

BARRILERO

B-TODAY

Law & Economics

Supreme Court Judgment / Generic Inspections
Private agreement / Appearance of legality /
“Maricarmen” decrees

OCTOBER-26



BARRILERO

**Get to know all the legal
and economic news from
multiples perspectives.**

Administrative Law Division	Jordi Grau i Bosch The effectiveness vis-à-vis third parties of disposals of essential assets without general meeting approval: Supreme Court Judgment 881/2026 of 9 June	4
Tax Law Division	Jon Lago The Supreme Court safeguards Tax limitation periods against generic inspections	6
Labour and Social Security Division	Irene Santiago The private agreement that was intended to avoid employment litigation... but did not	8
Criminal Law Division	Zoe Verano Companies, loans and capital: when the appearance of legality conceals money laundering	12
Public Law Division	Gonzalo Fernández de Córdoba New rules for residential lettings: what changes under the September 2026 “Maricarmen” decrees	15

The effectiveness vis-à-vis third parties of disposals of essential assets without general meeting approval: Supreme Court Judgment 881/2026 of 9 june

Jordi Grau i Bosch
j.grau@barrilero.es

Law graduate from the University of Girona. Master's Degree in Admission to the Legal Profession, Corporate Legal specialist course and Banking Law specialist course at ISDE Law & Business School. He is a member of Barrilero's Administrative Law's Division.

Law 31/2014, of 3 December, amending the Companies Act to improve corporate governance, introduced a new power of the general meeting of shareholders into Article 160 of Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Spanish Companies Act (the “LSC”). This power consists of deliberating and resolving on the acquisition, disposal or contribution to another company of essential assets. [1]

Supreme Court Judgment 881/2026, of 9 June (Appeal No. 6349/2023), has addressed one of the most controversial issues arising from Article 160(f) LSC, on which there is a legislative gap: whether a disposal of essential assets carried out by the management body without the mandatory approval of the general meeting – whether such approval should have been obtained before the transaction or subsequently by ratification – is effective vis-à-vis third parties who have acted in good faith and without gross negligence. The Supreme Court answers this question in the affirmative: the company remains bound vis-à-vis such third parties, as Article 234.2 LSC applies by analogy.

The First Chamber of the Supreme Court identifies a significant similarity between, on the one hand, a director carrying out disposals of essential assets without the approval of the general meeting and, on the other, a director who, likewise without such approval, carries out acts falling outside the corporate purpose defined in the articles of association, since approval of the latter also falls within the powers of the general meeting. In both cases, the director’s actions exceed the scope of their representative powers, as they are subject to a statutory and external limitation on their authority to represent the company.[2] The Chamber further notes that disposals of essential assets generally entail a de facto replacement or alteration of the corporate purpose. This reinforces the underlying similarity between the two situations and, consequently, supports the analogous application of Article 234.2 LSC.

One of the principal objections raised by those who have criticised this interpretation of Article 160(f) LSC – and which the Supreme Court seeks to rebut – is based on the wording of Article 10.1 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 (the “Directive”),[3] which provides that: “The company shall be bound vis-à-vis third parties by acts done by its organs, even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.”

The Supreme Court considers that Article 10.1 of the Directive is intended to ensure that Member States legally define, on a mandatory basis, the scope of directors’ representative powers, without this precluding the existence of statutory limitations that cannot be invoked against third parties who have acted in good faith and without gross negligence. This conclusion carries particular weight where, as in the

case of disposals of essential assets, the transactions concerned do not correspond to the corporate purpose or, at the very least, de facto alter or replace it.[4]

In our view, the Supreme Court’s ruling may help reduce the transaction costs associated with this type of operation. This does not, however, mean that parties contracting with a company should dispense with the necessary precautions – or, in the words of the First Chamber, take the appropriate steps – having regard to the circumstances of each case, to verify that the director with whom they are contracting is acting within the scope of their powers and thereby avoid a finding of bad faith or gross negligence. It will be necessary to await further rulings from the First Chamber in order to establish more precisely what constitutes good faith and the absence of gross negligence and, in particular, the extent of the duty of inquiry incumbent on a third party when determining whether the asset that is the subject of the transaction qualifies as an essential asset.

[1] The innovative nature of this power should be qualified, since, on the one hand, the provision is rooted in the doctrine of the implied or unwritten powers of the general meeting, which had already been recognised by the case law of the First Chamber of the Supreme Court, and, on the other, similar rules allocating powers to the general meeting can also be found in other legal systems.

[2] From a doctrinal perspective, both types of conduct may be classified as *ultra vires* acts by company directors. Thus, according to some commentators, disposals of essential assets may be *ultra vires* as far as the directors are concerned, but not as far as the company itself is concerned, given that legal persons have general legal capacity under Spanish law.

[3] The aforementioned Directive was repealed by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017, Article 9.1 of which reproduces the same wording.

[4] Dr Luis Fernández del Pozo takes a similar view, considering that: “For the purposes of protecting the third party – which is the ‘useful effect’ pursued by the Community legislature – it is not possible to rationally or logically distinguish between an ‘ordinary’ exceeding of the corporate purpose and an ‘extraordinary’ exceeding arising from a breach of the rule allocating powers under Article 160(f) LSC.”

Supreme Court safeguards Tax limitation periods against generic inspections

Jon Lago
j.lago@barrilero.es

Degree in Law and Business Administration and Management (University of Deusto) and a Master's Degree for Admission to the Bar (University of Deusto). He is a member of the Tax Law division at Barrilero.

The Administrative Litigation Chamber requires that, in taxes triggered by an instantaneous taxable event, such as Transfer Tax and Stamp Duty (ITP-AJD), the Tax Administration identify the specific transaction it intends to examine. A mere reference to the tax and the relevant year is not sufficient to interrupt the limitation period.

The Supreme Court has strengthened taxpayers' safeguards against tax inspection proceedings initiated in overly generic terms. In Judgment 968/2026, of 22 July, it held that, in taxes triggered by an instantaneous taxable event, a notice initiating tax verification proceedings that merely refers to a period of time – "ITP-AJD, tax year 2010" – does not interrupt the limitation period if it does not sufficiently identify the taxable transaction concerned.

The ruling, handed down in an appeal on a point of law, establishes a criterion of considerable practical importance both for the conduct of tax proceedings by the Tax Administration and for the defence of taxpayers subject to inspection procedures. The core of the Supreme Court's decision is clear: the limitation period cannot be interrupted by ambiguous notices that potentially open the door to an unlimited review of all transactions carried out by a taxpayer during a given year.

The case arose from a sale and purchase of shares in a company completed on 30 December 2010. The deadline for filing the corresponding tax return expired on 5 February 2011; accordingly, the Tax Administration's right to assess the tax liability would, in principle, have become time-barred on 5 February 2015.

Just weeks before that date, on 19 January 2015, the Tax Inspectorate notified the acquiring entity that verification and investigation proceedings had been initiated. The notice referred to the tax as "ITP-AJD" and to "tax year 2010". However, it did not specify whether the investigation concerned the Transfer Tax or Stamp Duty component, nor did it identify the specific transaction under review.

The transaction was not identified in the procedural records until the statement of objections issued on 30 September 2015. By that point, according to the Supreme Court's reasoning, the four-year limitation period had already expired. The High Court of Justice of Madrid annulled the tax assessment on the grounds that the claim was time-barred, and the Supreme Court has now upheld that conclusion.

The Regional Government of Madrid argued for a broad interpretation of Article 68.1(a) of the General Tax Law. According to its position, any administrative action formally notified to the taxpayer and aimed at verifying its tax position should interrupt the limitation period, even where the scope of the proceedings was defined solely by reference to a particular year. In its view, the regulations permit the notice initiating proceedings to

specify a "time period", meaning that it was not necessary to identify the individual transaction.

The Supreme Court rejects that approach, as had previously been done by the High Court of Justice of Madrid. Although Article 68 of the General Tax Law refers to "any action" taken by the Tax Administration to verify, inspect or assess a tax liability, the Chamber clarifies that this wording does not permit a generic interruption of the limitation period disconnected from a specific tax liability. The proceedings must be substantively directed at a specific obligation or, at the very least, one that can be objectively determined from the notice received by the taxpayer.

In reaching this conclusion, the judgment links the General Tax Law to the General Regulations governing tax management and inspection proceedings. These require the notice initiating proceedings to expressly state the subject matter of the proceedings, the relevant tax liabilities or their constituent elements and, where applicable, the tax periods, assessment periods or time frame concerned.

The decisive distinction lies in the nature of the tax. In periodic taxes, where the tax liability is linked to a tax year or assessment period, defining the relevant period may be sufficient to identify the subject matter of the verification. By contrast, in taxes triggered by an instantaneous taxable event, each taxable event gives rise to a separate tax liability. In the case of ITP-AJD, the tax liability arises when the taxable transaction takes place – in this case, the sale and purchase of the shares.

The ruling does not prevent the Tax Administration from investigating or assessing tax liabilities arising from transactions. It does, however, require precision from the outset. The identification must be sufficient to enable the taxpayer to understand which tax liability is being examined, so that any interruption of the limitation period is linked to that specific obligation. This safeguard is not merely a formal requirement: it directly affects the temporal limits on the Tax Administration's powers of verification and assessment.

The result is a doctrine that strengthens legal certainty. For taxpayers, it provides a significant avenue for challenging tax assessments arising from proceedings initiated by excessively broad notices. For the Tax Administration, it means that greater care must be taken when defining the subject matter of inspection proceedings, particularly where the taxes concerned arise from isolated transactions rather than from tax periods.

The private agreement
that was intended to
avoid employment
litigation... but did not

Irene Santiago Fontáns

i.santiago@barrilero.es

Law graduate from the University of Santiago de Compostela and holder of a Master's Degree in Employment Law from ISDE. She is a member of Barrilero's Labour and Social Law Division.

Some documents appear to bring a dispute to an end and yet leave the door open. This is precisely what the Supreme Court reminds us in Judgment 532/2026, of 10 June: a private agreement signed following a dismissal may not have a full and final settlement effect, even if the employee has signed it.

It is common for companies and employees, following a dismissal and with the aim of avoiding court proceedings and months of uncertainty – particularly as the courts are increasingly congested and hearings are often scheduled years in advance – to prefer to resolve the matter through a settlement agreement. This is usually documented by means of a private agreement signed in advance, with the parties undertaking to ratify it at the relevant administrative conciliation hearing.

The problem arises when the private document seeks to secure a swift settlement while combining incompatible formulations. This is where an agreement intended to reduce risk can instead become a new source of litigation.

Supreme Court Judgment 532/2026, of 10 June, examines a case in which, following a disciplinary dismissal, the company and employee signed an agreement on the same day under which the company acknowledged that the termination was unfair and offered €20,000 in compensation, compared with a statutory amount of approximately €60,000, together with the employee's final settlement payment.

The employee accepted the amount in order to avoid court proceedings and accordingly signed the agreement. However, on the date scheduled for the administrative conciliation hearing prior to judicial proceedings, the employee changed his mind and refused to ratify the agreement reached, subsequently bringing proceedings against the company to challenge his dismissal.

The Supreme Court confirmed that, in the specific circumstances of the case, the agreement could not be recognised as having full and final settlement effect because the privately signed document contained contradictory statements that created confusion and lacked internal coherence.

The judgment reminds us that the mere signing of a document acknowledging that a dismissal is unfair and specifying compensation does not, in itself, turn the agreement into an effective shield against future litigation.

This has an immediate practical consequence: a generic template should not be used to document a settlement concerning a dismissal.

The key point: signing is not enough

First ingredient: clarity. The document must identify the dispute that the parties intend to resolve, the amounts payable under each heading and the obligations that are being definitively discharged. A general waiver provides little protection if other provisions of the agreement create uncertainty.

Second: genuine negotiation. If the agreed compensation is lower than the amount that would be payable in the event of an unfair dismissal, it should be evidenced that this difference formed part of the negotiation. The company is not simply “paying less”; it is purchasing certainty and avoiding litigation.

Third: informed consent. The Supreme Court attaches importance to the circumstances in which the agreement is signed. In the case under review, the dismissal and signing of the agreement took place on the same day, and there was no evidence that the employee had been given a genuine opportunity to consider the document and obtain advice. A standard statement confirming that the employee has been able to seek advice does not necessarily replace a genuine opportunity to do so.

Fourth: temporal consistency. If the agreement is effective from the moment it is signed, this should be stated unambiguously. If the subsequent conciliation hearing serves solely to formalise or implement the agreement, that function should be clearly distinguished from the validity of the agreement itself. Conversely, if the intention is for its effectiveness to be conditional upon the conciliation hearing, this should also be expressly stated.

To help ensure the validity of the private agreement, the following questions should be considered before signing: Is the compensation and final settlement payment clearly itemised? Does the document record that the employee understands the difference between the amount offered and the amount they could potentially obtain through litigation? Is there evidence of genuine negotiation? Has the employee had a reasonable amount of time to review the document? Is it clear when the obligation to make payment arises? Is the subsequent conciliation a formality or a condition? Is the waiver of claims linked to an actual payment that is clearly identified?

A few additional minutes of negotiation and more precise drafting can prevent months of litigation.

The best defence of a private settlement agreement is not to accumulate waiver clauses, but to demonstrate that a genuine settlement took place behind the document: a specific dispute, reciprocal concessions, sufficient information, free consent and a clear commitment to make payment.

Ultimately, Supreme Court Judgment 532/2026 requires us to change the question. It is no longer sufficient to ask: **“Has the employee signed?”** The question that matters from a business perspective is a different one: **“If litigation arises tomorrow, will we be able to demonstrate that this agreement genuinely brought the dispute to an end?”**

If the answer lies in the document, the negotiation and the traceability of the process, the agreement ceases to be merely a promise to bring the matter to a close and becomes a genuine tool for preventing employment-related risk.

It should be borne in mind that, in employment matters, bringing a dispute to an end does not simply mean putting a full stop on paper; it means ensuring that we have all the necessary tools to defend the agreement so that the dispute cannot subsequently be reopened.



Companies, loans and capital: when the appearance of legality conceals money laundering

Zoe Verano Rubio

z.verano@barrilero.es

Law Graduate, Carlos III University of Madrid – Master's Degree in Admission to the Legal Profession and the Procura Profession – ICADE; is a member of the Criminal Law division at Barrilero.

A formally incorporated company, a capital increase or an intercompany loan are perfectly ordinary transactions in the course of business. But what happens when there is no genuine business activity behind that legal appearance to justify them? Can a transaction that is formally valid constitute an indication of money laundering?

These are among the issues addressed by Supreme Court Judgment (Criminal Chamber) No. 198/2026 of 5 March [ECLI:ES:TS:2026:1032], which once again considers the use of corporate structures and commercial transactions to channel funds of illicit origin and emphasises the importance of looking at the underlying economic reality of transactions, rather than merely at the legal form used to structure them.

This issue is particularly relevant in the context of money laundering, where there is not always direct evidence capable of reconstructing the movement of the money or immediately establishing the purpose pursued by those involved in the transactions. Hence the importance of circumstantial evidence and, in particular, of assessing as a whole those elements that make it possible to conclude that certain transactions, despite their ordinary appearance, lack genuine economic justification.

In this context, the Court attaches particular importance to the use of companies that have no genuine economic activity, no effective business structure or no recognisable business rationale. The absence of these elements may constitute a particularly significant indication when a company is used to receive, transfer or redistribute funds without any business activity capable of reasonably explaining those movements. The legal entity then ceases to perform the economic function that would apparently justify its existence and, in practice, becomes an instrument for channelling funds of illicit origin.

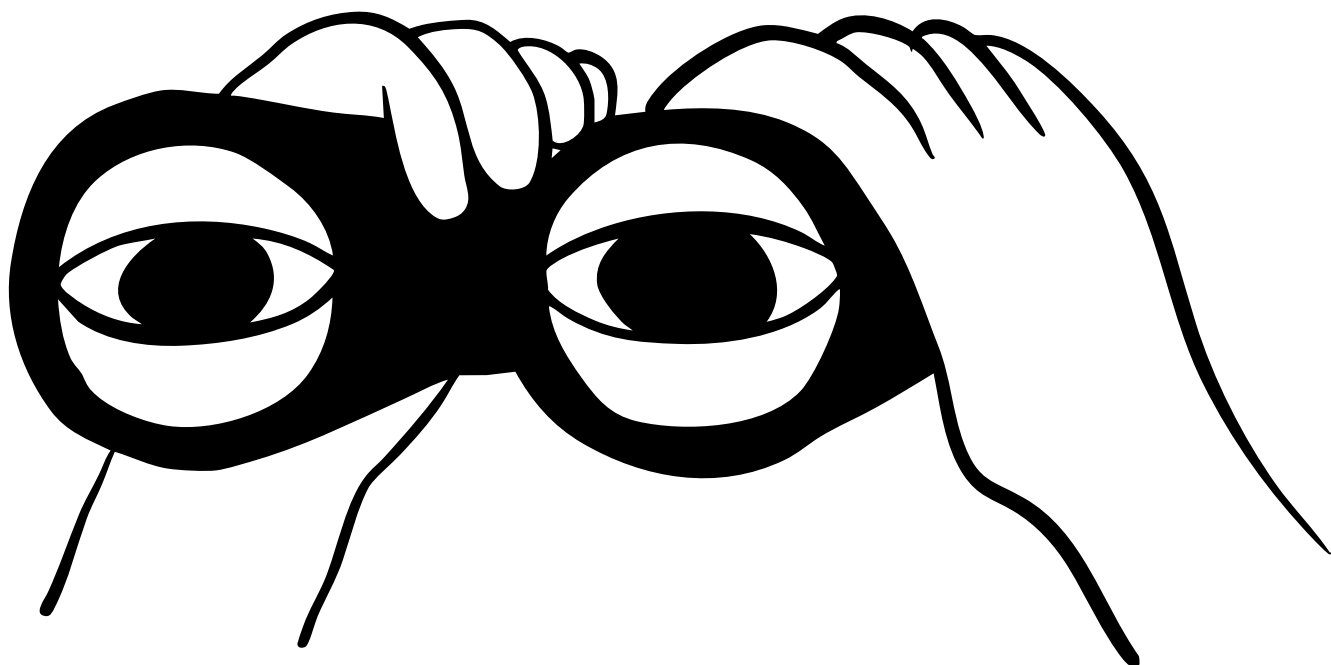
However, the existence of commercial or accounting documentation providing formal support for the movements is not, in itself, sufficient to neutralise their criminal-law significance. Intercompany loans, capital contributions or increases and other transactions that are perfectly valid in the abstract must be examined in light of the specific circumstances in which they take place. What matters is not merely whether the transaction is legally permissible, but whether it serves a genuine and reasonably explicable economic purpose.

Precisely for this reason, the Supreme Court rejects a fragmented analysis of the individual transactions. The judgment therefore places the emphasis on the assessment of the evidence as a whole: the existence or absence of actual business activity; the structure of the companies; the justification for the inflows and outflows of funds; the relationships between the individuals and entities involved; and the overall economic coherence of the transactions.

The aim is not, therefore, to automatically turn an unusual commercial transaction into criminal conduct, but to determine whether there is a credible economic explanation for it that allows it to be understood independently of any purpose of concealing or integrating illicit funds.

The judgment also addresses another essential aspect of the offence of money laundering: knowledge of the illicit origin of the assets. It is not necessarily required that the perpetrator have detailed knowledge of every aspect of the predicate offence. Such knowledge may be inferred from the circumstances of the transactions themselves and from the cumulative indications, provided that these support the conclusion that the individual knew that the funds were of illicit origin and participated in actions aimed at introducing them into, or keeping them within, the economic system under an appearance of legality.

Ultimately, the judgment offers a conclusion of particular practical importance: legal form cannot be analysed independently of economic substance. The existence of companies, contracts, loans or accounting-documented movements may explain how a transaction was structured, but not necessarily why it was carried out.



Data centres: the tension between artificial intelligence and legal certainty

María Hurtado
m.hurtado@barrilero.com

Double Degree in Business Administration and Law (University of Deusto); Master's Degree for Admission to the Bar (University of Deusto). Advanced Course in Urban Planning Law from the School of Legal Practice and the Complutense University of Madrid (2026); member of the Public Law division at Barrilero.

The expansion of artificial intelligence is turning data centres into strategic infrastructure, but also into major consumers of electricity, water and grid capacity. Against this backdrop, the Government has promoted a draft Royal Decree aimed at subjecting their development to stringent requirements concerning energy and environmental sustainability, resilience and digital sovereignty.

Royal Decree-Law 7/2026 empowered the Government to establish these conditions. Accordingly, the legal debate is not so much about whether the Government has regulatory powers in this area, but rather about the limits on the exercise of those powers.

One of the most significant measures is the requirement for data centres to cover a high proportion of their electricity consumption through new renewable generation, together with hourly matching mechanisms. The aim – to reduce the impact of growing electricity demand – pursues a legitimate public interest and is aligned with European decarbonisation objectives. However, Article 129 of Law 39/2015 requires regulatory restrictions to be necessary, proportionate and consistent with the principle of legal certainty.

This issue is particularly relevant to projects that are already under development or even hold grid access and connection permits. Regulatory conditions may legitimately be amended, but such changes must be weighed against the principle of legitimate expectations, particularly where operators have made significant investments in reliance on the previous regulatory framework. There is no right to regulatory rules remaining unchanged, but nor is it irrelevant when regulatory change frustrates advanced projects and financial commitments that have already been undertaken.

Another contentious issue is the introduction of substantial financial surcharges for failure to comply with certain requirements. Their justification will have to rest on objective and proportionate criteria. If such surcharges are purely compensatory in nature, they should bear a reasonable relationship to the costs that the breach causes the system; if their purpose is essentially punitive, the safeguards applicable under administrative sanctioning law will come into play.

This is compounded by the dimension of digital sovereignty, through requirements relating to the protection and location of certain data. The measure reflects a growing strategic concern in Europe, although it will have to be implemented in compliance with EU law and the principles of proportionality and the freedom to provide services. The challenge, therefore, is not to choose between data centres and sustainability. It is to strike a balance between the energy transition, system security, technological sovereignty and the freedom to conduct business.

Spain has significant advantages when it comes to attracting investment linked to artificial intelligence. Precisely for this reason, the future regulatory framework will need to combine environmental ambition with legal predictability. An excessively flexible regulatory approach could shift the costs of this new industry onto consumers as a whole, whereas an excessively rigid framework could drive investment towards other markets.

The underlying issue is straightforward, but of fundamental importance: how can data centres be regulated without turning sustainability into a barrier to innovation or legal certainty into the cost of the digital transition? Ultimately, the key legal question can be summed up as follows: how can the State require new digital infrastructure to be sustainable without disproportionately altering the rules on which investments have been built? The answer will require a careful balance between the public interest, environmental protection, the freedom to conduct business and legal certainty. That balance will determine Spain's position in the growing European competition to attract the infrastructure underpinning artificial intelligence.

New rules for residential lettings: what changes under the september 2026 “Maricarmen” decrees

Gonzalo Fernández de Córdoba

g.fernandez@barrilero.com

Degree in Law and International Relations from Comillas Pontifical University (ICADE). He heads the Banking, Financial, and Securities Market Law division at Barrilero.

On 29 September 2026, the Government approved two Royal Decree-Laws on housing, popularly known as the “Maricarmen decrees”, in reference to the eviction of an 87-year-old woman in Madrid. The first, Royal Decree-Law 26/2026, entered into force on 1 October. The second, Royal Decree-Law 27/2026, entered into force on 2 October.

As neither decree was ratified by Congress that same day, on 6 October the Council of Ministers approved the same decrees again, with substantially the same content, and the new texts have been published in the Official State Gazette (BOE).

By way of background, a residential tenancy agreement for a habitual residence has a minimum term of five years, or seven years where the landlord is a company, even if a shorter term is stipulated in the agreement. Once that period has expired, if neither party gives notice, the agreement is extended annually for up to a further three years. To prevent this, the landlord simply has to give four months’ notice, at no cost.

Once those eight or ten years have elapsed, the agreement either ends or continues on a month-to-month basis (the so-called *tácita reconducción*, or tacit renewal), and the tenant effectively loses almost all security of tenure.

What are the main changes introduced by Royal Decree-Law 26/2026?

This decree introduces an extraordinary extension of up to two years for tenancy agreements whose term expires before 31 December 2028. This extension is not automatic: it must be requested by the tenant, who must be up to date with rent payments and must have paid on time during the previous eight months.

The landlord must accept the extension unless they need the property for themselves or a family member, or unless the parties enter into another agreement or sign a new tenancy agreement.

In addition, until the end of 2027, annual rent increases are capped at 2%, and there will be no increase if the rent already exceeds the reference price. The decree also validates extensions requested in the spring under Royal Decree-Law 8/2026, which Congress rejected in April, and regulates seasonal and room rentals.

This decree also strengthens protection against evictions, although it does not impose a general ban on them. Until 31 December 2030, a judge must suspend the eviction of a vulnerable person who has no alternative housing where the eviction has been initiated by one of the entities commonly referred to as “fondos buitre” (“vulture funds”).

The decree itself does not use that expression; instead, it refers to entities engaged in purchasing properties or portfolios of unpaid mortgage loans at a price substantially below their appraised value.

The suspension is possible even where a judgment has already been issued, provided that the eviction itself (*lanzamiento*) has not yet taken place, and it also applies to proceedings that were already underway.

Furthermore, where the autonomous community does not provide alternative accommodation, it must pay the outstanding debt in order to halt the eviction – a procedure known as *enervación de la acción* – within a period of two months, during which the proceedings are suspended.

What are the main changes introduced by Royal Decree-Law 27/2026?

Once the initial five- or seven-year term has expired, if neither party gives notice, the tenancy agreement will no longer be extended on an annual basis. Instead, it will be extended for a further five or seven years, and so on successively, without limit.

A landlord who does not wish to renew the agreement will have to give six months’ notice and pay the tenant compensation of at least twelve months’ rent for a comparable property.

The landlord will not be required to pay such compensation, among other circumstances, if they need the property for themselves or a family member, if the tenant has another dwelling in the same municipality, or if the parties enter into a new tenancy agreement.

Congressional ratification: a key constitutional issue

From a constitutional perspective, what should be highlighted is the ratification of these decrees by Congress.

A Royal Decree-Law enters into force upon publication, but it is a provisional legislative instrument: Congress must vote on it within thirty days, and a simple majority is sufficient for it to remain in force. If it is not ratified, it is repealed, although the effects produced while it was in force remain valid.

The two decrees were voted on separately on 2 October, and neither was ratified. Consequently, following the calling of elections, the Government has approved them again, and the new texts must also be ratified within thirty days.

This time, ratification will be carried out by the Permanent Deputation of Congress, the body responsible for ratifying Royal Decree-Laws while Parliament is dissolved. The parliamentary arithmetic would allow the first decree to be passed without the votes of Junts.

The second, however, is less likely to be ratified due to the PNV’s opposition.

If the first decree is ratified, it is expected to remain in force at least until a possible change of government following the elections on 29 November.



BARRILERO

Madrid
Bilbao
Barcelona
San Sebastián
Sevilla

Valencia
Vigo
Vitoria
Lisboa
International Desk