
Plan in response to the war: measures on energy

Royal Decree-Law 6/2022 (“**RDL 6/2022**”) introduces a set of measures affecting the energy sector aimed at strengthening energy supply security and lowering electricity prices.

Legal flash – Energy

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Key aspects

- It updates the regulated remuneration system for renewable energy, cogeneration and waste.
- It establishes a simplified procedure for processing renewable energy projects with low environmental impact.
- It extends the mechanism to reduce the profits made by power plants that do not emit greenhouse gases and introduces amendments affecting bilateral contracts.
- It extends energy-related tax measures until June 30, 2022.
- It gives greater flexibility to natural gas supply contracts and imposes further requirements on security reserves.
- It regulates the installation of floating photovoltaic plants in the hydraulic public domain.
- It extends social discount rates on electricity bills.



Update to the regulated remuneration system for renewable energy, cogeneration and waste (RECORE)

➤ **Update to the parameters of the specific remuneration system applicable in 2022.**

Exceptionally, within two months from the entry into force of RDL 6/2022, the remuneration parameters established in [Order TED/171/2020](#) will be updated by ministerial order, to be applied to the regulatory period starting on January 1, 2020. This update will apply regardless of the update foreseen for the regulatory three-year period between January 1, 2020 and December 31, 2025.

To apply the updating methodology, the regulatory three-year period from January 1, 2020 to December 31, 2022, will be split into two regulatory half-periods: the first, from January 1, 2020 to December 31, 2021; and the second, from January 1, 2022 to December 31, 2022. The market price will be estimated for 2022, 2023 and 2024, calculated as the arithmetic mean of the quotes of the annual futures contracts traded on the electricity futures market operated by OMIP during the second half of 2021. An adjustment is also made for deviations of the market price for 2020 and 2021.

The approved remuneration parameters will be applicable from January 1, 2022. The Spanish Markets and Competition Commission (“CNMC”) will settle the amounts resulting from applying those remuneration parameters to each facility from the first settlement for which the values are available, and it will make the corresponding adjustment to the difference between the updated remuneration values and the amounts already paid as provided under Order TED/171/2020 in the following settlements, including any collection rights or payment obligations that may arise, which will be attributed to the 2022 financial year.

- **Adjustment mechanism for deviations of the market price.** The adjustment mechanism for deviations in the market price, regulated under article 22 of [Royal Decree 413/2014](#), will not apply to energy generated in 2023 and subsequent years, as the deviations would affect the update of the remuneration parameters for the regulatory three-year period between January 1, 2026, and December 31, 2028. The Spanish government will amend Royal Decree 413/2014 to adapt it to this forecast. Also, article 22.1 of Royal Decree 413/2014 is amended to provide greater certainty to plant owners, specifying the period to be taken into account to estimate the market price based on OMIP futures.



- > **New methodology for updating remuneration for the operation of plants whose operational costs mainly depend on the price of fuel.** By ministerial order and within two months from the entry into force of RDL 6/2022, a new methodology will be approved to update the remuneration for the operation of plants whose operational costs mainly depend on the price of fuel, as provided under article 20 of [Royal Decree 413/2014](#).

Measures to streamline procedures for renewable energy projects

- > **Procedure to determine the environmental impact of renewable energy projects.** Applications for administrative authorization of renewable energy projects submitted by developers before December 31, 2024, will be subject to a simplified procedure to determine the environmental impact of these projects, provided they meet all the following requirements:
 - **Connection:** Projects using overhead power lines with a voltage not exceeding 220 kV and a length not exceeding 15 km, unless they cross developed land.
 - **Size:** (i) Wind projects with an installed capacity not exceeding 75 MW; (ii) solar photovoltaic projects with an installed capacity not exceeding 150 MW.
 - **Location:** Projects not located in the marine environment or in areas included in the Natura 2000 Network and that, on the date the developer submits the application for authorization, are located entirely in low- and moderately sensitive areas according to the "Environmental zoning plan for the implementation of renewable energies" developed by the Ministry for Ecological Transition and the Demographic Challenge.

The environmental authority will draft the **environmental impact assessment report** within two months from the receipt of the documents required to process the application. This report will determine whether the project can follow the corresponding authorization procedure because it will not cause any observable adverse effects on the environment or, failing that, it will be subject to the corresponding environmental assessment procedure.

Finally, from the viewpoint of the **transitional regime**, the above procedure will apply to all projects that meet the requirements, regardless of their processing status, as follows: (i) within 20 days from the entry into force of RDL 6/2022, project developers must send the required documentation and the executive summary to the environmental authority; (ii) if the project is being processed with the decision-making body, the latter will send the complete project, the extended environmental



impact assessment and, if applicable, the result of the procedures performed to the environmental authority within 10 days, and the environmental authority will continue processing the project as established for this new procedure; (iii) any formalities completed in the procedure to determine the environmental impact will be maintained if they may be included in the environmental assessment procedure that, owing to the resulting report, would have to be carried out under Act 21/2013.

- **Simplified procedure to authorize renewable energy projects.** Authorization procedures for renewable energy generation projects within the competence of the state that have obtained a favorable environmental impact assessment report and the developers of which have applied for the simplified authorization procedure before December 31, 2024, are declared urgent on the grounds of public interest.

Under this simplified procedure, (i) the processing and resolution of the prior authorization and building permit (as well as the declaration of public utility, if requested) will be carried out jointly; (ii) some procedures relating to the information and submission of the execution project to the different authorities will be combined, reducing them by half; and (iii) the public information procedure will also be reduced by half.

From the viewpoint of the **transitional regime**, developers whose applications for authorizations are under way and who are granted a favorable environmental impact determination report will benefit from the simplified procedure.

GHG and emission allowances

- **Targets to reduce the intensity of greenhouse gas emissions.** RDL 6/2022 establishes, with effect from its entry into force, the target of reducing the intensity of greenhouse gas (GHG) emissions during the life cycle of the fuels and energy supplied in transport, referred to in Article 7a of [Directive 98/70/EC, of the European Parliament and of the Council](#), relating to the quality of petrol and diesel fuels. This target involves the mandatory 6% reduction in GHG emissions of the life cycle, per unit of fuel and energy supplied in transport, compared to the EU baseline standard for these emissions in 2010, set at 94.1 gCO₂_{eq}/MJ, as specified in Annex II of [Directive \(EU\) 2015/652](#). This reduction is to be achieved through the use of biofuels, alternative fuels and by reducing flaring and venting at production sites. It also establishes indicative targets to reduce GHG emissions by up to 4%. Among these, 2% would be achieved through the supply of energy for transportation (such as the use of electric vehicles) and the use of technologies capable of reducing GHG emissions (such as carbon capture and storage). The remaining 2% would be achieved by acquiring credits under the Clean Development Mechanism defined in the Kyoto Protocol.



- > **Obligated parties.** Parties obliged to meet the targets to reduce the intensity of GHG emissions: (i) wholesale operators and retail distributors of petroleum products, (ii) consumers of petroleum products for any part of consumption not covered above, (iii) wholesale operators and retail suppliers of liquefied petroleum gases (“LPG”), (iv) consumers of LPG for any part of consumption not covered above, (v) natural gas suppliers, and (vi) direct consumers in the market for any part of consumption not covered above.
- > **Fuels and energy supplied in transport subject to the targets.** The targets to reduce GHG emissions apply to (i) fuels used to power road vehicles and non-road mobile machinery, such as inland waterway vessels and recreational craft when not at sea, railroads, and agricultural and forestry tractors; (ii) electricity for road vehicles; and (iii) biofuels for aviation use.
- > **Calculation method and reporting obligations.** Royal Decree 235/2018 sets out the calculation method the obligated parties must use to determine the intensity of the GHG emissions of the fuels and energy supplied to assess the reduction achieved, as well as their reporting obligations.
- > **Compensation for indirect costs:** The Ministry for Industry, Trade and Tourism has approved a €65 million credit supplement to finance the scheme to compensate indirect costs linked to the greenhouse gas emission allowance trading scheme for companies in specific industrial sectors and subsectors considered exposed to a significant risk of carbon leakage.

Discount rates

- > **Extension of applicable discount rates.** RDL 6/2022 continues to protect vulnerable consumers by extending until June 30, 2022, the discount rates for vulnerable and highly vulnerable consumers set respectively at 60% and 70% of the voluntary price for small consumers.
- > **Additional measures.** The regulation also introduces several significant additional measures to strengthen social protection, e.g., by simplifying the application process for discount rates and including new beneficiaries in the scheme. Specifically, the discount rates will benefit families and members of the same household by extending its scope to all recipients of the minimum living income who have a supply contract—taking as a reference the household unit instead of the family unit. RDL 6/2022 also extends the right of beneficiaries of discount rates on electricity bills to discount rates on heating bills. Those currently benefiting from discount rates are entitled to the subsidy until it



expires. If, on that date, they still meet the requirements, it will be automatically extended for another two years. Moreover, beneficiaries applying for the discount rates under the new conditions will also be entitled to an automatic two-year renewal if they meet the necessary requirements. New applicants can submit the application for the new discount rates from March 31, 2022. Under RDL 6/2022, the reference suppliers are obliged to inform consumers about the new discount rates.

- **Financing of discount rates.** The discount rates will be financed by (i) electricity suppliers; (ii) all parties involved in the electricity supply chain, including the production, transmission, distribution and supply of electricity; and (iii) direct consumers in the electricity market, as provided in the regulations.

Installation of floating photovoltaic plants in the hydraulic public domain

- **Floating photovoltaic plants.** Within the framework of promoting renewable energies, RDL 6/2022 regulates the installation of floating photovoltaic plants, understood as electrical energy production projects implemented in floating photovoltaic installations mounted on a floating platform and physically located in the hydraulic public domain. In contrast to onshore installations, RDL 6/2022 states that these plants, among other advantages, produce a higher energy yield owing to the cooling effects of the water, they reduce evaporation and do not require significant land preparation.
- **Regulation:** Specifically, the regulatory framework applicable to the installation of these plants established in the Sixth Final Provision of RDL 6/2022, is set out in new article 77 bis of the [consolidated text of the Waters Act, approved by Royal Legislative Decree 1/2001](#). Under this precept, the installation of these plants will be granted a temporary concession for up to 25 years, including extensions.
- **Monitoring programs:** However, as floating photovoltaic systems are relatively recent, making it difficult to know the environmental impact they may cause, the regulation addresses the need to establish monitoring programs to find out more about these installations.

Measures affecting the natural gas sector

- **Greater flexibility to supply contracts:** Under Royal Decree-Law 29/2021, in certain circumstances, consumers were able to modify their contracts (change the flow rate,



lower the access tariff, and even terminate the contract), until March 31, 2022. These measures have now been extended until the quote of the daily product delivered the following day to the Virtual Balancing Point, as published by the Iberian Gas Market (MIBGAS), remains below 60 €/MWh for ten consecutive daily trading sessions, and until no later than June 30, 2022. It includes forecasts on the limit of contract amendments allowed during this time.

- **Further requirements on security reserves imposed under [RD 1716/2004](#):** The obligation imposed on those involved in the natural gas sector to store a minimum stock is set at 27.5 days of firm sales or consumption. The minimum strategic security stock equivalent to 10 days of firm sales or consumption in the previous calendar year will be kept in underground storage facilities of the basic network. As well as the strategic stock, all parties obliged to store a minimum security stock of natural gas must have, in underground storage facilities, an operating stock with a gas volume equivalent to 10 days of firm sales or consumption in the previous calendar year. Finally, users must store, at least until November 1, a volume of gas equivalent to 7.5 days of firm sales or consumption in the previous calendar year.
- **Specific rules on the use of basic underground storage.** From April 1, 2022, to March 31, 2023, the zero storage fee is applied for the directly allocated storage capacity necessary to meet the obligation imposed on users to store a minimum operating stock will be equivalent to 7.5 days of consumption or firm sales. The same zero fee (plus the premium resulting from the auction) is applied for the use of the capacity allocated in the auction of the annual product not destined to the storage of strategic or operational minimum security stocks of the system.

Renewable gas and hydrogen

- **Renewable gas supply through separate pipelines.** The supply of renewable gases by means of pipelines and auxiliary installations that are separate and, therefore, not connected to the gas system, will be considered a general interest activity, except those related to the production of renewable gases and direct lines, as defined in article 78 of [Act 34/1998, on the hydrocarbons sector](#). Likewise, separate renewable gas pipelines are declared in the public interest for the purposes of compulsory expropriation and will not need to be included in hydrocarbon planning.
- **Procedures for pipelines.** The General State Administration will be in charge of procedures for isolated pipelines if they cross more than one autonomous region. If they only cross one autonomous region, the competent authority of that region will be in



charge of these procedures. In both cases, if the maximum operating pressure is greater than 16 bar, authorization will require a mandatory report from the CNMC and a mandatory and binding report from the General Directorate of Energy Policy and Mines of the Ministry for Ecological Transition and Demographic Challenge, if within the competence of the autonomous region. Likewise, hydrogen pipelines connected to electrolyzers powered by the electricity grid will also require a report from the electricity system operator.

- **Third-party access:** Third-party access to these facilities will be negotiated based on principles of transparency, objectivity and non-discrimination to ensure a reasonable profit rate for the holder, in accordance with an efficient and well managed company, and the CNMC may establish the access criteria, if appropriate.
- **Remuneration:** These facilities will not accrue regulated remuneration and the income from negotiated access received by the holder will not have to be declared in the settlement procedure.
- **Supply:** Companies that carry out supply activities must be registered as provided for natural gas suppliers and will be subject to applicable rights and obligations of natural gas suppliers, except the obligation to store a minimum security stock for the supply of renewable gases. This activity is considered compatible with the supply of natural gas and electricity, and will be subject to accounting separation.

Storage facilities

- Storage facilities that are directly and indirectly connected to single or hybrid transmission and distribution networks will be subject to the same treatment as electricity generation facilities as regards the requirement for and processing of administrative authorizations, as well as for the purposes of their registration in the Administrative Registry of Electric Power Generation Plants (*Registro Administrativo de Instalaciones de Producción de Energía Eléctrica*).

Measures relating to grid access and release of capacity tendering procedures

- **Release of capacity at nodes reserved for tenders to boost self-consumption.** Under



article 8 of RDL 6/2022, grid access capacity can be requested and awarded at nodes on the transmission network where capacity had become available and had been blocked, pending the call for tenders for allocation. These tenders were announced in the resolution of the Secretariat of State for Energy approved on June 29, 2021, and the term to launch the procedures was to be no later than April 30, 2023. This deadline is now extended by a further two months (twelve months from the corresponding announcement). The capacity available that has been unblocked and released is, however, limited to 10% of the capacity available, a percentage that, according to the decree-law, amounts to 7 GW. For two years, the capacity released will be reserved for self-consumption facilities from renewable sources in which the consumption (the contracted power capacity in period 1) is equivalent to at least half of the facility's generation power. The capacity released in this way will be awarded in chronological order, following the rules on awarding capacity. If two years have elapsed and the capacity released has not been awarded, it may be awarded to other types of electricity generation facilities.

- **Guarantees in capacity tendering procedures.** The thirtieth final provision of RDL 6/2022 adds other provisions on tendering procedures in nodes with new or increased available capacity, making it easier for that capacity to be tendered out in different stages, provided they are all completed within 12 months from the announcement of the reserve of available capacity. The same provision improves the coordination between tendering procedures to award capacity in these nodes and grid access and release of capacity tendering procedures, obliging the projects awarded the tender to preserve the same technical characteristics when they later apply for access and connection. Article 9 refers to all types of tendering procedures to award capacity, including those launched for the award of capacity in fair transition nodes, which impose certain commitments on awardees, as well as guarantees to ensure compliance. The requirement of these guarantees is now generally ratified in the thirtieth final provision of the decree-law.
- **Loss of grid access guarantees.** Under article 9 of RDL 6/2022, any breach of the commitments resulting from the fair transition tendering procedures will result in the enforcement not only of the guarantee provided for the tender, but also that of the guarantee furnished to apply for grid access and connection.



Extension of the mechanism to reduce over-remuneration introduced under RDL 17/2021

The mechanism to reduce the profits made by power plants that produce electricity from technologies that do not emit greenhouse gases established under RDL 17/2021 is extended until June 30, 2022. The same rules and criteria in force to date will still apply, with the following amendments:

- > **PPAs:** Bilateral contracts (PPAs) are still excluded, provided they are fixed-price and have a term exceeding one year. However, from now on, energy covered at a fixed price will only be exempt when the agreed price is lower than 67 €/MWh, meaning that agreements reached after RDL 6/2022 enters into force will be affected by this mechanism for the part of the price received for energy under bilateral contracts, whether physical or financial, in excess of 67 €/MWh, and producers will have to pay the difference (although a correction coefficient is included, with an initial value of 0.9, allowing producers to keep a small percentage of that difference).
- > **Intragroup bilateral contracts:** One rule specifically affects intragroup bilateral contracts, which are now partially subject to the reduction mechanism. Specifically, in the case of intragroup bilateral contracts between producers and suppliers (or any other financial counterparty) belonging to the same vertically integrated group, the hedging price to calculate the reduction will not be the price agreed by the parties, but the selling price to the final consumer, correcting the maximum agreed price with the amount of the average supply margin determined by the CNMC. In these cases, the reduction will be applied to suppliers.

Extension of tax cuts for electricity

To mitigate the escalation of electricity prices, certain previously approved temporary tax measures have been extended. Approved tax measures and temporary extensions:

- > **Special electricity tax:** Under RDL 6/2022, the reduction of the special electricity tax from 5.11269632% to 0.5%, the term of which was due to expire on April 30, 2022, is now extended until June 30, 2022.
- > **Tax on the value of electricity generation:** The tax on the value of electricity generation has been further suspended, having been first approved under RDL 12/2021 for the third



quarter of 2021. Its scope has been extended since then by several royal decree-laws (RDL 17/2021 and RDL 29/2021), to now be extended to the second quarter of 2022 under RDL 6/2022. This temporary suspension is carried out by reducing the tax base set for 2022 by the total amount the taxpayer should receive for the production or incorporation of electricity into the electric system, measured at busbar cost, reduced (after RDL 6/2022) in the remunerations corresponding to the electricity incorporated into the system during the first two quarters of 2022. This measure also affects payments on account of the tax corresponding to the quarters specified above.

- **Value added tax ("VAT"):** The usual 21% rate has been reduced to 10% until June 30, 2022, on VAT on deliveries, imports and intra-Community acquisitions of electricity in the case of electricity supply contracts with a contracted power of up to 10 kW, and contracts entered into by the most vulnerable consumers (beneficiaries of discount rates on electricity bills and those considered highly vulnerable consumers or highly vulnerable consumers at risk of social exclusion). The temporary validity of this tax measure ended on April 30, 2022, and is extended under RDL 6/2022 until June 30, 2022.

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