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# Royal Decree-Law 17/2022: urgent measures in the field of energy

**RDL 17/2021** regulates the inclusion of cogeneration in RDL 10/2022, it creates an active demand response service, and it reduces VAT on natural gas

## Legal flash

October, 2022



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## Key aspects

- Royal Decree-Law 17/2021 (“**RDL 17/2022**”) regulates a new type of voluntary waiver of the specific remuneration scheme for cogeneration plants, slurry and olive oil sludge treatment, and its inclusion in the adjustment mechanism regulated in Royal Decree-Law 10/2022.
- Until December 31, 2022, on an exceptional and transitional basis, it provides for a VAT reduction from 21% to 5% on supplies of natural gas.
- It creates an active demand response service for electricity facilities located on the Spanish mainland through an annual auction.
- It simplifies several procedures for seeking authorization for renewable energy projects.



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## The so-called “Iberian Mechanism” is extended to cogeneration plants

- > **Cogeneration plants are included in the Iberian electricity adjustment mechanism.**  
One of the most significant amendments of RDL 17/2022 is that it extends the scope of application of the mechanism provided under Royal Decree-Law 10/2022, of May 13, establishing a temporary mechanism to reduce the price of electricity in the wholesale market (“**RDL 10/2022**”), the so-called Iberian Electricity Mechanism (the “**Mechanism**”). Cogeneration plants are included in the scope of application of the Mechanism.
- > **This measure, which the industry associations have welcomed, was foreseeable** because, as emphasized in the preamble to RDL 17/2022, the gas price situation on the energy markets together with the launch of the adjustment mechanism had led to the production stoppage of more than half of the cogeneration installed capacity in Spain, consequently resulting in a negative impact on energy-intensive industries and on the overall energy efficiency of the economy.
- > **Voluntary extension of the Mechanism. Waiver of the specific remuneration scheme.**  
Cogeneration facilities can choose to waive the specific remuneration system regulated under RD 413/2014 so that the adjustment mechanism provided under RDL 10/2022 may apply to them.
- > **Affected plants:** The measure applies to electricity production facilities located on the Spanish mainland belonging to group a.1 defined in article 2 of Royal Decree 413/2014, and to those governed by the first transitory provision of that Royal Decree that were governed by the second transitory provision of Royal Decree 661/2007.
- > **Procedure:** The facility waiving the specific remuneration scheme must inform the authority responsible for making the settlements. Once the waiver has been filed, the facility can ask the market operator and the system operator to include it in the Mechanism. The measure will be in effect between the first day of the month following the date the waiver is filed with the the authority responsible for making the settlements and the expiry date of the adjustment mechanism regulated under RDL 10/2022.
- > **Effects:** While the waiver is valid, the facilities will be included in the electricity Mechanism and, in turn, will not receive the specific remuneration. Along the same lines, they will not be required to comply with the energy efficiency conditions or with the fuel consumption limits imposed under Royal Decree 413/2014. Once the period of application of the waiver has ended, the plant will regain the right to receive the specific remuneration, effective from the first day of the month following the end date of that period.



- **Early termination:** Plants can file a request with the market operator so as not to be subject to the mechanism regulated under RDL 10/2022. They can also apply to the authority responsible for making the settlements for the early termination of the period of application of the waiver of the specific remuneration scheme. If the application is submitted at least two working days before the end of the month, the specific remuneration scheme will reapply from the first day of the following month. Otherwise, the effects will be delayed by another month.

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### Temporary measures to reduce the VAT rate applicable to intra-community deliveries, imports and acquisitions of certain fuels

- **Temporary and transitional reduction of the VAT rate:** Royal Decree-Law 11/2022, of July 25, on an exceptional and transitional basis from July 1, 2022, to December 31, 2022, reduced the VAT rate from 10% to 5% on intra-Community deliveries, imports and acquisitions of electricity, to the benefit of private consumers in certain cases.

In addition to this measure, owing to the energy crisis caused by the situation in Ukraine, RDL 17/2022 has now reduced to 5%—also on an exceptional and transitional basis—the VAT rate applicable to intra-community deliveries, imports and acquisitions of:

- natural gas,
- briquettes and pellets from biomass used as fuel in heating systems, and
- wood for firewood.

These fuels were previously subject to the general 21% VAT rate.

- **Validity:** The measure has been approved and will be effective from October 1, 2022, to December 31, 2022.

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### Active demand response service

- **Active demand response service:** RDL 17/2022 establishes the creation of an active demand response service for electricity facilities located on the Spanish mainland. Similar to the previous interruptibility service, it is devised as a specific balancing product to deal with situations in which there is a shortage of balancing energy provided by other standard manually activated services.



- > **Annual auction:** As with the interruptibility service, an online auction will be held annually to choose the providers of the new active demand response service. The auction will be managed by the system operator, Red Eléctrica de España (“REE”). Certain types of demand units (traders and direct consumers) in the market with a supply of at least 1 MW per individual consumption point (Universal Supply Point Code) can participate in the auction. Although bidders will be required to fulfill certain criteria in terms of measurement and data exchange in real time, other transitional solutions are expected to be allowed until March 31, 2023.
- > **Auctioned product:** The result of the first annual auction must be applicable from November 1, 2022. Therefore, the auction will have to be held at least seven business days and no fewer than ten days before the service provision period begins, and REE must have announced the auction and the conditions (e.g., total energy being auctioned, the periods in which it will apply, and auction date). During the auction, the authorized candidates will agree to vary (reduce) the energy consumption in blocks of at least 1 MW (specifying whether they allow for installments), during the periods in which they are so required, for up to three hours a day, in return for a price. The power offered by the group of candidates cannot be lower than 20% of the amount foreseen in the announcement. Otherwise, the power would be reduced to respect this threshold. The total auctioned amount of power cannot exceed the amount put up for auction or represent over 80% of the total amount of power offered by the bidders.
- > **Remuneration** The price paid to the chosen bidders, for their commitment to vary their energy consumption if so required, will be a marginal price, i.e., the highest of those accepted to cover the auctioned power. Also, if, when the time comes, they are required to vary the output, the energy scheme of the service provider will be reduced and the provider will be compensated for the equivalent amount of energy at the marginal price set by the service for tertiary regulation. Unlike the interruptibility service, the cost and remuneration for this new service will affect those subject to settlement in charge of the balance and those acquiring energy on the organized market.

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## Measures encouraging the processing, commissioning, and evacuation of renewable energy

- > **Justification.** RDL 17/2022 implements a number of measures to streamline the processing of administrative procedures to authorize power generation plants through renewable sources. These measures are in line with the European Commission’s *REPowerEU Plan: Joint European action for more affordable, secure and sustainable energy*, of March 8, 2022 (Toolbox 2), as well as Commission Recommendation (EU) 2022/822, of May 18 2022, on speeding up permit-granting procedures for renewable energy projects



and facilitating Power Purchase Agreements. They also follow in the footsteps of Royal Decree-Law 14/2022, of August 1, introducing measures to streamline procedures involving transmission facilities to minimize the disposal of renewable source energy.

These measures involve amending certain authorization procedures for production facilities—which means amending Royal Decree 1955/2000—as well as the prior registration in the administrative registry of power plants subject to a special regime RAIPRE)—requiring the subsequent amendment of Royal Decree 413/2014. These amendments can be summarized as follows:

- **Amendment of Royal Decree-Law 1955/2000:**
  - (a) **Administrative authorizations for construction are easier to obtain.** Energy generating plants that have obtained a prior administrative authorization for construction will not need to obtain a new one if the alteration to their installed capacity, once the modifications have been made, does not result in a change exceeding 15% (previously 10%) of the the capacity specified in the original project.
  - (b) **Broadening of the concept of “non-substantial amendment.”** Non-substantial amendments are those that do not imply any modification of the basic technical characteristics of more than 10% (previously 5%) of the plant's capacity.
  - (c) **Greater flexibility is granted to the Spanish Markets and Competition Commission’s reports** to grant prior administrative authorizations to renewable plants if three conditions are met:
    - (i) The scope of the project is clearly defined with respect to the assessment of the legal, technical and economic capacity of the applicant company.
    - (ii) The issuing period is set at fifteen days, and the lack of a report will be attributed a positive meaning.
    - (iii) It contemplates the possibility of “summarized reports”—compiled “without carrying out any detailed analysis”—in certain cases.
  - (d) **The period for “impact reports” is reduced.** The period for consulting the different administrations, bodies or public service or general interest service companies affected by the processing of execution projects is reduced, provided that they are not processed at the same time as the specific declaration of public utility or with a modification of the prior administrative authorization.
- **Amendment of Royal Decree 413/2014:** Royal Decree 143/2014 is amended to: (i) allow for certain slight discrepancies in relation to the power installed in the different



documents needed to carry out the registration in the Spanish Administrative Register of Electricity Production Facilities; and (ii) establish the admissible load levels in the transmission network in accordance with the criteria set out in Annex I of RDL 17/2022, so that the seasonal levels can become monthly, daily and even hourly levels depending on the environmental conditions and on the networks themselves.

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## Surplus in the electricity sector

- **Allocation of the electricity sector surplus in 2021:** exceptionally, if at the close of the 2021 financial year a surplus of revenue is generated in the electricity system, the whole of this surplus will be applied to cover temporary imbalances and transitory deviations between revenue and costs in the 2022 financial year.

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## Entry into force

- RDL 17/2010 came into force on September 22, 2022.

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