GARRIGUES

SPORTS & ENTERTAINMENT

JULY 2016

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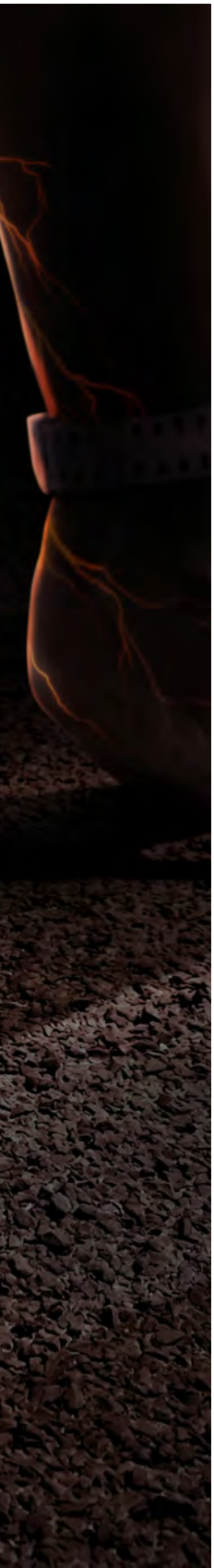
BREXIT:
SOME IMPLICATIONS FOR THE SPORTS INDUSTRY



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SPORTS & ENTERTAINMENT

BREXIT:

SOME IMPLICATIONS FOR THE SPORTS INDUSTRY

GARRIGUES SPORTS & ENTERTAINMENT

On Friday the world woke up to the news that the United Kingdom had said "yes" in the referendum on leaving the European Union (EU). Although this was in many ways an unexpected event with a far-reaching political, economic and social impact, its implications for international EU Law, and therefore for tax law, will take longer to materialize.

Under the rules on withdrawal provided in the Treaty on European Union, the formal notification of withdrawal will not have an immediate effect on the legal arrangements between the United Kingdom and the EU, but will take at least two years to be brought into operation. As a matter of fact, until the negotiation period for its withdrawal has ended, the United Kingdom will continue to be a member of the EU for all purposes, retaining all its rights and all its obligations, and all the rules in the EU acquis will continue to apply to its citizens.

For that reason, nothing is definite until the withdrawal agreement has been concluded, because it may include safeguard clauses retaining the currently applicable tax directives in force, and it is therefore early days to know the complete scope of the effects that the United Kingdom's new status will have for sportspersons, or any other sectors of the population, residing or carrying on any activities in the United Kingdom.

Additionally, without limiting the comments outlined above, in the specific case of the relationship between Spain and the United Kingdom there is a tax treaty in place.

That said, given the characteristics of Spanish tax law which has been moving at an increasingly faster pace towards harmonization in the EU, and the characteristics of an industry such sport which is heavily involved in international activities, some remarks are needed on the tax impact that the United Kingdom's withdrawal from the EU could have, for both UK-resident sportspersons carrying on activities in Spain, and for other sportspersons who are going to participate in any type of event in the United Kingdom:

- Taxpayers in Spain who are resident in another EU member state benefit from a 19% standard rate for nonresident income tax, which has obviously been available to UK taxpayers. The UK's withdrawal from the EU could mean that they will start to be taxed at the standard rate for Non-EU members, which is 24%.

- The Nonresident Income Tax Law allows the expenses set out in the Personal Income Tax Law to be deducted when determining the tax base, if it can be evidenced that those expenses are directly related to the income obtained in Spain and have a direct and inseparable connection to the activity carried on in Spain. That rule, which does not apply to third states, could, in principle, cease to apply for UK-resident taxpayers.

- Inclusion in the personal income tax base of income not recognized as a result of ceasing to have taxpayer status due to a change of residence. In the case of relocations to other member states, the option of filing additional returns is available (with no penalty, surcharge or interest) as and when the unrecognized income is received, whereas where the relocation is to a third state, the income must obligatorily be included in the tax base for the last tax period in which the person files a return as taxpayer.

- Eligibility for the general exit tax regime. The personal income tax legislation sets out a special regime (not for the tax in the year of exit) on the reporting of unrealized

capital gains on the shares held in any type of entity as a result of ceasing to have taxpayer status as a result of a change of residence to another EU state which in principle would not apply to changes of residence to third states.

- Non-eligibility for the exception to the international tax transparency rules (particularly important, if ultimately, in or after 2020 the United Kingdom reduces its nominal corporate income tax rate to 17%, because that rate would be lower than 75% of the Spanish nominal rate)..

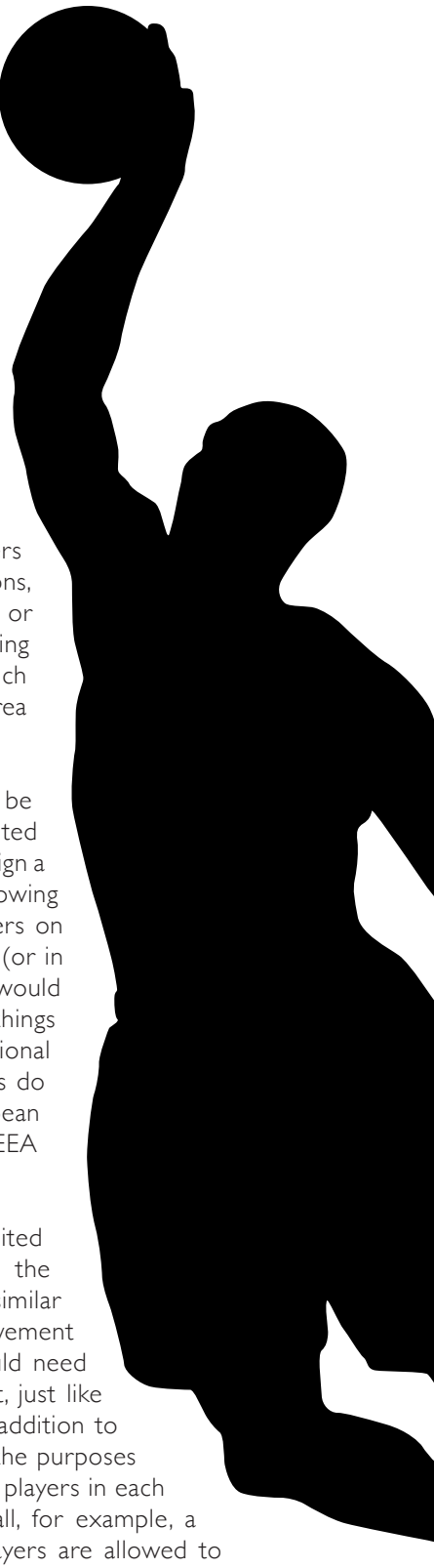
- VAT. In view of the harmonization and territorial nature of the tax, the United-Kingdom's withdrawal from the EU would mean its withdrawal from the EU territory in which the common system of VAT applies. In other words, for VAT purposes, the United Kingdom will become a third territory with all the associated implications under the VAT legislation.

- In relation to the wealth and the inheritance and gift taxes, the residents of third countries would not be entitled to certain benefits under the autonomous community legislation.

Note that some of the consequences of withdrawal described above would not apply if the United Kingdom, despite its withdrawal from the EU, continued to belong to the European Economic Area ("EEA").

We can also advise of the implications concerning employment law and the free movement of workers, although you are warned that this is an extremely complex subject due mainly to the fact that, in addition to the specific obligations in this area, the various competition organizers (leagues, sports associations, etc.) put in place quota or restriction systems for including foreigners in their teams which are not identical in every area and discipline.

Therefore, it will first have to be determined whether the United Kingdom will join the EEA or sign a similar type of agreement allowing the free movement of workers on the terms in force in the EU (or in the EEA). If it does, there would be no change from how things stand now, because in professional sport the limits on foreigners do not generally exclude European citizens or citizens of EEA member countries.



Otherwise, namely, if the United Kingdom did not belong to the EEA (or sign with the EU a similar agreement on the free movement of workers), UK players would need a work and residence permit, just like any other foreign worker, in addition to which they would count for the purposes of any limit placed on foreign players in each sport (in professional football, for example, a maximum of four foreign players are allowed to be employed by each club).

In any event, the procedures for obtaining work and residence permits have lightened, because besides the ordinary documents, the only other document needed is a certificate issued by the sports association,

professional league or equivalent entity and stamped by National Sports Council (CSD), setting out (i) acknowledgment that the applicant is a registered sports enterprise authorized to participate in sports activities, (ii) its capacity to hire the sportsperson, and (iii) that the sportsperson is in possession of the license required to play the sport.

That benefit only comes into play, however, for professional players in the following competitions (see table)

This limit will only be in place for local Spanish competitions, because in the tournaments organized by the UEFA (Champions League and Europa League), there is no limit on foreign players of the type described above.

And on the subject of potential restrictions affecting Spanish sportspersons in the United Kingdom, we will confine our comments basically to the Spanish men's premier league.

The premier league requires a foreign player to have played, in the two years before they are hired, a minimum number of matches with their side (ranging between 30% and 75% depending on the ranking that each national side has in the FIFA classification).

Although there are also some exceptions to this requirement, it may be concluded that the restriction is greater than for foreigners in Spain.

You are reminded however that the above requirements may be revised by the competition organizers, and in any event, until the effects of Brexit come into force (in the two year period mentioned above) no change will take place to the rules currently in force.

COMPETITIONS

Basketball

- Liga ACB (men's league organized by the association of basketball clubs)
- Liga LEB (mens basetball league)
- Women's basketball league

Handball

- Liga ASOBAL, División de Honor "A" (men's premier professional handball league)
- Liga ASOBAL, División de Honor Femenina (women's premier handball league)

Cycling

- Clubs or teams included in the UCI PRO TOUR

Football

- Liga nacional de Fútbol Profesional (1st and 2nd divisions in the Spanish men's professional football league)
- 1st division in the women's football league
- Liga Nacional de Fútbol-Sala masculina, División de Honor (Men's premier indoor football league)
- Liga Nacional de Fútbol-Sala femenino, División de Honor (Women's premier indoor football league)

Volleyball

- División de Honor Masculina (men's premier volleyball league)
- División de Honor Femenina (women's premier volleyball league)

CASES INCLUDED IN THE DEFINITION OF AN **ELITE SPORTSPERSON** FOR THE PURPOSES OF SEVERANCE IN A **TEMPORARY CONTRACT**

Judgment of Castilla y León High Court, sitting in Valladolid, on March 16, 2016

Castilla y León High Court denies a second division player's right to be paid the severance stipulated for temporary contracts on the termination of his contract at the end of the covenanted term

ÁNGEL OLMEDO JIMÉNEZ

Issue under debate
In this judgment it was discussed whether the professional sportsperson is entitled receive the severance stipulated for termination of temporary contracts at the end of the covenanted term.

In the backdrop to this judgment was the possibility of applying the precedent in the supreme court judgment of March 26, 2014 which allowed that option, although in a number of cases concerning specific professional sportspersons (those not considered as "elite").

Facts of interest
The claimant, a player with S.D. Ponferradina, had a contract for three seasons, under which his gross salary was €160,378.61 for each, one of the highest salaries in the club.

On termination of his contract, the club gave notice of termination of his employment, without paying him any severance.

In his professional career before that contract, the player had competed in el Espanyol B, Polideportivo Ejido, Xerez and Levante (getting to play in the first division with that club). After his services with S.D. Ponferradina ended, he was hired by F.C. Cartagena and is now with Rapid Bucarest.

The lower court dismissed his claim, holding that the severance was not warranted in that (i) in the claim the player himself acknowledged that he was an elite sportsperson, (ii) the sums he was paid were far higher than the amounts provided in the applicable collective labor agreement, (iii) he has competed in a first division team and currently plays abroad and (iv) he was one of the best-paid players in S.D. Ponferradina.

Judicial interpretation
The regional court hearing the appeal found significant procedural defects in the written appeal although this did not prevent it from examining the case.

The judge, which concluded by dismissing the appeal and confirming the lower court's judgment, mentioned first that the supreme court judgment intended to be used as support by the player (the judgment of March 26, 2014) is not case law (because there are later determinations to the same effect, and besides, it was rendered in an ordinary cassation appeal proceeding) and that it also applies to a different collective labor agreement from the one under examination (the collective labor agreement for professional cyclists).

Moreover, the arguments in that supreme court judgment, which the player intended to use to support his case, were mentioned in passing, and therefore were not considered to be directly applicable to the facts under examination.

In light of the facts outlined above which were not changed in an application to the higher court, Castilla y León High Court reached the same conclusion as the lower court, by upholding the sportsperson's status as an elite football player and therefore denying him the right to any severance as a result of the termination of his temporary contract on the ground of expiry of the covenanted term.

THE VALIDITY **OF CLAUSES SETTING** OUT MUTUAL RIGHTS TO TERMINATE **THE EMPLOYMENT CONTRACT** WITH ENTITLEMENT TO STATUTORY SEVERANCE **FOR PROFESSIONAL SPORTSPERSONS**

Judgment rendered by Cataluña High Court on February 25, 2016

Cataluña High Court granted validity to a clause contained in the employment contract of the football coaching coordinator at F.C. Barcelona in which both parties could terminate the employment contract, on giving one and a half month's notice, and paying an amount equal to two gross monthly payments of the covenanted salary

ÁNGEL OLMEDO JIMÉNEZ

Issue under debate

The debate in this judgment was over whether validity should be granted to a termination clause allowing either party to terminate the contract for a professional sportsperson, with an indemnity payment equal to two monthly payments, and on giving one and a half month's notice before the end of each of the seasons on which the term of the contract had been based.

Facts of interest

The worker had signed a professional sportsperson's contract on July 1, 2013 to provide services as a "football coaching coordinator". The agreement was for a term spanning over three seasons and set out fixed compensation totaling €300,000 and variable compensation totaling €200,000 per season.

Clause 3.2 of that agreement stipulated that at the end of each season for the sport, both parties could terminate the contract, effective June 30 of that season, subject to giving notice to the other party of that decision on or before May 15, in the season, it also required the party intending to terminate to indemnify the other party in all respects, not later than July 31 of that year in progress, with a gross sum equal to two monthly payments.

It was evidenced that the contract is a standard format used by the club, although it changes certain terms and conditions according to the person being hired, and that, moreover, after negotiating, the worker had been given two or three days in which to sign.

On April 29, 2014, F.C. Barcelona notified the football coordinator of its intention to terminate the employment contract effective June 30 of that year, under clause 3.2 of the employment contract, and proceeded to pay the covenanted sum (amounting to €50,000).

It should be noted that since March 2005 the worker had held six fixed-term contracts, all under Royal Decree 1006/1985, for the provision of services as "coach", except for the latest contract which provided that his work would be as "technical secretary for football coaching".

Following the decision to terminate his contract, the worker sued his employer, because he considered that clause 3.2 of his contract must be held null and void and that F.C. Barcelona's acts constituted unjustified dismissal, and therefore the severance to which he would be entitled should be calculated, either (i) by reference to a length of service starting on the date of the first contract (in March 2005), by upholding that there had been "essentially a single employment relationship", or (ii) with observance of the two monthly payments per year of service which is provided under RD 1006/1985, or (iii) under the parameters in article 49.1.c) WS, applying the Supreme Court's interpretation in its judgment of March 26, 2014, which acknowledged entitlement to the severance provided for the termination of temporary contracts on the termination of contracts of professional sportspersons.

Judicial interpretation

In line with the interpretation adopted by the lower court judge, Cataluña High Court dismissed the worker's claim in full, on the following arguments.

a) The way in which the player was hired, under successive contracts, does not involve fraud, considering that RD 1006/1985 itself requires the contracts to be temporary, besides which it is plain to see that the latest contract was entered into for a "new stage in his career", above all when compared to the terms and conditions provided in the earlier contracts.

b) Therefore, Cataluña High Court confirmed that the length of services that must be taken for severance purposes is the date of the latest contract, not the date determined on the basis of the prior succession of contracts.

c) Clause 3.2 of the contract cannot be classed as unfair considering the events leading up to it, along with the existing professional progress, and that the provision may be considered to meet the legal requirements to be included in the "grounds validly set out in the contract" which allow the employment relationship to be terminated under article 49 of the Workers' Statute.

d) Having established this, the court held that the severance paid was adequate because the severance provided in article 49.1.c) of the Workers' Statute, at the time of the events, was equal to ten days' salary per year of service, which resulted in a figure that was lower even than the amount provided in the employment contract (two monthly payments).

THE NATIONAL APPELLATE COURT HELD THAT NEITHER **THE DEDUCTION NOR THE REFUND OF THE INPUT VAT ON PAYMENTS** MADE BY A CLUB TO AN INTERMEDIARY ENTITY **WAS ALLOWABLE** AFTER CONCLUDING THAT, IN THE CASE UNDER EXAMINATION, THEY REPRESENT **THE PAYMENT OF PLAYER'S COMPENSATION**

BELTRÁN SÁNCHEZ

In a judgment rendered on March 23, 2016, the National Appellate Court dismissed in full the application for judicial review filed by a club against a decision of the Central Economic-Administrative Tribunal which confirmed (i) the correction made by the inspectors in relation to the deduction of input VAT on the payments made to an entity acting as agent of a football player belonging to the same club; and (ii) the penalty associated with that correction.

The correction the inspectors made was based, ultimately, on their considering that the contract signed between the club and the representative entity for the player was a sham concealing the payment that the player himself really had to pay for the services that the entity provided to him. The inspectors said that the sums paid by the club were paid on the player's behalf and for his account, and if the player had paid them himself, he would not have been able to deduct either the input VAT or the expense incurred. As a result, the inspectors concluded that the input VAT could not be deducted, but rather might be able to be added to wages and salaries for the tax period concerned.

The club's case for its defense focused on the correction not being allowable without simultaneously allowing a refund of the input VAT (*"there are only two possible alternatives: either the VAT is required and the deduction made is correct, or the VAT is incorrect and must be refunded"*).

The National Appellate Court dismissed the club's arguments, however, saying that the refund of the input VAT would have the effect of removing tax from a transaction subject to VAT (the provision of a representative's professional services) as result of a sham contract being entered into between a representative entity and the club for which the customer for the services is, in any event, the player.

ANTI-DOPING TESTS: WHAT LIABILITY IS THERE **FOR THE GOVERNMENT**?

In a judgment rendered on January 22, 2016, the National Appellate Court allowed a cyclist to be indemnified with €724,904.86 as a result of the reversal of a disciplinary penalty for doping imposed by Spain's Vuelta cycling competition in 2005

CAROLINA PINA

The cyclist and the company managing his rights of publicity claimed damages totaling €1,079,048.86 from the Education, Culture and Sport Ministry, after the penalty had been reversed following a long court proceeding

Anti-doping tests

In the 2005 Vuelta, one of the competitors was tested on a urine sample to detect prohibited substances. Erythropoietin (commonly known as EPO) was apparently found, which triggered a penalty proceeding by the Sports Disciplinary Committee belonging to the Spanish Cycling Association ("FEC").

The committee suspended the cyclist for two years, and disqualified his results in the 2005 Vuelta competition. The decision was appealed to the Spanish Sports Disciplinary Committee belonging to the National Sports Council (CSD), which held that it did not have jurisdiction in 2006 for the reason that FEC is a private entity which, moreover, acted by delegation of the International Cycling Union (UCI), and jurisdiction lay with the Court of Arbitration for Sport (CAS).

The cyclist did not give up on his mission, however, and filed an application for judicial review against both decisions to Castilla y León High Court, which took his side and set aside both decisions in 2011. This latter judgment was confirmed by the Supreme Court in a cassation appeal proceeding in 2012.

Unfortunately, the harm had already been done, and the proliferation of news items on anti-doping tests on the cyclist, and the association's penalty, had brought huge losses to the cyclist: termination of his employment contract, termination of licensing agreements for rights of publicity and of sponsorship agreements, suspension of his license for competitions, etc.

The financial liability of the government

Both the Law on Public Authorities, and the case law, acknowledge that the government can have financial liability, which cannot result simply from the setting aside of an administrative decision, but rather requires satisfaction of the following requirements: (i) there must be effective damage which can be recognized for an individual and is economically quantifiable; (ii) there must be a causal link between an administrative act and the damage, and (iii) unlawful detriment must have taken place, which the injured party should not have to bear.

Are these requirements met in this case?

The indemnification

Considering that the Supreme Court itself had confirmed the setting aside of the decisions, the cyclist decided in 2013 to file a claim against the government in respect of damages for the losses caused; and in particular, against the Education, Culture and Sport Ministry, which denied any such liability. This gave rise to an application for judicial review to the National Appellate Court at which this judgment was rendered.

The court accepted the arguments in the Supreme Court's previous judgment, by confirming that sports associations carry out public functions by delegation where they impose penalties, and therefore in this case the two decisions (by the association and by the ministry) being set aside may be regarded as an administrative act.

Additionally, it advised that, in the examining phase of the penalty proceeding by the association, the cyclist's rights had been violated because the time limits for delivery of the samples had not been met, his name was disclosed, the testing was always done by the same laboratory team, and a wealth of items of evidence were denied for no reason. This conduct can only be described as unlawful, and is clearly the reason for the damage caused to the cyclist.

Lastly, the cyclist performed an admirable exercise to identify the damage caused by both decisions, with exhaustive details of the economic losses sustained: termination of his employment contract, sponsorship agreement, licensing agreement for his publicity rights, cancellation of promotional events and a ban on practicing his profession while he was suspended.

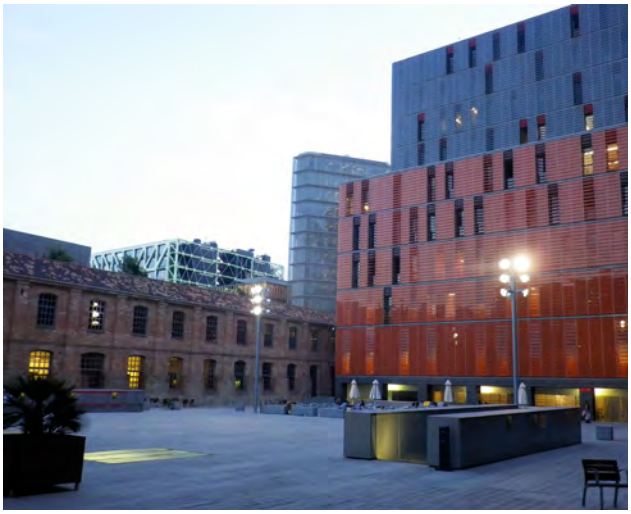
Although it moderated some of those items, the National Appellate Court finished by awarding a considerable indemnification figure for which the government was held liable.

NEWS

GARRIGUES SPORTS & ENTERTAINMENT TAKES PART IN SEMINAR ON "PROBLEMS SURROUNDING THE RULES ON USE AND MANAGEMENT OF SOCIAL NETWORKS IN FOOTBALL. CONFLICTS IN THE ONLINE BUSINESS" ORGANIZED BY FUNDACIÓN LALIGA FOUNDATION

On May 26 a seminar was held at the headquarters of LaLiga on "Problems surrounding the rules on use and management of social networks in football. Conflicts in the online business", organized by Fundación LaLiga, to bring awareness of the importance of social networks as a communication tool at clubs.

Félix Plaza, partner in the tax department and co-leader of Garrigues Sports & Entertainment, and Carolina Pina, partner in the intellectual property department and co-leader of Garrigues Sports & Entertainment, took part in the seminar, at which topics included the tax implications of the commercial exploitation of digital rights, direct and international taxation, exploitation through companies and withholdings from rights of publicity. Also discussed were the problems associated the rules on the use and management of social networks in football. The seminar was also attended by sports personalities from all areas of football.



GARRIGUES SPORTS & ENTERTAINMENT GIVES MASTER CLASS ON MASTER IN SPORTS MANAGEMENT PROGRAM AT UNIVERSITAT POMPEU FABRA

Diego Rodríguez, partner in the tax department and co-leader of Garrigues Sports & Entertainment, gave a master class on taxation in the world of sport within the Master in Sports Management program at the Barcelona School of Management, Universitat Pompeu Fabra.

GARRIGUES SPORTS & ENTERTAINMENT HOSTS THE "JUNTOS HACEMOS HISTORIA" (MAKING HISTORY TOGETHER) AWARDS CEREMONY FOR THE MANAGEMENT OF CLUBS, ORGANIZED BY LALIGA

On May 20, an awards ceremony was held at the Garrigues offices in Madrid, organized by LaLiga for recognition of management at Real Madrid, Atlético de Madrid, Villarreal CF, Sevilla FC and FC Barcelona, Spanish clubs, which have all had successes in European competitions.

Javier Tebas, LaLiga chairman, Miguel Cardenal, chairman of the National Sports Council, Carlos Espinosa de los Monteros, High Commissioner for Brand Spain, and Félix Plaza, partner in the tax department and co-leader of Garrigues Sports & Entertainment, chaired the ceremony, attended by representatives of Spanish football, including Enrique Cerezo, Miguel Ángel Gil Marín, Fernando Roig Negueroles, José Castro and Emilio Butragueño. Also attending the ceremony were representatives of other institutions such as the NBA, the Spanish Footballers' Association (AFE), the Leading Brands of Spain Forum (Foro de Marcas Renombradas), the Sports Press Association (Asociación de la Prensa Deportiva) or clubs in la Liga BBVA and Liga Adelante.

GARRIGUES SPORTS & ENTERTAINMENT GIVES THE TAX LAW CLASSES ON THE EXECUTIVE MASTER IN SPORTS MANAGEMENT PROGRAM, ORGANIZED BY CENTRO DE ESTUDIOS GARRIGUES

The tax law classes on the Executive Master in Sports Management program took place at Centro de Estudios Garrigues in May and June. Félix Plaza and Diego Rodríguez, partners in the tax department gave those classes together with other Garrigues professionals.

CHAMBERS AND PARTNERS

Leading firm in the field of Sport
2008 a 2015
Band 1

GARRIGUES SPORTS & ENTERTAINMENT RANKED IN BAND 1 BY CHAMBERS EUROPE FOR EIGHT YEARS RUNNING (2008 TO 2015)

UK-based publisher Chambers & Partners published its ranking in April in which Garrigues Sports & Entertainment was placed in band 1 for sports law for another year running. Garrigues Sports & Entertainment has now been commended for eight years running, for the quality and variety of the work performed by the Garrigues Sports & Entertainment professionals and the firm's level of penetration in the industry.

JUDGMENTS AND RULINGS

1. National Appellate Court decision, rendered on October 18, 2016, over whether there was criminal insult in the whistling gestures at the Spanish anthem and at King Felipe de Borbón at the Copa del Rey championship final

Barcelona Examining Court No 2 ruled that the whistling gestures at the Spanish anthem and at King Felipe de Borbón at the Copa del Rey championship final, disputed between Fútbol Club Barcelona and Athletic Club de Bilbao at Nou Camp stadium on May 30, 2015 should not be held as a criminal insult against the Crown and criminal derogatory acts against symbols or emblems of Spain, both defined in the Spanish Criminal Code. On appeal, the National Appellate Court held that, although the way in which the events occurred cannot be condoned, the manner of expressing certain criticisms by combining sports sentiments with political claims cannot be considered criminal, even if they are directed at the head of state and at the national anthem.

The National Appellate Court reaffirmed its position on freedom of expression in accord with the European Convention on Human Rights. It therefore dismissed the appeal, holding that the whistling gestures at the final of the Copa del Rey football championship were simply mechanisms used by people who dissented from the established law, in an attempt to achieve a different governing system from that established in the Spanish Constitution.

2. Supreme court judgments, rendered on February 16, 2016, in relation to identical trademarks

The company filed with the Spanish Patents and Trademarks Office an application for registration of composite mark "Quinielista.es". The Spanish state lottery company Loterías y Apuestas del Estado SA objected by asserting its similarity with previous marks, in particular several marks with the name "1X2 La Quiniela", although its appeal was dismissed because they were not found to be identical due to there being distinctive signs such as "1x2".

The Supreme Court laid down that an examination must be performed to analyze two factors. The first factor is that both marks refer to services in the same class, for spreading games of chance, betting, poker games, black-jack, casino and bingo. In relation to this factor, a lower degree of similarity between marks may be offset with a higher degree of similarity between the products or services covered, or vice versa. The second factor is the incorporation of the term "*Quiniela*" (pools or sport bet) in the signs. The Supreme Court held that the marks were completely identical. The root "Quiniel", appearing in both names, are identical elements which do not disappear because there are other graphic signs or naming elements such as "1x2" or the ending "-ista.es". In its case law, the Supreme Court has held in relation to well-known marks that care must be taken to avoid the risk of association which constitutes "a specific case of the risk of confusion".

3. Supreme Court judgment, rendered on February 24, 2016, in relation to breaches of the Competition Law in agreements for buying the audiovisual rights for LaLiga and Copa del Rey matches

A challenge was filed against the decision of the Spanish Markets and Competition Commission (CNMC) of April 14, 2010 holding that there had been a breach of Competition Law and of the Treaty on the Functioning of the European Union because these licensing agreements for audiovisual rights had terms spanning longer than three seasons, having been signed for terms of at least five years. The same decision found contrary to this legislation any clauses granting to the licensee operator any rights allowing its term to be extended to take in more than three seasons. The Supreme Court affirmed that the licensing agreements for audiovisual rights between audiovisual operators restricted competition due to the effects they had, by triggering the effect of closing the market for the buying of football audiovisual rights.

Among the agreements with football clubs examined in the CNMC's decision was that signed between Mediapro and the Valencia team, on February 26, 2009. Mediapro had bought 90.5% of the football club's audiovisual rights. The Supreme Court considered that monopsony (a buyer's monopoly) tends to occur in the audiovisual rights market, because the buyer with the best collection of rights when a club's rights come onto the market has a greater incentive to pay a higher price than a third party would pay, because the number of matches it could broadcast is higher than the number of matches that the competitor could broadcast. In the 09/10 season, by having agreements for terms of at least five years, Mediapro closed the market to other buyers, which has a considerable effect on competition.

The Supreme Court therefore found that the CNMC's decision was consistent with the law.

4. Supreme Court judgment, rendered on March 1, 2016, concerning the delays attributable to the party with tax obligations

Cassation appeal for a definitive ruling on a point of law lodged by F.C. Barcelona which considered that a delay

cannot be attributed to the party with tax obligations for failing to produce documents if they were not advised that the information was missing and that they would incur a delay.

The inspectors and TEAC considered that there were delays by F.C. Barcelona in fiscal year 1998 as a result of failure to produce documents which had been requested in the document for commencement of the inspection proceeding, on the licensing agreement for rights of publicity signed by FC Barcelona and Publicidad Vima, SA. Nor was the employment contract signed by RCD Espanyol produced when requested.

After establishing the contradiction with the contrasting judgments produced by F.C. Barcelona, while not sharing the view in the judgments on the need to repeat the remaining requested documents in every official notice and on the consequences of the failure to produce them, because the general initial warning that they do not have the complete set of requested documents is sufficient, the Supreme Court acknowledged the view that any delay in producing requested information is sufficient to constitute a delay attributable to the taxpayer is strictly opposed to the Supreme Court's line of reasoning. The Supreme Court held that verification of the completed inspection work and the justification for it play an especially important role against the powers of the authorities. The cassation appeal was upheld.

5. Supreme Court judgment, rendered on March 15, 2016, concerning the identification of participants in games

The appellant petitioned for the court to render null and void article 26.1 of Royal Decree 1613/2011, of November 14, 2011, which exceptionally allows the National Gaming Commission to authorize participation in games without prior identification of the participants. The aim behind the petition was to prevent minors and legally incapacitated persons and other persons who are subject to an absolute ban from being able to participate in these types of games for reasons related to public ethics.

The Supreme Court dismissed the appeal, arguing that the article attempts to harmonize, by seeking a balance, the performance of given games carried out on remote media, by tempering the obligation imposed on operators to require the participants in the games to identify themselves and to check that they do not fall within any of the banned parties, with the onus of verifying the identification particulars of the player when they seek to collect the prizes obtained.

Additionally, the court held that the claimant had standing to sue, by contrast to the earlier conclusion by Madrid High Court, given that this is not just an abstract interest in defending the law, in that the application of the challenged decision causes an actual detriment to the appellant's lawful rights.

6. Supreme Court judgment, rendered on April 19, 2016, in relation to the cassation appeal lodged by a football referee against the Spanish football association (Real Federación Española de Fútbol, RFEF)

RFEF notified the referee that he had been relegated, and the referee filed his objection, although no express decision was actually rendered on the relegation. The claimant's challenge of the RFEF's actions by relegating him was based on reasons related above all to the procedural regularity of the proceeding conducted, because he asserted the absence of a definitive decision on the relegation, rendered by the competent body within the association.

The claimant referee claimed that he was relegated as a result of a simple proposal, which would render inapplicable the 40-day time limit provided in the legislation for challenging the acts and decisions of sports clubs and sports associations.

The Supreme Court held that the time limit for challenging could be allowed not to start from when the referee was notified of the proposal by the RFEF's referee committee, because the referee could see it as a formality commencing a proceeding. After the referee had been made to referee matches in a lower category, however, it should have been concluded that there had been an act by the RFEF, with detrimental effects for the claimant because it entailed the effectiveness of his relegation. The court concluded that it was a "de facto" step, lacking the procedural requirements for an RFEF decision, and not coming from the competent body to adopt that decision, but these circumstances do not prevent the 40-day period for challenging the decision to apply, which is why the appeal was dismissed, because eighteen months had elapsed.

7. Supreme court judgments, rendered on April 28, 2016, in relation to cassation appeals lodged against the decision of May 3, 2012 by the decision of the Spanish Markets and Antitrust Commission (CNMC) upholding a breach of the CNMC's 2010 decision, by concluding agreements for buying audiovisual rights for a term spanning over more than three seasons

The Supreme Court had already given its interpretation of the lawfulness of the CNMC's decision of April 14, 2010 according to European and Spanish competition law (see point 3.3). These appeals were not intended to examine the legality of that decision, but to determine whether the agreements after that decision, signed between Mediapro and several football clubs, between June 2010 and August 2011, all after the entry into force of the General Audiovisual Communication Law on May 1, 2010, breached the obligations imposed in the first CNMC decision in 2010, which is affirmed in the decision of May 3, 2012 being challenged at first instance. The scope of the decision implies making that ban on concluding

agreements for terms spanning over more than three seasons binding for agreements other than those examined in that decision without taking into account the entry into force of that law, which placed a new limit on the terms of contracts of this type equal to 4 years.

The Supreme Court found it legitimate for Mediapro to consider that the new law allowed agreements to be concluded for terms spanning over more than three seasons, as a result of it placing its trust in the compatibility of the legislature's provisions with EU law. The court therefore set aside the 2012 decision, insofar as it found a breach by Mediapro in relation to the CNMC decision of April 14, 2010, because they were agreements to buy audiovisual rights which were concluded under Law 7/2010, of March 31, 2010.

8. Judgment of Palencia Provincial Appellate Court, rendered on May 17, 2016, in relation to the appeal lodged by an athlete who considered the use of blood samples a violation of her rights

The athlete lodged an appeal against RFEA, the Spanish athletics association (Real Federación Española de Atletismo,) and the IAAF for using her blood samples to compile a biological passport as an instrument to detect whether an inappropriate method for improving performance in sport had been used. The appellant considered that her fundamental right to privacy, and to the protection of her data had been violated, and that the law did not cover the compilation of that passport.

The provincial appellate court dismissed the appeal, noting that there had been no disproportionate acts or violation of fundamental rights, and that the acts that were being challenged were performed for a lawful constitutional purpose and with the appropriate coverage by the law through the extraction, preservation and use of blood samples for the only legitimate aim of detecting the potential use of any unlawful method such as the potential alteration of the natural composition of blood to obtain better performance in sport.

9. Binding ruling by the DGT, V0335-16, of January 27, 2016, in relation to VAT and the place of supply of the taxable event in the sale of Green fees

From the Spanish domestic VAT legislation and the European legislation on the common system of VAT, the Directorate-General for Taxes (DGT) concluded that the services described in the request, consisting in rights to use a golf course, are regarded as services related to real estate and will be subject to VAT where the course is situated in Spanish VAT territory and will be taxed at the 21% standard rate.

The requesting entity was also going to sell those rights to use the golf courses to other traders or professionals not established in the Spanish VAT territory. The VAT Law provides that where the trader/reseller acts on his own behalf, the transaction will similarly be a service related to real estate, which will be subject to VAT in the Spanish VAT territory if the golf course is situated in that territory, regardless of where the customer is established and whether the customer is a trader or professional or end consumer.

If, however, the trader acts as commission agent, it will be necessary to determine whether that mediation service similarly qualifies as a service related to real estate. Mediation on another's behalf in relation to those rights of access to golf courses, where the customer is not a trader or professional acting as such, will also be subject to VAT, because it is a service related to real estate.

10. Binding ruling by the DGT, V0504-16, of February 9, 2016, on the withholding rate for the income paid to an actor and professional model

A ruling was requested from the DGT on the withholding rate to apply to the income earned by an actor and professional model, carrying on his artistic activities primarily in the field of advertising but also working on the catwalks in fashion shows, at photo shoots, dress rehearsals, rehearsals, etc.

The requesting entity has been withholding 24% in respect of personal income tax from payments for rights of publicity. The personal income tax legislation actually determines that the withholding to be made from income from the licensing of the right to exploit publicity rights, no matter how it is classified, will be the figure resulting from applying a 24% withholding rate on the income paid.

By contrast, where the compensation is in respect of his artistic activities as model and actor and do not entail the licensing of the right to exploit his rights of publicity, unlike his activities in the field of advertising, a 15% withholding rate will apply.

11. Binding ruling by the DGT, V0577-16, of February 11, 2016 on eligibility for the VAT exemption for the requesting entity, registered as a sports enterprise and engaged in providing sports services related to golf, a federated sport

The DGT reaffirmed its view on when the VAT exemption applies to services provided to individuals performing sport and physical education activities. Three requirements are laid down:

- The transactions must be regarded as a supply of services, never as a supply of goods.
- Those supplies of services must be directly related to the performance of sport or physical education activities.

- Those services must be provided by the individuals or entities specifically mentioned in the legislation: public law entities, sports associations, the Spanish Olympic and Paralympic Committee, and private sport-related social enterprises or establishments

The services supplied by the requesting party as a sports section are supplied to users of its facilities, individuals who, in principle, are federated sportspersons and members of the club, by an entity which could be classed as a private social enterprise, and therefore would be eligible for the exemption. If the entity satisfies the requirements laid down for the VAT exemption, it may apply to be classed as a private sport-related social enterprise. The exemption will only apply, however, where the entity satisfies the requirements, regardless of whether it has received that classification.

For these purposes, the following will be classed as directly related to the performance of sport or physical education activities: services in exchange for the payment of membership fees for entry or periodical fees, services consisting of the use of sports facilities such as green-fees or areas for performing sports activities by members and nonmembers, rental of sports equipment, enrolment for sports competitions and other service such as courses or sport schools.

The following cannot be classed as services directly related to sport: entry to the club's premises for nonmembers; childcare services, supplying bags or electric carts for carrying golf clubs; catering and hospitality services; sale of sports equipment, by being classed as the supply of goods. The exemption cannot ever be taken for sports events.

12. Binding ruling by the DGT, V0637-16, of February 16, on the personal income tax arising on the indemnification granted to a cyclist for the delay in the entry into force of his employment contract with respect to the date originally agreed

The rules on exempt income in the personal income tax law include as such "severance payments for dismissal or cessation of employment of the worker".

We are not dealing here with severance for dismissal or cessation of employment of the worker because the employment contract had not come into force, and therefore the severance does not qualify for the exemption mentioned. After ruling out the possibility of it being exempt income, it may be characterized as salary income.

13. Binding ruling by the DGT, V0756-16, of February 25, 2016 on the taxation of prizes in chess championships

Income obtained by the sportspersons themselves in the performance of their activity are characterized as income from professional activities. The DGT has been interpreting in this respect that both their "fixed" income and the prizes received in sports competitions should be treated as income from professional activities.

The only exception to this characterization would be where there is an employment relationship between organizer and sportsperson, in which case these amounts would be characterized as salary income.

14. Binding ruling by the DGT, V0964-16, of March 10, 2016, on the withholding to be made for entertainers, workers dependent on various nonresident entities, in respect of activities carried out in Spain at the weekend

Firstly, to be able to apply the various tax treaties it will be necessary for those entities to evidence their tax residence by providing the required certificate.

In the case described, the entertainers are workers dependent on various nonresident entities, and therefore the income obtained from their activity in Spain as entertainers are attributed to the interposed person, not to the entertainers themselves. The tax treaties with France, Hungary and the United Kingdom provide for this position, allowing Spain, the state where the activity is conducted, to tax that income with no limitation whatsoever. Even in the case of the Netherlands, with which the treaty is an earlier one, the same conclusion must be reached. There would be an exemption available for that income, however, in the cases of entities resident for tax purposes in France and Hungary, if most of the activity is financed out of public funds.

15. Binding ruling by the DGT, V0986-16, of March 14, 206 on the VAT and personal income tax on the performances of orchestras or groups of musicians at public events

The entity wanted to know how to characterize the services provided by entertainers and performers in an orchestra for VAT purposes. VAT is chargeable at 21% on the services related to musical performances provided by the orchestra managed by the requesting trader to festival committees, events companies and other organizers of musical events, because those musical performances do not take place in his capacity as a performer and as an individual, but as a trader managing the orchestra. Regardless of this, the services provided by entertainers and performers to the orchestra will be regarded as services subject to VAT and will be taxed, moreover, at the standard 21% rate.

Regarding personal income tax, the applicable withholding rate in the described case must be determined according to the Personal Income Tax Regulations, and if a special employment relationship for entertainers in public events is involved the 15% minimum withholding rate must be applied.

16. Binding ruling by the DGT, V1035-16, of March 15, 2016, on the caption applicable to the sport betting business for the purposes of the tax on economic activities (IAE)

In this case, a company conducting an amusement arcade and gaming business registered under caption 969.6 for the tax on economic activities filed a request with the DGT over whether this caption would also be valid for conducting a sport betting business through an operator company, or whether the note on category 873 in the tariffs associated with the tax, for the "unofficial vendors authorized to receive sport bets on other games and to receive various lotteries."

The DGT concluded that in the case described by the requesting entity, in accordance with the legislation in force, there are two options:

(i) The owner of the amusement arcade carries on the business of the receiving of sport bets using issuing terminals, meaning those used by the employees of the operator company. In this case, the charge on the primary activity under caption 969.6 will be increased by 10%, in accordance with the note relating to category 873.

(ii) The owner of the amusement arcade carries on the business of the receiving of sport bets using ancillary machines, meaning those operated directly by the public. In this case, it must register under caption 969.7 ("Other automatic machines"), which is taxed in the form of two charges (local and national), composed of the taxable element "number of machines" regardless of whether they are operating.

17. Binding ruling by the DGT, V1655-16, of April 15, 2016, on the deduction for corporate income tax purposes of sponsorship costs on a sports team

This request concerned the deduction for corporate income tax purposes of sponsorship costs on a sports teams. The requesting entity wanted to sponsor an automobile racing team.

The DGT started off by underlining that every book expense is deductible for corporate income tax purposes if it meets the requirements in terms of recognition for accounting purposes, accrual and documentary support, and does not qualify as a non-deductible expense under article 15 of the Corporate Income Tax Law. That article clarifies that the costs incurred to promote, directly or indirectly, the sale of goods and the provision of services are not regarded as donations or gifts, and therefore will be deductible. Lastly, the DGT therefore concluded that the sponsorship costs on an automobile racing sports team is an advertising expense which is tax-deductible.

18. Binding ruling by the DGT, V1808-16, of April 22, 2016, on the eligibility of a sports gym for the exemption under article 20.1.13

Here, the DGT ruled on the eligibility of a limited liability company for the exemption under article 20.1.13 of the VAT Law for the services provided to individuals carrying out sport or physical education activities, by a private sport-related social establishment. The requesting company supplies the following services: (i) Sports center with a gym and exercise classes; (ii) Advice on nutrition and sport; (iii) Courses on sport disciplines; (iv) Rehabilitation, physiotherapy and osteopathy; (v) Sale of sportswear, sport accessories and supplements. The requesting entity also mentioned that any surplus generated by the enterprise is used for its purposes, and the directors are not paid for their services.

Firstly, the DGT recalled that this exemption only applies to services which are directly connected to the performance of sport or physical education activities. Accordingly, the DGT said, article.20.1.13 applies to all the services provided by the requesting entity, except for the sale of sportswear and sport accessories and supplements. In relation to the rehabilitation, physiotherapy and osteopathy services, however, the DGT added that the exemption for the provision of healthcare services (article 20.1.3) may apply, if they are provided by qualified medical professionals and have as their purpose the diagnosis, prevention and treatment of medical conditions and do not consist of the performance of physiotherapeutic methods for weight loss, or esthetic or relaxation massages.

The DGT also examined whether the fact of it being a business company prevents it from having a charitable purpose, which, pursuant to article 20.3 of the VAT Law, is required for an enterprise to be classed as a social enterprise and therefore qualify for the exemption under article 20.1.13. Lastly, the DGT drew an affirmative conclusion, based on the case law of the CJEU on this subject, that the fact of the requesting company having a profit-making purpose by reason of its commercial nature does not mean that it cannot be considered as acting other than for that purpose. In this respect, from the fact that the company's surpluses remain at the company for the achievement of its mission, and that the directors are not paid for their services, it may be concluded that it is a genuine social enterprise.

NEW LEGISLATION

1. Decision of March 7, 2016, of the Technical Secretariat-General, publishing the revised World Anti-Doping Code in force since January 1, 2015

The World Anti-Doping Code has been revised, which is the core document on which the World Anti-Doping Program for sport is based.The code's purpose is to aid the fight against doping through the universal harmonization of the main elements related to the fight against doping. It seeks to achieve complete harmonization on issues requiring uniformity, and is general in other areas to allow certain flexibility in relation to the way in which the admitted anti-doping principles are applied.

2. Decision of March 21, 2016, by the Revenue Department of the State Tax Agency, publishing the Agreement with the Spanish Agency for the Protection of Health in Sport on the enforced collection of the public funds of that entity

The Official State Gazette (BOE) published the Agreement signed on March 10, 2016 between the State Tax Agency and the Spanish Agency for the Protection of Health in Sport.
It is agreed between those organizations that the enforced collection of the penalties imposed by the Spanish Agency for the Protection of Health in Sport in exercising the disciplinary power conferred on it, will be carried out through the collection bodies of the Tax Agency pursuant to the rules set in that Agreement.

3. Decision of April 11, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish golf association (Real Federación Española de Golf)

Exercising the powers conferred in Sport Law 10/1990, of October 15, 1990, in a meeting held on December 23, 2015, the Leadership Committee of the National Sports Council, approved the incorporation of article 13 and article 77, the renumbering of its articles, and the amendment of articles 96, 99, 120, and 121, in the bylaws of the Spanish golf association (Real Federación Española de Golf), and authorized entry on the Register of Sports Associations.

4. Decision of April 12, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish boxing association (Federación Española de Boxeo)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on December 23, 2015, the Leadership Committee of the National Sports Council approved the amendment of articles 2, 3, 10, 11, 17, 25, 29, 30, 35, 43, 45, 50, 52, 53, 55, 56, 57, 58, 59, 62, 63, 64, 66, 68, 69, the name of Title IV, 75, 82, 83, the elimination of article 85, the renumbering from article 85, the amendment of article 86 and of the name of Title XI, together with the elimination of the additional provision, in the bylaws of the Spanish boxing association (Federación Española de Boxeo), and authorized entry on the Register of Sports Associations.

5. Decision of April 13, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish mountain and climbing sports association (Federación Española de Deportes de Montaña y Escalada)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on December 23, 2015, the Leadership Committee of the National Sports Council approved amendments of article 3, in the bylaws of the Spanish mountain and climbing sports association, and authorized entry on the Register of Sports Associations.

6. Decision of April 13, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish weightlifting association (Federación Española de Halterofilia)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on December 23, 2015, the Leadership Committee of the National Sports Council approved the amendment of article 2 of the bylaws of the Spanish weightlifting association (Federación Española de Halterofilia), and authorized entry on the Register of Sports Associations.

7. Decision of April 13, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish sailing association (Real Federación Española de Vela)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on December 23, 2015, the Leadership Committee of the National Sports Council approved the amendment of articles 60, 61, 62 and 63 of the bylaws of the Spanish sailing association (Real Federación Española de Vela), and authorized entry on the Register of Sports Associations.

8. Decision of May 5, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish association for karate and associated sports (Real Federación Española de Karate y Disciplinas Asociadas)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on December 23, 2015, the Leadership Committee of the National Sports Council approved the amendment of articles 1, 17, 18, 19 and 92, of the bylaws of the Spanish association for karate and associated sports (Real Federación Española de Karate y Disciplinas Asociadas), and authorized entry on the Register of Sports Associations.

9. Decision of May 5, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish canoeing and kayaking association (Real Federación Española de Piragüismo)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on March 21, 2015, the Leadership Committee of the National Sports Council approved the amendment of articles 19, 21, 22, the inclusion of a new article 53, the renumbering of its articles up to the last one and amendment of the new articles 101, 103, 107 and 108, of the bylaws of the Spanish canoeing and kayaking association (Real Federación Española de Piragüismo), and authorized entry on the Register of Sports Associations.

10. Decision of May 5, 2016, by the Chairperson's Office of the National Sports Council, publishing the bylaws of the Spanish volleyball association (Real Federación Española de Voleibol)

Exercising the powers conferred in article 10.2.b) of the Sport Law, in a meeting held on March 21, 2015, the Leadership Committee of the National Sports Council approved the amendment of articles 4, 7, 8, 43, 48, 64, 65, the elimination of articles 76 through 119 and the renumbering of its articles up to the last one, in the bylaws of the Spanish volleyball association (Real Federación Española de Voleibol), and authorized entry on the Register of Sports Associations.

11. Law 9/2016, of June 2, 2016 on urgent measures regarding public entertainment events in the autonomous community of Murcia

According to the preamble, its mission is simply to cover the gap in the law arising from the approval of the new Organic Law 4/2015, of March 30, 2015 on protection of the safety of citizens, which repeals its predecessor from 1992, because some of the specifications related to maintaining order at events had been left out of the new law.

Its prominent key elements are the inclusion of the definition of the offense related to failure to comply with the authorized opening hours, and the establishment of the associated penalty regime, under which the penalties consist of closure of the public establishments or fines between €200 and €12,000 which may be levied in relation to the holding of public entertainment events or recreational activities, in addition to the temporary withdrawal of licenses and the temporary closure of premises or establishments in the most serious cases.

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