

SPANISH COMPETITION

Highlights ...

Weekly follow-up: 25 - 29 Mar.

The Constitutional Court confirms the doctrine of the transfer of liability between legal entities

The present constitutional complaint (num. 63-2022) challenges the resolution of the Council of Ministers of 24 May 2019 which imposed on a bank entity a sanction of 1.056.000 euros for the commission of a very serious infringement of art. 51.1 a) of the Anti-Money Laundering Law (“LPBC”), consisting of failing to report certain transactions suspected of money laundering that had been identified by employees of the entity.

The doctrine applicable to the case

In cases of succession between legal entities (and specifically, in the case of merger by absorption that occurs in the present case), liability for administrative infringements is transferred when there is “substantial economic identity”. That is, when the economic activity in which the conduct was committed continues in the new legal entity. This criterion has been established on numerous occasions by both the Supreme Court and the Court of Justice of the European Union.

Likewise, the Court considers that the criterion of “substantial economic identity” is not contrary to the principle of guilt and individuality of penalties established in Article 25 of the Spanish Constitution.

This is expressly stated in Article 130.2 of the Criminal Code and, although this principle does not expressly exist in administrative sanctioning law, it should also apply in this area as it is addressed in different provisions. In this sense, article 61.1 Spanish Competition Law also states, for the case of companies, this succession of responsibility. In competition law, this is known as the “economic continuity criterion” and has been recognized by the Court of Justice of the European Union, among others, in the judgment of 14 March 2019, Case C-724/17 *Skanska Industrial Solutions and others*.

The court’s ruling

In light of the foregoing, the Constitutional Court dismisses the constitutional complaint brought by the bank entity to the extent that it is liable, following the merger by absorption, for the obligations that corresponded to the absorbed entity.