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Legal limits on the promotion of financial products through *Influencers*

The Growing Role of Influencers in Finance

The financial sector has embraced the trend of influencers. In recent years, so-called "finfluencers," who provide investment recommendations, have experienced unprecedented growth in followers and content. This is largely due to Generation Z seeking financial advice from influencers rather than from regulated financial advisors. As a result, many investment firms turn to these influencers to promote their financial products.

In response to the proliferation of this phenomenon, the European Securities and Markets Authority (ESMA) issued a statement in late 2021 about investment recommendations on social media and the regulations applicable to such cases. Subsequently, the CNMV (Spain's National Securities Market Commission) began reviewing the activities of influencers who might be issuing investment recommendations on social networks without fully complying with the law. Based on identified irregularities, in November 2023, the CNMV's president reiterated that anyone, even if not a professional, issuing an investment recommendation must meet certain obligations.

The CNMV's goal is to prevent market abuses and "reduce the regulatory gap" between professional analysts and influencers, ensuring that investors are equally protected regardless of the channel or method used to issue recommendations. For this reason, investment firms hiring influencers must know and ensure compliance with applicable regulations.

This article examines what influencers can and cannot do in the realm of financial advice under current regulations.

1. Permissible Activities for Financial Influencers

Article 125 of Law 6/2023, dated March 17, on Securities Markets and Investment Services, states that "investment advice" constitutes a service or investment activity. However, it clarifies that "generic, non-personalized recommendations made in the context of marketing securities and financial instruments" do not qualify as investment advice.

Article 129 of the same law specifies that "No person or entity, without the necessary authorization and registration in the corresponding administrative records of the CNMV or the Bank of Spain, may professionally or habitually engage in the activities outlined in Articles 125…" (which include financial advice).

Additionally, "The marketing of investment services and activities and the solicitation of clients may only be conducted professionally by authorized entities or through the regulated agents mentioned in Article 127."

Therefore, influencers, unless they have the required authorization and are registered with the CNMV or the Bank of Spain, cannot provide financial advice or solicit clients through any channel (internet, call centers, or phone calls). However, they may issue investment recommendations.

2. Legal Requirements for Influencers' Investment Recommendations

These requirements are outlined in the EU Market Abuse Regulation (Regulation EU 596/2014) and its accompanying delegated regulation (EU 2016/958). The main obligations are:

- Identification: The influencer making the recommendation must clearly identify themselves.
- Clarity and Objectivity: Recommendations must be presented in a clear, accurate, and objective manner.
- Conflict of Interest Disclosure: The influencer must demonstrate that there is no conflict of interest regarding the financial instruments being recommended.

This third requirement includes disclosing any remuneration received for the recommendation. Investment firms cannot offer influencers variable compensation based on the number of clients acquired, as this would amount to client solicitation, an activity prohibited for unauthorized and unregistered individuals, as stated earlier.

Given the fine line between what constitutes a recommendation and financial advice, regulators would benefit from establishing a universal definition of what constitutes an investment recommendation. Furthermore, investment firms that collaborate with influencers should:

- **Provide training on compliance requirements.**
- **Review the content influencers plan to publish to ensure it adheres to applicable regulations.**

Alba Santaularia

Law Degree, University of Barcelona
B.A. in Social and Political Sciences, University of Navarra
Member of the Commercial Division, Bufete Barrilero y Asociados

a.santaularia@barrilero.es
LinkedIn

The TEAC and case law setting limits on administrative abuse of the concept of *Tax Liability*

Approximately two years ago, in clear favor of the principles of legal security and legitimate trust, the Supreme Court dealt a significant blow to the customary administrative practices in procedures involving the attribution of joint tax liability. The Court ruled that actions taken with regard to the primary debtor did not affect the interruption of the statute of limitations for the still-undetermined jointly liable party.

As a result, the position previously upheld by various Tax Administrations (regional and state), which claimed that "actions that interrupt the statute of limitations for the primary debtor also interrupt the statute of limitations for the still-undetermined jointly liable party," was invalidated. Consequently, numerous procedures for establishing joint liability were annulled, as the right of the administration to declare such liability had expired.

In close connection with the above, but in the context of subsidiary liability, the Central Economic-Administrative Court (TEAC), in its ruling dated September 18, 2024 (RG 7050/2021), has also set limits on another questionable practice by Tax Administrations. This practice involves administrative maneuvering with the declaration of insolvency of the primary debtor.

Indeed, the various General Tax Laws of the Historical Territories, the Foral Community of Navarre, and the General Tax Law stipulate the following regarding the declaration of a subsidiary tax liability:

> *"For subsidiary liability, the statute of limitations begins to run from the notification of the last collection action taken against the primary debtor or any jointly liable party."*

In this regard, it is reasonable to expect that the last collection action taken against the primary debtor coincides with the declaration of insolvency. Consistently with the *actio nata* principle, the start date (dies a quo) for the four-year limitation period for declaring subsidiary tax liability is typically the date of this declaration.

Aware of this, and leveraging the broad discretionary powers granted by law, the Tax Administration often delayed issuing the declaration of insolvency, even when fully aware of the primary debtor's insolvent state.

A glaring example of this practice was observed in procedures for attributing subsidiary liability—commonly to administrators—following bankruptcy proceedings. In such cases, it was not uncommon for several months or even years to elapse between the court order concluding the bankruptcy (typically due to a lack of assets) and the declaration of insolvency, complicating the peaceful application of the statute of limitations.
In response, the TEAC, in the aforementioned resolution, formally questioned this dubious administrative behavior and ruled as follows:

> *"In this case, the primary debtor, XZ SA, was declared bankrupt in 2013, with the liquidation phase initiated by court order dated 01/06/2015. The bankruptcy concluded by court order dated 21/01/2019, which determined that there were no remaining assets and declared the company dissolved.*
>
> *Given the circumstances of this case, **after the court order concluding the bankruptcy, it was evident that there were no assets remaining in the bankrupt entity. This Court considers that the start date (dies a quo) for imposing the payment obligation on the subsidiary liable party is not the date when the administration issued the declaration of insolvency (27/10/2020). Instead, the administration should have immediately declared the company insolvent after the court order concluding the bankruptcy and then pursued action against the potential subsidiary liable party."***

In conclusion, this represents another correction to Tax Administration practices in favor of taxpayers and the principles of legitimate trust and legal certainty. This time, it was achieved through a TEAC resolution that also standardizes criteria, consistent with another ruling issued by the same body on April 15, 2024 (RG 5857/2021).

Jerzy Merchán

Double Degree in Law and Business Administration and Management (University of the Basque Country), Qualifying Master
for the practice of Law (economic specialty-International University of La Rioja). Member of the Tax Division of Bufete Barrilero y Asociados.

j.merchan@barrilero.es
LinkedIn

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Company pay registers should not reflect *individual workers' salaries*

We close 2024 with good news, resolving one of the issues that has caused significant headaches in recent years: the inclusion of salary data in pay registers that could reveal the individual remuneration of specific employees.

Workers' legal representatives, as part of their right to access the contents of this register, have frequently demanded that it include the average salaries of all professional groups or categories, even for those in which there is only one male or one female employee. This requirement has caused significant concern within companies since providing this information would disclose the exact salary of certain workers.

The obligation for companies to create a pay register was introduced with the amendment of Article 28 of the Spanish Workers' Statute by Royal Decree-Law 6/2019, dated March 1, concerning urgent measures to ensure equality between men and women in employment and occupation.

Under the Workers' Statute, the pay register must reflect all salary information within the company, detailed and broken down. Since the objective is to determine whether pay inequality exists between men and women, the data must be disaggregated by gender. Furthermore, within this framework, comparisons must be made between professional groups, categories, or positions of equal value. The register must calculate arithmetic averages for these categories.

This system allows companies to identify the average salaries of men and women by group or category, making it possible to detect and correct any potential pay gaps. The pay register must be updated annually and include all remuneration received by employees from January 1 to December 31 of the preceding year.

Since the pay register became mandatory, questions arose about what data should be included. For groups or categories where there is only one male or one female, including their salary would reveal the exact earnings of that individual, as no average calculation would be possible. This issue has caused numerous conflicts between companies and workers' representatives.

Finally, the Spanish Supreme Court addressed this issue in a recent ruling dated November 21, 2024 (No. 1302/2024), answering whether the pay register under Article 28.2 of the Workers' Statute must include data that allows the identification of individual workers' salaries.

The court clarified that the pay register required of employers should only include average values of employee remuneration. These averages must be disaggregated by gender and distributed by professional groups, categories, or positions of equal value.

The ruling emphasized that the regulation mandates the registration of average—not individual—remuneration values disaggregated by gender. It is evident that the purpose of the pay register is to serve as a tool for promoting pay equality.

The court stated that the register does not need to include the individualized salaries of all employees. Instead, its purpose is to reveal whether average remuneration values disaggregated by gender indicate any inequality. In essence, the key issue is the comparison between men's and women's salaries—not the individual remuneration of each worker.

Royal Decree 902/2020, dated October 13, on equal pay between men and women, further develops the concept of the pay register. It specifies that the register must include all staff members, including executives and senior management. However, according to the Supreme Court, this requirement does not provide sufficient legal basis to mandate the inclusion of individualized salary values in the register. This interpretation is especially clear given Article 28.2 of the Workers' Statute, which explicitly states that the register must only include average values.

The court also noted that this limitation applies even to workers' legal representatives, who are entitled to access the full contents of the pay register. Unless it can be demonstrated that knowing individualized salary data is necessary for achieving pay equality between men and women, the principle of data minimization recommends limiting such disclosures. The ruling suggests that reasons for disclosing individual salary data should be clearly alleged and justified, but only when strictly necessary.

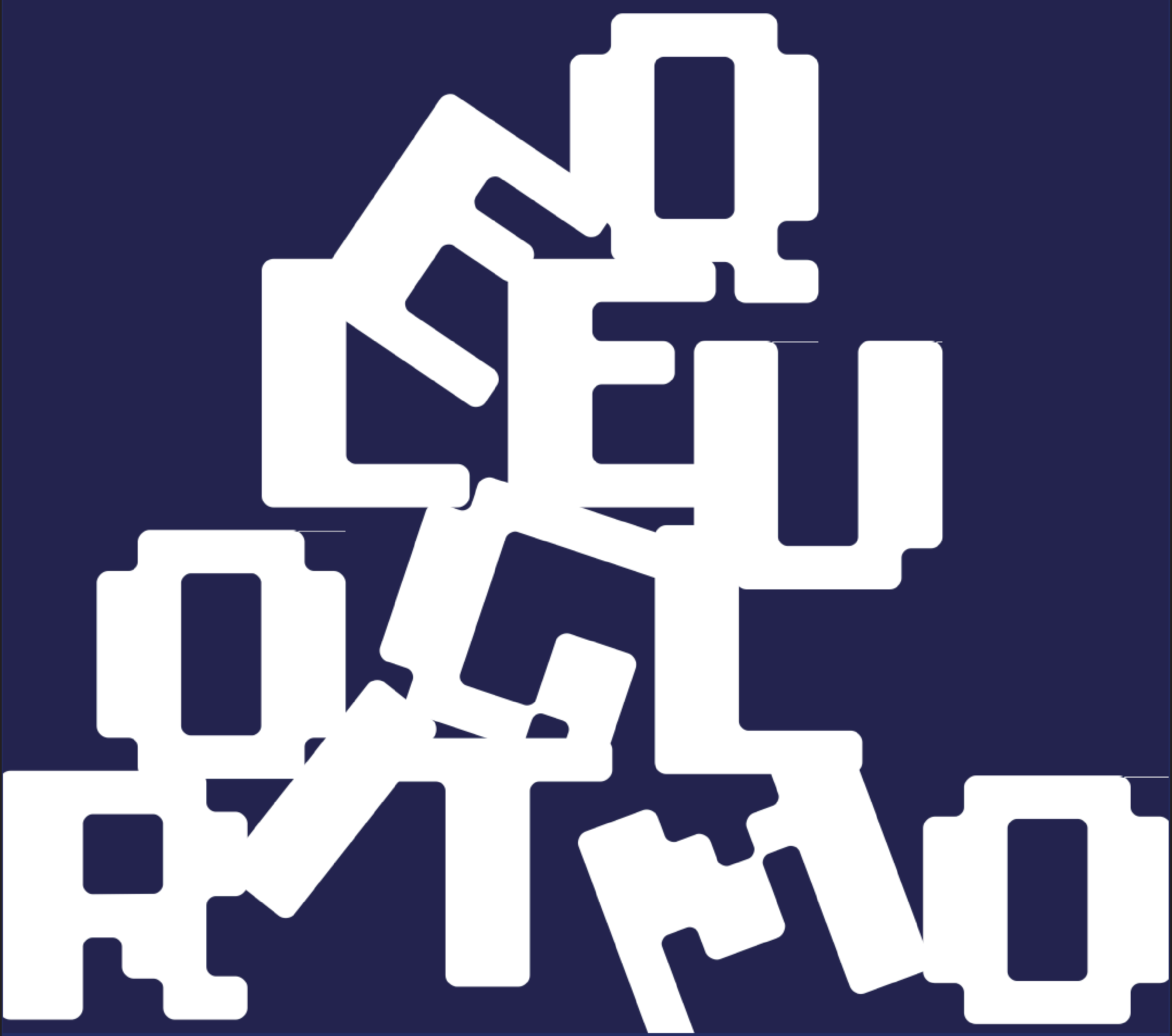
This decision supports the exclusion of individualized salary data from pay registers, even in information shared with workers' legal representatives. Unless a compelling case is made for its necessity, individual salary information should remain undisclosed.

It remains to be seen whether this exception could lead to future rulings requiring companies to provide individualized salary data. However, at this stage, such developments appear unlikely.

Rafael Moreno de Guerra de Luis

Degree in Law from the University of Vigo
Master's degree in Access to Legal Practice from the University of Vigo. Master's degree in New Technologies from the Catholic University of San Antonio, Murcia Member of the Labor Law Division at Bufete Barrilero y Asociados

r.moreno@barrilero.es
LinkedIn



Advertising of Medical Products: *A Turning Point?*

More and more companies recognize that an effective advertising strategy on social media and in mass media can yield significant benefits. In regulated sectors, such campaigns carry even greater importance, as the media and messages used in advertisements are strictly subject to authorizations and limitations to protect the general interests of consumers.

The healthcare sector provides a clear example, as advertising for treatments, medications, and medical products is subject to strict requirements and, in some cases, outright prohibitions to ensure that economic objectives do not overshadow their primary goal: protecting and promoting public health.

Misleading Advertising in the Healthcare Space
In recent years, an increasing number of companies outside the healthcare sector have adopted terminology specific to this field to promote their products and increase market share. This phenomenon has become widespread and widely accepted. Examples include fabric masks or pain-relief creams, which, while not manufactured for medical purposes, are advertised as if they possess such properties. This practice could pose risks to consumer health.

In response to this trend, professional associations and healthcare control departments in various regions have begun taking action to address and sanction such practices. These measures range from demands to cease misleading advertisements to imposing fines for their dissemination.

Definition of a Medical Product
Given the growing activity of regulatory bodies, it is essential for companies to understand that a medical product is defined as one intended for specific medical purposes, such as the diagnosis, treatment, relief, or prevention of diseases and/or physical conditions.

Although many companies implicated in such advertising practices do not sell medical products in the strictest sense or intend to do so, the use of terms like "therapeutic," "cure," or "relief" in their marketing can confuse regulatory bodies. This confusion can lead to official demands for compliance, as well as potential sanctions if the company cannot provide adequate proof to support its claims.

Risks of Misleading Advertising
While these terms are widely used in media campaigns, advertising non-medical products as though they were medical can create misunderstandings. It may lead to the impression that a company is selling medical products without the proper licenses or authorizations. In such cases, companies risk facing severe penalties unless they can demonstrate otherwise.

To illustrate, advertising a fabric mask as a "medical-grade product" or a cream as having "therapeutic effects" can imply compliance with medical product standards. However, without the necessary regulatory approvals, such claims could lead to regulatory scrutiny and enforcement actions.

How Companies Can Protect Themselves
In light of increasing oversight by regulatory bodies, companies must ensure their advertising strategies comply with healthcare regulations. This will help them avoid penalties and misunderstandings. Adhering to these rules is not only crucial for mitigating risks but also for running effective and transparent campaigns that generate benefits without engaging in irregular practices that could backfire.

For businesses, understanding and applying these advertising regulations are critical to achieving success in a legally sound and ethical manner.

Marcos María Lozano

Dual Degree in Law and Political Science and Public Administration from the Autonomous University of Madrid. Member of the Administrative Law Division at Barrilero y Asociados.

m.maria@barrilero.es
LinkedIn

JANUARY

Update to the protocol for telemonitoring in cases of *gender violence*

The Organic Law 1/2004, of December 28, on Comprehensive Protection Measures Against Gender Violence, introduced in its Article 64 the possibility of using technological instruments to verify immediate compliance with judicial prohibitions on the investigated, accused, or convicted individual approaching the protected person. This prohibition restricts the perpetrator from approaching the victim "in any place where they may be, including their home, workplace, or any other location frequented by them."

Articles 48 of the Criminal Code and 544 bis and ter of the Criminal Procedure Law (LECRIM) serve as the legal foundation for telematic monitoring of restrictions and measures prohibiting approach. These laws are implemented through protocols that regulate their operation. For this reason, in 2004, a protocol limited to the judiciary's authority was approved, allowing courts to determine whether a measure should be controlled with telematic devices. This protocol was signed by the Ministries of Justice and Interior, the General Council of the Judiciary, and the Office of the Prosecutor General.

On July 9, 2009, almost five years after the law came into force, the first protocol titled "System for Monitoring Approach Restriction Measures in Gender Violence Cases Using Telematic Means" (hereinafter "the System") was approved. This agreement was signed by the Ministries of Justice, Interior, Equality, the General Council of the Judiciary, and the Office of the Prosecutor. That same year, the Government Delegation against Gender Violence acquired and distributed the first 3,000 devices to courts and tribunals with jurisdiction in cases of violence against women. By the end of 2009, 153 devices were active.

Recently, in 2024, this Protocol has been updated to extend its application beyond monitoring penalties and precautionary measures prohibiting proximity. The updated protocol now includes monitoring restrictions imposed as conditions for suspending the execution of custodial sentences (as per Article 83 of the Criminal Code) and those imposed in supervised release contexts (under Article 106 of the Criminal Code). Accordingly, the updated System aims to improve the safety and protection of victims, fostering their confidence and aiding in their recovery.

This System ensures compliance with proximity restrictions imposed by courts in cases of gender violence and sexual violence under Organic Law 10/2022, of September 6 (commonly known as the "Only Yes Means Yes" Law). It applies throughout investigation, trial, and execution phases—not only when proximity restrictions are imposed as precautionary measures or penalties (in accordance with Articles 48 of the Criminal Code and 544 bis and ter of LECRIM) but also in supervised release contexts or as conditions for suspending custodial sentences.

With the recent update, the System provides real-time, continuous updates on any incidents—whether accidental or intentional—affecting the enforcement of these prohibitions and the functioning of surveillance equipment. Enhancements in security through the System aim to achieve three key objectives:

1. Ensuring the victim's right to safety.
2. Documenting potential breaches of proximity restrictions, whether as penalties, precautionary measures, or conditions of supervised release or suspended sentences.
3. Deterring the investigated, accused, or convicted individual from violating court-imposed restrictions.

The Protocol's objective is to standardize the operation of the System, establishing general guidelines for the actions and communications of those involved in these situations. It aims to ensure an understanding of the System's functionality and effectiveness, facilitating appropriate intervention and protection in each specific case.

For the purposes of applying the Protocol, the term "victims" includes women who have experienced gender violence, their minor children, and individuals under their guardianship or custody (as outlined in Article 1 of Organic Law 1/2004). It also includes women, girls, and boys who have been victims of sexual crimes in Spain, as specified in Article 3 of Organic Law 10/2022.

The recent update to the Protocol was prepared based on recommendations from the Monitoring Committee of the Protocol for the Implementation of the System for Monitoring Approach Restriction Measures in Gender Violence Cases Using Telematic Means. It was approved by the Technical Committee of the National Commission for Coordination of Judicial Police at its December 13, 2011, meeting.

Álvaro de La Rica

Degree in Law from the University of Navarra and Master of Access to the Legal Profession from the Autonomous University of Madrid. Member of the Criminal Division at Bufete Barrilero y Asociados.

a.rica@barrilero.es
LinkedIn

New Features Introduced by the Latest Labor Law Bill (DDL)

On December 11, 2024, the Senate approved, with 81 votes in favor, 47 against, and 1 abstention, the Labor Bill (A.S. 1264) titled "Provisions on Labor Matters."

The bill aims to simplify numerous obligations related to labor relations, particularly regarding workplace health and safety, labor contracts, compliance with contributory obligations, and social safety nets. Below are the main innovations introduced for workers and businesses:

Key Provisions for Workers and Employers

1. Resignation Due to Unjustified Absence

Article 19 establishes that a worker's unjustified absence beyond the period specified by the collective agreement—or, if no such provision exists, beyond 15 days—results in the termination of the employment contract. This is considered a voluntary resignation, without requiring adherence to the procedure for telematic resignations.

Employers are required to notify the Labor Inspectorate about the absence for necessary verifications.

2. Temporary Staffing (Workforce Leasing)

Article 10 simplifies the rules governing temporary staffing to promote the use of flexible contracts and make the labor market more dynamic.

Workers employed by agencies on permanent contracts or for specific purposes (e.g., seasonal activities, events, start-ups, worker replacements, or employees over 50 years old) are exempt from the 30% cap on temporary contracts relative to total stable contracts.

3. Probationary Period Duration

Article 13 standardizes probationary periods for fixed-term contracts.
Unless more favorable terms are provided by collective agreements, the probationary period is set at one day of work for every 15 calendar days starting from the contract's beginning.
For contracts of 6 months or less, the probationary period must be no shorter than 2 days and no longer than 15 days.
For contracts longer than 6 months but shorter than 12 months, the probationary period ranges from 2 to 30 days.

4. Smart Working

Article 14 requires employers to report, via telematic communication to the Ministry of Labor and Social Policies, the names of employees and the start/end dates of remote working within 5 days of the beginning or conclusion of the arrangement.

5. Apprenticeship: Training and Transition

Funding allocated annually for professional apprenticeship programs will now also apply to all types of apprenticeships. Apprenticeship contracts for qualifications and diplomas can be transitioned into professional or high-level training and research apprenticeships after the qualification or diploma is obtained.

6. Wage Subsidy and Secondary Employment

Article 6 allows workers receiving wage subsidies (cassa integrazione) to engage in other employment (subordinate or self-employed), provided they notify the INPS (Italian Social Security Institute) promptly.
Workers lose entitlement to wage subsidies during the period they engage in other employment.

7. Online Labor Dispute Resolutions

Article 20 simplifies dispute resolution by enabling telematic conciliations using audiovisual tools.
This aims to improve access to mediation services and reduce costs while maintaining the reliability of procedures.

8. Hybrid Contracts

Article 17 introduces a mixed-purpose contract that allows hiring a worker under a hybrid arrangement: part as an employee and part as an independent contractor (utilizing a VAT number).
This system enables professionals to combine part-time employment with freelance work, providing businesses (especially those with over 250 employees) greater flexibility.

9. Training for Temporary Workers

Article 9 introduces measures to encourage the flexible management of resources from the Formatemp and Ebitemp bilateral funds to support the training and income integration of both permanent and temporary workers.

10. Contribution Debt Installments

Article 23 permits INPS and INAIL (Italian Insurance Institute for Occupational Accidents) to authorize installment payments for outstanding contribution debts (up to 60 monthly installments) if they have not yet been assigned for collection.
This measure, effective January 1, 2025, aims to facilitate employers' voluntary regularization of contribution debts during economic hardship.

Workplace Health and Safety

Article 1 introduces several new safety measures:

Annual Safety Report:

The Ministry of Labor must present an annual report to Parliament on workplace safety, including recommendations for improvements.

Pre-Hiring Medical Examinations:

Company doctors may conduct pre-hiring medical assessments to evaluate candidates' fitness for specific roles.

Post-Absence Health Evaluations:

For absences longer than 60 consecutive days, the company doctor decides whether a health assessment is necessary before the employee returns to work.

Reduction of Redundant Tests:

Doctors can avoid duplicating medical tests if the results are already available in the worker's medical record.

Work in Subterranean or Semi-Subterranean Spaces:

Employers using enclosed underground or semi-underground spaces (without harmful emissions) must notify the Labor Inspectorate via PEC (certified email). Documentation proving compliance with ventilation, lighting, and climate requirements must be attached. These spaces can be used 30 days after notification, unless expressly prohibited.

Rossella Lo Galbo

Law graduate from the University of Bologna, PhD in Law, member of the Labor and Social Security division, and head of the Italian Desk.

r.logalbo@barrilero.es
LinkedIn: LinkedIn

EL ALGORITMO
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Bilbao
Madrid
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San Sebastián
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