

Current Legislation

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I. Environment

In this matter, we consider the following new rules and regulations to be of interest:

1. The **Environmental Assessment (Amendment) Act 9/2018 of 5 December¹**, the **Forestry (Amendment) Act 21/2015 of 20 July²**, and the **Greenhouse Gas Emissions Trading Scheme Act 1/2005 of 9 March³**.

The Environmental Assessment (Amendment) Act introduces the following changes:

- The developer's obligation to include in his environmental impact study an analysis of the vulnerability of projects to serious accidents or catastrophes, the risk of their occurrence and their likely adverse effects on the environment;
- The possibility of excluding from the environmental impact assessment process - at the proposal of the competent authority - projects whose sole objective is to respond to cases of civil emergency or works to repair or improve critical infrastructure in those cases in which the application of the assessment process has detrimental effects on the purpose of such projects;
- The determination of the competent environmental authority.

With regard to the greenhouse gas emissions trading scheme, the terms under which penalties are established and the monitoring plans of aircraft operators are regulated are modified. Likewise, a new article 35 bis is included concerning the special characteristics of the administrative penalty procedure in matters under the remit of the National Administration.

2. **Order TEC/1171/2018, of 29 October, regulating information, control, monitoring and assessment of large combustion plants (LCPs)⁴**. It establishes the requirements for compliance with the annual commitments to submit information on emissions from large combustion plants and includes control and monitoring mechanisms for these plants with respect to emissions of certain atmospheric pollutants (SO₂, NO_x and particles) caused during normal operating hours and during other non-normal operating conditions (start-up and shutdown periods),

¹ Ley 9/2018, de 5 de diciembre, por la que se modifica la Ley 21/2013, de 9 de diciembre, de Evaluación Ambiental.

² Ley 21/2015, de 20 de julio, por la que se modifica la Ley 43/2003, de 21 de noviembre, de Montes.

³ Ley 1/2005, de 9 de marzo, por la que se regula el régimen del comercio de derechos de emisión de gases de efecto invernadero.

⁴ Orden TEC/1171/2018, de 29 de octubre, por la que se regula la información, el control, el seguimiento y la evaluación de las grandes instalaciones de combustión (GIC).

in order to check the consistency of the data supplied with other information systems (PRTR-España [Spanish Pollutant Emission Register] or the Inventario Nacional de Emisiones [Spanish Emissions Inventory]).

3. **The Climate Change and Energy Transition (Andalusia) Act 8/2018 of 8 October**⁵. In the absence of a national Act of Parliament on climate change, the Andalusian Parliament has chosen to pass this statute, which has as one of its purposes to promote mitigation measures in all economic sectors.

Ignacio Álvarez Serrano y Paloma Tuñón Matienzo

II. Agri-food, sales at a loss

On this occasion, we refer to **Royal Decree-Law 20/2018, of 7 December, on urgent measures to boost the economic competitiveness of the trade and industry sectors in Spain**⁶. This regulation provides, amongst other things, for measures that have a direct impact on the food sector; we refer specifically to the amendment of the rules regulating sales at a loss contained in the Retail Trade (Unified Regulation) Act 7/1996 of 15 January⁷.

The aim of the amendment is to adapt Spanish legislation to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Thus, by virtue of Article 6 of the Royal Decree, Article 14 of Act 7/1996 is amended in such a way that it is no longer generally prohibited to sell at a loss; according to the new wording of the provision, this type of sale is considered unfair only in certain cases.

(José Luis Palma Fernández and Yago Fernández Darna)

⁵ *Ley 8/2018, de 8 de octubre, de medidas frente al cambio climático y para la transición hacia un nuevo modelo energético en Andalucía.*

⁶ *Real Decreto-Ley 20/2018, de 7 de diciembre, de medidas urgentes para el impulso de la competitividad económica en el sector de la industria y el comercio en España.*

⁷ *Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista.*

III. Intellectual property

In connection with this area, we should highlight the following:

1. The **Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - A balanced IP enforcement system responding to today's societal challenges**, contains, among other proposals, the creation of a European mediation platform whose work is consistent with the judgments of the Court of Justice of the European Union.
2. **Draft Trademark (Amendment) Bill⁸** to adapt the Trademarks Act 17/2001 of 7 December to Directive (EU) 2015/2436. The implications of this directive have already been analysed in "*La reforma del derecho europeo de marcas (I): principales novedades introducidas por la Directiva (UE) 2015/2436*".⁹
3. Amendments were adopted by the European Parliament on 12 September 2018 on the **proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market**. As is well known, this proposal gave rise to an intense legal and social debate because it seeks to introduce new rights and new measures which some see as an unjustified restriction on freedom of expression and the functioning of the Internet, whilst others see them as a necessary safeguard for copyrights. Of the content of the text adopted by the European Parliament - which is not a definitive text, as the legislative process has yet to continue - a number of points should be highlighted at this stage: a) platforms are made responsible for content which is disseminated on them and which violates copyrights; b) a new right - related to copyright - is provided for press publishers on the use of their publications on the Internet, and c) provision is made for the creation of another related right, owned exclusively by sport event organizers, which will enable them to reproduce and communicate exclusively to the public the events they organise.
4. The **Resolution of the Standing Committee of the General Council of the Judiciary of 18 October 2018¹⁰** has extended the Resolution of 2 February 2017, granting itself exclusive jurisdiction over civil matters that may arise under the Patents Act 24/2015 of 24 July, the Trademarks Act 17/2001 of 7 December and the Industrial Designs Act 20/2003 of 7 July, and conferred competence to the Companies Courts No. 1 of Granada, No. 1 of Las Palmas de Gran Canaria, No. 1 of A Coruña and No. 2 of Bilbao.

⁸ Anteproyecto de Ley de modificación de la Ley 17/2001, de 7 de diciembre, de Marcas.

⁹ <http://www.gomezacebo-pombo.com/media/k2/attachments/la-reforma-del-derecho-europeo-de-marcas-i-principales-novedades-introducidas-por-la-directiva-ue-2015-2436.pdf>.

¹⁰ Acuerdo de 18 de octubre del 2018, de la Comisión Permanente del Consejo General del Poder Judicial.

IV. Tax

The following tax-relevant legislation has been passed:

1. **Royal Decree-Law 17/2018, of 8 November, amending the Recast Version of the Stamp Duty Act¹¹**. This rule determines that in the case of mortgage-backed loan deeds, the lender shall be deemed the taxpayer, thereby establishing an exception to the general rule. In addition, a first final provision is added that amends the Corporate Income Tax Law, determining that lending institutions will not be allowed to claim relief for stamp duty expenses derived from the formalisation of mortgage-backed loans.
2. In the ‘Historical Territory’ of Biscay, **Provincial Decree 130/2018, of 9 October, amending the Personal Income Tax Regulations and the Corporate Income Tax Regulations¹²**, by virtue of which, as for personal income tax, a) in relation to the scheme for posted workers, the cases in which the work is understood to be especially qualified are specified and the activities that allow its application are determined; b) it is specified which expenses arising as a consequence of the posting give rise to a right to relief; c) in relation to withholdings and payments on account from work or services rendered in Biscay, it shall be presumed conclusively (*iuris et de iure*) that the work is rendered in Biscay when the worksite to which the worker is assigned is located in that territory. As for corporate income tax, the requirements that the proposal must meet in order to apply a higher relief limit for financial expenses are regulated. Also **Delegated Provincial Act 3/2018, of 9 October, amending the Value Added Tax Provincial Act 7/1994 of 9 November, the Gaming Activities Tax Provincial Act 7/2014 of 11 June, the Greenhouse Fluorinated Gases Tax Provincial Act 5/2014 of 11 June and the Non-Resident Income Tax Provincial Act 12/2013 of 5 December¹³**.
3. In the Historical Territory of Gipuzkoa, **Provincial Decree 28/108, of 7 November, amending the Collection Regulations¹⁴** and adapting these to the amendments introduced by the Provincial Act 1/2017 in matters such as these: a) the updating of the act to adapt it to the generalization of electronic and telematic procedures; b) as regards the collection of tax debt, technical improvements are introduced in deferrals and instalments, the cases of *sua sponte* set-offs in voluntary payment periods are extended, this is impossible when the debt is in the enforcement period and the section relating to the tax current account is eliminated, and c) various changes are introduced in the enforcement procedure.

¹¹ *Real Decreto Ley 17/2018, de 8 de noviembre, que modifica el Texto Refundido de la Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados.*

¹² *Decreto Foral 130/2018, de 9 de octubre, por el que se introducen modificaciones en el Reglamento del Impuesto sobre la Renta de las Personas Físicas y en el Reglamento del Impuesto sobre Sociedades.*

¹³ *Decreto Foral Normativo 3/2018, de 9 de octubre, de 9 de octubre, por el que se modifica la Norma Foral 7/1994, de 9 de noviembre, del Impuesto sobre el Valor Añadido; la Norma Foral 7/2014, de 11 de junio, del Impuesto sobre Actividades de Juego; la Norma Foral 5/2014, de 11 de junio, del Impuesto sobre los Gases Fluorados de Efecto Invernadero, y la Norma Foral 12/2013, de 5 de diciembre, del Impuesto sobre la Renta de no Residentes.*

4. In the Historical Territory of Araba-Álava, **Provincial Decree 54/2018, of 16 October, approving the amendment of Provincial Decree 66/2003, of 30 December, approving the Stamp Duty Regulations**¹⁵, by virtue of which the aforementioned regulations are adapted to Provincial Act 20/2018 which, among other provisions, established a new regulation for the electronic filing of stamp duty self-assessments.
5. In Navarre, **Regional Act 20/2018, of 30 October, amending various taxes**¹⁶; the most noteworthy amendments are as follows: a) in the area of corporate income tax, the application of the patent box excludes information relating to industrial, commercial or scientific experiences obtained as a result of research, development or innovation projects; its application to software is limited and supplementary certificates for medicines and legally protected designs are incorporated; and b) in the area of personal income tax, a deduction is incorporated for the receipt of maternity and paternity benefits and various nuances are introduced in relation to pension schemes. **Regional Decree 85/2018, of 17 October, approving the Regional Tax Regulations, concerning the review of administrative-track acts**¹⁷, by virtue of which a new regulation is approved, applicable to proceedings initiated as of its entry into force, which updates and modernizes the previous regulation in relation to the regulation of administrative appeals in tax and collection matters. **Regional Decree 79/2018, of 3 October, amending the Personal Income Tax Regulations**¹⁸, which a) adapts exemptions relating to prizes declared exempt by tax administrations other than Navarre, to study grants awarded by bank foundations and to earnings from employment abroad, the exempt amount of which may not exceed 30,000 euros; b) adapts the 30% deductions applicable to earnings from employment earned in a notoriously irregular manner over time, regulating its application to earnings received in instalments; c) equates the benefits of dependency insurance with benefits for permanent incapacity and major invalidity; and d) adapts certain aspects of earnings in kind from employment, such as the comparable conditions when applying the 40% deduction and contains the implementation of the integration of enrichment due to a change of residence abroad (exit tax). And **Regional Decree 77/2018, of 26 September, amending the Tax Inspection Regulations approved by Regional Decree 152/2001 of 11 June**¹⁹. The main points that are amended are as follows: a) in relation to groups of companies, it is indicated that the entity designated

¹⁴ Decreto Foral 28/108, de 7 de noviembre por el que se modifica el reglamento de Recaudación del Territorio Histórico de Gipuzkoa.

¹⁵ Decreto Foral 54/2018, de 16 de octubre, por el que se aprueba la modificación del Decreto Foral 66/2003, de 30 de diciembre, que aprobó el Reglamento del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados.

¹⁶ Ley Foral 20/2018, de 30 de octubre, de modificación de diversos impuestos. nadero, y la Norma Foral 12/2013, de 5 de diciembre, del Impuesto sobre la Renta de no Residentes.

¹⁷ Decreto Foral 85/2018, de 17 de octubre, que aprueba el Reglamento de desarrollo de la Ley Foral General Tributaria, en materia de revisión de actos en vía administrativa.

¹⁸ Decreto Foral 79/2018, de 3 de octubre, por el que se modifica el Reglamento del Impuesto sobre la Renta de las Personas Físicas.

¹⁹ Decreto Foral 77/2018, de 26 de septiembre, que modifica el Reglamento de la Inspección Tributaria aprobado por el Decreto Foral 152/2001, de 11 de junio.

as representative will have the obligation to represent the tax obligor and the inspection procedure is developed; b) in relation to the documentation of inspection actions, a new case is added in which preliminary proceedings will be opened to record a possible tax infringement, which will allow for the appropriate proposal of a provisional assessment; c) as regards penalties, for serious infringements, an additional reduction of 20% is added when the infringer pays the total tax debt within the voluntary payment period and, for simple infringements, of 30 %, requiring the infringer's agreement with all proposed penalties, as well as full payment within the voluntary payment period.

6. At the EU level, **Council Directive (EU) 2018/1695 of 6 November 2018 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud; and Council Directive (EU) 2018/1713 of 6 November 2018 amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals, enabling Member States to apply the reduced VAT rate to electronically supplied books, newspapers and periodicals**, provided that they do not consist wholly or predominantly of music or video content.

Mariana Díaz-Moro Paraja and Enrique Santos Fresco

V. Accounting

At the EU level, we would highlight **Commission Regulation (EU) 2018/1595 of 23 October 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 Interpretation 23 of the International Financial Reporting Interpretations Committee**, each company having to apply it as from the commencement date of its first financial year starting on or after 1 January 2019, which specifies how to reflect uncertainty in accounting for income taxes and whose adoption implies amendments to International Financial Reporting Standard (IFRS) 1 in order to ensure consistency between international accounting standards.

Mariana Díaz-Moro Paraja and Enrique Santos Fresco

VI. Securities market

The purpose of the **Spanish Securities Market Authority Circular 3/2018, of 28 June, on periodic information from issuers with securities admitted to trading on regulated markets relating to half-yearly financial reports, interim management statements and, where appropriate, quarterly financial reports**²⁰, is to adapt the content of the models for half-yearly, individual and consolidated financial reports, as well as interim directors' statements and, where appropriate, quarterly financial reports, to changes in: a) international accounting standards, mainly the entry into force, as from 1 January 2018, of IFRS 9 Financial Instruments and IFRS 15 Revenue from Contracts with Customers, and b) national rules and regulations, mainly the Bank of Spain Circular 4/2017 of 27 November and Royal Decree 583/2017, of 12 June, amending the accounting plan for insurance and reinsurance companies and rules on the preparation of consolidated annual accounts for groups of insurance and reinsurance companies, approved by Royal Decree 1317/2008 of 24 July.

This rules instrument, which repeals Circular 1/2008, and its partial amendment by Circular 5/2015, came into force on 4 July 2018 and will be applicable to half-yearly financial reports and interim statements relating to periods beginning on or after 1 January 2018 that have to be filed and published as of said entry into force.

In accordance with its transitional provision, issuing entities, as of 1 January 2019, must use the periodic information templates provided in the circular for the submission of half-yearly and quarterly financial reports. In relation to the first half-yearly financial report for the financial year 2018, the issuing entity must use the format of Circular 5/2015 (following the guidelines indicated in said transitory provision).

Inés Fontes Migallón and José María Álvarez Arjona

VII. Real estate

We think convenient, at least, a brief reflection on the Decision of 10 September 2018 of the Directorate-General of Registries and Notaries, in the appeal lodged against the refusal of the Torelavega No. 1 Land Registry to register a deed of creation of a commonhold tenure building. In the case at issue, it is a question of elucidating whether or not an administrative authorisation is required to register the creation of a commonhold tenure the subsequent division of a two-storey

²⁰ *Circular 3/2018, de 28 de junio, de la Comisión Nacional del Mercado de Valores, sobre información periódica de los emisores con valores admitidos a negociación en mercados regulados relativa a los informes financieros semestrales, las declaraciones intermedias de gestión y, en su caso, los informes financieros trimestrales.*

house in Cantabria into two independent elements (of exclusive use), the registration of which was carried out in 2012 by means of a notice of construction by reason of “age”.

For the resolution of the case, it is necessary to distinguish between the real estate complex and the commonhold. The differential fact between both is that, on the one hand, the commonhold “maintains the legal and functional unity, as the land and the flight remain as common elements, without there being a legal subdivision of the land that can be characterised as partitioning, with no alteration of form, surface area or boundaries” and, on the other hand, the real estate complex involves the formation of properties that become exclusive-use elements in a real estate complex, as they create new spaces that are the subject matter of totally separate property.

We should recall that, in accordance with the provisions of Article 26(6) of the Town and Country Planning Act (Recast) Act and Article 10(3) of Act 49/1960 of 21 July, it will be mandatory to obtain approval to register or modify real estate complexes provided that, as a result of these acts, new exclusive-use elements are formed and can be compared to land partitioning. In this specific case, the Directorate-General of Registries and Notaries revokes the registrar’s negative examination report and concludes that administrative authorisation is not required to register the submitted commonhold division, since two independent entities with full autonomy, which could be considered new and absolutely independent legal ‘objects’, have not been created.

Marina Martínez Plaza

VIII. Employment and labour

In the field of employment and labour law, legislation has been passed that merits special attention:

1. In September, the Official Journal of Spain refers on two occasions to **Royal Decree-Law 11/2018, of 31 August, transposing directives on the protection of pension commitments to workers, prevention of money laundering and entry and residence requirements for nationals of third countries and amending the Common Administrative Procedure of Public Administrations Act 39/2015 of 1 October**²¹. one on 4 September, to provide for its publication and the other, on 29 September, to include the resolution on its validation. The amendment is part of the European context in which the aim is to reduce the obstacles to the mobility of workers between Member States created by certain rules relating to supplementary pension

²¹ *Real Decreto Ley 11/2018, de 31 de agosto, de transposición de directivas en materia de protección de los compromisos por pensiones con los trabajadores, prevención del blanqueo de capitales y requisitos de entrada y residencia de nacionales de países terceros y por el que se modifica la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas.*



schemes for retirement linked to an employment relationship. The adaptation of this regulation involves altering the first additional provision of the Pension Schemes and Funds Act, which establishes the obligation to implement pension commitments by means of collective insurance and occupational pension schemes. Title I of this new Royal Decree-Law 11/2018 will include the regulatory changes, in particular, with regard to collective insurance, a category in which the premiums paid by the company are not fiscally imputed to the workers. Likewise, and in order to specify some aspects of progressive adaptation to the new regulation, two new transitional provisions (ninth and tenth) are included in the Pension Schemes and Funds Act.

2. **Royal Decree 1234/2018, of 5 October, establishing the regulatory basis for the direct awarding of aid to local entities for the financing of employment, self-employment and collective entrepreneurship projects, aimed at facing the demographic challenge in municipalities with smaller populations, within the framework of the European Social Fund's Youth Employment Operational Programme²².**
3. **Royal Decree 1268/2018, of 11 October, establishing the regulatory basis for granting subsidies to rural women's entities at the national level to carry out activities of special interest in the promotion of the role of women in rural development for the 2018 call for applications²³.**
4. The **Decision of 16 October 2018 of the Directorate-General of Labour, publishing the list of bank holidays for 2019²⁴**, enumerates the national bank holidays, of a remunerated and non-recoverable nature, distinguishing between those national ones that are not substitutable by the regions and those in respect of which these regions may choose between celebrating them in their territory or replacing them with others that, by tradition, are their own.
5. Despite being of a smaller legislative scale, there are other interesting pieces, such being the case of the **Decision of 6 September 2018 of the lower House ordering the publication of the Decision to validate Royal Decree-Law 7/2018 of 27 July 27 on universal access to the National Health System²⁵**; and the **Decision of 14 September 14 2018 of the Spanish Social Security Institute, setting out the technical specifications of the implementation and**

²² Real Decreto 1234/2018, de 5 de octubre, por el que se establecen las bases reguladoras para la concesión directa de subvenciones a entidades locales para la financiación de proyectos de empleo, autoempleo y emprendimiento colectivo, dirigidos a afrontar el reto demográfico en los municipios de menor población, en el marco del Programa Operativo de Empleo Juvenil del Fondo Social Europeo (ayudas EMP-POEJ).

²³ Real Decreto 1268/2018, de 11 de octubre, por el que se establecen las bases reguladoras de la concesión de subvenciones a entidades de mujeres rurales de ámbito nacional para la realización de actividades de especial interés para impulsar el papel de las mujeres en el desarrollo rural para la convocatoria correspondiente al ejercicio 2018.

²⁴ Resolución de 16 de octubre del 2018, de la Dirección General de Trabajo, por la que se publica la relación de fiestas laborales para el año 2019.

²⁵ Resolución de 6 de septiembre del 2018, del Congreso de los Diputados, por la que se ordena la publicación del Acuerdo de convalidación del Real Decreto Ley 7/2018, de 27 de julio, sobre el acceso universal al Sistema Nacional de Salud.



application of the “universal social card”²⁶. This is an information system aimed at improving and coordinating the social protection policies promoted by the different Public Administrations. It creates a personal data file that includes updated information for all contributory, non-contributory and welfare benefits of a pecuniary nature granted to citizens and financed from public resources. Bearing in mind, moreover, all the precautions adopted with regard to data protection, the Spanish Social Security Institute shall be the data controller, guaranteeing data confidentiality, security and integrity. In this sense, among others, access to the system for purposes that differ from specific management, access to the system for the purpose of obtaining information on the data owners not required by the management entrusted, the creation of databases parallel to that of the system and the use of system data without the Spanish Institute of Social Security’s express written authorisation shall be considered improper use.

6. The **Decision, of 9 October 2018, of the Directorate-General for Social Security Organisation, establishing the terms for the application to mutuels collaborating with the Social Security of the coefficients for the management of the temporary incapacity benefits deriving from general contingencies of employees of associate companies²⁷**; and the **Decision, of 17 October 2018, of the Spanish Social Security Institute, regulating the procedure for access by authorised persons to the retirement simulator of the “Tu Seguridad Social” platform²⁸**. The Social Security Administration presents a simulator that makes it possible to know the possible retirement dates and obtain an approximate calculation of the amount of the pension based on the data available in the Social Security, projecting the current situation of the citizen up to the date on which he or she could apply for retirement, even allowing for the modification of the projection with the incorporation of other possibilities and variables.

Lourdes López Cumbre

²⁶ Resolución de 14 de septiembre del 2018, del Instituto Nacional de la Seguridad Social, por la que se establecen las prescripciones técnicas necesarias para el desarrollo y aplicación de la «tarjeta social universal».

²⁷ Resolución de 9 de octubre del 2018, de la Dirección General de Ordenación de la Seguridad Social, por la que se establecen los términos para la aplicación a las mutuas colaboradoras con la Seguridad Social de los coeficientes para la gestión de la prestación económica de incapacidad temporal derivada de contingencias comunes de los trabajadores por cuenta ajena de las empresas asociadas.

²⁸ Resolución de 17 de octubre del 2018, del Instituto Nacional de la Seguridad Social, por la que se regula el procedimiento para el acceso por personas autorizadas al simulador de jubilación de la plataforma «Tu Seguridad Social».

IX. Energy

In this sector, the following legislation stands out in particular:

1. **Royal Decree-Law 15/2018, of 5 October, on urgent measures for energy transition and consumer protection²⁹**, whose content revolves around three axes: a) measures against energy poverty and for consumer protection: objective and subjective extension of the social bonus, approval of the thermal social energy tariff, new cases of prohibition of interruption of supply due to non-payment and prohibition of door-to-door marketing of energy supplies; b) developments in the electricity self-consumption scheme: elimination of the ‘sun tax’ and recognition of the right to shared self-consumption and the possibility of generating surpluses; c) measures relating to electricity-production facilities: exceptional extension until 31 March 2020 of permits for access and connection to the grid granted prior to the passage of Act 24/2013, amendments to the scheme of subsidy payments (‘specific remuneration’) and reduction of the tax burden on electricity production, among others.
2. The **Decision, of 30 October 2018, of the Spanish Competition and Markets Authority, laying down and publishing, for the purposes of the provisions of Article 34 of Royal Decree-Law 6/2000, of 23 June, the relations of the main operators in the energy sectors³⁰**.
3. The aforementioned **Royal Decree-Law 20/2018, of 7 December, on urgent measures to boost the economic competitiveness of the trade and industry sectors in Spain³¹**. The measures contained in this royal decree-law affect several areas. Here we limit ourselves to highlighting the developments referring to the energy sector which are mainly three: the approval of the “closed distribution networks”; the protection of the electro-intensive industry and the extension by two years of the useful life of high-efficiency cogeneration facilities that use renewable fuels, natural gas or of low emissions and whose useful life has ended after 1 January 2018.
4. **Order TEC/1302/2018, of 4 December, establishing the necessary provisions to implement a system of aid for investment in facilities that produce electricity from renewable energy sources in non-mainland territories and determining the transfer of sixty million euros from the electricity surplus to the budget of the Institute for Energy Diversification and Saving with**

²⁹ *Real Decreto Ley 15/2018, de 5 de octubre, de medidas urgentes para la transición energética y la protección de los consumidores.*

³⁰ *Resolución de 30 de octubre del 2018, de la Comisión Nacional de los Mercados y la Competencia, por la que se establecen y publican, a los efectos de lo dispuesto en el artículo 34 del Real Decreto Ley 6/2000, de 23 de junio, las relaciones de operadores principales en los sectores energéticos.*

³¹ *Real Decreto Ley 20/2018, de 7 de diciembre, de medidas urgentes para el impulso de la competitividad económica en el sector de la industria y el comercio en España.*

effect from 2017³², and Order TEC/1314/2018, of 7 December, establishing the necessary provisions to implement a system of aid for investment in facilities that produce electricity from renewable energy sources and determining the transfer of sixty million euros from the electricity surplus to the budget of the Institute for Energy Diversification and Saving with effect from the 2018 budgetary year³³. Transfers made by the Spanish Competition and Markets Authority of sixty million euros to the Institute for Energy Diversification and Saving from the electricity surplus generated until the entry into force of the Spanish Government Budget for 2017 Act 3/2017 of 27 June and the Spanish Government Budget for 2018 Act 6/2018 of 3 July, respectively, competitive calls for applications to investment aid will be made, charged to the aforementioned electricity surplus, with the possibility of increasing the amount of the call with other appropriations of the Ministry for Ecological Transition's expenditure budget and the co-financing by the European Regional Development Fund (ERDF). The investment aid will be allocated to facilities that produce electricity from renewable energy sources in non-mainland territories and will be subject to the scheme of the Subsidies Act 38/2003 of 17 November.

5. **Act 6/2018 of 13 November amending the tax on the environmental impact caused by certain uses of dammed water, wind farms and high-voltage electricity transmission facilities regulated in the recast version of the legislative provisions of the Region of Castile-Leon on own and assigned taxes³⁴.** This regional law introduces a new tax applicable to nuclear energy that taxes the temporary storage of radioactive waste.

Ana I. Mendoza Losana

X. Telecommunications

In the telecommunications sector, the following legislation stands out:

1. On 4 December 2018, the **Directive of the European Parliament and of the Council establishing the European Electronic Communications Code** and the **Regulation of the**

³² Orden TEC/1302/2018, de 4 de diciembre, por la que se establecen las disposiciones necesarias para instrumentar un sistema de ayudas a la inversión en instalaciones de producción de energía eléctrica a partir de fuentes renovables en territorios no peninsulares y se determina la transferencia de sesenta millones de euros procedentes del superávit eléctrico al presupuesto del Instituto para la Diversificación y Ahorro de la Energía con efectos del año 2017.

³³ Orden TEC/1314/2018, de 7 de diciembre, por la que se establecen las disposiciones necesarias para instrumentar un sistema de ayudas a la inversión en instalaciones de producción de energía eléctrica a partir de fuentes renovables y se determina la transferencia de sesenta millones de euros procedentes del superávit eléctrico al presupuesto del Instituto para la Diversificación y Ahorro de la Energía con efectos en el ejercicio presupuestario del 2018.

³⁴ Ley 6/2018, de 13 de noviembre, por la que se modifica el impuesto sobre la afección medioambiental causada por determinados aprovechamientos del agua embalsada, por los parques eólicos y por las instalaciones de transporte de energía eléctrica de alta tensión regulado en el texto refundido de las disposiciones legales de la Comunidad de Castilla y León en materia de tributos propios y cedidos.



European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 were adopted. Changes introduced by these two pieces of legislation include measures to boost 5G technology, the inclusion of affordable and adequate internet access as a universal service, the introduction of a public alert system to send alerts to citizens via their mobile phones in the event of a natural disaster or other emergency (“inverted 112”) and the setting of a maximum charge of 19 cents per minute for international calls (fixed and mobile) within the European Union, which will apply from 15 May 2019.

2. **Order ECE/1016/2018, of 28 September, establishing the regulatory basis for granting subsidies to pilot projects of 5G technology**³⁵. 5G technology will enable high-speed, high-capacity mobile broadband internet access, ultra-reliable and low-latency communications and machine-to-machine mass communications. This will have a crosscutting effect on the economy and society as a whole. For this reason, although the technological and commercial maturity of 5G technology is presumed in the horizon of 2020, in the meantime, the order provides for financial aid to promote the adoption of standards, identify cases of use, experiment with technologies and develop the appropriate ecosystems. Companies or temporary business partnerships (‘UTE’) set up for this purpose may participate in the selection procedure.
3. **Order ECE/1166/2018, of 29 October, approving the Plan to provide coverage allowing access to broadband services at a speed of 30 Mbps or higher, to be executed by operators holding public concessions in the 800 Mhz band**³⁶. This order requires the operators Vodafone España, S. A. U., Telefónica Móviles España, S. A. U., and France Telecom España, S. A. U. to adopt measures to guarantee coverage that allows access at a speed of 30 Mbps or higher to at least 90% of the citizens of population units of less than five thousand inhabitants before 1 January 2020. The coverage obligation will be distributed among each of the three operators required to meet the objectives set, so that they can submit a joint proposal indicating the number of citizens to whom each of the operators envisage providing additional coverage in each region.
4. The **Decision, of 14 November 2018, of the Spanish Competition and Markets Authority, laying down and publishing, for the purposes of the provisions of Article 34 of Royal Decree-Law 6/2000, of 23 June, the relations of the main operators in the national markets for fixed and mobile telephony services**³⁷.

³⁵ Orden ECE/1016/2018, de 28 de septiembre, por la que se establecen las bases reguladoras de la concesión de subvenciones a proyectos piloto de tecnología 5G.

³⁶ Orden ECE/1166/2018, de 29 de octubre, por la que se aprueba el Plan para proporcionar cobertura que permita el acceso a servicios de banda ancha a velocidad de 30 Mbps o superior, a ejecutar por los operadores titulares de concesiones demaniales en la banda de 800 Mhz.

³⁷ Resolución de 14 de noviembre del 2018, de la Comisión Nacional de los Mercados y la Competencia, por la que se establecen y publican, a los efectos de lo previsto en el artículo 34 del Real Decreto Ley 6/2000, de 23 de junio, las relaciones de operadores principales en los mercados nacionales de servicios de telefonía fija y móvil.

5. Although it is a cross-sectoral piece of legislation (which we will develop a little further below), we must also mention here the **Personal Data Protection and Digital Rights Guarantee Act 3/2018 of 5 December**³⁸, Title X whereof refers to the “guarantee of digital rights” and expressly regulates rights such as universal access to the Internet, the right to digital security, the right to be forgotten in Internet searches, the right to the portability of data in social network services and equivalent services and the right to a digital will.

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XI. Audiovisual

In this area, **Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services** (Audiovisual Media Services Directive) stands out in the light of changing market realities. The aim of the reform is to apply to online audiovisual content platforms rules similar to those applicable to conventional television channels with regard to the promotion of European content and the protection of minors. In addition, it removes restrictions on the time of advertising broadcasted on television. All this with the aim of creating a framework for competition between television channels and online platforms. The new directive will apply to audiovisual media service providers and video exchange platforms established in a Member State of the European Union, broadly defining the concept of ‘establishment’. The deadline for transposing the directive is 19 September 2020.

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XII. Data protection

In compliance with the provisions of Article 99 of the General Data Protection Regulation, the new **Personal Data Protection and Digital Rights Guarantee Act 3/2018 of 5 December**³⁹ has been passed, replacing the current statute conceived as a necessary law to adapt the Spanish legal system to the aforementioned European provision and as proportional to this objective, its ultimate reason being to ensure legal certainty.

³⁸ *Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y Garantía de los Derechos Digitales.*

³⁹ *Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos y Garantía de los Derechos Digitales.*

Among its main developments, we must highlight the regulation of the following matters:

- Guarantee of digital rights.
- Processing of children's data.
- Processing of personal data related to criminal convictions, offences, proceedings and related provisional and protective measures.
- Processing of individual employers and freelancers' contact data.
- Data processing related to certain corporate transactions.
- Data processing for video-surveillance purposes.
- Advertising exclusion systems.
- Information systems for internal complaints in the private sector.
- Use of digital devices in the workplace.

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