

# Current Legislation

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We do not assess the numerous rules and regulations published as a result of the situation caused by the coronavirus (COVID-19) as this would entail an unusual length for this digest. In any case, you can access all our comments on these rules and regulations on our website at the following link: [www.ga-p.com](http://www.ga-p.com).

## I. Environment

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

1. **Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption.** It aims to protect human health from the adverse effects of any contamination of water intended for human consumption by defining minimum conditions of health and cleanliness, establishing quality parameters and risk assessment and management. At the same time, the regulation aims to improve access to water intended for human consumption for groups defined by each Member State as vulnerable and marginalised.
2. **Emissions Trading System Act Amendment (Cost-Effective Emissions Reduction) Act 9/2020 of 16 December<sup>12</sup>.**
3. **Royal Decree 27/2021, of 19 January, amending Royal Decree 106/2008, of 1 February, on batteries and accumulators and the environmental management of waste batteries and accumulators, and Royal Decree 110/2015, of 20 February, on waste electrical and electronic equipment<sup>3</sup>.**
4. **Foral<sup>4</sup> Act 17/2020, of 16 December, regulating Activities with an Environmental Impact<sup>5</sup>.** It replaces Foral Act 4/2005, of 22 March, on Intervention for Environmental Protection, with which it shares its subject matter and purpose: to regulate the intervention of the Public Administrations of Navarre to prevent and reduce pollution and the environmental impact of public and private activities on the natural environment as a whole (atmosphere, water, soil, landscape, etc.).

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<sup>1</sup> *Ley 9/2020, de 16 de diciembre, por la que se modifica la 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, para intensificar las reducciones de emisiones de forma eficaz en relación con los costes.*

<sup>2</sup> An analysis of this piece of legislation can be found in the following link (Spanish only): [https://www.ga-p.com/wp-content/uploads/2021/02/Ley\\_9\\_2020\\_principales\\_novedades.pdf](https://www.ga-p.com/wp-content/uploads/2021/02/Ley_9_2020_principales_novedades.pdf).

<sup>3</sup> *Real Decreto 27/2021, de 19 de enero, por el que se modifican el Real Decreto 106/2008, de 1 de febrero, sobre pilas y acumuladores y la gestión ambiental de sus residuos y el Real Decreto 110/2015, de 20 de febrero, sobre residuos de aparatos eléctricos y electrónicos.*

<sup>4</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>5</sup> *Ley Foral 17/2020, de 16 de diciembre, reguladora de las Actividades con Incidencia Ambiental.*

5. **Waste and Contaminated Soil (Galicia) Act 6/2021 of 17 February<sup>6</sup>.** In general terms, this regulation transfers to the Galician territory the scheme already provided for in Spain's Waste and Contaminated Soil Act. As a relevant development, it modifies the financial guarantee system provided for in Waste and Contaminated Soil (Galicia) Act 10/2008 of 3 November, repealed by Act 6/2021 (fundamentally, it specifies the actors affected and the cases that must be covered by this guarantee and establishes a deadline for creating the aforementioned guarantee).
6. **Royal Decree 27/2021, of 19 January, amending Royal Decree 106/2008, of 1 February, on batteries and accumulators and the environmental management of waste batteries and accumulators, and Royal Decree 110/2015, of 20 February, on waste electrical and electronic equipment<sup>7</sup>.** This piece of legislation introduces amendments of varying scope to the aforementioned Royal Decrees that affect the business conduct of producers of electrical and electronic equipment (EEE) and batteries and accumulators (B&A), the individual and collective systems of extended producer responsibility for such equipment and the managers of waste generated by the use of both such equipment and batteries and accumulators.

Ignacio Álvarez Serrano and Paloma Tuñón Matienzo

## II. Agri-food

In this area we highlight on this occasion **Royal Decree 84/2021, of 9 February, laying down the basic rules for the application of Article 167a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, regulating the marketing standards for olive oil<sup>9</sup>.**

This regulation empowers the Ministry of Agriculture, Fisheries and Food to approve, in “situations of clear risk of market imbalance”, marketing rules aimed at “regulating supply to improve the stability and functioning of the market in the olive oil sector for a given marketing year”.

<sup>6</sup> Ley 6/2021, de 17 de febrero, de Residuos y Suelos Contaminados de Galicia.

<sup>7</sup> A more detailed analysis of this piece of legislation can be found at the following link: <https://www.ga-p.com/en/publications/royal-decree-27-2021-amending-the-royal-decrees-on-batteries-and-accumulators-and-on-waste-electrical-and-electronic-equipment/>.

<sup>8</sup> Real Decreto 27/2021, de 19 de enero, por el que se modifican el Real Decreto 106/2008, de 1 de febrero, sobre pilas y acumuladores y la gestión ambiental de sus residuos, y el Real Decreto 110/2015, de 20 de febrero, sobre residuos de aparatos eléctricos y electrónicos.

<sup>9</sup> Real Decreto 84/2021, de 9 de febrero, por el que se establecen las normas básicas para la aplicación del artículo 167 bis del Reglamento (UE) núm. 1308/2013, del Parlamento Europeo y del Consejo, de 17 de diciembre, regulador de las normas de comercialización del aceite de oliva.

Specifically, that ministry is empowered to decide on, by ministerial order, the temporary withdrawal of the product, the non-food use of the product or both. The adoption of such rules is also subject to prior consultation with “the Autonomous Communities and [the] organisations representing the sector at national level”.

According to its Article 1, Royal Decree 84/2021 applies “to all growers of olives intended for olive oil, and to operators who produce, store or market olive oil and olive pomace oil in Spain”.

José Luis Palma Fernández and Yago Fernández Darna

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### III. Company law

The following two changes in the field of company law are noteworthy:

1. **Royal Decree-law 2/2021, of 26 January, on the reinforcement and consolidation of social measures to protect jobs<sup>10</sup>**, allows the holding during 2021, even if the articles of association do not provide it, of meetings of the governing bodies of associations, business partnerships, commercial companies and cooperatives by videoconference or by multiple telephone conference provided that all the members of the body have the necessary means, the secretary of the body recognises their identity and records such in the minutes, which will be sent immediately to the e-mail addresses of each of the attendees. Likewise, the governing bodies of the aforementioned legal persons and the board of trustees of foundations may pass written resolutions at in absentia meetings whenever the chairman so decides and must pass them when requested by at least two of the members of the body. The meeting shall be deemed to be held at the registered office.

Since the passage of Royal Decree-law 34/2020 of 17 November, the holding of general meetings of public limited companies by telematic means and remote voting are also permitted during 2021; in the case of general meetings of shareholders of private limited companies and limited partnerships with share capital, meetings of members of associations, business partnerships and cooperatives and meetings of the board of trustees of foundations, these may be held by videoconference or by multiple telephone conference provided that all persons entitled to attend or those representing them have the necessary means, the secretary of the body recognises their identity and records such in the minutes, which will be sent immediately to the e-mail addresses of each of the attendees. Royal Decree-law 5/2021, which came into force on 13 March, allows the holding of exclusively telematic general meetings -that is, without the physical attendance of the shareholders or their representatives- provided

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<sup>10</sup> Real Decreto Ley 2/2021, de 26 de enero, de Refuerzo y Consolidación de Medidas Sociales en Defensa del Empleo.

that reasonable safeguards are in place to ensure the identity of the persons exercising their voting rights and the possibility of participating in the meeting is offered.

2. **Royal Decree 2/2021, of 12 January, approving the implementing regulations of the Auditing of Accounts Act 22/2015 of 20 July**<sup>11</sup> aims, in its tenth and eleventh additional provisions, to give a boost to the system for imposing penalties on companies that fail to comply with the obligation to file accounts by introducing a series of measures that complete the penalty system regulated in Article 283 of the Companies Act. The changes introduced are as follows:

- The management and the proposal for a decision in respect of the sanctioning proceedings may be entrusted to the company registrars of the place where the defaulting company's registered office is situated.
- The total period for resolving and notifying the decision in the sanctioning proceedings shall be six months from the date on which the Chairman of the Spanish Auditing and Accounting Standards Board takes the decision to initiate the proceedings.
- The criteria to determine the amount of the penalty, within the limits set out in Article 283(1) of the Companies Act, are laid down.

Pursuant to Article 283(3) of the Companies Act, if the annual accounts had been filed prior to the initiation of the sanctioning proceedings, the penalty shall be imposed at its minimum level and shall be reduced by fifty per cent. Infringements for failure to file accounts will lapse after three years (Art. 283(4) of the Companies Act).

Inés Fontes Migallón

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## IV. Taxes

The following developments are of relevance in the tax field:

1. The new **Convention between the Kingdom of Spain and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income** and its **Protocol, done at Madrid on 16 October 2018**, which will enter into force next 1 May 2021; and the new **Convention between the Kingdom of Spain and the Republic of Belarus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and wealth** and its **Protocol, done at Madrid on 14 June 2017**, which will enter into force next 9 May 2021.

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<sup>11</sup> *Real Decreto 2/2021, de 12 de enero, por el que se aprueba el Reglamento de desarrollo de la Ley 22/2015, del 20 de julio, de Auditoría de Cuentas.*

2. **Royal Decree 1178/2020, of 29 December, amending the Corporate Income Tax Regulations, approved by Royal Decree 634/2015 of 10 July<sup>12</sup>**, by which amendments are incorporated in Articles 8 and 9 of the Regulations, relating to credit risk hedging, as well as article 13(1), relating to information and documentation on transactions with related entities.
3. **The Spanish Government Budget for 2021 Act 11/2020 of 30 December<sup>13</sup>** adopts various tax measures, including, among others, the following:
  - a) With regard to personal income tax: the tax rate applicable to the general tax base is increased by two percentage points, as from EUR 300 000; the tax rate as from EUR 200 000 of the net savings base is increased to 26 %, and the scale of tax rates applicable to the tax scheme for expatriates is modified, raising the rate to 47 % for income exceeding EUR 600 000 of tax base.
  - b) With regard to corporate income tax: Article 21 of the Corporate Income Tax Act is amended so that dividends and positive income derived from the transfer of holdings to which the exemption applies will be reduced by 5 % for management fees, leaving 95 % exempt.
  - c) In the context of wealth tax: the last rate bracket - over EUR 10 000 000 - is increased to 3.5 %.
  - d) In the field of value added tax: the tax rate applicable to beverages with added sweeteners -natural and derived- is modified and they are now taxed at 21 %.
4. **Royal Decree-law 4/2021, of 9 March, amending the Corporate Income Tax Act 27/2014, of 27 November, and the Recast Version of the Non-Resident Income Tax Act, approved by Royal Legislative Decree 5/2004 of 5 March, in relation to Hybrid Asymmetries<sup>14</sup>**. It will be effective for tax periods commencing on or after 1 January 2020 and which have not been completed at the date of its entry into force. This Royal Decree-law introduces an Article 15 *bis* in Act 27/2014, indicating the non-deductibility of expenses related to different transactions carried out by related persons or entities resident in another country or territory. Likewise, Article 16(1) of the Corporate Income Tax Act relating to the limitation on the deductibility of financial expenses is amended, as well as the inclusion of two new sub-articles in Article 18 of the Non-Resident Income Tax Act.

<sup>12</sup> Real Decreto 1178/2020, de 29 de diciembre, por el que se modifica el Reglamento del Impuesto sobre Sociedades, aprobado por el Real Decreto 634/2015, de 10 de julio.

<sup>13</sup> Ley 11/2020, de 30 de diciembre, de Presupuestos Generales del Estado para el año 2021.

<sup>14</sup> Real Decreto Ley 4/2021, de 9 de marzo, por el que se modifican la Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades, y el Texto Refundido de la Ley del Impuesto sobre la Renta de No Residentes, aprobado mediante Real Decreto Legislativo 5/2004, de 5 de marzo, en relación con las Asimetrías Híbridas.



5. In the Historical Territory of Araba-Álava, **Provincial Act 2/2021, of 29 January, on tax measures for 2021**<sup>15</sup>, which amends, among others, the special rule for the imputation of certain public aid received in the field of personal income tax and the special merger scheme under the corporate income tax.
6. In the Historical Territory of Biscay, **Provincial Decree 5/2021, of 2 February, implementing the new reporting obligations on cross-border tax planning mechanisms by amending the Regulations governing the formal tax obligations of the Historical Territory of Biscay**<sup>16</sup>, in relation to Council Directive (EU) 2018/822 of 25 May 2018 on the obligation of tax intermediaries to declare transactions that may be considered as aggressive tax planning and that take place in the international sphere; and **Delegated Provincial Act 3/2021, of 23 February, on additional measures in Non-Resident Income Tax, Value Added Tax, Insurance Premium Tax and Business Activity Tax rates**<sup>17</sup>, which includes measures such as the following: a) in the field of value added tax, the validity of the 0 % rate applicable to certain deliveries, imports and intra-Community acquisitions of goods necessary to combat the effects of COVID-19; b) in relation to non-resident income tax, the exemption for interest and other income is adapted; and c) the increase in the tax rate of the tax on insurance premiums from 6 % to 8 %.
7. In Navarre, the **Delegated Foral Act 1/2021, of 13 January, on Tax Harmonisation, amending the Foral Act 19/1992, of 30 December, on Value Added Tax**<sup>18</sup>, amending, inter alia, Articles 37(1), 57(5) and 68 and including three additional provisions relating to the rate of value added tax on the supply of goods, imports, intra-Community acquisitions and the provision of services necessary to combat COVID-19.
8. At the EU level, the **Commission Implementing Decision (EU) 2021/33 of 14 January 2021 as regards the authorisation for Spain not to take into account certain categories of transactions for the calculation of the VAT own resources base in respect of supply of services by authors until the end of 2024** is relevant.

Enrique Santos Fresco and Paloma Galán González

<sup>15</sup> Norma Foral 2/2021, de 29 de enero, de medidas tributarias para el 2021.

<sup>16</sup> Decreto Foral 5/2021, de 2 de febrero, de la Diputación Foral de Bizkaia, por el que se desarrollan las nuevas obligaciones de información sobre los mecanismos transfronterizos de planificación fiscal mediante la modificación del Reglamento por el que se regulan las obligaciones tributarias formales del Territorio Histórico de Bizkaia.

<sup>17</sup> Decreto Foral Normativo 3/2021, de 23 de febrero, de medidas adicionales en el Impuesto sobre la Renta de no Residentes, en el Impuesto sobre el Valor Añadido, en el Impuesto sobre las Primas de Seguros y en las tarifas del Impuesto sobre Actividades Económicas.

<sup>18</sup> Decreto Foral Legislativo 1/2021, de 13 de enero, de Armonización Tributaria, por el que se modifica la Ley Foral 19/1992, de 30 de diciembre, del Impuesto sobre el Valor Añadido.

## V. Accounting

The following legislative developments merit special attention:

1. **Royal Decree 1/2021, of 12 January, amending the Spanish Accounting Plan approved by Royal Decree 1514/2007 of 16 November; the Spanish Accounting Plan for SMEs approved by Royal Decree 1515/2007 of 16 November; the Rules for the Preparation of Consolidated Annual Accounts approved by Royal Decree 1159/2010 of 17 September; and the rules for the adaptation of the Spanish Accounting Plan to non-profit organisations approved by Royal Decree 1491/2011 of 24 October<sup>19</sup>.** The main purpose of this Royal Decree is the convergence of Spanish accounting legislation with European and international financial legislation. To this end, among other things, the definition of *fair value* in the Spanish Accounting Plan is modified and changes are introduced to adapt the recognition and measurement standard 9 (financial instruments) and the recognition and measurement standard 14 (revenue from sales and provision of services) to EU-IFRS 9 and 15, respectively; and the aforementioned **Royal Decree 2/2021, of 12 January, approving the implementing regulations of the Auditing of Accounts Act 22/2015 of 20 July<sup>20</sup>**, by virtue of which a new penalty system is established for failure to comply with the obligation to file accounts.
2. **Commission Regulation (EU) 2021/25 of 13 January 2021 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 39 and International Financial Reporting Standards 4, 7, 9 and 16**, whose amendments shall apply to all companies with effect from their first financial year starting on or after 1 January 2021.

Enrique Santos Fresco and Paloma Galán González

## VI. Real Estate

In this first quarter of the year, we can highlight the **Judgment of the Barcelona Court of First Instance no. 20 of 8 January 2021**, in which the *rebus sic stantibus* doctrine is declared

<sup>19</sup> Real Decreto 1/2021, de 12 de enero, por el que se modifican el Plan General de Contabilidad aprobado por el Real Decreto 1514/2007, de 16 de noviembre; el Plan General de Contabilidad de Pequeñas y Medianas Empresas aprobado por el Real Decreto 1515/2007, de 16 de noviembre; las Normas para la Formulación de Cuentas Anuales Consolidadas aprobadas por el Real Decreto 1159/2010, de 17 de septiembre; y las normas de adaptación del Plan General de Contabilidad a las entidades sin fines lucrativos aprobadas por el Real Decreto 1491/2011, de 24 de octubre.

<sup>20</sup> Real Decreto 2/2021, de 12 de enero, por el que se aprueba el Reglamento de desarrollo de la Ley 22/2015, del 20 de julio, de Auditoría de Cuentas.

applicable, reducing the rent in favour of the tenant in some industrial leases on properties intended for tourist accommodation in order to restore, in this way, the contractual balance of the parties, upset as a result of the pandemic.

The court considers that the health crisis caused by the COVID-19 has meant an absolutely unforeseeable extraordinary alteration of this contract, having frustrated its purpose and producing an excessively onerous harm to the lessee, which, if the rent is not reduced, would enter into insolvency proceedings.

Thus, the judgment concludes that in this particular case the requirements for applying the *rebus sic stantibus* doctrine and amending the contract by reducing the rents agreed between the parties are met. Furthermore, on the one hand, the court does not consider it sufficient for the lessor (large holding) to have accepted a moratorium on the payment of the rent, since this measure has not managed to restore the contractual balance between the parties. And, on the other hand, it gives relevance to the fact that during the trial an expert report was provided by the tenant on the harm suffered by the suspension of business activity and to the good faith of the tenant in having always paid half of the rent under the new pandemic circumstances.

Marina Martínez Plaza

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## VII. Insolvency

In anticipation of the end of the insolvency moratorium approved by the Government and the increase in insolvency situations that the current economic crisis will undoubtedly bring about, several initiatives have arisen to try to alleviate the difficulties that experience has uncovered in the transfer of production units (units producing goods or services) in the context of insolvency proceedings. Two major developments stand out:

1. At the end of January, the **company judges of Barcelona approved a series of guidelines** that have come to be known under the title of **pre-packaged insolvency**, focused on the management, in a stage prior to the opening of insolvency proceedings, of a procedure for the realization of the productive units or assets of the company in a state of insolvency or pre-insolvency. One of the new features introduced with this instrument is the role of the 'restructuring practitioner', who will coordinate and oversee the conduct of the process and who, subsequently, would acquire the status of insolvency practitioner.

This mechanism, which is based on the principles set out in Directive 2010/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, aims to design, streamline and promote a process of asset transfer at an early stage in order to avoid value impairment due to avoidable delays.

2. On the other hand, the **Best Sale of Production Units Practices Guide**, prepared by the Madrid Bar Association, in collaboration with the Company Judges, the Association of Economists, the Association of Commercial Technicians and the Association of Registrars, and which follows the footsteps of the Best Procedural Practices Guide, in matters of sale of Production Units, approved by the Madrid Company Judges, at a meeting on 22 January 2021, has been made public.

The guide, imbued with the conviction that time is an essential factor for the success of the transfer of the production units of distressed companies, establishes a protocol of action that seeks to streamline the process provided for in Article 530 of the Recast Version of the Insolvency Act, without this entailing a detriment to the guarantees and rights of all parties involved in the process.

To this end, the guide is accompanied by sheets or forms that not only try to guarantee the provision of the necessary information for correct decision-making, but also help the applicant to identify the essential aspects that define the production unit to be transferred, while at the same time providing criteria that will help to establish their valuation.

Finally, in order to increase the publicity of the sale process, the publication of the production units, duly delimited and valued, in a single platform dependent on the Ministry of Justice is imposed. To this end, the said Ministry is enjoined to implement the system of legal publicity provided for in Article 423 of the Recast Version of the Insolvency Act, enabling a nationwide European-connected system of production unit sale projects in the Public Insolvency Registry.

Insolvency Team of the Madrid office

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## VIII. Employment

In the field of employment law, we should consider in particular the following:

1. The aforementioned **Spanish Government Budget for 2021 Act 11/2020 of 30 December** contains the rules relating to the revaluation of contributory pensions, limits on these, the establishment of minimum supplements, the revaluation of non-contributory pensions, increases for certain benefits, contribution rebates and a moratorium on the payment of contribution debts, some measures on the single health insurance card and the bases and rates of Social Security contributions for the current year. In the area of supplementary social welfare, it introduces new limits on the reduction in the tax base of contributions to social welfare systems, modifying, with effect from 1 January 2021 and indefinitely, the previous general amount to reduce it to 2,000 euros per year. This limit will be increased to 8,000 euros per year, provided that the increase comes from company contributions. Along the same lines,

the budgetary legislation promotes public employment pension funds, in such a way that, within a maximum period of twelve months, the Government undertakes to present a bill on these funds, attributing to the National Public Administration the legal capacity to promote them. They will be of an open nature and pension schemes of the defined-contribution employment system for retirement that so establish in their specifications and, by default, employment pension schemes that do not determine a specific pension fund can join. Act 11/2020 extends the amount of the national minimum wage until a new amount is approved and specifies the amount of the public indicator of multiple effects income (IPREM), which is set at 18.83 euros per day, 564.90 euros per month and 6,778.80 euros per year.

The budget legislation amends some laws, such as the Workers' Statute Act or the Social Security Act. It also introduces some changes in the Public Employee's Basic Statute Act, in the Employment Branch (Infringements and Penalties) Act and in the Pension Schemes and Funds Act.

2. The aforementioned **Royal Decree-law 2/2021, of 26 January, on the reinforcement and consolidation of social measures to protect jobs**, regulates the extension of the different temporary collective redundancy procedures (ERTEs): due to force majeure; due to impediment, authorised by virtue of Royal Decree-law 24/2020; due to impediment in carrying out the business activity, authorised by virtue of Royal Decree-law 30/2020, and due to limitation in the normal pursuit of the business activity, also by virtue of the latter Royal Decree-law 30/2020. Likewise, the possibility of requesting a temporary collective redundancy procedure due to impediment or limitation of business activity is extended to entities affected by restrictions and health containment measures due to impediment or limitation of business activity under the terms set forth in Article 2 of Royal Decree-law 30/2020 as from 1 February 2021 and until 31 May 2021. For their part, the provisions set forth in Article 3 of Royal Decree-law 30/2020 will apply to temporary collective redundancy procedures based on economic, technical, organisational or production causes related to COVID-19, initiated after the entry into force of this new piece of legislation and until 31 May 2021.

Other aspects of interest are also extended, such as that established in relation to the safeguarding of employment, overtime and new hiring and outsourcing referred to in Article 7 of Royal Decree-law 30/2020 of 29 September, on social measures to protect jobs, which will remain in force until 31 May 2021 and will also apply to all cases authorised by virtue of this regulation. In addition, force majeure and the economic, technical, organizational and production grounds for the suspension of contracts and reduction of working hours provided for in Articles 22 and 23 of Royal Decree-law 8/2020 may not be understood as justifying the termination of the employment contract or redundancy. In another order of considerations, exemptions are included for companies belonging to sectors with a high rate of cover for temporary collective redundancy procedures and a low rate of recovery of business activity and the MECUIDA Plan is extended, which includes rights in terms of adaptation or reduction of working hours until 31 May 2021.

3. **Royal Decree-law 38/2020, of 29 December, adopting measures to adapt to the third State status of the United Kingdom of Great Britain and Northern Ireland following the end of the transition period provided in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 31 January 2020<sup>21</sup>**, regulates the - transitory - scheme for temporarily posted workers (Art. 6) and the rules applicable to the Social Security (Art. 9). To these two rules should be added the provisions on unemployment (Art. 10) and health care (Art. 11), as well as the maintenance of European works councils in companies or groups of companies with an EU dimension within the United Kingdom (Art. 7).

However, the sixth final provision of Royal Decree-law 38/2020 makes the entry into force of certain provisions conditional upon the entry into force on 1 January 2021 of an agreement on future relations between the European Union and the United Kingdom that expressly contains the provisions set forth in those articles. And, in this regard, it should be noted that the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, on the one hand, and the United Kingdom of Great Britain and Northern Ireland, on the other, of 29 December 2020, includes the Protocol on coordination in matters of Social Security for these purposes. Royal Decree-law 5/2019 of 1 March (Official Journal of Spain [BOE] of 2 March), which provided, among other measures, for a specific arrangement of reciprocal recognition in matters of Social Security, is hereby expressly repealed and shall now be replaced by the Protocol of Coordination contained in the aforementioned agreement between the European Union and the United Kingdom.

Lourdes López Cumbre

## IX. Intellectual Property

The **Decision of the Director of the Spanish Patent and Trademark Office, dated 23 December 2020**, has approved a new version of the “Guidelines for the examination of absolute and relative prohibitions of registration for trademark and trade name applications of the Spanish Patent and Trademark Office”.

It is a document of great significance that must be taken into account by operators applying for distinctive signs, even though it is expressly stated that “its effectiveness lies not in its taking the form of rules with legal value vis-à-vis third parties, but in its being considered as mandates for

<sup>21</sup> *Real Decreto Ley 38/2020, de 29 de diciembre, por el que se adoptan medidas de adaptación a la situación de Estado tercero del Reino Unido de Gran Bretaña e Irlanda del Norte tras la finalización del periodo transitorio previsto en el Acuerdo sobre la retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea y de la Comunidad Europea de la Energía Atómica, de 31 de enero del 2020.*

the purpose of direction by an administrative body of a managerial nature in respect of hierarchically subordinate administrative bodies”<sup>22</sup>.

Ángel García Vidal

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## X. Digital law

We should at least highlight the **Proposal of 15 December 2020 for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act)**, which aims to amend the current Trade Directive 2000/31/EC<sup>23</sup>.

This proposal is accompanied by the **Proposal of 15 December 2020 for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)**<sup>24</sup>.

Both proposals form a regulatory package that aims to establish new rules for all digital services, including social networks, websites and online platforms operating in the European Union. The *Digital Services Act* aims to introduce a new liability regime for digital service intermediaries.

Ángel García Vidal

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## XI. Designations of origin

It is at least worth mentioning that the European Union has reached an agreement with China to mutually protect certain designations of origin and geographical indications in their respective territories (including several Spanish ones such as Rioja, Queso Manchego, Cava). Thus, the Official Journal of the European Union of 4 December 2020 (L 408I) publishes the **Agreement between the European Union and the Government of the People’s Republic of China on cooperation on, and protection of, geographical indications**<sup>25</sup>.

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<sup>22</sup> They can be accessed on the Office’s website: [https://www.oepm.es/es/signos\\_distintivos/marcas\\_nacionales/Guia\\_examen\\_prohibiciones\\_registro](https://www.oepm.es/es/signos_distintivos/marcas_nacionales/Guia_examen_prohibiciones_registro).

<sup>23</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>

<sup>24</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>

<sup>25</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2020.408.01.0003.01.ENG>



## XII. Telecommunications

We consider the following legislation of particular interest in this sector:

1. **Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code.** When defining relevant markets according to national circumstances in accordance with Article 64(3) of Directive (EU) 2018/1972, national regulatory authorities should analyse the following product and service markets: market 1, wholesale local access provided at a fixed location, and market 2, wholesale dedicated capacity. This recommendation is without prejudice to market definitions, the results of market analyses and the regulatory obligations adopted by national regulatory authorities in accordance with the regulatory framework in force prior to their date of adoption.
2. **Royal Decree 43/2021, of 26 January, implementing Royal Decree-law 12/2018, of 7 September, on the security of networks and information systems<sup>26</sup>.** It is a cross-cutting regulation, as its scope of application extends to providers of strategic essential services and providers of digital services that are online marketplaces, online search engines and cloud computing services. All of them are obliged to adopt special risk management measures on their networks and to notify, through the National Platform for Notification and Monitoring of Cyberincidents, any security incidents to the authorities defined by the royal decree and in accordance with the procedures regulated therein.

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## XIII. Energy

In the energy sector, the following is particularly noteworthy:

1. **Royal Decree-law 37/2020, of 22 December, on urgent measures to address situations of social and economic vulnerability in the field of housing and transport<sup>27</sup>,** which, among other measures, contains a new ban on the interruption of basic supplies (electricity, natural gas and water) to the various categories of vulnerable consumers defined in Articles 3

<sup>26</sup> Real Decreto 43/2021, de 26 de enero, por el que se desarrolla el Real Decreto Ley 12/2018, de 7 de septiembre, de seguridad de las redes y sistemas de información.

<sup>27</sup> Real Decreto Ley 37/2020, de 22 de diciembre, de medidas urgentes para hacer frente a las situaciones de vulnerabilidad social y económica en el ámbito de la vivienda y en materia de transportes.



and 4 of Royal Decree 897/2017, of 6 October, regulating the role of the vulnerable consumer, the social energy tariff and other protection measures for domestic consumers in the event of non-payment for the duration of the state of alarm (fourth add. prov.). In addition, those consumers who, not being able to prove that they are a party to the supply contract, meet the requirements that entitle them to recognition of the status of vulnerable or severely vulnerable consumer in accordance with article 3 of Royal Decree 897/2017, of 6 October, may also benefit from the ban on suspension by means of certification of this circumstance by the competent social services or by social mediators before the supply company.

For these purposes, mention should also be made of the **Decision of the State Secretariat for Social Rights, of 2 February 2021, publishing the list of third sector entities that are considered to be social mediators collaborating with the National Public Administration, for the purposes of accreditation of the requirements that give the right to recognition of the status of vulnerable or severely vulnerable consumer, in accordance with Royal Decree-law 37/2020.**

2. **Order TED/1271/2020, of 22 December, setting out various regulated costs of the electricity system for the financial year 2021 and extends the electricity access tolls (connection charges) from 1 January 2021<sup>28</sup>.**
3. **Royal Decree 1183/2020, of 29 December, on access and connection to electricity transmission and distribution networks<sup>29</sup>**, which involves the unification of the regulation of the access and connection rights scheme and the effective application of Article 33 of the Electricity Sector Act 24/2013 of 26 December. The main new features introduced by the Royal Decree, with the aim of boosting the development of renewable energy and minimising economic and environmental costs, are as follows: the regulation of a single procedure for jointly obtaining permits for access and connection to the transmission and distribution grids processed electronically with the grid manager, where the guarantees required gain special importance and the (statutory) cases of refusal of access and connection permits are defined; the possibility of calling for tenders in respect of the access capacity of certain points of the transmission grid for the integration of renewable energy, and the definition of special conditions for obtaining access and connection permits for the hybridisation of facilities and the regulation of their remuneration scheme.

The Royal Decree is supplemented by **Circular (Rules Instrument) 1/2021, of 20 January, of the Spanish Markets and Competition Authority, laying down the methodology and conditions for access and connection to the transmission and distribution networks of power plants<sup>30</sup>.**

<sup>28</sup> Orden TED/1271/2020, de 22 de diciembre, por la que se establecen diversos costes regulados del sistema eléctrico para el ejercicio 2021 y se prorrogan los peajes de acceso de energía eléctrica a partir del 1 de enero del 2021.

<sup>29</sup> Real Decreto 1183/2020, de 29 de diciembre, de acceso y conexión a las redes de transporte y distribución de energía eléctrica.

<sup>30</sup> Circular 1/2021, de 20 de enero, de la Comisión Nacional de los Mercados y la Competencia, por la que se

4. **Royal Decree 1106/2020, of 15 December, regulating the Statute of Electro-intensive Consumers<sup>31</sup>**, which recognises the particularities of industrial electricity consumers engaged in activities that constantly demand high energy consumption and whose production cost is directly related to the price of electricity. The Royal Decree establishes measures such as compensation for the costs attributable to renewable energy and other charges on the bill or a mechanism for hedging risks arising from the medium and long-term purchase of electricity by electricity-intensive consumers; these measures are mainly intended to boost the competitiveness of domestic industries, whose costs depend to a large extent on local energy costs. In return, consumers qualifying as *electro-intensive* will have to assume commitments relating to the energy efficiency of their facilities and procedures, the replacement of highly polluting energy sources with clean energy and the area of investment in R&D&I and employment, among others.
5. **Circular (Rules Instrument) 2/2021, of 10 February, of the Spanish Markets and Competition Authority, laying down the methodology and conditions for electricity labelling to provide information on the origin of the electricity consumed and its impact on the environment<sup>32</sup>**. It is approved in compliance with Article 110 *bis* of Royal Decree 1955/2000 of 1 December, and repeals Circular (Rules Instrument) 1/2008, of 7 February, of the Spanish Energy Authority. The circular obliges all electricity retailers to report on the origin of the energy marketed and its environmental impact, whether or not they are covered by the energy origin guarantee system. On the other hand, it allows consumers to receive information on the environmental impact of the energy consumed and to standardise the information offered to third parties on the origin and environmental impact of the energy consumed (especially useful in tenders for the supply of electricity to Public Administrations).

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## XIV. Railway

We can highlight the adoption of the following:

1. **Commission Delegated Regulation (EU) 2020/2180 of 18 December 2020 extending the reference period of Regulation (EU) 2020/1429 of the European Parliament and of the**

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*establece la metodología y condiciones del acceso y de la conexión a las redes de transporte y distribución de las instalaciones de producción de energía eléctrica.*

<sup>31</sup> *Real Decreto 1106/2020, de 15 de diciembre, por el que se regula el Estatuto de los Consumidores Electrointensivos.*

<sup>32</sup> *Circular 2/2021, de 10 de febrero, de la Comisión Nacional de los Mercados y la Competencia, por la que se establece la metodología y condiciones del etiquetado de la electricidad para informar sobre el origen de la electricidad consumida y su impacto sobre el medio ambiente.*

**Council establishing measures for a sustainable rail market in view of the COVID-19 outbreak.** The new regulation extends until 30 June 2021 the deadline by which Member States may authorise infrastructure managers to reduce, defer or waive railway infrastructure access charges or to exempt railway undertakings that use them.

2. In the context of Brexit, **Regulation (EU) 2020/2222 of the European Parliament and of the Council of 23 December 2020 on certain aspects of railway safety and connectivity with regard to the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link** has been adopted.

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## XV. Natural gas

With regard to the gas sector, mention should be made of the adoption of several pieces of legislation that configure the remuneration scheme for facilities related to the transport, distribution and supply of natural gas. These are **Circular (Rules Instrument) 8/2020, of 2 December, of the Spanish Markets and Competition Authority, setting out the unit reference values for investment and operation and maintenance for the 2021-2026 regulatory period and the minimum requirements for audits on investments and costs at natural gas transmission facilities and liquefied natural gas plants<sup>33</sup>**; the **Royal Decree 1184/2020, of 29 December, laying down the methodologies for calculating gas system charges, regulated remuneration for basic underground storage facilities and the fees charged for their use<sup>34</sup>**; and **Order TED/1286/2020, of 29 December, setting out the remuneration and access fees for basic underground storage facilities for 2021<sup>35</sup>**.

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<sup>33</sup> Circular 8/2020, de 2 de diciembre, de la Comisión Nacional de los Mercados y la Competencia, por la que se establecen los valores unitarios de referencia de inversión y de operación y mantenimiento para el periodo regulatorio 2021-2026 y los requisitos mínimos para las auditorías sobre inversiones y costes en instalaciones de transporte de gas natural y plantas de gas natural licuado.

<sup>34</sup> Real Decreto 1184/2020, de 29 de diciembre, por el que se establecen las metodologías de cálculo de los cargos del sistema gasista, de las retribuciones reguladas de los almacenamientos subterráneos básicos y de los cánones aplicados por su uso.

<sup>35</sup> Orden TED/1286/2020, de 29 de diciembre, por la que se establecen la retribución y cánones de acceso de los almacenamientos subterráneos básicos para el año 2021.