

Legal Updates  
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## 1. Spanish Legislation

**1.1 Spanish Securities and Exchange Commission.** Supervision of internal solvency models of investment services companies

**Resolution of 31 July 2018. Publication of the Agreement entrusting management to the Bank of Spain for the performance of support work in the supervision of internal solvency models of investment service companies.** [See more.](#)

## 2. European Provisions

**2.1 Commission Delegated Regulation (EU) 2018/1108 of 7 May 2018** supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with technical rules regulating the criteria for the designation of central contact points for electronic money issuers and payment service providers and with rules on their functions. [See more.](#)

**2.2 Commission Implementing Regulation (EU) 2018/1146 of 7 June 2018** amending Implementing Regulation (EU) 2017/892 laying down detailed rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council in the fruit and vegetables and processed fruit and vegetables sectors and Regulation (EC) No. 606/2009 laying down detailed rules for the application of Council Regulation (EC) No. 479/2008 as regards the categories of grapevine products, oenological practices and restrictions. [See more.](#)

**2.3 Commission Decision (EU) 2018/1094 of 1 August 2018** confirming the participation of the Netherlands in the enhanced cooperation for the establishment of the European Public Prosecutor's Office. [See more.](#)

**2.4 Commission Implementing Regulation (EU) 2018/1105 of 8 August 2018** laying down technical implementing rules about procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council. [See more.](#)

**2.5 Commission Implementing Regulation (EU) 2018/1106 of 8 August 2018** laying down technical implementing rules concerning templates for the declaration of compliance to be made public and retained by managers of significant and non-significant benchmarks in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council, on indices used as a benchmark in financial instruments and financial contracts or to measure the performance of investment funds, and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (1), and in particular the third subparagraph of Article 25(8) and Article 26(5) thereof. [See more.](#)

- 2.6 **Commission Implementing Regulation (EU) 2018/1121 of 10 August 2018**, amending Implementing Regulation (EU) 2015/1518 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009. [See more.](#)
- 2.7 **Council Decision (EU) 2018/1195 of 16 July 2018** on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) concerning the international regular and special regular carriage of passengers by coach and bus. [See more.](#)
- 2.8 **Decision of the EEA Joint Committee No 255/2016 of 2 December 2016**, amending Protocol 47 (on the abolition of technical barriers to trade in wine) to the EEA Agreement [2018/1191]. [See more.](#)
- 2.9 **Commission Implementing Regulation (EU) 2018/1209 of 27 August 2018**, concerning the classification of certain goods in the Combined Nomenclature. [See more.](#)

### 3. Administrative Rulings

- 3.1 **Resolution of 30 July 2018, of the Directorate General for Energy Policy and Mines**, setting the average energy price to be applied in calculating the remuneration for the interruptibility demand management service provided by consumers of electricity systems in non-mainland territories to which Order ITC/2370/2007, of 26 July, is applicable during the third quarter of 2018. [See more.](#)
- 3.2 **Resolution of 25 July 2018**, of the Directorate General of Insurance and Pension Funds, publishing the amounts of the updated compensation system for the valuation of damages caused to persons in traffic accidents. [See more.](#)

### 4. Judicial Resolutions

- 4.1 **SUPREME COURT: Judgment of the Supreme Court, Civil Division, of 29 June 2018, appeal 3603/2015** [Ver más.](#)  
*The duties of information and the error of consent in investment contracts.*

Application by the applicant for a declaration of nullity/annulability on the ground of error of consent (Article 1266 CC) with the consequent restitution of the benefits of a contract for the purchase of subordinated debt (subordinated debentures, investment contract) for a nominal amount of 90,000 € with a 10-year maturity, signed with Caja Madrid (now Bankia S.A.).

Subsidiarily, the plaintiff requested the termination of the contract for breach (art. 1088 and 1101 CC) by the Entity of its legal obligations of diligence, loyalty and information, for lack of adequate information to the customer of what he was buying. In this regard, it was proved that a convenience test was carried out on the plaintiff, but not the corresponding suitability test.

After a judgment upholding the claims sustained by the plaintiff issued by the Cadiz Court of First Instance No. 1, the Entity appealed the judgment on appeal to the Provincial Court of Cadiz which upheld the appeal and decided to revoke the judgment of first instance and acquit the Entity.

The plaintiff appealed in cassation to the Supreme Court on the sole grounds of article 477.2.3º LEC, for infringement of articles 1.265 and 1.266 CC, in relation to articles 78, 78 bis and 79 of the Securities Market Law (LMV).

It was established by the SC that the financial product being prosecuted (subordinated debt) is a "complex financial product", which despite offering in most cases a higher return than other debt assets, in the event of insolvency has less collection capacity or in cases of extinction and subsequent liquidation of the issuing company. All this is because the payment is subordinated in the order of priority in the event of insolvency proceedings (art. 92.2 Insolvency Law) with respect to ordinary creditors.

The SC reiterates in this ruling its doctrine regarding the error of consent, recalling that consent operates when "the contracting party's will is formed from an inaccurate belief, when the mental representation that comes from the budget for the execution of the contract is wrong or erroneous".

More specifically, the SC argues that in the area of the securities market and investment products and services, in the event that the investment company/entity fails to comply with the duty to inform the non-professional client, even though this does not prevent the client from knowing the nature and risks of the product, and therefore has not suffered an error in contracting the product, it leads to the presumption of a lack of sufficient knowledge about the product that it has contracted and all the risks that may be involved, thus violating the consent. For this reason, the SC states that "the absence of adequate information does not in itself determine the existence of the error, but it does allow us to presume it" (see SSTs No. 840/2013 of 20 January 2014 and No. 769/2014 of 12 January, among others).

The SC ends by reiterating its doctrine and pointing out the following with respect to the duties of information in investment contracts, in the marketing of obligations by a financial institution "its duty of information entails a positive action of informing sufficiently in advance of the risks of the product, which as a general rule cannot be replaced by the content of the contract nor by the delivery in the same act of all the contractual documentation, including that relating to information on risks, except in some case in which, in said documentation, sufficient information is clearly and unequivocally contained, which did not happen in the event of litigation".

## 5. General Directorate of Registrars and Notaries

5.1 Social objective: The transport and distributors of electrical energy require a single and exclusive object.

**Resolution 25 July 2018, of the Directorate General of Registrars and Notaries, in the appeal filed against the classification note issued by the Commercial and Movable Property Registrar II of Navarre, suspending the registration of resolutions modifying the corporate purpose.**

**Summary:** It is not possible for a company to have simultaneously the object of distribution and transport of electrical energy with that of production, sale and marketing of said energy. The activity of transmission and distribution of electrical energy requires a single and exclusive object. [See more.](#)

### **5.2 Expiry of preventive entries in the Personal Property Registrar. its various periods**

***Resolution of 26 July 2018 of the General Directorate of Registries and Notaries, in the appeal filed against the qualification note issued by the Burgos registrar of Companies and Personal Property, denying the practice of a preventive annotation of extension.***

**Summary:** The annotation of a vehicle seized under the 1954 LHMPSPD expires three years after its date. [See more.](#)

### **5.3 Request for deposit of accounts without report of the registered auditor at the request of the minority**

**Resolution of 27 July 2018, of the Directorate General of Registries and Notaries, in the appeal filed against the qualification note issued by the Zaragoza registrar of Companies and Personal Property I, rejecting the deposit of accounts of a company corresponding to fiscal year 2016.**

**Summary:** If there is an auditor appointed at the request of the minority, the deposit is not possible without the auditor's report. [See more.](#)

## 5.4 Data Protection

*Resolution of 1 August 2018, of the Directorate-General for Registrars and Notaries, approving the model of a general voluntary clause on the processing of personal data, in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation). [See more.](#)*

## 6. Other Regulations

**6.1** Order ICT/862/2018 of 1 August establishing the regulatory basis for the National Domestic Trade Awards. [See more.](#)

**6.2** Order PCI/870/2018 of 3 August publishing the National Security Council Agreement approving the procedure for the development of a new National Cybersecurity Strategy. [See more.](#)

**6.3** Order APA/882/2018 of 2 August defining the insurable assets and yields, the minimum technical conditions of cultivation, the scope of application, the guarantee periods, the dates of underwriting and the unit prices of the insurance of olive holdings, included in the thirty-ninth Combined Agricultural Insurance Plan. [See more.](#)

**6.4** Guideline (EU) 2018/1151 of the European Central Bank of 2 August 2018 amending Guideline ECB/2011/23 on the statistical reporting requirements of the European Central Bank in the field of external statistics. [See more.](#)

**6.5** Order APA/883/2018, of 2 August, defining the insurable assets and yields, the minimum technical conditions of cultivation, the scope of application, the guarantee periods, the dates of underwriting and the unit prices of insurance for extensive arable crop holdings, included in the thirty-ninth Combined Agricultural Insurance Plan. [See more.](#)

**6.6** Corrigendum to Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, about the updating of the nomenclature of countries and territories. [See more.](#)

**6.7** Corrigendum to Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on the settlement of consumer disputes online and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. [See more.](#)

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