

# Current Legislation

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## Summary

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I.	Environment . . . . .	2
II.	Agri-food . . . . .	2
III.	Tax . . . . .	3
IV.	Accounting . . . . .	4
V.	Employment and labour . . . . .	4
VI.	Real estate . . . . .	5
VII.	Audiovisual . . . . .	6
VIII.	Telecommunications . . . . .	6
IX.	Energy . . . . .	7
X.	Railway sector . . . . .	7
XI.	Data protection . . . . .	7

## I. Environment

On this subject we outline below the most relevant new legislation:

1. **Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6).** The adoption of this Regulation, providing for measures consistent with the guidelines contained in the opinion delivered on 28 October 2015 by the Technical Committee on Motor Vehicles, clearly strengthens the European Union's emissions policy.
2. **The Sustainable Rural Housing Act Repeal Act (Madrid) 1/2016 of 29 March<sup>1</sup>.** This statute repeals Act 5/2012, of 20 December, which permitted the construction in Madrid of single-family dwellings (detached or semi-detached houses) on originally non-developable land, provided municipal permission had been previously obtained. This applied even in the case of land subject to special protection where legislation did not expressly disallow residential use of the same.
3. **The judgment of the Castilla y León (Burgos) Tribunal Superior de Justicia of 4 March 2016 (Judicial Review Division, First Chamber, reporting judge: José Matías Alonso Millán).** Because of its importance in practice, it would be remiss not to mention this judgment. The main issue in dispute was whether there was a legal obligation to lay down in the regional plan the precise site for a comprehensive waste treatment plant. The claimant submitted that such a site should be determined in advance in the

relevant regional plan. In the end, the High Court concluded that the exact site for the waste treatment plant need not be specified. In this regard, the judgment expressly states as follows: "Therefore, Act 22/2011 does not require a precise determination of the exact location of the comprehensive industrial waste treatment plant, just that the plan should provide the minimum content under Schedule V to this statute".

4. **Decree Act on urgent measures to guarantee the management of municipal waste (Valencia) 4/2016 of 10 June<sup>2</sup>. This statutory instrument delimits more precisely the cases already provided for in the current Waste Act (Valencia) 10/2000 of 12 December<sup>3</sup>, so that the regional government can act in those cases where municipalities or consortia do not adequately provide recovery or disposal services under municipal jurisdiction (acting in the stead of the defaulting municipality or consortium, which would bear the costs of substitution).**

These measures involve enhancing the performance of the public corporation Vaersa, notably by providing that it can act on behalf of municipalities and consortia where so decided voluntarily (until now it could only act on behalf of the regional government). Thus, municipalities and consortia may directly assign to Vaersa waste management operations within their purview, so that, even though Vaersa will then have to select the private operator through procedures that ensure publicity and competition, such procedures are more flexible, fast and agile than those that would apply in the case of a typical administrative concession contract.

Pilar López Torralba

## II. Agri-food

The main developments on the subject of agri-food law revolve around **Royal Decree 197/2016, of 13 May, laying down the conditions for granting aid to cooperation for joint approaches with respect to ongoing**

**environmental projects and practices under the National Rural Development Programme 2014-2020<sup>4</sup>.**

The publication of this statutory instrument connects with the Cooperatives and other Agri-food Organisations (Promotion

<sup>1</sup> Ley 1/2016, de 29 de marzo, por la que se deroga la Ley de Viviendas Rurales Sostenibles de la Comunidad de Madrid.

<sup>2</sup> Decreto Ley 4/2016, de 10 de junio, del Consell de la Comunitat Valenciana, por el que se establecen medidas urgentes para garantizar la gestión de residuos municipales.

<sup>3</sup> Ley 10/2000, de 12 de diciembre, de residuos de la Comunidad Valenciana.

<sup>4</sup> Real Decreto 197/2016, de 13 de mayo, por el que se establecen las bases reguladoras de la concesión de ayudas a la cooperación para planteamientos conjuntos con respecto a proyectos medioambientales y prácticas medioambientales en curso, en el marco del Programa Nacional de Desarrollo Rural 2014-2020.



of Integration) Act 13/2013 of 2 August<sup>5</sup>, which seeks a structural reform of this industry through the creation of larger organisations capable of competing in a global market, as made clear by the explanatory notes to the same: “[...] the Government has set as a priority action the boost and promotion of cooperative and associative integration, in the conviction that it will be conducive to the competitiveness, downsizing, modernization and internationalization of these organisations”.

The requirements to be met by a priority association are, essentially, the following: (a) supra-regional scope; (b) joint marketing of production; (c) turnover higher than the levels specified in Schedule I to Royal Decree 550/2014 (depending on the productive industry concerned); (d) obligation of the producer members to deliver the entire production for its joint marketing; and e) democratic functioning.

The creation of specific aid for priority associations (such as those regulated in Royal Decree 197/2016) shows

that the Spanish Ministry of Agriculture, Food and Environment is strongly committed to such organisations with a view to “attaining a more profitable, competitive and professionalized value-creating business partnership model”.

The priority associations are set to play a key role in the future of the Spanish agri-food industry, increasingly taking part in transactions that, until now, seemed out of bounds. In particular, this industry will take on company acquisition and integration processes on the basis of patterns that, over many years, have been shaped by company law praxis: heads of terms, due diligence, contract, etc.

The professionalization of these processes will play a key role in mitigating potential risks, ensuring proper completion of transactions and, in short, facilitating synergies through a sound sectoral consolidation that results in efficiently managed groups of a national and international scale.

*José Luís Palma Fernández and Yago Fernández Darna*

### III. Tax

In the last quarter, new legislation has also been passed in the field of taxation:

1. **Decision<sup>6</sup> of 4 April 2016 of the Directorate-General for Taxation concerning the deductibility of late tax payment interest in the implementation of the Corporate Income Tax Act 27/2014 of 27 November<sup>7</sup>**, wherein late tax payment interest is classified as finance costs in accordance with its legal meaning and is included in the tax base, having, in turn, to regard these as deductible within the limits of deductibility set out in art. 16 of the Corporate Income Tax Act.
2. **Order<sup>8</sup> HAP/871/2016, of 6 June, approving the corporate income tax and non-residents' income tax forms for permanent establishments and entities incorporated abroad with presence in Spanish territory and subject to conduit foreign income rules for the tax periods beginning**

**between 1 January and 31 December 2015, issuing instructions regarding the filing and payment process and laying down the standard terms and procedure for electronic submission, and approving the standard form for documents specific to transactions with related persons or organisations where the requirements of art. 101 of the Corporate Income Tax Act are met.**

3. In the 'historical territory' of Biscay, **Provincial Decree (Biscay) 77/2016, of 26 April, introducing amendments to several tax-related regulations<sup>9</sup>**. These changes most notably include: (1) an amendment to the Personal Income Tax Regulations<sup>10</sup>, approved by Provincial Decree (Biscay) 47/2014, of 8 April, as regards the exemption of public aid provided by territorial public administrations; (2) an amendment to the Transfer and Stamp Duty Regulations<sup>11</sup>, approved by Provincial Decree (Biscay) 63/2011, of 29 March, providing an exception to self assessment within

<sup>5</sup> *Ley 13/2013, de 2 de agosto, de fomento de la integración de cooperativas y de otras entidades asociativas de carácter agroalimentario.*

<sup>6</sup> *Resolución*

<sup>7</sup> *Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades.*

<sup>8</sup> *Orden*

<sup>9</sup> *Decreto Foral de la Diputación Foral de Bizkaia 77/2016, de 26 de abril, por el que se introducen modificaciones en varios reglamentos de carácter tributario.*

<sup>10</sup> *Reglamento sobre la Renta de las Persona Físicas.*

<sup>11</sup> *Reglamento sobre el Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados.*

the general time limit of 30 working days as of the taxable event comprising the acquisition of movable property from individuals by entrepreneurs or vendors for subsequent resale; and (3) an amendment to Provincial Decree (Biscay) 120/2010, of 16 November, laying down rules for the management of business activity tax, adapting its content to the adjustments made to the Business Activity Tax (Recast) Provincial Law 6/1989 of 30 June<sup>12</sup> by Provincial Law 3/2015 of 3 March.

4. In the 'historical territory' of Gipuzkoa, **Provincial Decree (Gipuzkoa) 11/2016, of 17 May, approving the Non-Residents' Income Tax Regulations**<sup>13</sup>.
5. In the 'historical territory' of Biscay, the **Property Tax Provincial Law 4/2016 of 18 May**<sup>14</sup>. The most noteworthy measures are as follows:

(1) the modification of the tax base resulting from the introduction of a new category of property, property with special features; (2) the systematization and order of exemptions and obligations, distinguishing between mandatory and discretionary relief and setting out therein a series of changes; (3) the establishment of a new tax rate directly pegged to cadastral values that will come into effect on 1 January 2017; and (4) the inclusion of a new minimum and maximum rate for urban and rural property in order to better manage municipal resources.

6. Finally, at the EU level, we should note **Council Directive (EU) 2016/856 of 25 May 2016 amending Directive 2006/112/EC on the common system of value added tax, as regards the duration of the obligation to respect a minimum standard rate**.

*Enrique Santos Fresco and Mariana Díaz-Moro*

## IV. Accounting

In terms of accounting law, we should note the Spanish **Securities Market Authority's Rules Instrument 2/2016, of 20 April, on the accounting standards,**

**annual accounts, public financial statements and restricted statistical statements of financial vehicle corporations**<sup>15</sup>.

*Enrique Santos Fresco y Mariana Díaz-Moro*

## V. Employment and labour

1. With respect to employment and labour law, this quarter has been marked by **Royal Decree Act 1/2016, of 15 April, extending the Employment Activation Programme**<sup>16</sup>. Support for jobseekers who have exhausted their benefits or allowance (including active inclusion income) and which involves receiving 426 euros a month and the implementation of an individualised pathway to employment.
2. Also, two orders were issued on employment matters: **Order ESS/722/2016, of 9 May, broadening the offer of professional certificates which may be accessed through distance learning and setting**

**out the delivery requirements for such learning; and Order ESS/723/2016, of 9 May, implementing the specific statement-of-compliance form for submission by training centres to provide training in different areas covered by the training catalogue**. Both measures are related to employment, in one case because it involves evidencing professional skills acquired through occupational training and, in the other, because it means greater auditing of aid granted for the delivery of such training.

3. Similarly, a series of public grants for different programmes are published. For one, Spain's **Public**

<sup>12</sup> *Texto Refundido de la Norma Foral 6/1989, de 30 de junio, del Impuesto sobre Actividades Económicas.*

<sup>13</sup> *Decreto Foral 11/2016, de 17 de mayo, por el que se aprueba el Reglamento del Impuesto sobre la Renta de no Residentes.*

<sup>14</sup> *Norma Foral 4/2016, de 18 de mayo, del Impuesto sobre Bienes Inmuebles.*

<sup>15</sup> *Circular 2/2016, de 20 de abril de la Comisión Nacional del Mercado de Valores, sobre normas contables, cuentas anuales, estados financieros públicos y estados reservados de información estadística de los fondos de titulación.*

<sup>16</sup> *Real Decreto Ley 1/2016, de 15 de abril, por el que se prorroga el Programa de Activación para el Empleo.*



**Employment Services' Decision, of 17 May 2016, amending its own of 21 August 2015, approving the call for applications to the award, out of the 2015 budget year, of public subsidies for the implementation of a specific state-level programme to improve the employability, qualifications and professional inclusion of young people under the age of thirty; and for another, Spain's Public Employment Services' Decision, of 18 May 2016, amending its own of 24 August 2015, approving the call for applications to the award, out of the 2015 budget year, of public subsidies for the implementation of a specific state-level programme to improve the employability, qualifications and professional inclusion of young people entered on the National Youth Guarantee Records.** Also, Spain's

**Public Employment Services' Decision, of 8 March 2016, updating, for 2016 and subsequent years, the maximum amounts that make up the amount of subsidies for carrying out vocational guidance actions for employment and self-employment assistance to not-for-profit collaborators.**

4. Lastly, two decisions serve to publish two important pieces of information: Spain's **Public Employment Services' Decision, of 30 March 2016, publishing the catalogue of challenging vacancies for the second quarter of 2016**, and the Spanish Department of Social Security's **Decision, of 4 April 2016, publishing the catalogue of agencies, bodies and companies included in the State Benefits Register.**

*Lourdes López Cumbre*

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## VI. Real estate

In this area, we must highlight **judgment no. 217/2016 of the Supreme Court of 6 April 2016**. The circumstances of the case involved the existence of two registered properties belonging to the claimant and the defendant, joined through the demolition of a partition wall and jointly leased to one and the same tenant.

When the current defendant purchases one of the aforementioned registered properties, the other owner brings against him a co-owner ex-post first refusal action under art. 1522 of the Civil Code.

The Court of First Instance upheld the claim holding that there was an ex-post right of first refusal attached to the adjacent property and the appellate Provincial Court varied the judgment a quo, upholding the preferential acquisition rights of the adjacent owner under the ex-post right of first refusal of co-owners. Finally, the Supreme Court upholds the 'cassation' appeal (on the grounds of a breach of the rules governing the determination of disputes), sets aside the contested judgment and rejects the claim.

According to the Supreme Court, the facts as found are that the properties are adjacent to one another, that

they belong to two different owners and that at the Land Registry they are listed as two separate properties, even if physically connected. Hence, the court of last resort rejects the co-owner ex-post first refusal action on account of not meeting the essential requirement which is none other than the existence of common property held in undivided shares.

The Supreme Court contends that the fact that for a time the properties were physically joined and jointly leased to a third party does not imply the presence of common property. First, the court states, because the lease is temporary and, second, because what was leased was the use of the properties, without conveying at any time ownership of the same. In addition, the lease made an explicit reference to two owners in respect of each of the properties, without ever alluding to undivided shares.

To conclude, in this judgment the Supreme Court holds as legal doctrine that: "A co-owner ex-post first refusal action can only be upheld when said action falls on a share or portion of a thing [res] that is held undivided by a number of co-owners".

*Marina Martínez Plaza*

## VII. Audiovisual

With regards to the audiovisual sector, we must highlight that on 25 May a range of initiatives aimed at strengthening the single market were presented by the European Commission as part of its “digital single market strategy for Europe”. With the aim, among others, of achieving a level playing field for all market players, the European Commission has adopted the **Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media**

**services in view of changing market realities.** Under the proposal, on-demand services such as that offered by Netflix shall reserve in their catalogues at least a 20% share for European works; Member States shall be allowed to impose financial contributions on on-demand services in their jurisdictions as well as on those established in a different Member State but targeting their national audiences; and the scope of the updated Directive shall extend, in certain respects, to video-sharing platform services which do not have editorial responsibility for the content that they store but which organise that content, as is the case of YouTube.

Ana Isabel Mendoza Losana

## VIII. Telecommunications

In this sector legislation of great interest has also been adopted, including:

1. **Commission Implementing Decision (EU) 2016/687 of 28 April 2016 on the harmonisation of the 694-790 MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services and for flexible national use in the Union (notified under document C(2016) 2268).** The frequency band subject to regulation is currently used for digital terrestrial television (DTT) and also for programme making and special events. It is a valuable asset for deploying cost-efficient terrestrial wireless networks with high capacity and ubiquitous indoor and outdoor coverage. This Decision seeks to repurpose the 700 MHz frequency band for wireless broadband electronic communications services (inter alia, public protection and disaster relief radio communications or machine-to-machine radio communications including the ‘Internet of Things’) and make this band available under harmonised technical conditions across the Union, whilst allowing for flexible national use in response to specific national needs.
2. At the national level, worth noting is the adoption of two regulations concerning the placing on the market of radio equipment and telecommunications devices:

**Royal Decree 186/2016, of 6 May, regulating the electromagnetic compatibility of electrical and electronic equipment<sup>17</sup>, and Royal Decree 188/2016, of 6 May, approving the Regulation laying down the requirements for the making available on the market, putting into service and using radio equipment, and regulating the conformity assessment procedure, market surveillance and rules on penalties related to telecommunications equipment<sup>18</sup>.** By way of the foregoing, Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC, and Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast), are transposed into Spanish law. Pursuant to Royal Decree 188/2016, the making available on the market or putting into service of radio equipment which is in conformity with the previous repealed legislation (Royal Decree 1890/2000, of 20 November, approving the Regulations that establishes the conformity assessment procedure with regard to telecommunications equipment<sup>19</sup>) where placed on the market before 13 June 2017.

Ana Isabel Mendoza Losana

<sup>17</sup> Real Decreto 186/2016, de 6 de mayo, por el que se regula la compatibilidad electromagnética de los equipos eléctricos y electrónicos.

<sup>18</sup> Real Decreto 188/2016, de 6 de mayo, por el que se aprueba el Reglamento por el que se establecen los requisitos para la comercialización, puesta en servicio y uso de equipos radioeléctricos, y se regula el procedimiento para la evaluación de la conformidad, la vigilancia del mercado y el régimen sancionador de los equipos de telecomunicación.

<sup>19</sup> Real Decreto 1890/2000, de 20 de noviembre, por el que se aprueba el Reglamento que establece el procedimiento para la evaluación de la conformidad de los aparatos de telecomunicaciones.





## IX. Energy

In this matter, we regard the following as legislation of special interest:

1. First, a number of instruments have been passed that specify the legal regime of the gas market. Salient amongst these are the **Decision of the Spanish Junior Ministry of Energy, of 6 June 2016, approving various provisions on the organised gas market**; the **Decision of the Spanish Directorate-General for Energy and Mining Policy, of 29 March 2016, publishing the last resort tariff for natural gas**; the **Decision of the Directorate-General for Energy and Mining Policy, of 15 March 2016, assigning the basic storage capacity for the period from 1 April 2016 and 31 March 2017**, and the **Decision of the Spanish Competition and Markets Authority, of 1 March 2016, approving the registration and deregistration procedure for users with a balancing portfolio at the virtual trading point as well as the framework contract**.
2. At the EU level, **Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators** has been published. This Regulation lays down the requirements that must be satisfied by new

generating facilities, which are considered 'significant' in accordance with the Regulation's own criteria, for connection to the interconnected power system. It also defines the obligations for ensuring that system operators make appropriate use of the power-generating facilities' capabilities in a transparent and non-discriminatory manner. The aim of all this it is to improve the conditions of competition in the internal electricity market, ensure system security and the integration of renewable electricity sources, and to facilitate Union-wide trade in electricity. The foregoing shall apply from three years after publication.

3. At the national level, we should note the **Decision of the Spanish Directorate-General for Energy and Mining Policy, of 6 May 2016, setting the average price of energy to be applied in calculating the financial reward during the second quarter of 2016 for the demand-side interruptible load management service offered by consumers of non-peninsular electricity systems to which Order ITC/2370/2007 of 26 July applies**. The average price of energy applicable in the second quarter of 2016 in the calculation of the amount corresponding to the equivalent annual turnover for calculating the aforementioned reward is 35.05 euros/MWh. In the previous quarter, the price was 49.25 euros/MWh.

*Ana Isabel Mendoza Losana*

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## X. Railway sector

In this quarter several pieces of legislation have been published that bear on the shaping of the single European railway area and the consolidation of the internal market. These are **Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (Recast)**; **Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (Recast)**; **Commission Regulation (EU) 2016/527 of 4 April 2016 amending Regulation (EU) No 454/2011 on the technical**

**specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system**; **Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004**; and **Commission Regulation (EU) 2016/912 of 9 June 2016 correcting Regulation (EU) No 1303/2014 concerning the technical specification for interoperability relating to 'safety in railway tunnels' of the rail system of the European Union**.

*Ana Isabel Mendoza Losana*

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## XI. Data protection

In this area we can highlight the following relevant legislation:

1. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection

of natural persons 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). This Regulation reforms European legislation on data protection to address the increased cross-border flows and technological progress, all of which require a regulatory framework to boost the digital single market.

Among the main developments of the Regulation are an increase in the rights of data subjects, including the right to be forgotten, the right to object even to the use of personal data for profiling purposes, the right to be informed if personal data has been hacked and the right to data portability from one service provider to another.

2. **Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA** lays down the rules relating to the protection of natural

persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

3. **Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime**, provides for the transfer by air carriers of passenger name record (PNR) data of passengers of extra-EU flights, the processing of such data including its collection, use and retention by Member States and its exchange between Member States.

This new Directive, which does not affect or alter Council Directive 2004/82/EC, regulates the transfer of advance passenger information (API) data by air carriers to the competent national authorities for the purpose of improving border controls and combating illegal immigration. Moreover, although the new Directive applies to extra-EU flights, Member States may also voluntarily apply it to intra-EU flights.

*Ángel García Vidal*