

Current Legislation

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I. Environment

On this subject, we consider the following new rules and regulations to be of interest:

1. **Royal Decree 355/2018, of 6 June, restructuring ministerial departments¹.** A new Ministry of Energy Transition has been created, which will be led by Teresa Ribera, former State Secretary for Climate Change between 2008 and 2011. The new ministerial department will be responsible for energy, water, environment and climate change. Among its most immediate challenges is the drafting of the Climate Change and Energy Transition Act, a key piece of legislation for fulfilling the pledges of the Paris Agreement.
2. **Royal Decree 293/2018, of 18 May, on the reduction of plastic carrier bag consumption and creating the Register of Manufacturers².** This piece of legislation incorporates into Spanish law Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags. It sets forth a transitional regime in the reduction of the use of plastic bags: as of 1 July 2018 they can no longer be delivered free of charge to consumers at points of sale and as of 1 January 2021 they cannot be delivered to consumers at points of sale. It also creates the Register of Manufacturers, of an administrative and declaratory nature, attached to the former Directorate-General for Environmental Quality and Assessment under the Ministry of Agriculture and Fisheries, Food and the Environment.
3. **Royal Decree 210/2018, of 6 April, approving the Programme for the Prevention and Management of Waste and Resources in Catalonia (PRECAT20)³.** The Cabinet approved the PRECAT20 by means of this royal decree in substitution of the powers that the Waste and Contaminated Land Act 22/2011 of 28 July grants to the Catalan Regional Government, in view of the suspension of its autonomy due to the application of article 155 of the Spanish Constitution. PRECAT20 is the most important planning instrument for waste prevention and management in Catalonia, through which the situation of waste management is analysed, a series of measures are planned to promote the reuse and recycling of the waste generated and objectives are established for waste prevention, preparation for reuse, recycling, recovery and disposal.

Ignacio Álvarez Serrano and Paloma Tuñón Matienzo

¹ Real Decreto 355/2018, de 6 de junio, por el que se reestructuran los departamentos ministeriales.

² Real Decreto 293/2018, de 18 de mayo, sobre reducción del consumo de bolsas de plástico y por el que se crea el Registro de Productores.

³ Real Decreto 210/2018, de 6 de abril, por el que se aprueba el Programa de Prevención y Gestión de Residuos y Recursos de Cataluña (PRECAT20).

II. Agri-food

On this occasion we refer to the recently adopted **Commission Implementing Regulation (EU) No. 2018/775 of 28 May 2018**.

This implementing regulation lays down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011. According to the aforementioned provision, where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient: (a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or (b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food.

In this regard, the implementing regulation provides that the country of origin or the place of provenance of a primary ingredient which is not the same as the given country of origin or the given place of provenance of the food shall be given:

- (a) with reference to one of the following geographical areas: (i) 'EU', 'non-EU' or 'EU and non-EU'; or (ii) Region, or any other geographical area either within several Member States or within third countries; or (iii) FAO Fishing area, or sea or freshwater body; or (iv) Member State(s) or third country(ies); or (v) Region, or any other geographical area within a Member State or within a third country; or (vi) The country of origin or place of provenance.
- (b) or by means of a statement as follows: '(name of the primary ingredient) do/does not originate from (the country of origin or the place of provenance of the food)' or any similar wording.

Finally, it should be noted that the above implementing regulation does not apply to protected geographical indications or registered trademarks where the latter constitute an origin indication.

José Luis Palma Fernández, Yago Fernández Darna and Clara Téllez de la Fuente

III. Illegal Content Online

Following the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms", the Commission has

published its **Recommendation of 1.3.2018 on measures to effectively tackle illegal content online**. This recommendation formally sets out the operational measures that companies and Member States should take with regard to the detection and removal of illegal content; these may be reactive (“notice-and-action” mechanisms) or proactive.

The recommendation applies to illegal content (meaning any information which is not in compliance with Union law or the law of a Member State concerned), although a distinction is made between terrorist content (which deserves special recommendations) and other illegal content, such as material relating to child sexual abuse, hate speech, commercial fraud and infringements of intellectual property rights.

Ángel García Vidal

IV. Trademarks

During the month of April 2018, two delegated regulations were published to implement the provisions contained in the EU Trademark Regulation:

1. **Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430.**
2. **Commission Implementing Regulation (EU) 2018/626 of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Implementing Regulation (EU) 2017/1431.**

Ángel García Vidal

V. Copyright

The transposition of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, led to the passing in Spain of the Copyright Act and the Civil Procedure Act Amendment Act 21/2014 of 4 November.

However, there were still a number of issues to be incorporated into Spanish law. For this reason, **Royal Decree Act 2/2018 of 13 April, amending the Recast Version of the Copyright Act approved by Royal Legislative Decree 1/1996 of 12 April⁴**, and transposing into Spanish law Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 and Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017, has been adopted.

Ángel García Vidal

VI. Tax

The following tax-relevant legislation has been passed:

1. Noteworthy is the **Protocol amending the Convention between the Kingdom of Spain and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, and its Protocol**, signed in Brussels on 14 June 1995, amended by the Additional Act signed in Madrid on 22 June 2000, done in Brussels on 2 December 2009, published in the Official Journal of Spain (“BOE”) on 23 May 2018, and in force as from 23 April of the same year. The Protocol updates, on the one hand, the definition of Belgium’s “competent authority” and, on the other hand, the reference to the allocation of jurisdiction for taxes subject to the exchange of information system.
2. Similarly, the **Convention between the Kingdom of Spain and the Republic of Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and its Protocol**, done in Helsinki on 15 December 2015, published in BOE on 29 May 2018 and in force as from 17 July 2018. In Spain, it will apply to personal income tax, corporate income tax, non-resident income tax and local income tax. In Finland it will be levied on income taxes (corporate, communal, church, interest and non-resident income taxes). The Convention includes a system for the exchange of information.
3. **Order HFP/441/2018, of 26 April, approving the tax return forms for corporate income (forms 200 and 220) and non-resident income (form 206) for permanent establishments and entities established abroad with a presence in Spain, for tax periods starting between 1 January and 31 December 2017, instructions are issued on the tax return and payment procedure and the standard terms and procedure for electronic filing are established,**

⁴ Real Decreto Ley 2/2018, de 13 de abril, por el que se modifica el Texto Refundido de la Ley de Propiedad Intelectual aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril.

as well as modifying form 222 “Corporate Income Tax. Tax consolidation scheme. Payments by instalments” approved by Order HFP/227/2017 of 13 March⁵. By means of the foregoing, the following changes are introduced: a) Forms 200 and 220 are adapted to the new rules introduced by Royal Decree Act 3/2016, of 2 December, concerning the treatment of negative income derived from the transfer of holdings - non-deductible for holdings benefiting from the right to exemption in the payment of dividends or for entities located in tax havens - and the limits for offsetting negative taxable income (i.e. carrying forward tax losses); (b) a new page is added to Form 200 to include a further breakdown of withholdings and payments on account according to the nature of the taxpayer’s income subject to withholding or imputed to him by economic interest groupings or temporary business partnerships; c) new characters are included to allow for the offsetting of negative taxable income in exceptional cases of non-application of the offsetting limits established - such as in the case of the tax period in which the entity’s dissolution occurs or in the case of newly created entities -; d) the page devoted to providing information on the allocation of consolidated profit is eliminated from Form 220; and e) various provisions relating to the formalities for filing the forms are included.

4. In the ‘historical territory’ of Bizkaia, **Provincial Decree 65/2018, of 22 May, amending certain aspects of the tax treatment of certain European funds and of the tax measures to promote innovation, the financing of economic activity and productive capitalization⁶.** On the occasion of the creation and implementation of European funding for the promotion of innovation, economic activity and productive capitalization, this decree establishes a series of fiscal incentives in the main tax categories that affect the direct taxation of taxpayers and determines the information requirements and obligations that such taxpayers must comply with.
5. In the ‘historical territory’ of Gipuzkoa, **Provincial Decree 1/2018, of 10 May, introducing amendments to various tax rules and regulations⁷.** The most significant changes are as follows:
 - In personal income tax: (a) modification of the scheme for posted workers and provision of an exemption of 15 % of gross earnings from employment causing the posting;

⁵ Orden HFP/441/2018, de 26 de abril, por la que se aprueban los modelos de declaración del impuesto sobre sociedades (modelos 200 y 220) y del impuesto sobre la renta de no residentes (modelo 206) correspondiente a establecimientos permanentes y a entidades en régimen de atribución de rentas constituidas en el extranjero con presencia en territorio español, para los periodos impositivos iniciados entre el 1 de enero y el 31 de diciembre del 2017, se dictan instrucciones relativas al procedimiento de declaración e ingreso y se establecen las condiciones generales y el procedimiento para su presentación electrónica, y por la que se modifica el modelo 222 «Impuesto sobre sociedades. Régimen de consolidación fiscal. Pago fraccionado» aprobado por la Orden HFP/227/2017, de 13 de marzo.

⁶ Decreto Foral 65/2018, de 22 de mayo de la Diputación Foral de Bizkaia por el que se desarrollan determinados aspectos del tratamiento tributario de determinados fondos europeos y de las medidas tributarias de impulso a la innovación, a la financiación de la actividad económica y a la capitalización productiva.

⁷ Norma Foral 1/2018, de 10 de mayo, por la que se introducen modificaciones en diversas normas tributarias.

- (b) alteration of the rules for determining the net earnings from real estate and extension of the period for offsetting a negative balance; and (c) introduction of technical changes to the allowances for disabled or dependent persons, for rental of a habitual residence and for investment in new or newly created companies.
- In corporate income tax: (a) limitation of the deductibility of net financial expenses to 30% of the operating profit for the financial year and non-application of the thin capitalisation rule; (b) non-deductibility of expenses arising from transactions carried out with related persons or entities which, as a result of a different tax classification in those persons or entities, do not generate income or are exempt or subject to a nominal tax rate of less than 10%; (c) elimination of the possibility of double taxation of dividends and shares in profits distributed by entities which have paid corporate income tax or a tax of an identical or similar nature at a tax rate of less than 10 %; (d) adaptation of the patent box system to European guidelines; (d) reduction of different rates of corporate income tax; and (e) incorporation of the obligation to make a payment by instalments, with the exception of certain entities.
 - In the transfer and stamp duty: non-liability, under the category of asset transfers for consideration, of the transfer of production units within the framework of insolvency proceedings.
6. At the European level, the **Commission Implementing Regulation (EU) 2018/550 of 6 April 2018 amending Annex II to Regulation (EC) No 684/2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty**. This rule updates the codes of the Combined Nomenclature for certain energy products subject to excise duties.
7. Lastly, **Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements**. On the one hand, the directive lays down rules for the mandatory disclosure to the competent authorities of potentially aggressive tax-planning arrangements with a cross-border element by intermediaries and taxpayers and, on the other hand, ensures that national tax authorities automatically exchange such information with the tax authorities of other Member States.

Mariana Díaz-Moro Paraja and Enrique Santos Fresco

VII. Accounting

At the EU level, we must highlight **Commission Regulation (EU) 2018/519 of 28 March 2018 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards Interpretation 22 of the International Financial Reporting Interpretations Committee**. This update inserts IFRIC Interpretation 22 *Foreign Currency Transactions and Advance Consideration*.

Mariana Díaz-Moro Paraja and Enrique Santos Fresco

VIII. Register of Companies

By means of **Order JUS/318/2018** and **Order JUS/319/2018**, both of 21 March, published in the BOE of 27 March, **the new templates for the filing of the consolidated and individual annual accounts with the Register of Companies, respectively, are approved**.

The use of these new templates is mandatory for companies that approve the annual accounts for 2017 after 28 March 2018, the date on which these orders enter into force. The electronic formats and templates applicable prior to these orders may continue to be used for the filing of annual accounts for financial years beginning before 1 January 2017. In any event, companies that have approved the accounts for 2017 prior to 28 March 2018 and have filed them with the Register of Companies do not have to refile.

The main novelty introduced in the new templates is the obligation for companies that prepare individual (non-consolidated) annual accounts to file with the Register of Companies, together with the rest of the documents that make up the annual accounts, a mandatory “Notice of beneficial owner”.

In addition, a report on non-financial information and information on diversity is included in the “standard template” and in the consolidated accounts template, which must be completed and filed with the Register of Companies by certain large companies and groups that decide to issue a report on these matters separately from the directors’ report.

Inés Fontes Migallón and José María Álvarez

IX. Real Estate

Of note is the **Judgment of the Supreme Court of 3 April 2018** on the right of a lessor to claim the amount provided for in the penalty clause agreed with the lessee in the event of withdrawal when the lessor has re-leased the premises.

In this appeal, the legal question raised is whether fulfilment of the provisions of the penalty clause of a rental agreement is appropriate in the event of withdrawal by the tenant before the mandatory period of ten years or whether, on the contrary, the amount provided for in the penalty clause should be reduced, bearing in mind that the lessor rented out again the premises once the lease had expired before the end of ten years and that the lack of reduction would give rise to unjust enrichment.

The Supreme Court concludes that it is not appropriate in this case to reduce the amount due from the lessee under the contract on the following grounds: First, in a thirty-year lease such as the one on trial, it is absolutely reasonable to ensure rent for the first ten years by means of an agreement whereby the tenant pays the outstanding rent until completion of said period in the event of withdrawal. Secondly, there is no unjust enrichment that can justify the reduction of the penalty, since one of the necessary conditions of unjust enrichment, as is the lack of cause, is not met, since it is in fact a question of compliance with what has been freely agreed between the parties. Finally, it is also not possible to reduce the penalty by applying the invoked *rebus sic stantibus* rule in view of the difference in rent between when it was agreed and at the time of withdrawal, since the termination of the lease by the lessee was not due to the rent, but to his own will.

According to the judgment itself, the Supreme Court has different rulings on the reduction of the amount agreed in lease agreements in the event of withdrawal in response to the circumstances of the case (RJ 2014, 3177 and RJ 2014, 322).

Marina Martínez Plaza

X. Employment, labour and social security

1. Essentially two higher-ranking pieces of legislation merit attention:

One is **Royal Decree 192/2018, of 6 April, approving the statutes of the autonomous Labour and Social Security Inspection Agency**⁸. As is well known, Act 23/2015 of 21 July introduced

⁸ *Real Decreto 192/2018, de 6 de abril, por el que se aprueban los estatutos del organismo autónomo Organismo Estatal Inspección de Trabajo y Seguridad Social.*

among its new features the creation of the Labour and Social Security Inspection Agency, thereby constituting the Inspectorate as an autonomous body. Now, with the adoption of the statutes, the body will “effectively become operational”, acquiring distinct legal personality, its own assets, as well as management autonomy and full capacity to have rights and the capacity to act upon those rights. With regard to its central structure, it has the Governing Council and the Director and, as a body with institutional participation, the General Council.

This piece of legislation is completed by the **Decision of the Under-Secretariat of 11 April 2018 publishing the Resolution of the Cabinet of 6 April 2018 approving the Strategic Plan of the Labour and Social Security Inspectorate for the period 2018-2020**⁹. An extensive document approves, among other lines of action, the assessment of the anti-fraud plan, the strategic objectives of the Labour and Social Security Inspectorate, the quality of its service and the effectiveness of its actions, among other measures.

The other piece of legislation would be **Royal Decree 257/2018, of 4 May, amending Royal Decree 1299/2006, of 10 November, approving the cadre of work-related illnesses in the Social Security System and establishing criteria for their notification and registration**¹⁰. Scientific evidence has shown that respirable free silica dust, which can take a crystalline form, is liable to cause lung cancer, so the list of work-related illnesses is modified to include such evidence.

We should mention here, in connection with the above, the approval of **Order ESS/256/2018, of 12 March, implementing Royal Decree 231/2017, of 10 March, regulating the establishment of a system reducing contributions for occupational contingencies for companies that have considerably reduced the number of workplace accidents**¹¹. This instrument implements all legislation relating to the computer file for the submission of non-binding reports-proposals and information on appeals for administrative review by managerial bodies of or mutual societies collaborating with the Social Security, to the determination of the observation period, to the specification of the mutual society responsible for processing application, to the concept of small enterprises for the purposes of the declaration of preventive activities or, in short and among others, to such important aspects as the calculation of the accident rates to which the legislation under implementation refers.

⁹ Resolución de 11 de abril del 2018, de la Subsecretaría, por la que se publica el Acuerdo del Consejo de Ministros de 6 de abril del 2018, por el que se aprueba el Plan Estratégico de la Inspección de Trabajo y Seguridad Social para el periodo 2018-2020.

¹⁰ Real Decreto 257/2018, de 4 de mayo, por el que se modifica el Real Decreto 1299/2006, de 10 de noviembre, por el que se aprueba el cuadro de enfermedades profesionales en el Sistema de Seguridad Social y se establecen criterios para su notificación y registro.

¹¹ Orden ESS/256/2018, de 12 de marzo, por la que se desarrolla el Real Decreto 231/2017, de 10 de marzo, por el que se regula el establecimiento de un sistema de reducción de las cotizaciones por contingencias profesionales a las empresas que hayan disminuido de manera considerable la siniestralidad laboral.

It is worth mentioning too, at least in this section, **Royal Decree 94/2018, of 2 March, creating the Interministerial Committee for the incorporation of social criteria in public procurement**¹².

2. In addition to the above, the following lower-ranking legislation is important:

Order ESS/214/2018, of 1 March, amending Order ESS/484/2013, of 26 March, regulating the System for electronic submission of data in the sphere of Social Security¹³. This ministerial order modernizes the system that has been in place since 1995.

With regard to decisions, we have the **Decision of the Insolvency Payments Service, of 6 March 2018, including new procedures, susceptible of processing by electronic registration under Schedule I to Order TIN/2942/2008 of 7 October**¹⁴; the **Decision of the Spanish Department of Social Security, of 5 April 2018, publishing the catalogue of bodies, entities and undertakings included in the Social Security Benefits Register**¹⁵, and, among others, the **Decision of the State Secretariat for the Civil Service of 22 March 2018, publishing the Second Government-Trade Unions Agreement for the improvement of public employment and working conditions**¹⁶. Nonetheless, that which most stands out is the **Decision of the State Secretariat for Employment, of 28 March 2018, ordering the publication of the Resolution of the Cabinet, of 27 March 2018, approving the Annual Employment Policy Plan for 2018, in accordance with article 11(2) of the Recast Version of the Employment Act, approved by Royal Legislative Decree 3/2015 of 23 October**¹⁷.

Lourdes López Cumbre

¹² Real Decreto 94/2018, de 2 de marzo, por el que se crea la Comisión Interministerial para la incorporación de criterios sociales en la contratación pública.

¹³ Orden ESS/214/2018, de 1 de marzo, por la que se modifica la Orden ESS/484/2013, de 26 de marzo, por la que se regula el Sistema de remisión electrónica de datos en el ámbito de la Seguridad Social.

¹⁴ Resolución de 6 de marzo del 2018, del Fondo de Garantía Salarial, por la que se incluyen nuevos procedimientos, susceptibles de tramitación mediante registro electrónico en el anexo I de la Orden TIN/2942/2008, de 7 de octubre.

¹⁵ Resolución de 5 de abril del 2018, del Instituto Nacional de la Seguridad Social, por la que se publica el catálogo de organismos, entidades y empresas incluidos en el Registro de Prestaciones Sociales Públicas.

¹⁶ Resolución de 22 de marzo del 2018, de la Secretaría de Estado de Función Pública por la que se publica el II Acuerdo Gobierno Sindicatos para la mejora del empleo público y las condiciones de trabajo.

¹⁷ Resolución de 28 de marzo del 2018, de la Secretaría de Estado de Empleo, por la que se ordena la publicación del Acuerdo de Consejo de Ministros de 27 de marzo del 2018 por el que se aprueba el Plan Anual de Política de Empleo para el 2018, según lo establecido en el artículo 11.2 del Texto Refundido de la Ley de Empleo, aprobado por el Real Decreto Legislativo 3/2015, de 23 de octubre.

XI. Energy

Several pieces of legislation have been published relating to the energy sector, including the following:

At the EU level, **Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency**. Developments aimed at reducing greenhouse gas emissions from buildings, in order to meet the short (2020), medium (2030) and long term (2050) limits set by the European Union, must be transposed by 10 March 2020 at the latest.

Although not legally binding, because of their relevance we must highlight the publication of the Commission notices '**Guidance document on the requirements for hydropower in relation to EU nature legislation**' (2018/C 213/01) and '**Energy transmission infrastructure and EU nature legislation**' (2018/C 213/02).

In the Spanish legal system:

1. **Order ETU/360/2018, of 6 April, establishing the values of the remuneration for the operation for the first half of 2018 and approving a standard facility and establishing its appropriate remuneration parameters, applicable to certain facilities that produce electricity from renewable energy sources, cogeneration and waste¹⁸**. The remuneration aspects of the new standard facilities and their remuneration parameters will be effective retroactively, applying from 14 July 2013, the date of entry into force of Royal Decree Act 9/2013 of 12 July.
2. **Order ETU/362/2018, of 6 April, amending Order IET/2013/2013, of 31 October, regulating the competitive mechanism for the assignment of the demand-side interruptible load management service¹⁹**. The referred order is amended in order to increase competition in the procedure for assigning the interruptible resource and to ensure that the consumer who provides the service will be liable for the payment obligations incurred if successful in the call for applications ('auction'). Up to now there have been two different products: 90 MW and 5 MW, depending on the reduction potential available to the system and its availability. As of the delivery period beginning on 1 June 2018, the 90 MW product is abolished and replaced by a 40 MW product. In addition, a new requirement is added for consumers who wish to obtain

¹⁸ Orden ETU/360/2018, de 6 de abril, por la que se establecen los valores de la retribución a la operación correspondientes al primer semestre natural del año 2018 y por la que se aprueba una instalación tipo y se establecen sus correspondientes parámetros retributivos, aplicables a determinadas instalaciones de producción de energía eléctrica a partir de fuentes de energía renovables, cogeneración y residuos.

¹⁹ Orden ETU/362/2018, de 6 de abril, por la que se modifica la Orden IET/2013/2013, de 31 de octubre, por la que se regula el mecanismo competitivo de asignación del servicio de gestión de la demanda de interrumpibilidad.

authorisation to provide the service: they must prove that they have no outstanding debts in connection the provision of the demand-side interruptible load management service over the four full calendar years prior to the date of application.

With regard to this service, one must also mention the **Decision of the State Secretariat for Energy, of 19 April 2018, approving the calendar and characteristics of the competitive application procedure for the assignment of the interruptible demand management service regulated in Order IET/2013/2013, of 31 October, for the delivery period from 1 June to 31 December 2018**²⁰.

3. **Rules Instrument 1/2018 of the National Commission on Markets and Competition, of 18 April, regulating the management of the system of guarantee of origin of electricity from renewable energy sources and high-efficiency cogeneration**²¹. The purpose of this instrument is to lay down the rules for the organisation and operation of the system for the guarantee of origin of electricity from renewable energy sources and high-efficiency cogeneration. Guarantee of origin means the proof, in electronic form, certifying that a given number of megawatt hours of electricity produced in a plant in a given time period has been generated from renewable energy sources or high efficiency cogeneration. The owner of an electricity generating facility, directly or through his representative, may request the Spanish Competition and Markets Authority ('CNMC'), on a voluntary basis, to issue guarantees of origin for the electricity generated in the facility from renewable energy sources and high-efficiency cogeneration during a period of time - which must be a multiple of calendar months - by submitting the duly completed application in accordance with the format of the standard template published on the CNMC's website.
4. The **Decision of the State Secretariat for Energy, of 9 May 2018, approving the rules for the operation of the day-ahead and intraday electricity production markets**²², as amended by Order TEC/625/2018, of 11 June, assuming the jurisdiction of the State Secretary for Energy and amending the **Decision of the State Secretariat for Energy, of 9 May 2018, approving the rules for the operation of the day-ahead and intraday electricity production markets**²³. In application of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing

²⁰ Resolución de 19 de abril del 2018, de la Secretaría de Estado de Energía, por la que se aprueba el calendario y las características del procedimiento competitivo de subastas para la asignación del servicio de gestión de la demanda de interrumpibilidad regulado en la Orden IET/2013/2013, de 31 de octubre, para el periodo de entrega comprendido entre el 1 de junio y el 31 de diciembre del 2018.

²¹ Circular 1/2018, de 18 de abril, de la Comisión Nacional de los Mercados y la Competencia, por la que se regula la gestión del sistema de garantía de origen de la electricidad procedente de fuentes de energía renovables y de cogeneración de alta eficiencia.

²² Resolución de 9 de mayo de 2018, de la Secretaría de Estado de Energía, por la que se aprueban las reglas de funcionamiento de los mercados diario e intradiario de producción de energía eléctrica.

²³ Orden TEC/625/2018, de 11 de junio, por la que se avoca la competencia de la Secretaría de Estado de Energía y se modifica la Resolución de 9 de mayo de 2018, de la Secretaría de Estado de Energía, por la que se aprueban las reglas de funcionamiento de los mercados diario e intradiario de producción de energía eléctrica.

a guideline on capacity allocation and congestion management (CACM), which includes as one of its main objectives the creation of a single day-ahead and intraday coupling within the European Union, Schedule I to the Decision of 9 May 2018 contains the rules for the operation of the day-ahead and intraday electricity production markets (rules 11 and 46.1 have been amended by Order TEC/625/2018); Schedule II to the aforementioned decision approves the “Agreement for adherence to the rules of operation of the day-ahead and intraday electricity production markets”. The aforementioned decision amends the rules approved by the Decision of the State Secretariat for Energy of 9 May 2014 and takes effect from 12 June 2018, at 10 p.m., the date on which the European continuous intraday market (Cross-Border Intraday Market Project or XBID), to which Spain and thirteen other European countries are connected, became operational.

Also, in compliance with Commission Regulation (EU) 2015/1222 and as a supplement to the previous legislation, the Regulatory Supervision Division of the CNMC has adopted the **Resolution of 6 June 2018 approving the specifications and procedures for the development of the methodology for complementary regional intra-day auctions between Spain and Portugal**²⁴.

5. **Royal Decree 335/2018, of 25 May, amending various royal decrees regulating the natural gas sector**²⁵. The amended regulations are Royal Decree 949/2001, of 3 August, regulating third party access to gas facilities and establishing an integrated economic system for the natural gas sector; Royal Decree 1434/2002, of 27 December, regulating transport, distribution, marketing and supply activities and authorisation procedures for natural gas facilities; and Royal Decree 984/2015, of 30 October, regulating the organised gas market and third party access to natural gas system facilities. In the main, these amendments seek to promote the use of liquefied natural gas infrastructures by making capacity contracting services more flexible, to increase the revenues of the gas system and to facilitate changes of gas supplier. In addition, Royal Decree 335/2018 regulates the procedures for the closure of facilities (temporary or definitive) at the request of the owner, without in any case generating any remuneration rights for the same, and speeds up the procedure for the disqualification of gas suppliers that have engaged in fraudulent conduct and the related procedure for transferring clients to a regulated gas supplier.

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²⁴ *Acuerdo por el que se aprueban las especificaciones y procedimientos de desarrollo de la metodología de subastas regionales intradiarias complementarias entre España y Portugal prevista en artículo 63 del Reglamento -UE- 2015/1222, de la Comisión, de 24 de julio de 2015, por el que se establece la directriz sobre la asignación de capacidad y la gestión de las congestiones.*

²⁵ *Real Decreto 335/2018, de 25 de mayo, por el que se modifican diversos reales decretos que regulan el sector del gas natural.*

XII. Telecommunications

In the electronic communications sector, a number of EU laws of an eminently technical nature stand out, such as **Commission Implementing Decision (EU) 2018/637 of 20 April 2018 amending Decision 2009/766/EC on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community as regards relevant technical conditions for the Internet of Things (C/2018/2261)**, and **Commission Implementing Decision (EU) 2018/661 of 26 April 2018 amending Implementing Decision (EU) 2015/750 on the harmonisation of the 1452-1492 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Union as regards its extension in the harmonised 1427-1452 MHz and 1492-1517 MHz frequency bands (C/2018/2286)**.

In Spain, we have the **Decision of the Spanish Competition and Markets Authority, of 6 March 2018, publishing the decision approving the methodology for determining the economic replicability test of Telefónica's broadband products sold in the residential segment and providing for notice of the same to the European Commission and the Body of European Regulators for Electronic Communications**²⁶. This decision imposes certain information obligations on Telefónica de España, S.A.U. (Schedule IV), including the obligation to inform the CNMC and alternative operators of the prices that will govern the virtual unbundled local access ('NEBA local') and indirect access to fibre ('NEBA fibra'). These prices shall be included in the offer of the aforementioned wholesale services and will be published on the websites of both the aforementioned Authority and Telefónica.

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XIII. Railway sector

1. Various rules have been adopted in the EU on this matter. We need only mention **Commission Implementing Regulation (EU) 2018/867 of 13 June 2018 laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways** and **Commission Implementing Regulation (EU) 2018/868 of 13 June 2018 amending**

²⁶ Resolución de 6 de marzo de 2018, de la Comisión Nacional de los Mercados y la Competencia, por la que se publica la resolución por la que se aprueba la metodología para la determinación del test de replicabilidad económica de los productos de banda ancha de Telefónica comercializados en el segmento residencial, y se acuerda su notificación a la Comisión Europea y al Organismo de Reguladores Europeos de Comunicaciones Electrónicas.

Regulation (EU) No 1301/2014 and Regulation (EU) No 1302/2014 as regards provisions on energy measuring system and data collecting system.

2. In addition, two decisions aimed at strengthening the EU's rail connections with third countries should also be highlighted. In this regard, **Commission Implementing Decision (EU) 2018/491 of 21 March 2018 on the compliance of the joint proposal submitted by the Member States concerned for the extension of the North Sea Mediterranean rail freight corridor with Article 5 of Regulation (EU) No 913/2010 of the European Parliament and of the Council (C(2018) 1634)** was adopted. This decision, which involves the acceptance of the extension of the rail freight corridor to Geneva and makes it possible to connect Switzerland with important European maritime ports (Amsterdam, Antwerp, Dunkirk, Marseille, Rotterdam and Zeebrugge), is addressed to the Kingdom of Belgium, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and to the Swiss Confederation.
3. For its part, **Commission Implementing Decision (EU) 2018/500 of 22 March 2018 on the compliance of the proposal to establish the Alpine-Western Balkan rail freight corridor with Article 5 of Regulation (EU) No 913/2010 of the European Parliament and of the Council (notified under document C(2018) 1625)** allows for the creation of this new rail freight corridor connecting four Member States (Austria, Bulgaria, Croatia and Slovenia) and Serbia.
4. In Spain, **Royal Decree 271/2018, of 11 May, amending Royal Decree 2387/2004, of 30 December, approving the Railway Sector Regulations²⁷**, has been adopted. Among other amendments relating to the accounting rules for railway infrastructure managers and railway undertakings and the elimination of the fifth transitory provision relating to the provision of rolling stock maintenance services by Renfe-Operadora (in the absence of other alternative offer in the market), the new royal decree details the accident insurance cover for railway infrastructure or third parties that the owners of freight wagons or passenger carriages who deliver them to railway undertakings for transport are obliged to purchase. Such owners who, when the royal decree comes into force, have their civil liability covered in an amount lower than that required by the new legislation may maintain such amount until 1 July 2019.
5. Mention should also be made of **Order FOM/642/2018, of 13 June, amending Order FOM/897/2005, of 7 April, on the network statement and procedure for the allocation of railway infrastructure capacity, and Order FOM/189/2015, of 11 February, implementing basic principles for the application of incentives in the system of charges for the use of railway infrastructure under article 73 of the Railway Sector Act 39/2003 of 17 November²⁸**. Said Order FOM/642/2018 completes the transposition of

²⁷ Real Decreto 271/2018, de 11 de mayo, por el que se modifica el Real Decreto 2387/2004, de 30 de diciembre, por el que se aprueba el Reglamento del Sector Ferroviario.

²⁸ Orden FOM/642/2018, de 13 de junio, por la que se modifican la Orden FOM/897/2005, de 7 de abril, relativa a la declaración sobre la red y al procedimiento de adjudicación de capacidad de infraestructura ferroviaria,

Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.

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y la Orden FOM/189/2015, de 11 de febrero, por la que se desarrollan principios básicos de aplicación de incentivos en el sistema de los cánones por utilización de las infraestructuras ferroviarias establecidos en el artículo 73 de la Ley 39/2003, de 17 de noviembre, del Sector Ferroviario.