

## ANDERSEN IBERIA CHINA DESK NEWSLETTER

### ANDERSEN伊比利亚中国业务部简报



#### SECTION A: FINANCIAL REGULATION

#### 章节 A: 金融法规

**Crypto Asset Markets: Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on crypto asset markets (MiCA Regulation):**

**加密资产市场：欧洲议会和理事会2023年5月31日关于加密资产市场的规定 (MiCA规定) (EU) 2023/1114:**

After the publication of the MiCA Regulation, on June 9, 2023, the Member States of European Union shall decide on the period of application of the Regulation in each country. However, in case of that no decision is taken by the Member States of European Union, this Regulation will automatically apply from July 2026 for crypto asset service providers, but with a transitional period of 36 months.

在MiCA规定发布后，即2023年6月9日，欧洲联盟成员国需要决定各国何时适用该法规的期限。然而，如果欧洲联盟成员国没有做出相关法律起始适用期的决定，该规定将自2026年7月起自动适用于加密资产服务提供商，但将有36个月的过渡期。

The Spanish Ministry of Economic Affairs and Digital Transformation has announced that there will be a transitional period of 18 months from the publication of the MiCA Regulation, because this Regulation will come into force in December 2025. During the transitional period, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) will approve the applicable technical standards for the development of MiCA Regulation.

西班牙经济和数字转型部宣布，从MiCA规定发布之日起西班牙将有18个月的过渡期，因为该规定将于2025年12月生效。在过渡期间，欧洲证券和市场管理局 (ESMA) 和欧洲银行业监管局 (EBA) 将批准适用于MiCA规定制定的技术标准。



## SECTION B: DATA PROTECTION

### Changes in the use of cookies:

The Spanish Data Protection Agency (AEPD), by means of the update of Data Protection Guidance regarding the use of cookies establishes that companies must implement the following relevant changes introduced in the Guidance by January 11, 2024:

#### 1. Option to reject cookies in the first layer:

The AEPD has introduced the obligation to include a button or equivalent mechanism with the text of “Reject cookies” or similar text, to reject the use of cookies (except those that are exempt from the obligation to obtain informed consent).

The AEPD has also pointed out that the actions to accept or reject cookies in the website must be presented in a prominent place and format.

#### 2. Personalization Cookies

The AEPD has also introduced a change on the personalization cookies by considering that, when it is the user himself who makes the decision about them, this kind of cookies shall be considered technical and, therefore, do not require consent, since this kind of cookies are not used for other purposes.

However, clarifies the AEPD, when the publisher is the one to take such decisions on customization cookies, it must inform about it by prominently offering the option to accept or reject them. In this case, the publisher may not use them for purposes other than those accepted.

## 章节 B: 数据保护

### Cookie使用的变化:

西班牙数据保护局（AEPD）通过更新有关 cookie 使用的数据保护指南，规定各大西班牙公司必须在2024年1月11日之前实施指南中引入的以下重要变化:

#### 1. 拒绝cookie的选项:

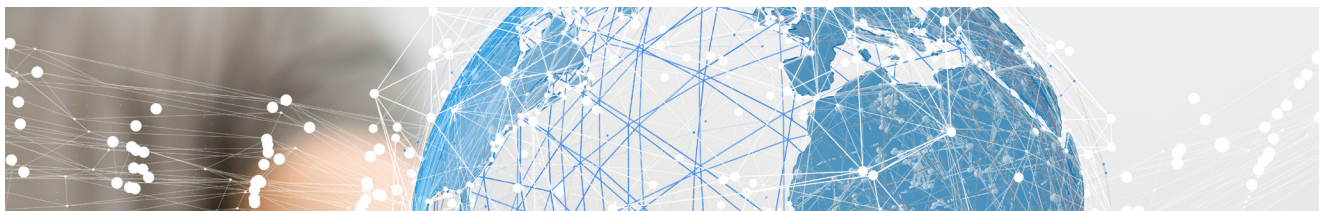
AEPD引入了在公司网站上包含一个按钮或类似机制的义务，其文本为“拒绝使用 cookie”或类似文本，以拒绝使用 cookie（除了那些免除获取知情同意义务的 cookie）。

AEPD还指出，在网站上接受或拒绝 cookie 的操作必须以突出的位置和格式呈现。

#### 2. 个性化Cookie

AEPD还通过用户自己对个性化 cookie 做出使用决定是的一项变更，认为这种 cookie 应被视为技术性质且 cookie 且不用于其他目的，因此不需要同意。

然而，AEPD澄清道，当发布者决定采用这些个性化 cookie 时，必须通过突出提供接受或拒绝它们的选项来通知用户。在这种情况下，发布者不得将其用于除接受目的以外的其他目的。



### 3. Cookie walls

The AEPD has pointed out that for consent to be considered freely given by the users of the website, the access to the service and the functionalities shall not be conditional on the user's consent to the use of cookies.

In this regard, the non-acceptance of the use of cookies shall not imply the no access to the website or the total or partial use of the service.

## SECTION C: TAX

### TEAC Resolution of 22 February 2024:

A recent from the Economic Administrative Central Court (TEAC) resolution deals once again with the deductibility of the remuneration paid by companies to their directors with executive functions. It introduces a change of criteria and aligns its doctrine with the latest case law of the Spanish Supreme Court on this issue.

The TEAC accepts that directors' remuneration for their executive functions could be considered as deductible from a Corporate Income Tax perspective even if it's not expressly provided in the Company's Bylaws.

According to the TEAC resolution, in line with the Spanish Supreme Court criteria, it considered unreasonable that a director who provides a real, effective service beyond his position as director should not be remunerated for such services and that, in the event that this director receives remuneration, the deductibility for such expense for CIT purposes is denied to the taxpayer (the company), exclusively on the basis of the doctrine of the Bond Theory.

### 3. Cookie墙

AEPD指出，为了用户的同意被视为自由给予，对网站用户的访问和功能的使用不应取决于用户对使用cookie的同意。

在这方面，不接受使用cookie不应意味着无法访问网站或无法完全或部分使用服务。

## 章节 C: 税务:

### TEAC 2024年2月22日的决议:

最近一项来自西班牙经济行政中央法院（TEAC）的决议再次涉及公司向其执行职能董事支付的报酬的可扣除性问题。该决议引入了一项标准变更，并且新标准与西班牙最高法院关于此问题的最新判例标准保持一致。

TEAC接受，即使在公司章程中没有明确规定，董事对其执行职能所支付的报酬在企业所得税角度上仍可被视为可扣除的费用。

上述TEAC的决议与西班牙最高法院的标准一致。我们可以认为，如果董事在其作为董事的职责之外提供了真实、有效的服务，则公司应向该董事支付相应的报酬，并且如果该董事收到报酬，则上述报酬应作为企业（纳税人）在公司税申报中的可扣除支出。



## SECTION D: LABOUR

### Breaks and working time:

The Spanish Supreme Court in a recent judgement regarding a labour collective dispute has established the break time carried out in the 15 minutes following the agreed start time of the working day must be considered as effective working time for those who have strict timetable control and are not employees with the category of manager or similar, nor employees with a non-managerial position and category.

The Supreme Court has reached the conclusion based on the literal interpretation of the terms used in a pre-existing Labor Agreement of the Company in question. Thus, the judgement has followed from the above-mentioned Labor Agreement that, if a break time is carried out in the fifteen minutes following the start time, it will be considered to have been made at the beginning of the same and will therefore be considered effective working time.

## SECTION E: REAL ESTATE

On February 22, the Order of February 15, 2024, of the Regional Ministry of Housing, Transport and Infrastructures has been published in the Official Gazette of the Community of Madrid. In this regard, the order has established the maximum prices of publicly protected housing in the Community of Madrid.

## 章节 D: 劳务:

### 工作休息和工作时间:

最近一起有关劳工集体纠纷的案件中，西班牙最高法院裁定，对于那些有严格的时间控制并且不是具有经理或类似职位的员工，也不是非管理职位和类别的员工，工作日开始后15分钟内进行的休息时间必须被视为有效的工作时间。

最高法院根据公司现有公司劳工协议中使用的术语的字面解释得出了这一结论。因此，判决是根据上述公司劳工协议而作出的，如果在工作日开始后的15分钟内进行休息，将被视为在工作日中进行的休息行为所以需要被视为有效的工作时间。

## 章节 E: 不动产:

2月22日，《马德里社区住房、交通和基础设施区域部门2024年2月15日令》已经在《马德里社区官方公报》上发布。就此，该令已经确定了马德里自治区公共保护住房的最高价格。



The Order contains the following measures:

- The zoning of the Community of Madrid has been modified for the purpose of determining the maximum prices of the publicly protected housing.
- The maximum prices of publicly protected housing are updated.
- An automatic annual update of the maximum prices foreseen in the Order is foreseen as from January 1, 2025.
- The prices established by the Order may be applied to provisional qualification procedures already initiated as long as certain requirements are met.

该令包括以下措施：

- 修改了马德里自治区的分区规定，以确定公共保护住房的最高价格。
- 更新了公共保护住房的最高价格。
- 规定从2025年1月1日起，该法令中预见的最高价格将自动年度更新。
- 只要符合一定的要求，该令确定的价格可以适用于已经启动的临时资格程序。

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