

Special Information Briefing COVID-19 (No. 12):

Measures relating to Energy included in Royal Decree-law 11/2020 of 31 March, adopting additional urgent social and economic measures to deal with COVID-19

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Madrid, 2 April 2020.

On 1 April 2020, Royal Decree-law 11/2020 of 31 March, adopting additional urgent social and economic measures to deal with COVID-19 (“**RDL 11/2020**”) was published in the Official State Bulletin (“**BOE**”). The RDL establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted through the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19, and its subsequent extension, approved by Royal Decree 476/2020, of 27 March.

In this briefing, we provide an analysis of the energy-related measures which have been approved.

1. Extension of discount electricity rate (*bono social*) to self-employed workers that have ceased working or reduced their turnover as a result of COVID-19

To whom does the measure apply?

To **self-employed workers** who are entitled to the **extraordinary benefit for the cessation of activity provided for in Article 17 of Royal Decree-law 8/2020** of 17 March on urgent extraordinary measures to deal with the economic and social impact of COVID-19 (“**RDL 8/2020**”), due to the suspension of their activities or because their turnover was reduced by 75% in the month prior to the application of the discount electricity rate in relation to the average for the previous six-month period.

Which contract is affected?

The contract for the supply of electricity to the primary residence of the self-employed worker. If this contract is in the name of the legal entity, the discount electricity rate must be requested for the individual, which will involve a change in the ownership of the supply contract.

Which income requirements must self-employed workers meet?

The aforementioned consumers will be considered **vulnerable consumers** for the purposes of the discount electricity rate regulations, provided that the holder of the supply point or the family unit in which it is integrated has an income equal to or less¹ than the following thresholds:

- 2.5 times the IPREM² index of 14 payments, in the event that the holder of the supply point is not part of a family unit or there are no minors in the family unit.

¹ The income of the holder of the supply point or, in the event of being part of a family unit, the joint annual income of the family unit to which it belongs, calculated in accordance with the provisions of Article 4 of Order ETU/943/2016, of 6 October, which implements Royal Decree 897/2017, of 6 October, regulating the definition of the vulnerable consumer, the discount electricity rate and other protection measures for domestic electricity consumers (“**RD 897/2017**”).

- 3 times the IPREM index of 14 payments, in the event that there is a minor in the family unit.
- 3.5 times the IPREM index of 14 payments, in the event that there are two minors in the family unit³

How do I apply and what is the duration of the measure?

The application for the discount electricity rate must be requested from a referenced supplier (“COR”), through the application form contained in Annex IV of RDL11/2020.

The right to receive the discount electricity rate is extended to a maximum of six months from the date of accrual. However, the definition of vulnerable consumer, defined in the regulations ceases when the defined circumstances no longer exist, and the consumer must notify the COR.

During the time in which the discount electricity rate is applied, the vulnerable consumer is entitled to a 25% discount on all of the terms included in the PVPC⁴.

2. Impossibility of suspending essential supplies in the primary residence

To whom does the measure apply?

Individuals in their primary residence.

What does the measure consist of?

During the validity of the state of alarm, the following essential supplies may not be suspended in the event of non-payment, even if this sanction is contained in the contracts which were signed:

- (i) Supply of electric energy;
- (ii) Supply of petroleum products (including manufactured gases and liquefied petroleum gases or “LPG”);
- (iii) Supply of natural gas;
- (iv) Supply of water.

In exceptional circumstances, the supply may be interrupted for reasons of security of supply, persons, and facilities.

² “Indicador Público de Renta de Efectos Múltiples” which is set, in the case of 14 payments, at EUR 7,519.59 according to the additional provision one hundred and nineteenth of Law 6/2018, of 3 July, on the General State Budget for 2018.

³ It should be noted that these income limits are higher than those contained in RD 897/2017, in which the multipliers are set at 1.5, 2 and 2.5 for each of the cases indicated.

⁴ Vid. Article 6 of RD 897/2017.

In addition, the measure provides that the temporary period during which the state of alarm is in force will not count for the purposes of the periods between the formal request for payment and the suspension of the supply due to non-payment established in the regulations in force or in the supply contracts, where applicable.

It should be noted that this measure is an extension of the measure provided for in Article 4 of RDL 8/2020, which limited the guarantee of supply to the month following the entry into force of the regulation, and applied only to consumers included in the category of vulnerable, severely vulnerable or at risk of social exclusion, and without including the supply of petroleum products.

3. Amendment of electricity and natural gas supply contracts of self-employed workers and enterprises

Under the heading “*flexibility in supplies*”, some measures are adopted that directly affect electricity and natural gas supply contracts.

To whom does the measure apply?

To **self-employed workers** and **companies**⁵ and, in the case of natural gas supply contracts, supply companies.

What is the measure?

- **Electrical energy supply contracts:**

During the validity of the state of alarm, self-employed workers or companies that own electricity supply points may take advantage of the following measures:

- Request, at any time, from the supply company the **suspension or temporary amendment of their supply contract** in order to contract another alternative offer with the same supplier that adjusts to their new consumption without being penalised.
- Request from the distribution company a **change of power or access tariff** even if the period of 12 months since the last amendment of the technical conditions of the third party access contract has not expired⁶.

⁵ It should be noted that unlike what is provided for in Article 44 of RDL 11/2020, in which the measure regulated is limited to self-employed workers and SMEs, in Articles 42 and 43 of the regulations there is a generic reference to “companies”, so it could be understood that measures to make contracts more flexible can also be adopted by large companies.

⁶ Such amendments must be complied with within a maximum period of five calendar days.

- Natural gas supply contracts:

For the duration of the state of alarm:

- (i) Self-employed workers or enterprises who hold a natural gas supply point may
 - Request from the supply company (i) the amendment of the contracted daily flow, (ii) the inclusion of a tariff corresponding to a lower annual consumption or (iii) the temporary suspension of the supply contract at no cost.
- (ii) Supply companies may apply to the distribution or transmission company for any of the following measures:
 - The amendment of the terms of the tariff for transmission and distribution.
 - The reduction of the contracted flow in products with an output capacity of standard duration or indefinite duration, in the latter case without having to wait 12 months from the last amendment of the contracted flow and without this amendment being counted for the purposes of the minimum period for the request of a new amendment.
 - The cancellation of contracted output capacity products and the temporary suspension of access contracts of indefinite duration, without any restriction.

All savings from lower tariff payments resulting from the application of the above measures must be passed on in full by the supplier to the holder of the supply point.

Once the state of alarm has ended, within the following three months, the electricity consumer or the holder of the natural gas supply point may request a new amendment of the contracts and supply conditions that had been previously amended or, if appropriate, the reactivation of the contracts that had been suspended.

The adoption of these measures requires that the General State Budget Laws approved after the entry into force of this regulation provide the corresponding budgetary appropriations in the amount equivalent to the reduction experienced, in order to compensate the Electricity System and the Gas System for the reduction in income resulting from the application of the measures.

4. Suspension of energy supply bills for self-employed workers and SMEs

To whom does the measure apply?

To **self-employed workers** and **SMEs**, as defined in Annex I of Regulation (EU) No 651/2014 of the

European Commission.

What does the measure consist of?

They may request the suspension of **electricity, natural gas and certain petroleum products** bills under the terms set out below.

- Consumers rights (self-employed workers or SMEs)
 - While the state of alarm is in force, they may request the **suspension of payment of bills** for billing periods that include days which form part of the state of alarm and which relate to supplies of (i) electrical energy; (ii) natural gas; (iii) manufactured gases and liquefied petroleum gases (LPG).
 - The suspension includes all billing items.
- Duties of consumers (self-employed workers or SMEs)
 - Once the state of alarm has ended, the amounts due will be included in equal parts in the bills issued in respect of the billing periods over the next six months.
 - They may not change their electricity or natural gas supplier, as the case may be until this adjustment has been completed.
- Rights of the suppliers:
 - **The exemption**, in the case of electricity suppliers, from the **obligation to pay the distribution company for access** to the transmission and distribution networks⁷ which relate to deferred bills until the consumer pays the bill in full.
 - **The exemption**, for natural gas suppliers, from the **obligation to pay the relevant fees for transmission and distribution in relation** to deferred bills⁸ until the consumer pays the bill in full.
 - **The exemption from the VAT, Electricity Excise Duty**, where applicable, and the **Special Tax on Hydrocarbons**, where applicable, in relation to bills

⁷ Established in paragraph d) of Article 46.1 of Law 24/2013 of 26 December on the Electricity Sector.

⁸ Established in paragraph f) of Article 81.2 of Law 34/1998, of 7 October, on the Hydrocarbon Sector.

whose payment has been suspended, until the consumer has paid them in full, or until six months have elapsed following the end of the state of alarm⁹.

- **The right to request the guarantees** defined in Article 29 of Royal Decree-law 8/2020 of 17 March or another guarantee facility created for this purpose, in the event that their income has been reduced because of the suspension of bills¹⁰.
- Duties of suppliers:
 - Communicate to the distribution companies (and in the case of natural gas to the transmission companies) the information regarding the holders of supply points, and the associated CUPS, that have requested the suspension of the payment of bills.
- Rights of distribution and transmission companies:
 - Electricity distribution companies and natural gas distribution and transmission companies whose provisional incomes from tariff collection is reduced as a result of the above measures may request the guarantees defined in Article 29 of RDL 8/2020, or other guarantee facilities created for this purpose, for the amount by which their incomes have been reduced.

5. Fuel specifications for summer 2020

What does the measure consist of?

During an exceptional period, from 1 May to 30 June 2020, the commercialisation of fuel intended for use in vehicles equipped with positive-ignition engines which under the regulations in force¹¹, have different limits in summer and winter, provided that the minimum limit for summer and the maximum limit for winter established in those regulations are complied with.

By resolution of the State Secretariat for Energy, the date of the end of the indicated period may be amended, depending on changes in the demand for fuel, and the duration of the state of alarm.

⁹ Applicable to electricity and natural gas supply companies and distribution companies of manufactured gases and liquefied petroleum gases by pipeline.

¹⁰ Applicable to electricity and natural gas supply companies and distribution companies of manufactured gases and liquefied petroleum gases by pipeline.

¹¹ Vid Annex I of Royal Decree 61/2006, of 31 January, determining the specifications for gasoline, gas oils, fuel oils, and liquefied petroleum gases and regulating the use of certain biofuels and the sulphur content of marine fuels.

What is the objective?

According to the explanatory part of the regulation, dealing with the logistical challenge caused by the declaration of the state of alarm means that the demand for petrol is experiencing an unprecedented reduction which, in turn, is causing a slower than expected turnover of the storage tanks, thus preventing the full consumption of the stocks with winter specifications as of 1 May 2020 and with it, the start of the sale of petrol with summer specifications.

6. Extension of the time limit for access and connection permits

To whom does the measure apply?

To holders of access and connection permits granted prior to the entry into force of Law 24/2013, of 26 December, on the electricity sector (“LSE”), which, in the event of not having obtained a commissioning certificate to operate the facility prior to 31 March 2020¹², were subject to expiration¹³.

What does the measure consist of?

For permits that were due to expire on 31 March 2020, there is an additional period of two months, which begins at the end of the state of alarm.

Therefore, section a) of the eighth transitional provision of the LSE is amended so that the aforementioned permits will expire if, within two months after the end of the state of alarm, the commissioning certificate for the generation facility associated with the permits has not been obtained.

It provides that for the calculation of this two-month period the suspension and restart of periods regulated in the third and fourth additional provisions of the aforementioned RD 463/2020 shall not be applicable¹⁴.

¹² This deadline, however, has been amended by the suspension of deadlines provided for in Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis caused by COVID-19 (“RD 463/2020”) which provides for the restart of the calculation of deadlines once the state of alarm has ended.

¹³ The eighth transitional provision of the LSE as amended by by Royal Decree-law 15/2018, of 5 October, on urgent measures for energy transition and consumer protection.

¹⁴ However, this results from RD 463/2020 itself, as the suspension of administrative deadlines and the suspension of prescription and expiry periods provided for in the aforementioned third and fourth additional provisions are linked to the validity of the state of alarm, and the two-month period for the expiration of permits only begins to be counted once the state of alarm ends.

What is the objective?

According to the explanatory memorandum of RDL 11/2020, it aims to provide legal certainty both to the promoters of electricity generation projects who own these permits, “*on which depend investments that are essential for the fulfilment of the objectives of the introduction of new renewable energies*”, and to the operators of the electricity networks responsible for granting these access and connection permits, so that the parties concerned have sufficient time to adapt to the new situation.

7. Price review of the last-resort rate (TUR) for natural gas and bottled LPG (butane cylinder)

Article 4.3 of RDL 8/2020, which establishes the suspension of the systems for updating the regulated prices of bottled LPG and the TUR (last-resort rate) for natural gas for three bi-monthly and two quarterly periods respectively, is amended to allow the updating of both regulated prices in the event that the new resulting price is lower than that currently in force¹⁵.

The information contained in this Briefing is of a general nature and does not constitute legal advice. This Briefing was prepared on 2 April 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

¹⁵ This is predictable in view of the marked decrease in the price of the Brent barrel during March, this being one of the fundamental elements in the determination of both regulated prices.