

TRANSPORT NEWSLETTER SEPTEMBER 2011

The Revised Text of the 2010 Ports Act is approved

The Cabinet has approved the Revised Text of the Ports Act, which brings together previous ports acts and their successive amendments into a single legal text.

The Revised Text stresses the autonomy of port authorities and economic-financial self-sufficiency. It also incentivises competitiveness and efficiency with tariff freedom and strengthens free access to the provision of port services. It also promotes sustainability, intermodality, Sea Motorways, Mediterranean logistics platforms and the development of the trans-European transport network. The port system undertakes the commitment to reach an annual profitability of 2.5%.

The Constitutional Repression of Smuggling Act 12/1995, of 12 December 1995, is amended

Last 1 July saw the publication in the BOE State Gazette of Constitutional Law 6/2011, of 30 June 2011, amending the law on smuggling. This law establishes the obligation of anyone carrying out transport operations to send the Spanish customs authorities information about the passengers who are to be embarked in countries or regions that are not part of the EU Customs Area for their carriage to Spanish soil – be it by air, sea or land – irrespective of the transport being in transit or as the final destination. The failure to fulfil this obligation will be penalised in accordance with the provisions of the General Tax Law, and in particular by Article 198. The routes or legs about which no information need be sent may be determined by Order of the Ministry of the Treasury. Similarly, the obligation is regulated of the owners or concessionaries of airports, ports, goods carriage by road stations that have facilities equipped with the means to receive, store or expedite the goods, multimodal transport stations, dry docks, railway stations, free zones, free warehouses, and public bonded warehouses to provide the appropriate and sufficient premises to provide the relevant customs and fiscal services in them, as the case may be, and the SOIVRE Inspection Services of the Regional and Provincial Trade Departments. They must also provide these services with access to the surveillance and monitoring systems that are established. When the customs enclosure is not inside the port or airport space, the owners or concessionaries must also provide the necessary facilities to ensure that the customs or fiscal monitoring work can be carried out satisfactorily. These measures will come into effect one year after their publication in the BOE State Gazette.

Partial reform of the Capital Companies Act

The principal new features of the reform introduced by Law 25/2011, of 1 August 2011, which will come into effect on 2 October, are limited to the removal of the differences in system between limited and limited liability companies; the reduction of the organisation and operating cost of capital companies by eliminating publicity requirements, among other features; the introduction of some rules of modernisation of the right of this class of company; and the transposition to internal legislation of European Parliament and Council Directive 2007/36/CE, of 11 July 2007, regarding the exercise of certain rights of shareholders in listed companies.

The conditions and requirements of ship classification companies to be regulated

Royal Decree 877/2001, of 24 June 2001, introduces into Spanish internal law the amendments of European Parliament and Council Directive 2009/15/CE, of 23 April 2009, on common rules and standards for ship inspection and audit organisations and for the corresponding activities of the maritime authorities.

The Royal Decree establishes the conditions and requirements that ship classification organisations and companies must fulfil for the European Commission to recognise them and the maritime authorities to authorise them to carry out the functions of inspection, audit and certification of ships on its behalf. It also regulates the procedure for obtaining and revoking authorisation and it determines the obligations, responsibilities and limitations undertaken by the authorised organisations.

The Civil Proceedings Act is amended for the application of the International Convention on the Arrest of Ships.

Royal Decree-Law 12/2011, of 26 August 2011, amends the Civil Proceedings Act by incorporating a new final provision that establishes the application of the provisions of the International Convention on the Arrest of Ships done in Geneva on 12 March 1999 to all arrests of ships. The aim is to aid the application of the Convention through the relevant procedural provisions and the specialities it entails. This way, it is regulated that to decree the arrest of a ship, it will suffice to plead the credit claimed and the cause motivating it. The court will, in any event, require a bond of sufficient amount to meet any damages and costs that may be occasioned. After the arrest, the opposition may only be founded on the failure to comply with the requirements set out in the International Convention on the Arrest of Ships. This Royal Decree-Law repeals Law 2/1967, of 8 April 1967, on the arrest of ships and will come into effect on 28 March 2012.

The investigation of maritime accidents and incidents to be regulated

Royal Decree 800/2011, of 10 June 2011, incorporates the 2009/18/CE Directive, of 23 April 2009, into the Spanish legal system, establishing the fundamental principles that govern the investigation of accidents in the maritime transport sector.

The Royal Decree regulates the operating rules of the Permanent Commission for the investigation of maritime accidents and incidents and the procedure to be followed with the aim of making the Commission more streamlined and giving it greater rigour in its operation. The investigation of fishing vessels with a length of less than fifteen metres is included.

Adaptation of the concept of general-interest airport

The increase in air traffic, together with the fact that the autonomous communities carry out their statutory authorities in regional economically-viable airports to manage international air traffic, has forced the adaptation of the concept of general-interest airports.

Through Royal Decree 1150/2011, of 29 July 2011, which amends Royal Decree 2858/1981, of 27 November 1981, on the classification of civil airports, a general-interest airport is classed as a civil airport or heliport that, due to the importance of its traffic, is part of the trans-European network of airports as international or EU components; as one whose joint management is necessary to ensure the proper operation of the common transport network throughout the country; as one that may have a substantial impact on the air traffic system and on the structure and control of air space; and the airport facilities that share infrastructures, facilities or services with national defence. This amendment does not affect airports and heliports that were classed as general-interest airports and heliports.

In any event, the provision of state non-airport public services will be the responsibility of the state. Consequently, they will be governed by their specific regulations and subject to the relevant permits in accordance with these regulations.

The Airport Economic Regulation Commission is created

The Cabinet has approved a Royal Decree-Law creating the Airport Economic Regulation Commission as regulatory body of the air transport sector in terms of airport tariffs. Its aim will be to ensure that air tariffs are set independently, objectively and transparently. Any tariff disagreements will be resolved by this regulatory body. The Commission will come into being on 31 December.

Transfer of state functions and services to the Basque Country Autonomous Community in the area of maritime transport

Royal Decree 900/2011, of 24 June 2011, transfers the functions and services of maritime transport that are, in accordance with the applicable legal system, within the jurisdiction of the Basque Country Autonomous Community, and singularly the transport activity that is exclusively carried out between ports or points of the Autonomous Community without connecting to other ports or points in other regional spheres.

Review of the transport of goods by road internal market

The Directorate General for Transport of the European Commission has called a public consultation, which will end on 31 October, aimed at reviewing the current rules and achieving economically and environmentally more efficient road transport.

Exchange of vehicle registration details between member states

The Council of the European Union will approve the proposed directive that will allow member states to access each other's vehicle registration details to identify the owner of vehicles with which a traffic offence has been committed with the aim of putting an end to the impunity of non-resident drivers.

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