

Judgment of the Constitutional Court Dated 14 April 2016

In a recent judgment, the Constitutional Court has declared the unconstitutionality of Transitory Provision 8 of Act 2/2014 on tax, administrative, financial measures and those of the public sector of Catalonia, that suspends the implementation of commercial establishments with a surface area equal to or greater than 800 square metres, restricting the freedom of implementation of commercial establishments in given areas, contrary to basic state legislation.

With this judgment, the Court has again reiterated its position already stated in previous conflicts of constitutionality existing in light of actions of the Generalitat de Catalunya ("Autonomous Government of Catalonia") and in which it had declared certain Articles of the Act on Retail Commerce (Act 7/1996, 15 January) as basic state legislation, as well as others of the Act on free access to service activities and their exercise (Act 17/2009, 23 December).

Basic state legislation on free access to service activities and their exercise (that incorporates Directive 2006/123/EC into our legal system) solely allows the limitation or restriction of the freedom of implementation of commercial establishments in Spain when such restrictions fulfil the threefold condition of being proportionate, non-discriminatory and necessary for compelling reasons of general interest.

Within this context, the Constitutional Court has considered that the aforementioned Catalanian Act did not contain sufficient motives to justify such restriction to the implementation of commercial establishments with a surface area greater than 800 square metres, and specifically did not contain any reason that could be deemed of general interest, such as protection of the environment, urban planning or the conservation of national historic and artistic heritage. The Court considers that this situation is contrary to the organisation of competencies between the State and the Autonomous Regions, and therefore declares it unconstitutional, annulling Transitory Provision 8 of Catalanian Act 2/2014.

This judgment of the Constitutional Court may be a wake-up call in light of increasing commercial restrictions being promoted from several local and autonomous regional governments. Thus, we may cite proposals submitted by the municipal groups "Zaragoza en Común" (*"Zaragoza in Common"*) or "Ganemos Córdoba" (*"Let's Win Córdoba"*) for a moratorium on large commercial surfaces in both municipal districts and which were rejected by the respective plenaries. We likewise call attention to the temporary moratorium approved by Decree-Act 2/2015 of the Autonomous Region of the Balearic Islands, suspending the implementation of large commercial surfaces in the Balearic Islands and which was approved by various insular councils.

This recent judgment therefore opens the way to investors and commercial groups that plan to develop large commercial establishments in Spain and whose investment projects are being restricted by certain political decisions.