Pérez-Llorca

Legal Briefing

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THE GOVERNMENT APPROVES A PACKAGE OF EXTRAORDINARY MEASURES IN RESPONSE TO THE WAR IN UKRAINE

On 30 March 2022, Royal Decree-law 6/2022, of 29 March, adopting urgent measures within the framework of the National Plan to respond to the economic and social consequences of the war in Ukraine (**"RDL 6/2022"**), was published in the Official State Gazette.

RDL 6/2022 incorporates a series of measures to support the economic and business fabric, and in relation to energy, labour, tax, housing rental, intellectual property and technology, among others, all of which are aimed at mitigating the effects of the armed conflict between Russia and Ukraine, which are analysed in this legal briefing.

RDL 6/2022 entered into force on 31 March 2022, and, in accordance with the provisions of Article 86.2 of the Spanish Constitution, the text of the law will be submitted to debate and vote by the Congress of Deputies within thirty days of its enactment, at which time the Congress will decide whether to validate or repeal it.

1. Measures to support the economic and business fabric

A. Approval of guarantee facilities to cover, on behalf of the State, the financing granted to companies and the self-employed

Among the measures supporting the economic and business fabric regulated in Title III of RDL 6/2022 to strengthen the liquidity of companies and the self-employed is the approval of Official Credit Institute (ICO) guarantee facilities for an amount of €10 billion to cover liquidity needs arising due to the temporary increase in the prices of energy and other raw materials.

The Ministry of Economic Affairs and Digital Transformation will provide guarantees for financing granted to companies and the self-employed by credit institutions, money lending institutions, electronic money institutions and payment institutions to meet liquidity or investment needs. Such guarantees may also be granted by the Compañía Española de Reafianzamiento (CERSA).

The guaranteed credits can be applied for until 31 December 2022, and the applicable conditions and requirements to be met, including the maximum period for applying for the guarantee, will be established by agreement of the Council of Ministers.

In addition, RDL 6/2022 establishes that the legal regime for recovery and collection provided for in Article 16 of Royal Decree-law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic (**"RDL 5/2021"**) and in Annex II of the Council of Ministers' Agreement of 11 May 2021 will apply to the guarantees granted thereunder.

B. Amendment of Royal Decree-law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic

Additional Provision 32 of RDL 6/2022 amends Articles 5 and 7 of RDL 5/2021, relating to (i) the purpose of the measures contained in said Royal Decree-law; and (ii) the extension of the maturity dates and grace periods or the temporary suspension of principal repayments in financings that have received a public guarantee, respectively.

(i) First, as regards the amendment to Article 5 of RDL 5/2021, RDL 6/2022 removes the requirement that the beneficiaries of the measures must have experienced a significant drop in revenue as a result of the COVID-19 pandemic, thus allowing access to such measures to those companies that are now facing liquidity problems due to their particular exposure to cost increases resulting from the tensions in energy and other commodity prices (without it being necessary, therefore, for them to have also experienced a significant drop in revenue as a result of COVID-19).

(ii) Secondly, with regard to the amendment of Article 7 of RDL 5/2021, a new feature is introduced whereby the Code of Best Practices can determine the sectors, cases and conditions in which a temporary suspension of repayment of the principal of the guaranteed transactions may take place, either through an extension of the current grace period or through an additional grace period if the grace period has expired.

2. Labour and social security measures

A. Labour measures

RDL 6/2022 contemplates employment protection measures, giving priority to the use of internal flexibility mechanisms rather than the termination of employment contracts, similar to the measures implemented through the ERTEs during the pandemic.

To this end, Article 44 of the RDL establishes a guarantee of job preservation in two different situations:

(i) Firstly, companies benefiting from the direct aid provided for in the RDL are unable to use the increase in energy prices as the justification of objective grounds for dismissal, this exclusion being a prerequisite for obtaining such aid. This ban on dismissals lasts for three months, from the entry into force of the RDL until 30 June 2022. The exclusion does not affect the possible accreditation of objective reasons for dismissal in companies that do not benefit from these credits and aid.

(ii) Secondly, companies affected by ERTEs involving the suspension of contracts or the reduction of working hours for reasons related to the invasion of Ukraine, and who are beneficiaries of public support (quota rebates), may not use these same grounds to carry out dismissals.

The main effect of non-compliance with these measures will be the suspension of aid, with the obligation to repay aid already received. In addition to the repayment of the aid received, companies adopting objective dismissals face other risks, under the above conditions, including possible legal challenges by the dismissed workers.

B. Social security measures

Articles 28 and 37 and Final Provision 38 of the RDL include measures to ensure the liquidity of companies and workers, equivalent to those provided for in the pandemic or other urgent support measures for certain sectors. These take the form of special deferrals of the payment of social security contributions with a reduced interest rate of 0.5 per cent in the following sectors affected by the current situation:

(i) companies with workers registered in the General Social Security Regime and workers included in the Special Social Security Scheme for the Self-Employed who carry out their activity in the urban and road transport sector (National Classification of Economic Activities (CNAE) codes 4931, 4932, 4939, 4941 and 4942), which accrue between the months of April and July 2022, in the case of companies, and between the months of May and August 2022, in the case of self-employed workers;

(ii) companies and workers included in the Special Social Security Scheme for Sea Workers, which accrue between March and June 2022; and

(iii) the existing deferrals for companies in the Special Agricultural System are extended for a further month, from March to June, and for self-employed workers belonging to the Special System for the Self-Employed, from April to July.

3. Tax measures

The RDL includes, among other measures, certain tax measures which are aimed mainly at the electricity and hydrocarbon sectors. The tax benefits envisaged are as follows:

A. **Value Added Tax (VAT):** The measure provided for in Royal Decree-law 12/2021, of 24 June, which provides for the application of the reduced tax rate of 10% on intra-Community supplies, imports and acquisitions of electricity, is maintained until 30 June 2022.

B. **Special Tax on Electricity:** The measure provided for in Royal Decree-law 17/2021, of 14 September, which reduced the general rate of 5.11% for the Special Tax on Electricity to 0.5%, is maintained until 30 June 2022.

C. **Tax on the Value of Electricity Production:**

(i) The measure provided for in Royal Decree-law 17/2021 of 14 September, which provides for the suspension of the Tax on the Value of Electricity Production, is maintained until 30 June 2022.

(ii) For the 2022 financial year, the taxable base will be determined by the total amount corresponding to the production and incorporation into the electricity system, less the remuneration corresponding to the electricity incorporated into the system during the first two quarters of the 2022 financial year.

(iii) For the purposes of calculating the interim payments for the first two quarters of the 2022 financial year, the value of electricity production will be zero euros.

D. **Special Tax on Hydrocarbons:** Order HAP/290/2013 of 19 February, which establishes the procedure for the partial refund of the Tax on Hydrocarbons for the consumption of professional diesel, is amended. This amendment means that, as of 1 April 2022, the application for the refund of quotas for supplies of hydrocarbons made will be made on a monthly basis instead of at the end of each quarter of the financial year.

4. Measures relating to energy

RDL 6/2022 introduces significant new developments in the field of energy. In this respect, the main measures taken are set out below and will be analysed in detail in a separate Legal Briefing:

A. Extraordinary and temporary rebate on the final price of certain energy products:

(i) A rebate is established for persons and entities that purchase certain products established in Article 15.3 of Royal Decree-law 6/2022, of 29 March, such as petrol, regular automotive diesel, LPG, CNG, biodiesel, etc., provided that they are purchased between 1 April and 30 June 2022.

(ii) The rebate will be applied per litre or kilogram, as appropriate, with a discount equivalent to the amount of the rebate on the retail price of such products.

(iii) The amount of the rebate will be €0.20 when the products are purchased from those who hold the rights to operate the retail fuel supply facilities, as well as companies that make direct sales to final consumers.

(iv) The amount of the rebate will be €0.15 when the products are purchased from wholesale petroleum product operators with an annual turnover of more than €750 million, with the corresponding discount amounting to a minimum of €0.20 per litre or kilogram in total.

B. Support measures for energy-intensive industries in two areas:

(i) In electricity-intensive industries, a temporary reduction of 80% of the costs of access tolls to electricity transmission and distribution networks; and

(ii) In gas-intensive industries, a direct aid scheme is introduced with the aim of compensating for the higher costs incurred by the increase in the cost of gas.

C. Update of the remuneration parameters of the specific remuneration scheme applicable to the year 2022 established in Order TED/171/2020, of 24 February, affecting all standard facilities, for which a ministerial order must be approved within 2 months.

D. Measures to speed up procedures relating to renewable energy projects, including the following:

(i) Procedure for determining environmental impact for renewable energy projects, applicable to projects that comply with a series of characteristics.

(ii) Simplified authorisation procedures for renewable energy projects under the authority of the General State Administration.

E. Measures regulating certain aspects of access tenders, including: (i) the release of capacity reserved for access tenders for self-consumption and (ii) the expiry of the permits in the event of non-compliance with the commitments acquired in the access tenders.

F. Extension until 30 June 2022 of the mechanism for reducing the excess remuneration of the electricity market caused by the high price of natural gas on international markets regulated in Title III of Royal Decree-law 17/2021, of 14 September, on urgent measures to mitigate the impact of the rise in natural gas prices in the retail gas and electricity markets. Likewise, the exemption rule of the fixed price forward contracted or hedged energy mechanism has been amended.

G. Obligation to reduce the intensity of greenhouse gas emissions during the life cycle of fuels and energy supplied in transport.

H. Obligation on certain wholesale petroleum product operators to provide temporary public contributions ("*prestación patrimonial de carácter público no tributario temporal*")

I. Measures relating to the discount rate ("*bono social*") for electricity, including the following:

(i) The discount rate will be assumed by the parties in the electricity sector that participate in the activities for the supply of electricity (production, transmission, distribution and commercialisation of electricity), as well as by direct market consumers.

(ii) The discount rate applicable to domestic electricity consumers set out in Article 6.3 of Royal Decree 897/2017, of 6 October, regulating the concept of vulnerable consumers, the discount rate and other protection measures for domestic electricity consumers, is extended until 30 June 2022.

J. Extension of the measures to make natural gas supply contracts more flexible until 30 June 2022.

K. Measures in relation to the last resort tariff for natural gas.

L. Measures relating to basic underground storage.

M. Introduction of amendments to sectoral legislation, notably:

(i) Law 24/2013, of 26 December, on the Electricity Sector.

(ii) Law 34/1998, of 7 October, on the Hydrocarbons Sector.

(iii) Royal Decree 1955/2000 of 1 December 2000, which regulates the activities of transmission, distribution, commercialisation, supply and authorisation procedures for electricity facilities.

(iv) Royal Legislative Decree 1/2001, of 20 July, approving the revised text of the Water Act.

(v) Law 21/2013, of 9 December, on environmental assessment.

(vi) Royal Decree 897/2017, of 6 October, regulating the concept of vulnerable consumers, the discount rate and other protection measures for domestic electricity consumers.

(vii) Royal Decree 1183/2020, of 29 December, on access and connection to electricity transmission and distribution networks.

(viii) Royal Decree-law 17/2021, of 14 September, on urgent measures to mitigate the impact of rising natural gas prices on gas and electricity retail markets.

(ix) Royal Decree 1716/2004, of 23 July 2004, regulating the obligation to maintain minimum security stocks, the diversification of natural gas supply and the corporation of strategic reserves of petroleum products.

5. Measures in relation to rental housing

In the case of residential leases where rent must be updated due to the expiry of the annual period of validity between 31 March and 30 June 2022, an increase resulting from a new agreement between the parties may be negotiated with the lessor. If there is no agreement between the parties, the increase will be of the amount resulting from the application to the rent of the annual variation of the Competitiveness Guarantee Index on the date the contract is updated (2.02% in January 2022, the latest published data).

If the lessor is a large-scale property holder (i.e. owns of more than ten urban properties for residential use or a constructed area of more than 1,500 m² for residential use, excluding garages and storage rooms), the agreement between the parties may never exceed this reference rate.

6. Intellectual property and technology measures

A. **Extension of deadlines for films eligible for support in the 2020 to 2022 period, which are scheduled to be shot in Ukraine, Russia and neighbouring countries affected by the war:** Films benefiting from general and selective aid for the production of feature films on project, as well as aid for the production of short films on project granted between 2020-2022 under Order CUD/582/2020, will benefit from certain extensions of the deadlines to (i) start filming and notify the Institute of Cinematography and Audiovisual Arts (**"ICAA"**), or the competent regional body; and (ii) notify these bodies of the end of filming and request the classification and certificate of nationality. Furthermore, interest for late repayment of the aid will not be applicable in cases where it is impossible to comply with the deadlines laid down in the regulations, and where this is accredited by the beneficiary producers.

B. **Relaxation of the procedure for the classification of films and other audiovisual works of Ukrainian nationality:** production or distribution companies applying for the classification of a cinematographic film or other audiovisual work of Ukrainian nationality will only be required to submit a sworn statement concerning the nationality of the work.

C. **Time limits for administrative proceedings in the field of industrial property:** The time limits provided for in the Trade Marks Act, the Patents Act, and the Industrial Designs Act are extended for applicants or holders of the industrial property rights concerned who have their residence or registered office in Ukraine. This extension does not include the deadlines for carrying out opposition proceedings.

D. **Amendment of Royal Decree-law 12/2018, of 7 September, concerning the security of networks and information systems:** The Secretariat of State for Digitalisation and Artificial Intelligence of the Ministry of Economic Affairs and Digital Transformation is incorporated as the competent authority for the security of networks and information systems. Furthermore, operators of essential services and providers of digital services which, while not critical operators, fall within the scope of application of Law 40/2015, in particular cloud computing services, are empowered to require additional and stricter security measures from the providers of such services.

E. **Amendment of Royal Decree-law 17/2020, of 5 May, adopting measures to support the cultural sector and tax measures to deal with the economic and social impact of COVID-19:** The period during which the minimum percentages provided for in Article 177.6 of the revised text of the Intellectual Property Act will not apply in relation to the amounts collected by collecting societies and not claimed by their owner is extended from 2 to 4 years.