

# Current Legislation

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## I. Environment<sup>1</sup>

In this field, we consider the following to be of interest:

1. **Regulation (EU) 2020/741 of the European Parliament and of the Council of 25 May on minimum requirements for water reuse.** The regulation applies whenever treated urban waste water is reused, in accordance with Article 12(1) of Directive 91/271/EEC, for agricultural irrigation. It sets out minimum requirements for water quality and monitoring, as well as risk management provisions to ensure that reclaimed water is safe for agricultural irrigation. The principles underlying this Regulation are the protection of the environment and of human and animal health, and the promotion of a circular economy to cope with water scarcity and the resulting pressure on water resources throughout the Union.
2. **Royal Decree 553/2020, regulating shipments of waste within the territory of the State<sup>2</sup>.** The purpose of this piece of legislation is to regulate, clarify and increase the control of waste shipments within the Spanish territory, in application of Article 25 of the Waste and Contaminated Soils Act 22/2011 of 28 July. Among other changes, the persons that, in accordance with EU legislation, may have the status of shipment operator are specified in more detail. Also noteworthy is the implementation of a common electronic information system that allows for harmonization of said information throughout the State's territory, thus guaranteeing the traceability and control required to ensure correct waste management.
3. **Decision of the Cabinet, of 2 June 2020, approving the Spanish Strategy for the Circular Economy: "España Circular 2030"<sup>3</sup>.** The strategy lays the foundations for promoting a new model of production and consumption in which the use of materials and resources is optimised and waste generation is reduced. The strategy is consistent with the instruments adopted by the European Union - mainly the Green Deal - to achieve a sustainable, decarbonized, efficient and competitive economy.

The document provides strategic guidance of a transversal and multidisciplinary nature along three sustainability axes - economic, social and environmental - and lays down the following objectives for the year 2030: 1) to reduce greenhouse gas emissions to below 10 million tonnes of CO<sub>2</sub> equivalent; 2) to reduce the generation of food waste throughout the food chain; 3) to

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<sup>1</sup> We will not delve into an analysis of the numerous pieces of legislation published as a result of the situation caused by the coronavirus (COVID-19) as this would lead to an unusual length for this newsletter. You can, nonetheless, access all our comments on these laws on our website at the following link: [www.ga-p.com](http://www.ga-p.com).

<sup>2</sup> *Real Decreto 553/2020, por el que se regula el traslado de residuos en el interior del territorio del Estado.*

<sup>3</sup> *Acuerdo del Consejo de Ministros de 2 de junio del 2020, por el que se aprueba la Estrategia Española de Economía Circular: España Circular 2030.*

reduce national consumption of materials by 30% in relation to the gross domestic product; 4) to reduce waste generation by 15% by 2010; 5) to improve water use efficiency by 10%; and 6) to increase the reuse and preparation for reuse of municipal waste to 10%.

Ignacio Álvarez Serrano and Paloma Tuñón Matienzo

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## II. Agri-food

On this occasion, we refer to **Royal Decree 429/2020, of 3 March 3, approving the Access to Plant Genetic Resources for Food and Agriculture and those Cultivated for Other Purposes Regulations, and amending various royal decrees on plant products<sup>4</sup>**.

This piece of legislation culminates the implementation of Title IV of Act 30/2006 of 26 July (already initiated previously, with regard to its Part III, by Royal Decree 199/2017 of 3 March). It also incorporates the provisions necessary for compliance with two international treaties: the International Treaty on Plant Genetic Resources for Food and Agriculture (ratified by the Kingdom of Spain on 17 March 2004), and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (ratified by the Kingdom of Spain on 9 August 2012).

José Luis Palma Fernández and Yago Fernández Darna

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## III. Intellectual property

The following legislation should be considered in this field:

1. The European Union Intellectual Property Network has published the **Common Practice “Distinctiveness of three-dimensional marks (shape marks) containing verbal and/or figurative elements when the shape is not distinctive in itself”**; it applies from 1 April<sup>5</sup>.

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<sup>4</sup> Real Decreto 429/2020, de 3 de marzo, por el que se aprueba el Reglamento sobre acceso a los recursos fitogenéticos para la agricultura y la alimentación y a los cultivados para utilización con otros fines, y se modifican diversos reales decretos en materia de productos vegetales.

It is a document that aims to unify the practice of the European Union Intellectual Property Office (EUIPO) with that of the national offices. Among other things, it states that if a non-distinctive shape contains an element that is distinctive on its own, it will suffice to render the sign as a whole distinctive. In any case, the size and proportion of the verbal/figurative elements, their contrast with respect to the shape and their actual position on it, are all factors that may affect the perception of the sign when assessing its distinctiveness.

2. The European Union Intellectual Property Network has also published the **Common Practice “Criteria for assessing disclosure of designs on the Internet”**. This document acknowledges that designs may be disclosed on the Internet and indicates the evidence that must be provided to prove disclosure depending on whether it has taken place on a website, in an app, by e-mail or by a file sharing system. Attention is also given to the date on which the disclosure will be deemed to have taken place<sup>6</sup>.

Ángel García Vidal

## IV. Foreign investments

With regard to this matter, **Royal Decree-law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of COVID-19**<sup>7</sup>, is noteworthy. Despite the fact that it derives from COVID-19, we comment on it because of its transcendence and possible extension in time. This law amends the Capital Movements and Financial Transactions with Foreign Countries (Legal Regime) Act 19/2003 of 4 July to decree the suspension of the deregulation of certain foreign direct investments in Spain (new Article 7 bis of Act 19/2003), to classify as a very serious infringement the failure to comply with this new body of rules (Article 8(2) of Act 19/2003) and to introduce changes in the conduct of the sanctioning procedure (Article 12(2)), with effect from 18 March 2020. Furthermore, **Royal Decree-law 11/2020, of 31 March, adopting additional urgent measures in the social and economic field to deal with COVID-19**<sup>8</sup>, in turn amends Article 7 bis and introduces transitional procedural rules for transactions already underway when the new Article 7 bis comes into force and for those between 1 and 5 million euros; these rules exempt transactions of less than 1 million euros from the necessary prior administrative authorisation (second transitional provision of Royal Decree-law 11/2020).

<sup>5</sup> [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/News/cp9/CP9\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/News/cp9/CP9_en.pdf)

<sup>6</sup> [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/News/cp10/CP10\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/News/cp10/CP10_en.pdf)

<sup>7</sup> *Real Decreto Ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19.*

<sup>8</sup> *Real Decreto Ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19.*

Article 7 bis(1) defines these foreign direct investments as “all those investments as a result of which the investor holds 10% or more of the share capital of the Spanish company, or when as a result of the capital transaction, act or lawful business the investor effectively participates in the management or control of that company, provided that one of these circumstances applies: a) the investment is carried out by residents of countries outside the European Union and the European Free Trade Association; b) the investment is carried out by residents of countries in the European Union or the European Free Trade Association whose beneficial ownership lies with residents of countries outside the European Union and the European Free Trade Association. Such beneficial ownership shall be deemed to exist when the latter ultimately own or control, directly or indirectly, a percentage of more than 25 % of the investor’s capital or voting rights, or when by other means they exercise control, directly or indirectly, over the investor”.

As for the companies affected by the suspension of the deregulation of foreign investments, generally speaking it is those operating in the media sector, critical infrastructure and technology, supply of key inputs such as energy and sectors with access to sensitive information (e.g. personal data), provided that the foreign investments affect public policy, public security and public health (Article. 7 bis(2) of Act 19/2003).

Direct foreign investments in Spain are also subject to administrative authorisation when: a) the foreign investor is directly or indirectly controlled by the government - including public bodies or the armed forces - of a third country, b) the foreign investor has made investments or participated in activities in sectors affecting security, public policy and public health in another Member State, or c) administrative or judicial proceedings have been initiated against the foreign investor in another Member State or in the home State or in a third State for criminal or illegal activities (Article 7 bis(3) of Act 19/2003). In addition, “the Government may suspend the deregulation of foreign direct investment in Spain in those other sectors not covered by paragraph 2 of this article, when they may affect public security, public policy and public health” (Article 7 bis(4) of Act 19/2003).

Article 7 bis(5) of Act 19/2003 provides that investment operations carried out without the required prior administrative authorisation will lack validity and legal effects until such time as they are legalised, and this is without prejudice to the sanctioning rules that may apply on account of such absence of prior authorisation.

Inés Fontes Migallón

## V. Tax

Many laws of import have been passed over the last few months in the field of taxation<sup>9</sup>, but we would like to highlight the following (some also derived from COVID-19, but of great interest):

1. **Royal Decree-law 17/2020, of 5 May, approving measures to support the cultural sector and tax measures to address the economic and social impact of COVID-2019<sup>10-11</sup>**. This piece of legislation, on the one hand, increases tax incentives for film and audiovisual production of fiction, animation or documentary series, as well as for foreign shoots. On the other hand, it also increases the percentages of tax relief for donations made by taxpayers of personal income tax to patronage projects. Finally, the time limits for major events planned as events of exceptional public interest are extended, which affects the tax expenditures applicable thereto.
2. Likewise, within the framework of **the legislative tax measures adopted as a result of COVID-19**, a series of **royal decree-laws** have been adopted that have temporarily affected certain taxes and procedures. Thus, on the one hand, administrative time limits have been extended or suspended, judicial time limits have been interrupted and the payment of certain tax arrears has been deferred, although these time limits have now been resumed or restarted<sup>12</sup>. A number of measures have also been taken in the context of customs legislation with regard to customs transit. Finally, to a lesser extent, certain taxes have also been affected in order to mitigate the economic impact that the situation may have on taxpayers.
3. In the Historical Territory of Gipuzkoa, **Foral<sup>13</sup> Act 1/2020, of 24 April, introducing tax changes related to the transposition of European directives and other modifications of a technical nature<sup>14</sup>**, is noteworthy. This law adapts the regulation of the tax system to

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<sup>9</sup> For more details, you can access all our comments on our website at the following link: [www.ga-p.com](http://www.ga-p.com).

<sup>10</sup> *Real Decreto Ley 17/2020, de 5 de mayo, por el que se aprueban medidas de apoyo al sector cultural y de carácter tributario para hacer frente al impacto económico y social del COVID-2019.*

<sup>11</sup> For an in-depth analysis we refer to the following article: <https://www.ga-p.com/wp-content/uploads/2020/05/The-new-2020-Spanish-tax-incentives-for-the-filming-industry-upgrade-Spain-as-one-of-the-most-attractive-Locations-to-shoot-films-and-TV-shows-4.pdf>.

<sup>12</sup> For more detail, you can access the following publication: [https://www.ga-p.com/wp-content/uploads/2020/03/Tax-Alert\\_Estado-de-Alarma.pdf](https://www.ga-p.com/wp-content/uploads/2020/03/Tax-Alert_Estado-de-Alarma.pdf)

<sup>13</sup> *Translator's note: "Foral" is the generic name used in Spain for all the institutions of the autonomous administration and legal systems of the former Kingdom of Navarre and the former seigniories of Araba-Alava, Gipuzkoa and Biscay, constituting Navarre and the Basque Country, respectively, which, for various historical vicissitudes, have been maintained.*

<sup>14</sup> *Norma Foral 1/2020, de 24 abril, por la que se introducen modificaciones tributarias relacionadas con la transposición de directivas europeas y otras modificaciones de carácter técnico.*



the obligation to report certain cross-border mechanisms of aggressive tax planning (DAC6). In addition, this law introduces certain changes:

- 1) In the personal income tax, on the one hand, the exemption for co-responsibility in the care of the infant is included and, on the other hand, a clarification is introduced in relation to the exempted profits from the transfer of family businesses in certain cases.
- 2) Firstly, in the field of corporate income tax, a number of nuances are included in the consideration of asset-holding companies. Furthermore, the application of the elimination of double taxation of dividends excludes their non-inclusion in cases where the distribution of dividends or profit shares generates a tax-deductible expense at the paying entity. Finally, in the tax consolidation system, it is clarified that the tax losses to be offset at the time of integration into the tax group may be offset against the taxable income of the group up to a limit of 50 % of the individual taxable income of the same entity.
- 3) In the wealth tax, the rules on the exemption applicable to holdings in the capital or assets of entities are amended to extend to indirect holdings the condition that the entity does not have as its main activity the management of movable or immovable assets.

**Foral Decree 5/2020, of 21 April, approving the Regulations on tax management and the implementation of common rules on tax acts and procedures<sup>15</sup>** was adopted, which include common rules on tax acts and procedures, as well as management acts and procedures. It also regulates other aspects related to the assignment and exercise of tax management functions, information and assistance to taxpayers and social collaboration in tax management, among others.

4. In the Historical Territory of Biscay, **Delegated Foral Act 2/2020, of 21 April, amending Foral Act 7/1994, of 9 November, on value added tax<sup>16</sup>** has been published. This law incorporates the harmonised value added tax rules for “agreements for the sale of goods on consignment” entered into between employers or self-employed professionals for the cross-border sale of goods. Thus, a simplified treatment is introduced which will apply when the goods are acquired by the customer within one year of arrival in the Member State of destination, also establishing the formal requirements to be met to enable its application.
5. At the EU level, worth noting is **Commission Decision (EU) 2020/491 of 3 April 2020 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020**. By this decision, goods are admitted free of import duties and exempted of value added tax on the imports, essentially those: (a) which are distributed free of charge to persons affected by or at risk from

<sup>15</sup> Decreto Foral 5/2020, de 21 de abril, por el que se aprueba el Reglamento de gestión tributaria y de desarrollo de las normas comunes sobre actuaciones y procedimientos tributarios.

<sup>16</sup> Decreto Foral Normativo 2/2020, de 21 de abril del Territorio Histórico de Bizkaia, por el que se modifica la Norma Foral 7/1994, de 9 de noviembre, del Impuesto sobre el Valor Añadido.



COVID-19 or those involved in combating the disease, and (b) which are imported for re-release for free circulation by or on behalf of State organisations. This exemption applies to importations made from 30 January 2020 to 31 July 2020.

Enrique Santos Fresco and Rosario Cuadra Espinar

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## VI. Accounting

In relation to this field, at the EU level, **Commission Regulation (EU) 2020/551 of 21 April 2020 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 Financial Reporting Standard 3** has been adopted. This regulation includes an amendment that aims to clarify the definition of a business under IFRS 3 with respect to the identification of a Business Combination with a view to facilitating its practical application.

Enrique Santos Fresco and Rosario Cuadra Espinar

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## VII. Real Estate

In the field of leases, two pieces of legislation have been published during the 'state of alarm' which, despite also deriving from the situation generated by COVID-19, we have decided to comment, at least briefly, due to their importance and special interest<sup>17</sup>.

1. The already mentioned **Royal Decree-law 11/2020, of 31 March, adopting additional urgent measures in the social and economic field to deal with COVID-19**, which also introduces measures for the rental of housing that can be grouped into three different categories: 1) moratoriums and assistance in the payment of rent by the tenant; 2) extraordinary extension of six months of lease agreements subject to the Urban Tenancy Act 29/1994; and 3) in eviction procedures, in certain cases, the suspension of the dispossession - or of the hearing to order the dispossession - for a maximum period of six months from the entry into force of the law (4 April 2020).

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<sup>17</sup> In any case, for more detail, you can access all our comments on our website at the following link: [www.ga-p.com](http://www.ga-p.com).

2. **Royal Decree-law 15/2020, of 21 April, on additional urgent measures to support the economy and employment**<sup>18</sup>, which also provides for the possibility of a moratorium on the payment of rent applicable to leases of business premises subject to the Urban Tenancy Act and to industrial leases whose beneficiaries are self-employed persons and SMEs of certain characteristics.

Marina Martínez Plaza

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## VIII. Insolvency

In the field of insolvency, the publication of **Royal Legislative Decree 1/2020, of 5 May, approving the recast version of the Insolvency Act**<sup>19</sup>, which will soon come into force, with practically no *vacatio legis* (i.e., period between adoption and application) to digest such a voluminous text, on 1 September 2020, is particularly relevant, perhaps not because of what it actually provides, but because of its consequences for legal operators - at least in the short and medium term. With this piece of legislation, the lawmaker intends to regularise, clarify and harmonise a text that had certainly become disorderly as a result of the multiple amendments to which it has been subjected throughout its short life.

The recast version tries to eliminate the possible interpretative doubts that could be generated by the drafting of the Insolvency Act, making it easier to read and understand. To this end, it has devoted an article to each subject - with no one provision dealing with different or heterogeneous issues - and has rearranged its content by distributing it in three books which, in turn, are divided into no less than 752 articles (compared to the 242 that made up the previous wording of the Insolvency Act). The first book, the most extensive of the three, with 582 articles, is devoted to insolvency proceedings; the second, to pre-insolvency law and the third, to the rules of private international law.

The main changes introduced by the recast version include the following<sup>20</sup>:

- The order opening the insolvency proceedings will be issued on the first working day following the judge's assessment that the requirements for it are met (Articles 10 and 14).
- If the appeal against the rejection of the petition for insolvency proceedings is upheld, the date of the opening of the insolvency proceedings shall be that of the decision under appeal (Article 26).

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<sup>18</sup> *Real Decreto Ley 15/2020, de 21 de abril, de medidas urgentes y complementarias para apoyar la economía y el empleo.*

<sup>19</sup> *Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal.*

<sup>20</sup> For a more detailed analysis, we refer to the publication contained in the following link: <http://www.ga-p.com>.

- The Companies Court is empowered to open joint insolvency proceedings or for the joinder of a non-employer natural person, of an employer natural person or of legal person (Article 46).
- The jurisdiction of the insolvency judge to determine whether an asset or right is necessary for the continuation of the debtor's professional or business activity and to wind up and liquidate the insolvent debtor's company or marital community property regime is expressly added (Article 52).
- In the accountability document, the insolvency practitioner must justify the use it has made of the powers conferred; he must detail the remuneration that has been set for each stage of the insolvency proceedings, specifying the amounts received - including supplements - as well as the dates of each of these payments, and must express the payments of the assistants or delegate assistants - where appointed - and those of any experts, appraisers and specialist entities engaged against the remuneration of the insolvency practitioner himself. The document will also specify the number of workers assigned by the insolvency practitioner to the insolvency proceedings and the total number of hours dedicated by all these workers to the same (Article 102).
- With regard to liability claims that may be heard by the insolvency judge, claims against the natural person appointed to permanently exercise the functions of the post of director and against the person, whatever the name, with the powers of senior management of the company when there is no permanent delegation of powers of the board to one or more managing directors (Article 132).
- Compensation from the same legal relationship is not subject to the legal prohibition of compensation (Article 153).
- The prohibition on the sale or encumbrance of the property and property rights that make up the assets available for distribution without the authorisation of the judge is extended until the approval of the liquidation plan - instead of until the opening of the liquidation (Article 205).
- As regards the sale of productive units and the realization of property attached to a specially privileged claim, it is expressly stated that this will be done by auction, judicial or extrajudicial, including electronic, unless the judge authorizes another method of realization from among those provided for in this law (Articles 209 and 215).
- With regard to the standing to bring avoidance actions against acts detrimental to the assets available for distribution, it is specified that the expiry of the two-month period following the request by the creditors for the bringing of an avoidance action shall not prevent the insolvency practitioner from bringing an avoidance action, whether or not the action has been brought

by the creditors. If it has already been brought by the creditors, the insolvency judge will proceed on his own initiative to join the proceedings (Article 232).

- A claim is considered to be litigious as soon as the statement of claim relating to it has been answered (Article 262).
- In the event that the final list of creditors results in the existence of only one creditor, the judge will issue an order in which he agrees to the conclusion of the insolvency proceedings (Article 303).
- The insolvency practitioner may at any time request the judge to modify the approved plan if he considers it in the best interest of the insolvency proceedings and the quickest route to obtaining satisfaction for the creditors (Article 420).
- The report submitted by the insolvency practitioner in which the insolvency is characterised as at-fault will take the form of a statement of claim. The opinion issued by the Public Prosecutor's Office will have the same structure. The objection to the characterisation will take the form of a statement of defence (Articles 448, 449 and 451).
- A title of the law is dedicated to the regulation of consecutive insolvency proceedings. With regard to the characterisation of consecutive insolvency proceedings, it is provided that, in the case of a legal person, in addition to those set out in the recast version, shareholders who, without reasonable cause, have refused to agree to the capitalization of claims or to an issue of securities or convertible instruments or have voted against the proposal may be regarded as persons affected by the characterisation. The classification of the shareholders as persons affected by the characterisation will depend on the degree to which they contributed to the formation of the majority required for the rejection of the resolution (Article 701).

Rodrigo López González and Sofía Fernández Mariño

## IX. Employment and labour

All employment, labour and social security legislation this quarter has been tarnished by the effects of the pandemic. Nevertheless, and without prejudice to the reference to the more specific studies carried out in this regard<sup>21</sup>, the following highlight those measures that extend or may extend their scope beyond the state of alarm:

1. **Royal Decree-law 18/2020, of 12 May, on corporate measures to protect jobs**<sup>22</sup> establishes the extension of temporary collective redundancy procedures (ERTEs) arising from force majeure until 30 June 2020, with the possibility of being extended until the end of the year. Since its original regulation in Article 22 of Royal Decree-law 8/2020 of 17 March, this temporary suspension from employment measure has been key in preventing layoffs. Now companies will be able to even keep a partial procedure of this type when they decide to reinstate only part of their staff. Also the rest of the temporary collective redundancy procedures (Article 23 of Royal Decree-law 8/2020) may extend their effects until the indicated date, although with some specificities provided for in this new Royal Decree-law 18/2020. In addition, the unemployment protection measures associated with these procedures are extended until the end of June and, in some cases, until 31 December 2020. Likewise, the exemption of contributions for companies and entities with extended temporary collective redundancy procedures is maintained. However, companies and entities with their tax domicile in tax havens will not be able to avail themselves of these procedures due to force majeure and commercial companies or other legal persons that use the public resources of these measures will not be able to pay dividends for the fiscal year in which such procedures apply. With two exceptions: companies with fewer than 50 employees or which pay the amount matching the exemption from which they have benefited. In any case, companies with temporary collective redundancy procedures due to force majeure will be bound to maintain employment for a period of six months from the date of resumption of the activity (commitment modulated by Royal Decree-law 11/2020 of 31 March - BOE of 1 April -, depending on the sector and the high variability or seasonality of the companies' employment). If they fail to comply with this commitment, they must reimburse the full amount of the contributions from which they were exempted, with the appropriate surcharge and late payment interest.
2. **Royal Decree-law 19/2020, of 26 May, adopting additional measures in the agricultural, scientific, economic, employment and social security and tax fields to mitigate the effects of COVID-19**<sup>23</sup>, introduces amendments to a large part of the emergency employment

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<sup>21</sup> For more details, you can access all our comments on our website at the following link: [www.ga-p.com](http://www.ga-p.com).

<sup>22</sup> Real Decreto Ley 18/2020, de 12 de mayo, de medidas sociales en defensa del empleo.

<sup>23</sup> Real Decreto Ley 19/2020, de 26 de mayo, por el que se adoptan medidas complementarias en materia agraria, científica, económica, de empleo y Seguridad Social y tributarias para paliar los efectos del COVID-19.

legislation and to basic laws such as the Workers' Statute Act (LET) or the Social Security Act (LGSS), among others. It is worth noting the inclusion of a new Article 33(11) of the Workers' Statute Act on the application of administrative silence in the benefits of the Spanish Insolvency Payments Service (Fogasa), which may not, however, be extended to persons who cannot be recipients under the law or for an amount greater than that which results from the application of the limits provided for in the law.

3. However, some development also deserve to be highlighted because of their intended permanency:

Firstly, support for companies and self-employed persons through the benefits for cessation of business (amended by the aforementioned Royal Decree-law 19/2020), the moratorium on the payment of social security contributions for six months and the deferment of debts in this area, in accordance with the provisions of the aforementioned **Royal Decree-law 11/2020 of 31 March, adopting additional urgent measures in the social and economic field to deal with COVID-19** (Articles 34 et seq.), and provided that the companies have not obtained exemptions for the suspension of their business activity. On the other hand, the companies subject to insolvency proceedings that are viable will be able to avail themselves of the emergency employment measures under the terms of this Royal Decree-law 11/2020, modifying some aspects of the current Insolvency Act.

Secondly, it should be noted that the agricultural sector has been given a major incentive to hire national workers or foreigners in an irregular situation, given that it is impossible to hire quotas of workers from abroad due to limitations on international mobility. In this regard, **Royal Decree-law 13/2020, of 7 April, adopting certain urgent measures in the area of agricultural employment**<sup>24</sup>, will make it possible to make certain social benefits compatible with the remuneration obtained for work in the fields and will facilitate the residence and nationality procedures for foreigners hired in the sector, with special attention to young people. All these measures have been extended until 30 September 2020 by the aforementioned Royal Decree-law 19/2020.

And thirdly and finally, it is worth highlighting the important amendments introduced into Royal Decree-law 8/2020 – ground-breaking in employment matters - by the aforementioned **Royal Decree-law 15/2020, of 21 April, on additional urgent measures to support the economy and employment**. Among others, the establishment of the Mecuida Plan, which maintains the preferential nature of teleworking and measures to reduce or adapt working hours for at least three months after the end of the state of alarm, or the modifications introduced in the Employment-Related Infringements and Penalties Act to intensify the control of false data in the conduct of procedures or processing of benefits.

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<sup>24</sup> Real Decreto Ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario.

4. **Royal Decree-law 20/2020, of 29 May, setting out the living allowance**<sup>25</sup>. Created as a non-contributory social security benefit, this is a personal right that guarantees a minimum level of income both to individual recipients over the age of 23 and under the age of 65, and to cohabitation units legally resident in Spain that are in a situation of economic vulnerability due to lack of sufficient income, revenue or assets, under the terms of the law. The payment will be monthly from the month of June and will be compatible with work. In fact, companies that hire people receiving this benefit will be able to obtain -when approved- the so-called *social inclusion stamp*.
5. Other noteworthy measures in the **field of social security** focus basically on the granting of previously non-existent benefits. One of the most important of these is the exceptional granting of an extraordinary allowance for lack of activity for persons covered by the Special System for Household Employees of the social security's general scheme (class) under **Royal Decree-law 11/2020** (Articles 30 et seq.). Likewise, the extension of the occupational contingency deriving from work-related injuries to cover illnesses of healthcare workers due to the contagion of the virus is established by the analysed **Royal Decree-law 19/2020** and the granting of an exceptional unemployment benefit for artists (the already indicated **Royal Decree-law 17/2020, of 5 May, approving support measures for the cultural sector and tax measures to deal with the economic and social impact of COVID-2019**, and the aforementioned **Royal Decree-law 19/2020, of 26 May, adopting additional measures in the agricultural, scientific, economic, employment and social security and tax fields to mitigate the effects of COVID-19**).
6. On the other hand and to conclude, **also in the field of Social Security**, the aforementioned **Royal Decree-law 15/2020, of 21 April, on additional urgent measures to support the economy and employment**<sup>26</sup>. This has meant a significant transfer of the management of the public sector pensions scheme (class) to the social security managerial bodies, has imposed the option of a mutual society collaborator of the Social Security for self-employed workers, both by action and by omission, has lowered the interest rate in the event of deferment of debt to the Social Security to 0.5% and has introduced a quantitative limit on the redemption of vested rights in occupational pension schemes for participants affected by temporary collective redundancy procedures.

Lourdes López Cumbre

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<sup>25</sup> Real Decreto Ley 20/2020, de 29 de mayo, por el que se establece el ingreso mínimo vital.

<sup>26</sup> Real Decreto Ley 15/2020, de 21 de abril, de medidas urgentes complementarias para apoyar la economía y el empleo.



## X. Energy

In a context marked by legislation passed in the framework of the declaration of the state of alarm<sup>27</sup>, the following should be highlighted the energy sector:

1. The **Decision of the State Secretariat for Energy, of 25 March 2020, for the application of Order TEC/1259/2019, of 20 December, setting out the remuneration of the basic underground storage activity and the tolls and fees associated with access by third parties to gas facilities for the year 2020**<sup>28</sup>.
2. The **Decision of the Directorate-General for Energy Policy and Mines, of 30 April 2020, setting the average price of energy to be applied in calculating the remuneration of the demand-side interruptible load management service provided by consumers in the electricity systems of the non-peninsular territories to which Order ITC/2370/2007, of 26 July, applies during the second quarter of 2020**<sup>29</sup>. The aforementioned decision sets a value of 37.33 euros/MWh.

Ana Isabel Mendoza Losana

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<sup>27</sup> You can find on our website comments on developments in the various regulated sectors following the pandemic. At the following link: [www.ga-p.com](http://www.ga-p.com).

<sup>28</sup> *Resolución de 25 de marzo del 2020, de la Secretaría de Estado de Energía, para la aplicación de la Orden TEC/1259/2019, del 20 de diciembre, por la que se establecen la retribución de la actividad de almacenamiento subterráneo básico y los peajes y cánones asociados al acceso de terceros a las instalaciones gasistas para el año 2020.*

<sup>29</sup> *Resolución de 30 de abril del 2020, de la Dirección General de Política Energética y Minas, por la que se fija el precio medio de la energía a aplicar en el cálculo de la retribución del servicio de gestión de la demanda de interrumpibilidad prestado por los consumidores de los sistemas eléctricos de los territorios no peninsulares a los que resulta de aplicación la Orden ITC/2370/2007, de 26 de julio, durante el segundo trimestre del 2020.*