

Legal Updates

December 2018

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1. Spanish legislation

1.1 Organic Law 3/2018 of 5 December on the Protection of Personal Data and guarantee of digital rights.

The General Data Protection Regulation aims, with its direct effectiveness, to overcome the obstacles which prevented the harmonising purpose of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The transposition of the directive by the Member States has resulted in a patchwork of rules with irregular profiles throughout the European Union, which has ultimately led to appreciable differences in the protection of citizens' rights.

The general data protection regulation implies the revision of the legal bases of the European data protection model beyond a mere updating of the current regulations. It enhances legal certainty and transparency while allowing its rules to be specified or restricted by the law of the Member States to the extent necessary for reasons of consistency and for national provisions to be comprehensible to the addressees. [See more.](#)

1.2 Royal Decree-Law 20/2018 of 7 December on urgent measures to boost economic competitiveness in the industrial and commercial sector in Spain.

To achieve sustainable competitive advantages in a global industry it is necessary to sustain the performance of companies also on those factors that are likely to generate differentiated success with respect to major producing countries. Productivity and flexibility have become the two backbone of industrial development in recent years. In order to continue creating employment and remain competitive, it is necessary to advance on these two factors, within the framework of social dialogue, with agreed measures that offer the sector the tools to compete in these areas, such as the relay contract, a valuable instrument for reducing the percentages of unemployment that, particularly markedly, affect the younger workforce. [See more.](#)

1.3 Royal Decree-Law 21/2018, of 14 December, on urgent measures relating to housing and rent.

The urgent measures regarding housing and renting provided for in this Royal Decree-Law are based on the situation of economic and social vulnerability of families to meet the payment of rent or mortgage in habitual residence, the rapid increase that has occurred in market prices, the shortage of social housing and the increase in evictions linked to rental housing.

The aim of these measures is to create a regulatory environment that favours an increase in the supply and demand for rental housing through a series of economic and fiscal incentives that make the rental system more attractive. [See more.](#)

1.4 Royal Decree 1464/2018, of 21 December, implementing the revised text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October and Royal Decree-Law 21/2017, of 29 December, on urgent measures for

the adaptation of Spanish law to European Union regulations on the securities market, and partially amending Royal Decree 217/2008, of 15 February, on the legal regime for investment service companies and other entities providing investment services and partially amending the Regulation of Law 35/2003, of 4 November, on Collective Investment Institutions, approved by Royal Decree 1309/2005, of 4 November, and other royal decrees on the securities market.

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 make up the so-called "regulatory package MIFID II" or "MIFID II/MIFIR", hereinafter MIFID II, which includes not only these two level 1 acts, but also the aforementioned delegated directive; as well as more than thirty-four implementing rules of European law, between delegated acts and technical rules of regulation and implementation, as well as more than thirty-four delegated acts and technical rules of regulation and implementation.

MIFID II, which began to be applied on 3 January 2018, represents a substantial modification of the functioning of the markets and contracting centres of the European Union, not so much because of the objectives pursued, since the same objectives are essentially maintained as those that inspired and directed Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, but because of the scale of the operational amendments imposed to comply with the obligations of transparency and compulsory negotiation in procurement venues contained in the abovementioned Regulation (EU) n.Regulation (EC) No 600/2014 of the European Parliament and of the Council of 15 May 2014. [See more.](#)

1.5 Royal Decree-Law 23/2018, of 21 December, transposing directives on trademarks, rail transport and package travel and related travel services.

The timely transposition of European Union directives is now one of the priority objectives set by the European Council. The European Commission submits regular reports to the Competitiveness Council, which are given high political value in that they serve to measure the effectiveness and credibility of Member States in implementing the Internal Market. [See more](#)

1.6 Law 11/2018, of 28 December, amending the Commercial Code, the revised text of the Capital Companies Law approved by Royal Legislative Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on Account Auditing, on non-financial information and diversity.

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards the disclosure of non-financial information and information on diversity by certain large companies and certain groups, aims to identify risks in order to improve sustainability and to increase the confidence of investors, consumers and society in general, by increasing the disclosure of non-financial information, such as social and environmental factors.

Likewise, the transposition of Directive 2014/95/EU into Spanish law makes it necessary to modify certain precepts relating to the management report in the Commercial Code, approved by Royal Decree of 22 August 1885, and in the Consolidated Text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July, to the annual corporate governance report in the latter, and to the action of the auditors in relation to these matters in the Audit of Accounts Act. The modifications incorporated are adapted to the principles of necessity, efficacy, proportionality, legal certainty, transparency and efficiency that govern the exercise of the legislative initiative, as required by article 129 of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations. [See more.](#)

2. European provisions

2.1 Decisions of the Administrative Council of the European Patent Organisation amending certain rules of the Implementing Regulation of the European Patent Convention. [See more.](#)

2.2 Amendments to Annexes 6, 8 and 9 of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, adopted in Geneva on 12 October 2017. [See more.](#)

3. Administrative rulings

3.1 Resolution of 29 November 2018, of the General Treasury of Social Security, authorising deferred payment of contributions to companies and self-employed or self-employed workers affected by the intense storms accompanied by rain and hail in the Valencia Region from May to August 2018. [See more.](#)

3.2 Resolution of December 7, 2018, of the Secretary of State for Employment, publishing the Agreement of the Council of Ministers of December 7, approving the Shock Plan for Young Employment 2019-2021. [See more.](#)

4. Judicial decisions

4.1 Judgment of 13 November 2018, of the Third Chamber of the Supreme Court, partially upholding contentious-administrative appeal 1/4923/2016, against Order IET/980/2016, of 10 June, which established the remuneration of electricity distribution companies for the year 2016. [See more.](#)

5. General Directorate of Registries and Notaries

5.1 Mortgage. Ordinary interest and delay clauses. Early maturity clause.

Resolution of 30 November 2018, of the Directorate General of Registries and Notaries, in the appeal filed against the rating note issued by the No. 3 registrar of Marbella property, which suspends the registration of certain clauses of a mortgage loan deed.

Summary: The DGRN revokes the registrar's note suspending the registration of ordinary and late interest due to lack of clarity, and early maturity due to the unilateral nature of the powers that the creditor reserves to appreciate the existence of early maturity. [See more.](#)

5.2 Amendment of statutes. Necessity of public deed. The notarial act of the board meeting is not sufficient.

Resolution of 29 November 2018, of the Directorate General of Registries and Notaries, in the appeal filed against the refusal of the commercial registrar XIII of Madrid to register certain corporate resolutions of a company.

Summary: For the registration of an amendment to the articles of association, a public deed is required without the notarial minutes of the meeting being sufficient. [See more.](#)

5.3 Incorporation of a non-professional S.L. Reference to a profession in the company name.

Resolution of 5 December 2018, of the Directorate General of Registries and Notaries, in the appeal filed against the refusal of commercial registrar V of Valencia to register the deed of incorporation of a company.

Summary: It is possible to use in the name of companies in general, a name that refers to a particular profession, even if the company is not occupational. [See more.](#)

6. Other

6.1 Order CE/1306/2018, of 5 December, establishing and regulating the Contracting Board and the Single Contracting Board of the Ministry of Economy and Enterprise. [See more.](#)

6.2 Order HC/1375/2018 of 17 December approving the average selling prices applicable in the management of the Tax on Capital Transfers and Stamp Duty, Inheritance and Gift Tax and Special Tax on Certain Means of Transport. [See more.](#)

The comments expressed contain informative aspects and do not constitute professional or legal advice, nor necessarily include the authors opinion.

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