 1075/2017, de 29 de diciembre, por el que se modifican el Reglamento del impuesto sobre el valor añadido, aprobado por el Real Decreto 1624/1992, de 29 de diciembre; el Reglamento del

3. **Royal Decree 1074/2017, of 29 December, amending the Personal Income Tax Regulations, approved by Royal Decree 439/2007 of 30 March, the Corporate Income Tax Regulations, approved by Royal Decree 634/2015 of 10 July, and the Inheritance and Gift Tax Regulations, approved by Royal Decree 1629/1991 of 8 November¹⁰.**
4. **Royal Decree 1073/2017, of 29 December, amending the Implementing Regulation as regards administrative review under the Tax Act 58/2003, of 17 December, approved by Royal Decree 520/2005 of 13 May¹¹.**
5. **Royal Decree 1072/2017, of 29 December, amending the Tax Penalties Regulations, approved by Royal Decree 2063/2004 of 15 October¹².**
6. **Royal Decree 1071/2017, of 29 December, amending the Collection Regulations, approved by Royal Decree 939/2005 of 29 July¹³.**
7. **Royal Decree 1070/2017, of 29 December, amending the Tax Management and Compliance Checks and Implementation of Common Rules for Tax Application Procedures Regulations, approved by Royal Decree 1065/2007 of 27 July, and Royal Decree 1676/2009, of 13 November, regulating the Taxpayer Council¹⁴.**

impuesto sobre transmisiones patrimoniales y actos jurídicos documentados, aprobado por el Real Decreto 828/1995, de 29 de mayo; el Reglamento de los impuestos especiales, aprobado por el Real Decreto 1165/1995, de 7 de julio; el Reglamento del impuesto sobre los gases fluorados de efecto invernadero, aprobado por el Real Decreto 1042/2013, de 27 de diciembre; el Reglamento por el que se regulan las obligaciones de facturación, aprobado por el Real Decreto 1619/2012, de 30 de noviembre; el Real Decreto 3485/2000, de 29 de diciembre, sobre franquicias y exenciones en régimen diplomático, consular y de organismos internacionales y de modificación del Reglamento General de vehículos, aprobado por el Real Decreto 2822/1998, de 23 de diciembre, y el Real Decreto 1065/2007, de 27 de julio, por el que se aprueba el Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos.

¹⁰ Real Decreto 1074/2017, de 29 de diciembre, por el que se modifican el Reglamento del impuesto sobre la renta de las personas físicas, aprobado por el Real Decreto 439/2007, de 30 de marzo; el Reglamento del impuesto sobre sociedades, aprobado por el Real Decreto 634/2015, de 10 de julio, y el Reglamento del impuesto sobre sucesiones y donaciones, aprobado por el Real Decreto 1629/1991, de 8 de noviembre.

¹¹ Real Decreto 1073/2017, de 29 de diciembre, por el que se modifica el Reglamento General de desarrollo de la Ley 58/2003, de 17 de diciembre, General tributaria, en materia de revisión en vía administrativa, aprobado por el Real Decreto 520/2005, de 13 de mayo.

¹² Real Decreto 1072/2017, de 29 de diciembre, por el que se modifica el Reglamento General del régimen sancionador tributario, aprobado por el Real Decreto 2063/2004, de 15 de octubre.

¹³ Real Decreto 1071/2017, de 29 de diciembre, por el que se modifica el Reglamento general de recaudación, aprobado por el Real Decreto 939/2005, de 29 de julio.

¹⁴ Real Decreto 1070/2017, de 29 de diciembre, por el que se modifican el Reglamento general de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por el Real Decreto 1065/2007, de 27 de

8. **In the Region of Navarre, Regional Act 16/2017, of 27 December, altering various taxes and other tax measures¹⁵, has been passed, introducing changes that notably include the following:**
- (a) In the *personal income tax*, among other measures, compensation received as a result of civil liability for personal injury is exempted in the amount reached through mediation; with regards to pension schemes, the 40% deduction in the case of benefits received in the form of lump sums is eliminated; and, in addition, the 40% deduction in the rental of real property for housing is eliminated.
 - (b) In the *wealth tax*, the relief for property and property rights necessary to carry on a business or professional activity is broadened.
 - (c) In the *corporate income tax*, changes have been made to double taxation relief (in cases where there have been financial losses), as well as relief for impairment losses, refunds for negative taxable income (limited to 50%), and the concept of minimum tax for the different entities has been modified.
 - (d) In the *inheritance and gift tax*, the progressive rate shall be applied to blood relatives in the ascending or descending line, adopters or adoptees.
9. In the ‘historical territory’ of Bizkaia, **Provincial Decree 1/2018, of 20 February, amending the Value Added Tax Provincial Act 7/1994, of 9 November¹⁶**. This piece of legislation incorporates the changes introduced by the Public Procurement Act 9/2017, which provides that certain transactions carried out by public entities are not subject to VAT. It also defines the concept of price-related subsidies for the purposes of its inclusion in the VAT base. Finally, the application of the simplified and special schemes for agriculture, livestock and fisheries is defined, in accordance with the provisions of Royal Decree-Act 20/2017, of 29 December, extending and approving various tax and other urgent social measures
10. In the ‘historical territory’ of Gipuzkoa, **Provincial Decree 31/2017 amending the Personal Income Tax Regulations and approving the review coefficients applicable in 2018 for the determination of the income obtained from the transfer of assets in this tax and in the corporate income tax¹⁷**. Among the most important measures, the tables of withholdings

julio, y el Real Decreto 1676/2009, de 13 de noviembre, por el que se regula el Consejo para la Defensa del Contribuyente.

¹⁵ Ley Foral 16/2017, de 27 de diciembre, de modificación de diversos impuestos y otras medidas tributarias.

¹⁶ Decreto Foral Normativo 1/2018, de 20 de febrero, por el que se modifica la Norma Foral. 7/1994, de 9 de noviembre, del Impuesto sobre el Valor Añadido.

¹⁷ Decreto Foral 31/2017, de 27 de diciembre, por el que se modifica el Reglamento del Impuesto sobre la

on earnings from employment are modified and the acquisition value of assets may be updated in the event of transfers with consideration or enrichment.

11. In the 'historical territory' of Araba/Alava, **Provincial Act 22/2017, of 27 December, amending the property tax and the tax on construction, installations and works¹⁸**, was passed. With regard to the first tax, the tax ordinances are enabled to regulate relief in the event of (a) systems for the improvement of energy efficiency being installed or (b) a class A or B energy efficiency label being obtained. With regard to the second tax, relief is also introduced for constructions, installations and works that include the incorporation of renewable energy.
12. Finally, at the European level, the **Commission Implementing Regulation (EU) 2018/99 of 22 January 2018 amending Implementing Regulation (EU) 2015/2378 as regards the form and conditions of communication for the yearly assessment of the effectiveness of the automatic exchange of information and the list of statistical data to be provided by Member States for the purposes of evaluating of Council Directive 2011/16/EU** was adopted.

Mariana Díaz-Moro Paraja y Enrique Santos Fresco

VII. Accounting

At the EU level, **Commission Regulation (EU) 2018/182 of 7 February 2018 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard 28 and International Financial Reporting Standards 1 and 12**. By way of this regulation, IAS 28, on the measurement method for investments in associates and joint ventures, IFRS 1, relating to the first-time adoption of international financial reporting standards, and IFRS 12, providing the manner in which interests in other entities are disclosed, are amended.

Also noteworthy is **Commission Regulation (EU) 2018/289 of 26 February 2018 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council**

Renta de las Personas Físicas y se aprueban los coeficientes de actualización aplicables en 2018 para la determinación de las rentas obtenidas en la transmisión de elementos patrimoniales en dicho impuesto y en el Impuesto sobre Sociedades.

¹⁸ Norma Foral 22/2017, de 27 de diciembre, de modificación del impuesto sobre bienes inmuebles y del impuesto sobre construcciones, instalaciones y obras.

as regards International Financial Reporting Standard (IFRS) 2 ‘Share-based Payment’. This update clarifies how companies should apply the share-based payment standard in some specific instances.

Mariana Díaz-Moro Paraja y Enrique Santos Fresco

VIII. Business

On the one hand, the **Public consultation of the Draft Instrument amending the annual corporate governance and directors’ remuneration reports templates** is of interest.

The Spanish Securities Market Authority (CNMV) submits for public consultation a new draft instrument that will amend the current templates of the annual corporate governance report - to be submitted by listed companies and other issuers - and the annual report on directors’ remuneration - to be submitted by listed companies - contained in Instruments 5/2013 of 12 June and 4/2013 of 12 June, respectively.

On the other hand, the **Judgment of the Supreme Court of 26 February 2018 (reporting (associate) judge: Mr Sarazá Jimena)** is particularly novel in its **interpretation of the current system of remuneration for directors of unlisted companies limited by shares**, which contradicts the legal doctrine established by the Directorate-General for Registers and Notaries in recent decisions and by the ruling of the Barcelona Provincial Court (Fifteenth Chamber) of 30 June 2017.

The following conclusions can be drawn from this recent judgment:

- (1) The articles of association must establish the remunerated or non-remunerated nature of the position of director as well as the remuneration system or, in other words, the items of remuneration to be earned by all directors, regardless of whether they are performing purely supervisory functions or executive functions.
- (2) It is the responsibility of the general meeting to set the maximum amount of annual remuneration that all directors (including those who perform executive duties) may earn.
- (3) The remuneration of directors performing executive functions must be included in the directors’ service contracts (in the terms of arts. 249(3) and 249(4) of the Companies Act [LSC]) and, in any event, be in accordance with the remuneration system provided in the articles of association (art. 217(2) LSC) and be included in the maximum amount of the annual remuneration of all the directors approved by the general meeting (art 217(3) LSC).

- (4) The powers of the board of directors with regard to the remuneration of its members consist of (a) distributing the remuneration set for the whole of the board among the different directors according to their functions and responsibilities, unless it is already distributed by the general meeting (art. 217(3) LSC), and (b) approving and signing the contracts with the executive directors pursuant to arts. 249(3) and 249(4) LSC within the framework of the provisions of the articles of association and within the maximum remuneration established by the general meeting (art. 217(3) LSC).

Inés Fontes Migallón y José María Álvarez Arjona

IX. Real estate

We believe that a few thoughts on the novel **Decision of the Directorate-General for Registers and Notaries of 28 November 2017** would be useful.

In the deed filed for registration with the Land Registry that was rejected by the same, property was sold for a deferred consideration and conveyance was subject to compliance with the condition 'precedent' consisting of full payment, with the seller retaining title to the property until the same. Among other arguments, the Registrar refused registration contending that there was no transfer of ownership because of the retention of title agreement - which is only expressly recognised by law in personal property law - and that similar effects could be obtained by means of regulated legal transactions, such as the condition 'subsequent' under art. 1504 of the Civil Code.

The Directorate-General of Registers and Notaries, however, allows the registration of this deed of sale with the Land Registry, accepting for the first time the recording of a sale in circumstances such as these, where, having deferred payment of the price of a property, total payment constitutes a condition precedent and the seller reserves ownership of the property until such payment, and all this based on the principle of party autonomy under art. 1255 of the Civil Code.

Marina Martínez Plaza

X. Employment and labour

Several pieces of legislation have been passed on employment and labour matters that merit attention:

1. **Royal Decree 1032/2017, of 15 December, approving the Spanish Employment Activation Strategy 2017-2020¹⁹.** Having the previous one come to an end, the 2017-2020 Strategy makes new tools, infrastructures and information systems available to all the agents of the National Employment System and incorporates three types of objectives that supplement each other, namely, key objectives, which summarise the ultimate aim of the action of the employment service; strategic or priority objectives, which are those that acquire special relevance at a given time, on which efforts must be focused for a certain period of time, and, finally, structural objectives, which are those of a stable nature, which must be met by the employment service in its ordinary operation through services sustained over time.
2. **Royal Decree-Act 20/2017, of 29 December, extending and approving various tax and other urgent social measures²⁰,** which lays down the rules on how the new national minimum wage amounts for 2018, 2019 and 2020 affect collective agreements, and **Royal Decree 1077/2017, of 29 December 2018, fixing the national minimum wage for 2018²¹,** which sets the amount of the national minimum wage for 2018 at 24.53 euros per day or 735.9 euros per month.
3. **Royal Decree 62/2018, of 9 February, amending the Workplace Pensions (Outsourcing Arrangements) Regulations, approved by Royal Decree 1588/1999 of 15 October, and the Pension Schemes and Funds Regulations, approved by Royal Decree 304/2004 of 20 February²².** One of the main changes introduced by this new legislation is that, as of its entry into force, the 'exceptional circumstances of limited liquidity' for the purposes of pension withdrawals are broadened. Thus, members of personal pension schemes may access benefits built up over at least ten years from personal contributions, whereas members of occupational pension schemes may access benefits built up over at least ten years from personal contributions and amounts paid in by the employer only where provided for in the specific terms of such schemes.

¹⁹ Real Decreto 1032/2017, de 15 de diciembre, por el que se aprueba la Estrategia Española de Activación para el Empleo 2017 2020.

²⁰ Real Decreto Ley 20/2017, de 29 de diciembre, por el que se prorrogan y aprueban diversas medidas tributarias y otras medidas urgentes en materia social.

²¹ Real Decreto 1077/2017, de 29 de diciembre, por el que se fija el salario mínimo interprofesional para el 2018.

²² Real Decreto 62/2018, de 9 de febrero, por el que se modifica el Reglamento sobre la instrumentación de los compromisos por pensiones de las empresas con los trabajadores y beneficiarios, aprobado por el Real Decreto 1588/1999, de 15 de octubre, y el Reglamento de planes y fondos de pensiones, aprobado por el Real Decreto 304/2004, de 20 de febrero.

4. **Royal Decree 1079/2017, of 29 December, on the appreciation of public sector pensions, national insurance pensions and other public-sector social security benefits for 2008²³**; as a general rule, it applies a 0.25% appreciation.
5. **Royal Decree 1082/2017, of 29 December, determining the minimum level of protection guaranteed to the Dependency Care System recipients²⁴**; it allots a minimum of 190.13 euros per month for grade III (major dependency), 84.49 euros per month for grade II (severe dependency) and 47.38 euros per month for grade I (moderate dependency).
6. Spain has also ratified in the BOE of 21 December 2017 the **Protocol of 2014 to the Forced Labour Convention, 1930, adopted in Geneva on 11 June 2014**. This convention requires each member to take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.
7. The **Instrument of Ratification of the Instrument for the Amendment of the Constitution of the International Labour Organisation**, made in Geneva on 19 June 1997, has also been published (BOE, 30 January 2018). By virtue of this amendment, the General Conference of the International Labour Organisation (ILO), acting on a proposal of the Governing Body of the International Labour Office, may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any convention if it appears that the convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the ILO.
8. **Order ESS/55/2018, of 26 January, implementing the legal rules on Social Security contributions, unemployment, cessation of business protection, the Insolvency Payments Service and vocational training for 2018²⁵**.
9. **Order ESS/1310/2017, of 28 December, amending the Order of 24 September 1970 laying down rules for the application and implementation of the special scheme for self-employed workers²⁶**, in order to adapt it to the amendments made to this special scheme (contribution class), including the possibility that, from 1 January 2018, up to three registrations and deregistrations in the year with effect from the day on which, regarding the person concerned, the requirements

²³ *Real Decreto 1079/2017, de 29 de diciembre, sobre revalorización de pensiones de clases pasivas, de las pensiones del sistema de la Seguridad Social y de otras prestaciones sociales públicas para el ejercicio 2018.*

²⁴ *Real Decreto 1082/2017, de 29 de diciembre, por el que se determina el nivel mínimo de protección garantizado a las personas beneficiarias del Sistema para la Autonomía y Atención a la Dependencia.*

²⁵ *Orden ESS/55/2018, de 26 de enero, por la que se desarrollan las normas legales de cotización a la Seguridad Social, desempleo, protección por cese de actividad, Fondo de Garantía Salarial y formación profesional para el ejercicio 2018.*

²⁶ *Orden ESS/1310/2017, de 28 de diciembre, por la que se modifica la Orden de 24 de septiembre de 1970 por la que se dictan normas para aplicación y desarrollo del régimen especial de los trabajadores autónomos.*

and conditions determining their inclusion in said scheme are met for registration, and from the date of cessation of business for deregistrations.

10. **Order ESS/1309/2017, of 28 December, extending the validity of Order ESS/1/2012, of 5 January, regulating the employer-sponsored work permit system for 2012²⁷**; it publishes the shortage occupation list for the first quarter of 2018.

Lourdes López Cumbre

XI. Strategic industries

Commission Delegated Regulation (EU) 2017/2364 of 18 December 2017 amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts. The thresholds laid down for public contracts by the Procurement Directive for Utilities (Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC) are adjusted from EUR 418,000 to EUR 443,000 and from EUR 5,225,000 to EUR 5,225,000.

Ana I. Mendoza Losana

XII. Energy

In the energy sector, the most significant changes are as follows:

1. **Order ETU/1282/2017, of 22 December, setting the electricity access tolls for 2018²⁸.** This order sets (a) the ‘access tolls’ (connection charges) and unit prices financing capacity payments applicable to electricity consumers, as well as the values of the charges associated

²⁷ Orden ESS/1309/2017, de 28 de diciembre, por la que se prorroga la vigencia de la Orden ESS/1/2012, de 5 de enero, por la que se regula la gestión colectiva de contrataciones en origen para el 2012.

²⁸ Orden ETU/1282/2017, de 22 de diciembre, por la que se establecen los peajes de acceso de energía eléctrica para el 2018.

with the costs of the system of application to the types of self-consumption, from 1 January 2018, and (b) the income mismatch annuities for 2018 and the costs defined as quotas for specific uses and production cost overruns in non-peninsular electricity systems. In general, the values of tolls valid since 1 January 2014 are maintained. The order has been appealed to the Supreme Court.

2. **Order ETU/66/2018, of 26 January, fixing the taxes and surcharges considered for the purposes of the territorial supplements and implementing the mechanism for obtaining the information necessary for the establishment of the territorial supplements in relation to the electricity tolls for 2013²⁹.** Art. 17(4) of the Electricity Sector Act 54/1997 stated that “if the activities or facilities for the supply of electricity are taxed, directly or indirectly, with regional taxes or surcharges on State taxes, access tolls will include a territorial supplement that will cover the totality of the extra-cost caused by this tax or surcharge and which will have to be paid by the consumers located in the territorial area of the relevant region”. Order ETU/66/2018 provides which regional taxes justify the application of this surcharge for 2013, granting a three-month period from its entry into force for companies to submit to the Ministry of Energy, Tourism and Digital Agenda a certificate issued by the relevant region as evidence of payment of the tax or surcharge for the purpose of fixing the appropriate surcharges on access tolls, and establishing the re-billing procedure for affected consumers.
3. **Order ETU/257/2018, of 16 March, setting out the obligations to make contributions to the National Energy Efficiency Fund in 2018³⁰.** In compliance with the Growth, Competitiveness and Efficiency (Approval of Urgent Measures) Act 18/2014 of 15 October, which lays down a national system of energy efficiency obligations, this order sets an aggregate savings target by 2018 of 262 ktoe (thousands of tons of oil equivalent) or 3,046.51 GWh (gigawatt hours), determines that the financial equivalence for 2018 is 0.789728 million euros per ktoe saved, or 67,916.58 euros per gigawatt hour saved, and that the value of the remuneration for the cost of the contribution to the National Energy Efficiency Fund included in the hourly variable of the supply costs included in the calculation of the voluntary price for small consumers (PVPC) is 0.000259 €/kWh (euros per kilowatt-hour). In addition, the order defines in percentage values the distribution of contributions to the National Energy Efficiency Fund among the relevant obligors.

²⁹ Orden ETU/66/2018, de 26 de enero, por la que se fijan los tributos y recargos considerados a efectos de los suplementos territoriales y se desarrolla el mecanismo para obtener la información necesaria para la fijación de los suplementos territoriales en relación con los peajes de acceso de energía eléctrica correspondientes al ejercicio 2013.

³⁰ Orden ETU/257/2018, de 16 de marzo, por la que se establecen las obligaciones de aportación al Fondo Nacional de Eficiencia Energética en el 2018.

4. The **Energy Efficiency Measures and Guarantee of Accessibility to Electricity (Galicia) Act 7/2017 of 14 December**³¹, which requires the Galician ministry responsible for energy matters to pay, upon request, 50% of the amount of the electricity bill resulting from the application of the social energy tariff to severely vulnerable consumers. Correlatively, regulated suppliers are required to “sign the appropriate collaboration agreements with the Regional Government of Galicia in order to establish a telematic platform to communicate to the social services and the regional ministry responsible for energy matters of the Regional Government of Galicia, on a monthly basis, the acknowledgements of severely vulnerable consumers”.

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XIII. Telecommunications

We must at least mention the following decisions of the Spanish Competition and Markets Authority (CNMC):

The **decisions of 18 January 2018** publishing, on the one hand, the decisions approving the definition and analysis of markets for voice call termination on individual mobile networks and, on the other hand, the decision on the definition and analysis of wholesale trunk segments of leased lines, the designation of the operator with significant market power and the imposition of specific obligations, and agreeing to the notification of both to the Spanish Energy Regulator and the Body of European Regulators for Electronic Communications, and the Decision of 6 March 2018, publishing the decision approving the methodology for determining the economic replicability test of Telefónica’s broadband products marketed in the residential segment, and agreeing to notify the European Commission and the Body of European Regulators for Electronic Communications.

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³¹ Ley 7/2017, de 14 de diciembre, de Galicia, de medidas de la eficiencia energética y garantía de accesibilidad a la energía eléctrica.

XIV. E-commerce

Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

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XV. Audiovisual

Royal Decree 2/2018, of 12 January, laying down certain rules for the implementation of Royal Decree Act 5/2015, of 30 April, on urgent measures relating to the marketing of the rights to exploit audiovisual content in professional football competitions³², aims to regulate the contributions of the entities participating in the National League Championship to the promotion of sport and, in particular, to the development of amateur football, provided for in Royal Decree Act 5/2015, by means of the contribution of a percentage of the revenue derived from the exploitation of audiovisual rights. It also regulates the basic aspects of the arbitral function of the Spanish Sports Council in relation to possible conflicts arising from the determination and distribution of these contributions.

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XVI. Railway sector

Particularly noteworthy is **Royal Decree 1011/2017, of 1 December, amending Royal Decree 664/2015, of 17 July, approving the Railway Traffic Regulations³³**. The said Railway

³² Real Decreto 2/2018, de 12 de enero, por el que se dictan determinadas normas de desarrollo del Real Decreto Ley 5/2015, de 30 de abril, de medidas urgentes en relación con la comercialización de los derechos de explotación de contenidos audiovisuales de las competiciones de fútbol profesional.

³³ Real Decreto 1011/2017, de 1 de diciembre, por el que se modifica el Real Decreto 664/2015, de 17 de julio, por el que se aprueba el Reglamento de Circulación Ferroviaria.

Traffic Regulations are amended to incorporate certain aspects identified by infrastructure administrators, railway undertakings, railway staff training centres, trade unions and private individuals in order to correct, clarify and supplement its content. In addition, a transitional regime is introduced to achieve, through a series of actions on the network and rolling stock, a progressive increase in safety in traffic processes.

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