

Energy Spain Newsflash

EXTRAORDINARY ENERGY MEASURES TO DEAL WITH THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE WAR IN UKRAINE (1/2)

On 30 March 2022, Royal Decree-Law 6/2022 of 29 March, adopting urgent measures within the framework of the National Response Plan to the economic and social consequences of the war in Ukraine (**RDL 6/2022**), was published in the Spanish Official Gazette (**BOE**). RDL 6/2022 came into force on 31 March 2022.

RDL 6/2022 introduces several measures in the fields of energy, transport, business as well as for workers and vulnerable groups, among others. Please find below the first delivery of our analysis on RDL 6/2022, which includes a summary of the energy measures included in Title I of the aforementioned Royal Decree-Law.

Support measures to ensure the competitiveness of the energy-intensive industry.

- Temporary reduction of the cost of access tolls to transmission and distribution grids.

RDL 6/2022 sets out a temporary reduction of 80 per cent of the cost of access tolls to transmission and distribution grids, which will be in force as from 1 January to 31 December 2022, both in terms of contracted capacity and active energy. The reduction will be made directly by the relevant distribution company. Under no circumstances will the amount to be discounted lead to being a lesser value than that of the of the tolls on.

This measure will apply to consumers who hold an electricity-intensive consumer certificate (*certificado de consumidor electro-intensivo*), including those who are able to prove their status and obtain the certificate during the term of this measure, and will end at the time that they lose such status. cease when they lose this status.

- Direct aid to the gas-intensive industry.

Likewise, a direct aid scheme amounting to 125 euro million has been approved in favour of the gas-intensive industry to mitigate the cost increase of natural gas caused by the invasion of Ukraine and the sanctions imposed on Russia. To be eligible for this aid, companies (whatever their legal form) must have carried out during 2021 and continue to carry out at least one of the activities set out in CNAE Codes 171, 206, 231, 232 or 233. The amount of each individual aid will be calculated by multiplying the relevant amounts set out in RDL 6/2022 (depending on the beneficiary's CNAE), by the number of employees of the beneficiary, with a maximum amount of EUR 400,000.

Measures for the update of the specific remuneration regime for electricity production from renewable energy sources, high-efficiency cogeneration and waste.

- RDL 6/2022 introduces a mandate for an extraordinary update of the year 2022 remuneration parameters established in Order TED/171/2020, without prejudice to their subsequent update which is planned for the next regulatory semi-period comprised between 1 January 2023 and 31 December 2025. This update shall be carried out by means of a ministerial order which shall be approved within two months as from the date of its publication.

Article 5.5 of RDL 6/2022 sets out the criteria to be applied in order to update the remuneration parameters applicable to 2022 and such new parameters shall be applied retroactively from 1 January 2022. The National Markets and Competition Commission (CNMC) will settle the difference in the amounts resulting from the application of the new parameters in the first settlement as soon it is possible.

- Likewise, another mandate is being introduced in order to approve a new methodology for the update of the remuneration for the operation of those facilities whose operating costs depend essentially on the fuel price. This new methodology shall be approved by ministerial order to be approved within 2 months as of the entry into force of RDL 6/2022.

This methodology will be aimed at promoting the efficient operation of installations, focusing in the management of CO₂ emissions and should provide the necessary signals for operators to operate plants minimising emissions, so that CO₂ emission allowances maintain their incentive character within the decarbonisation process.

Measures to expedite the administrative processing of renewable energy projects .

- The Determination of environmental impacts for renewable energy projects.

RDL 6/2022 introduces a new administrative procedure for determining the environmental impact of solar or wind projects not located in the marine environment:

(i) whose aerial evacuation lines (*líneas de evacuación aéreas*) are not included in Annex I of Law 21/2013, of 9 December, on Environmental Assessment (*Ley 21/2013, de 9 de diciembre, de evaluación ambiental*) (i.e., with voltage equal to or greater than 220 kV and a length greater than 15 km, unless they run entirely underground through urbanised land, as well as their related substations);

(ii) whose installed capacity is equal to or less than 75 MW for wind power generation projects and 150 MW for photovoltaic projects; and

(iii) which are not located in areas that form part of the Red Natura 2000 programme and, at the date of submission of the application by the developer, are located entirely in areas of low and moderate sensitivity according to the "Environmental zoning for the implementation of renewable energies".

This mechanism will be applicable to applications for administrative authorisation submitted before 31 December 2024 and will exempt the aforementioned projects from the environmental assessment procedure, if it is set out in the report arisen from this new administrative procedure, which must be issued within a maximum period of two months as from the receipt of the documentation to be provided by the developer.

This report may also establish conditions for the authorisation of the project to mitigate or compensate the environmental effects produced by the project, as well as conditions relating to the monitoring and surveillance plan of the project. The report will lose its validity if the project is not authorised within two years of its notification. When the aforementioned impact report considers that it is possible to continue with the authorisation procedure because no significant adverse effects on the environment can be detected, the milestone corresponding to obtaining a favourable environmental impact statement will be deemed fulfilled.

This new administrative procedure will only apply to projects processed by the General State Administration (**AGE**), although the Autonomous Communities may decide to apply it to the processing of projects within the scope of their competences that meet the aforementioned characteristics.

- Prioritisation of dispatch. Declaration of urgency for reasons of public interest.

In addition to the foregoing, the administrative authorisation procedures for renewable energy generation projects that have obtained the favourable environmental impact assessment report mentioned above are declared urgent for reasons of public interest and provided that their promoters request the simplified procedure before 31 December 2024. As a result, the reduction of deadlines to half of their duration as provided for in article 33 of Law 39/2015 will be applied, in addition to a series of specialities relating to the joint processing of the prior and construction administrative authorisations, as well as to the request for the declaration of public utility.

- Energy production by means of floating photovoltaic plants.

RDL 6/2022 amends the Water Law, approved by Royal Legislative Decree 1/2001, of 20 July (**Water Law**), to introduce new provisions relating to the installation of floating photovoltaic plants in the public water domain (*dominio público hidráulico*):

(i) These facilities shall be granted on a temporary basis for a maximum period not exceeding 25 years (including its potential extensions).

(ii) Their authorisation in the electricity sector will be subject to the provisions of Title IX of Law 24/2013, of 26 December, on the Electricity Sector and its implementing regulations, being subject to the Water Law with respect to the public water domain. The environmental impact assessment will be governed by the provisions of Law 21/2013, of 9 December and its implementing regulations.

(iii) The taxable base for the calculation of the use fee (canon) shall be determined as the annual average daily and intraday market price published by the CNMC for the accrued year multiplied by the plant's production.

(iv) When the floating photovoltaic generation project is to be installed on canals or other hydraulic works owned by the Spanish Government or basin organisations, the granting of an administrative concession (*concesión demanial*) of ownership will be required beforehand.

Other measures regulating certain aspects of access competitions.

- Release of capacity for self-consumption and modification of capacity tendering rules.

A release of 10 per cent of the capacity reserved at the entry into force of RDL 6/2022 in those nodes in which the holding of a capacity tender has been resolved is provided in favour of those facilities that (i) are intended for self-consumption; and (ii) the ratio between the contracted capacity in the period P1 and the installed generation capacity is at least 0.5.

The above conditions shall cease to apply after 2 years and the remaining capacity may be freely allocated according to the general criteria.

Likewise, the rules governing capacity tenders are amended to determine the automatic expiry of access and connection permits and the execution of the associated guarantees in the event of non-compliance by the holder of the aforementioned permits with the commitments acquired in the capacity tenders.

Measures aimed at reducing the intensity of greenhouse gas emissions.

RDL 6/2022 sets out an obligation to reduce the life-cycle greenhouse gas emission intensity of fuels and energy supplied in transport. Obligated parties must therefore comply with a mandatory life-cycle greenhouse gas emissions reduction target, per units of fuel and energy supplied in transport, of 6 per cent of the reference value for greenhouse gas emissions from fossil fuels used in the European Union in 2010 (i.e., 94.1 g CO₂eq /MJ). To meet this target, (i) biofuels that meet the sustainability criteria; (ii) alternative fuels; (iii) reductions in flaring or (iv) venting should be used.

The greenhouse gas emission intensity reduction obligation mentioned above shall apply to

sales or consumptions in the field of transport by obligated entities of:

- fuels for road vehicles, non-road mobile machinery, including inland waterway vessels when not at sea and on railways, agricultural and forestry machinery and recreational craft vehicles when not at sea;
- electricity for use in road vehicles if it can be demonstrated that the electricity supplied for use in such vehicles has been adequately metered and verified; and
- biofuels for aviation use, provided they meet the sustainability criteria of Royal Decree 1597/2011 of 4 November and are proven to be sustainable.

The following entities are obligated parties, where they fulfil certain conditions: (i) retail distribution companies of petroleum products; (ii) wholesale operators of liquefied petroleum gases; (iii) companies that carry out a retail marketing activity of liquefied petroleum gases; (iv) natural gas marketers, among others.

In addition, obligated entities must submit the information and documentation accrediting compliance with the aforementioned objectives in accordance with the provisions of Royal Decree 235/2018. This information must be audited by an independent company.

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

A temporary extraordinary allowance of €0.20 per litre or kilogramme, as appropriate, is set out on the retail price of certain energy products and additives: (i) petrol; (ii) diesel A and A+; (iii) diesel B; (iv) marine diesel; (v) LPG; (vi) CNG; (vii) LNG; (viii) bioethanol; (ix) biodiesel; (x) blends of petrol with bioethanol or diesel with biodiesel requiring specific labelling; and (xi) the additive AdBlue.

All persons and entities that purchase these fuels between 1 April and 30 June 2022 will be beneficiaries of this allowance.

Additionally, some duties of cooperation are imposed on the holders of the operating rights of fuel supply facilities, as well as on companies that make direct sales to end consumers, who must make a discount on the retail price equivalent to the amount of the allowance, and will be subsequently entitled to a refund of these subsidies in accordance with the provisions of RDL 6/2022.

Temporary public contribution payable by wholesale operators of petroleum products.

A new quarterly temporary public contribution (*prestación patrimonial de carácter público no tributario temporal*) is established for the period between 1 April to 30 June 2022, which will be payable by wholesale oil product operators with refining capacity in Spain and with an annual turnover of more than 750 million euros. Operators who undertake to unequivocally apply a discount on sales of certain products to end consumers, either directly or through the retail fuel supply facilities of their distribution network, will not be obligated to comply with the abovementioned payment.

The benefit is set at 0.05 euros per litre or kilogram of fuel as referred to in the previous section above (*Extraordinary and temporary allowance on the final price of certain energy products*), as appropriate. In the case of the purchase of products from operators subject to this economic benefit, the bonus referred to in the previous section shall be reduced to 0.15 euros per litre or

kilogram.

Key Contacts

We bring together lawyers of the highest calibre with the technical knowledge, industry experience and regional know-how to provide the incisive advice our clients need.



Andrés Alfonso

PARTNER
MADRID

+34 91 364 9873
andres.alfonso@ashurst.com



Soledad Adell

SENIOR ASSOCIATE
MADRID

+34 913 649 451
soledad.adell@ashurst.com

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