

ANALYSIS OF THE ENERGY MEASURES CONTAINED IN ROYAL DECREE-LAW 6/2022

On 30 March 2022, the BOE published Royal Decree-law 6/2022, of 29 March, adopting urgent measures within the framework of the National Plan in response to the economic and social consequences of the war in Ukraine (“RDL 6/2022”).

This Legal Briefing will analyse the key aspects of the main energy measures contained in RDL 6/2022.

1. Measures relating to electricity production facilities

(i) Update of the specific remuneration scheme for electricity production from renewable energy sources, high-efficiency cogeneration and waste

As a special measure and for 2022, within 2 months of the entry into force of RDL 6/2022, the remuneration parameters established for 2022 in Order TED/171/2020, of 24 February, will be updated by ministerial order.

This update will be carried out independently of the update planned for the regulatory half-period between 1 January 2023 and 31 December 2025, under Royal Decree 413/2014, of 6 June, (“RD 413/2014”), which governs electricity production from renewable energy sources, cogeneration and waste, with the following specific features:

- The parameters in place on the date of the entry into force of RDL 6/2022 will be used, except for the estimate of market price revenues, fuel prices, and the price of CO₂ emission rights.
- The market price estimate for 2022, 2023 and 2024 will be calculated as the arithmetic mean of the quotes of the annual futures contracts traded on the electricity futures market organised by OMIP during the last six months of 2021.
- The fuel price estimate will follow the methodology provided by Order IET/1345/2015, of 2 July, which establishes the methodology for updating the remuneration for the operation of facilities with a specific remuneration scheme.

- The estimate of the CO₂ allowance price for 2022 and beyond shall be calculated as the arithmetic mean of the daily quotes of the 2022 CO₂ allowance futures contracts traded during the last six months of 2021.
- The adjustment value for deviations in the market price for 2020 and 2021 will be calculated with the value of the annual average price of the daily and intraday market calculated by the CNMC.

In the process of updating the remuneration parameters for the 2023-2025 regulatory half-period, the value of the average annual price of the daily and intraday market used to calculate the adjustment value for deviations in the market price for 2022, will be calculated by the CNMC as the arithmetic mean of the hourly prices of the daily and intraday market from 1 January 2022 to 31 December 2022.

The adjustment mechanism for deviations in the market price will not apply to energy generated in 2023 and subsequent years.

Similarly, a ministerial order will approve, within two months of RDL 6/2022 coming into force, a new methodology for updating the remuneration for the operation of standard facilities the operating costs of which are critically dependent on the price of fuel.

(ii) Streamlining authorisation procedures for renewable energy projects

The following measures are adopted:

- **Procedure for evaluating environmental impact:** this is a new procedure with a temporary validity limited to projects that request administrative authorisation before 31 December 2024, and will be applicable to facilities within the State's jurisdiction, although it may be applied by the Autonomous Communities in their own jurisdiction.

Projects not located in the marine environment referred to in sections i) and j) of Group 3 of Annex I¹ and sections g) and i) of Group 4 of Annex II² of Law 21/2013, of December 9, on Environmental Assessment ("Law 21/2013")

¹ "i) Facilities for the use of wind power for the production of energy (wind farms) that have 50 or more wind turbines, or that have more than 30 MW or that are located less than 2 km from another wind farm in operation, under construction, with administrative authorisation or with an environmental impact statement."

"j) Facilities for the production of electrical energy from solar energy intended for sale to the grid, which are not located on the roofs of existing buildings and which occupy more than 100 ha. of surface area."

² "g) Facilities for the use of wind power for energy production. (Wind farms) not included in Annex I, except those intended for self-consumption that do not exceed 100 kW of total power."

"i) Facilities for the production of electrical energy from solar energy, intended for sale to the grid, not included in Annex I or installed on roofs of buildings or on urban land and which, occupy a surface area greater than 10 ha."

may be submitted to the process provided that they comply with the following requirements:

- **Connection:** the overhead power lines do not have a voltage of 220 kV or more and a length of more than 15 km.
- **Size:** these must be wind projects with a capacity of 75 MW or less or photovoltaic projects with a capacity of 150 MW or less.
- **Location:** projects must be located, at the date of submission of the application for authorisation, entirely in areas of low and moderate sensitivity according to the “Environmental zoning for the implementation of renewable energies”³. In any case, the projects must not be located in the marine environment or in areas that are part of the Natura 2000 Network.

The procedure requires that, within a maximum period of 2 months from the receipt of the documentation, the environmental agency must issue a report on the environmental impact, determining whether the project can be processed without the need for an environmental assessment because no significant adverse effects on the environment can be detected or whether, on the contrary, the project must be subject to an environmental assessment.

If the environmental assessment is not required, the environmental authority may impose the obligation to subject the project authorisation to the conditions deemed appropriate to mitigate or compensate for the project’s potential environmental impacts, as well as to conditions relating to the monitoring and supervision plan of the project.

Authorisation procedures that are being processed at the time RDL 6/2022 comes into force may use this procedure within 20 days of the entry into force of RDL 6/2022, and to do so they must submit the executive summary document quantifying the impacts to the substantive body in the terms set out in the regulation.

- **Simplified authorisation procedure:** authorisation procedures for renewable energy projects under the authority of the General State Administration, which have obtained a favourable environmental impact assessment report, are declared urgent for reasons of public interest, and will be processed through a simplified procedure provided that their promoters apply for this procedure before 31 December 2024.

³ <https://sig.mapama.gob.es/geoportal/>

The simplified procedure involves a 50% reduction of the deadlines established in the regulations and the joint processing and resolution of the prior administrative authorisation (AAP) and the construction authorisation (AAC), with the accumulation of the public information procedures and, where appropriate, simultaneous processing of the declaration of public utility.

(iii) Extension of the mechanism for reducing excess remuneration

The mechanism for reducing the excess remuneration of the electricity market caused by the high price of natural gas on international markets introduced by Royal Decree-law 17/2021, of 14 September, on urgent measures to mitigate the impact of the rise in natural gas prices on the retail gas and electricity markets, is extended until 30 June 2022.

Similarly, amendments are introduced to the exemption rule of the fixed price forward contracted or hedged energy mechanism, limiting the fixed price of the forward contracting instruments entered into after the entry into force of the regulation, so that only fixed price forward energy with a hedging price equal to or lower than €67/MWh and a hedging period equal to or greater than one year will be exempt.

(iv) Floating solar photovoltaic facilities

Royal Legislative Decree 1/2001, of July 20, 2001, approving the revised text of the Water Law is amended to regulate the framework governing the administrative concessions required for the commissioning of solar photovoltaic plants located in the public water domain, or on other water-related infrastructures owned by the General State Administration or the catchment area bodies and connected to the electric power transmission or distribution networks.

(v) Storage facilities

Storage facilities that are directly or indirectly connected to the transmission and distribution networks, alone or hybridised, are treated as electricity generation facilities for the purposes of the necessary administrative authorisations, as well as for the purposes of registration in the Register of Electricity Production Facilities.

(vi) Capacity Tenders

The following amendments are made to the regulation of capacity tenders:

- In order to promote self-consumption facilities, 10% of the capacity that at the time RDL 6/2022 came into force was reserved for access tenders is freed up so that, within two years of the entry into force of the regulation, it can be allocated to renewable self-consumption facilities. All or part of the capacity may be used exclusively for self-consumption facilities.
- The non-compliance with the commitments acquired in an access capacity tender is introduced as a ground for the cancellation of access and connection permits. Cancellation for this reason will result in the cancellation of both the guarantees provided to participate in the tender and the guarantees provided to apply for the access and connection permits.
- The maximum period within which the order for the invitation to tender must be published is extended to 12 months from the date of the resolution of the Secretary of State for Energy announcing the holding of the tender.
- In the event that the reserved capacity exceeds 10 GW, multiple tenders are allowed without the period between tenders exceeding six months.

2. Measures relating to the electricity discount rate (“*bono social de electricidad*”)

In relation to the electricity discount rate, the main measures adopted are:

- (i) A **new mechanism** for financing the discount rate is established, which will be assumed by all parties in the electricity sector that participate in the activities of the electricity supply chain according to the following rules:
 - **Producers:** in proportion to their production according to a unit contribution value expressed in euros per megawatt-hour (€/MWh).
 - **Carriers:** in proportion to the remuneration received for carrying out this activity according to a unit value expressed in euros to be contributed for each euro paid (€/€ paid).
 - **Distributors:** in proportion to the share of customers connected to their network according to a unit value expressed in euros per CUPS [*Universal Supply Point Code*] (€/CUPS) connected to the distribution networks.
 - **Electricity distributors:** in proportion to the share of customers to whom they supply electricity according to a unit value expressed in euros per customer (€/customer).

- **Direct market consumers:** in proportion to the energy purchased on the production market according to a unit value expressed in euros per MWh (€/MWh) purchased on the production market.
- (ii) The discounts applicable to the discount rate established in Article 1 of RDL 23/2021 are extended until 30 June 2022.
- (iii) The definition of vulnerable consumers is amended, as well as the application process for the discount rate for all vulnerable consumers. The concept of the family unit is replaced by that of the cohabitation unit.

3. Measures relating to the gas sector

Among the measures approved by RDL 6/2022 affecting the gas sector, the following should be highlighted:

- (i) The measures to make natural gas supply contracts more flexible in order to protect the industrial sector from price increases are extended until 30 June 2022. Therefore, a maximum number of permitted modifications of flow and tolls of 3 and 1 respectively is provided until the abovementioned deadline for the application of this exceptional measure.
- (ii) Law 34/1998 of 7 October 1998 on the Hydrocarbons Sector is amended with regard to direct lines and the supply of renewable gases using isolated pipelines. It also introduces provisions for the supply of renewable gases through isolated pipelines, including renewable hydrogen. The aspects regulated include its consideration as an activity of general interest and its declaration of public utility; the applicable procedure for the authorisation of infrastructures; negotiated third-party access and the non-applicability of regulated remuneration; and the rights, obligations, infringements, penalties and other provisions applicable to operators in the renewable gas supply chain.
- (iii) The use of basic underground storage is regulated from 1 April 2022 to 31 March 2023.
- (iv) The obligation to maintain **minimum safety inventories** for entities operating in the natural gas sector is increased from 20 to 27.5 days of firm sales or consumption in the previous calendar year, and the accounting of minimum safety inventories is modified.
- (v) In relation to the allocation of underground natural gas storage capacity, **the directly allocated storage capacity is reduced** and will be limited exclusively to that necessary to comply with minimum safety inventories.

- (vi) The application of the seventh additional provision of Royal Decree-law 17/2021, of 14 September, is extended for the **reviews of the price of the last resort natural gas tariff** corresponding to 1 April 2022 and 1 July 2022, establishing the maximum increase in the cost of the raw material, Cn term, at 15%.
- (vii) The **methodology for calculating the last resort tariff** for natural gas is amended, modifying the formula used to calculate the real cost of the last resort tariff storage, so that the formula reflects the weighted average price resulting from the direct allocation procedure and the auction (distinct from the current charge) for the portion to be contracted through this procedure.
- (viii) The supply obligation of last resort retailers is extended to essential consumers until they have a supply contract with a retailer.

4. Measures to support industry

In order to guarantee the competitiveness of electricity-intensive industries, the following measures have been adopted:

- (i) With effect from 1 January 2022 and until 31 December 2022, a support mechanism will be applied to electricity-intensive industries consisting of a reduction in the electricity bill of consumers holding the electricity-intensive consumer certificate of 80% of the cost corresponding to the access tolls to the electricity transmission and distribution networks applicable at any given time.
- (ii) A direct aid scheme for gas-intensive industries is approved, with the aim of compensating for the higher costs incurred by the increase in the cost of gas, for a total amount of 125 million euros.

5. Measures aimed at reducing the intensity of greenhouse gas emissions during the life cycle of fuels

Article 7a of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC is transposed.

Thus, with effect from the entry into force of RDL 6/2022, the objective of reducing the intensity of greenhouse gas emissions during the life cycle of fuels and energy supplied in transport by 6% compared to the reference value of greenhouse gas emissions from fossil fuels used in the European Union in 2010, which is 94.1 g CO₂eq/MJ, is established.

This target should be met through the use of biofuels that meet sustainability criteria, alternative fuels and reductions in flaring and venting at sites.

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

An extraordinary and temporary rebate (between 1 April and 30 June 2022) on the price of certain energy products and additives is approved.

In this respect, the beneficiaries of the rebate are specified, as well as the products whose acquisition will entitle them to the rebate. The rebate will be 0.20 euros and will be applied to the retail price of each litre or kilogram of product.

The rebate is structured using a discount to be applied to each supply by the holders of the operating rights of the retail fuel supply facilities, as well as by the companies that make direct sales to final consumers of the products covered by the rebate. Subsequently, the aforementioned holders and companies may request a refund of the discounts made to the Tax Administration.

7. Temporary public contribution (*“prestación patrimonial de carácter público no tributario temporal”*) to be provided by wholesale petroleum product operators.

Wholesale operators of oil products with refining capacity in Spain and an annual turnover of more than 750 million euros are required to pay a quarterly non-tax public benefit during the period from April 1 to June 30, 2022, inclusive. The amount of the benefit is fixed at EUR 0.05 per litre/kilogram of product distributed by the person liable to pay.

Operators are exempted from the obligation if they undertake to unequivocally discount sales of the products covered by the standard to final consumers, either directly or through the retail fuel supply facilities of their distribution network.

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