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Key energy measures contained in Royal Decree-law 5/2023

The BOE of 29 June 2023 has published Royal Decree-law 5/2023, of 28 June, adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposing EU Directives on structural changes in commercial companies and reconciliation of family and professional life for parents and carers; and the implementation and enforcement of European Union law ("RDL 5/2023").

The purpose of this Legal Briefing is to analyse the key energy measures contained in RDL 5/2023.

1. Measures for renewable generation facilities

I. Extension of the deadline for the accreditation of the obtaining of the Administrative Construction Authorisation ("ACA")

As part of what it refers to as the "adaptation of administrative milestones", Article 185 of RDL 5/2023 amends, on an exceptional basis, the deadline for the accreditation of the obtaining of the ACA provided for in Royal Decree-law 23/2020, of 23 June, approving measures in the energy sector and other areas for economic recovery ("RDL 23/2020")¹.

Specifically, it provides that holders of access permits for electricity generation and storage facilities who have obtained such permits between 1 January 2018 and before the entry into force of RDL 5/2023 (i.e., 30 June 2023), must achieve the administrative milestone of having obtained the ACA within a period of no more than 43 months.

This period will begin to run from:

- a) 25 June 2020, for electricity generation facilities that obtained access permits between 1 January 2018 and 24 June 2020. In these cases, the ACA must be obtained on or before 25 January 2024.
- b) From the date of obtaining the permits, for those access permit holders who obtained their permits between 25 June 2020 and 30 June 2023 (i.e., the date of entry into force of RDL 5/2023).

Therefore, the "adaptation" of the administrative milestones implemented by RDL 5/2023:

- Involves an exceptional 6-month extension of the deadline for the accreditation of the fourth administrative milestone relating to the obtaining of the ACA, as opposed to the general deadline of 37 months contained in section 1.b)(4) of RDL 23/2020, which will continue to apply for those facilities whose access permits are granted after 30 June 2023.
- Does not involve an extension of the fifth and final administrative milestone which consists of obtaining the definitive operating permit ("DOP"), for the accreditation of which the maximum period

¹ It should be noted that, although the title of Article 185 of RDL 5/2023 refers to the adaptation of administrative milestones to the "situation of the supply chain", the Explanatory Memorandum of the regulation introduces a different justification, more closely linked to the deadlines necessary to carry out the administrative processing of projects, justifying the extension of deadlines as a mechanism to allow "orderly processing, ensuring the participation of the territory in the procedure and that both the conditions established in the EIS and the prior administrative authorisation and the new submissions that may arise in the process are incorporated into the execution projects in terms that maximise the general interest".

of 5 years provided for in Article 1 of RDL 23/2020² and in Article 33 of Law 24/2013, of 26 December, on the Electricity Sector ("LSE") is maintained.

II. Facilities with regulated remuneration (specific remuneration regime)

- **Updating of remuneration parameters:** Article 187 of RDL 5/2023 includes the following provisions relating to the updating of the remuneration parameters of the specific remuneration regime ("SRR") for the current regulatory half-period between 1 January 2023 and 31 December 2025 and which replace the prices estimated under Article 22 of RD 413/2014³:
 - c) The **estimated electricity market price for 2023 is €109.31/MWh**, and has been calculated using the arithmetic mean of the daily market prices from 1 January to 31 May 2023, the arithmetic mean of the quotes of the futures contracts for delivery in June traded on the electricity futures market organised by OMIP from 1 January to 31 May 2023 and the arithmetic mean of the quotes of the futures contracts for delivery in the third and fourth quarters of 2023 traded on the electricity futures market organised by OMIP from 1 January to 31 May 2023.
 - d) The **estimated electricity market price for 2024 is €108.86/MWh and for 2025 the estimated market price is €89.37/MWh**, calculated as the arithmetic mean of the quotes of the corresponding annual futures contracts traded on the electricity futures market organised by OMIP from 1 January to 31 May 2023⁴. For 2026 and subsequent years, the value obtained in 2025 will be used.
 - e) For the calculation of the adjustment value for deviations in the market price for 2023 (*Vajdm*) that will be applied in the updating of the remuneration parameters for the regulatory half-period starting on 1 January 2026, the weighted average value of the basket of electricity market prices for 2023 will be the minimum value between this value, as defined in Article 22 of RD 413/2014, and the average annual price of the daily and intraday market in 2023.

As the Explanatory Memorandum of the regulation states, "*this is an exceptional and specific adaptation of Article 22.1 of RD 413/2014 for the estimate of the market price more appropriate to market expectations*".

- Update of the RO: Article 188 of RDL 5/2023 contains the provisions relating to the update of the operating remuneration ("RO") for standard facilities whose operating costs depend essentially on the price of fuel for the first and second half of 2023. Specifically, certain amendments are introduced relating to the estimates of fuel prices, which replace the prices estimated under RDL 20/2022⁵.

2. Regulation of Energy Communities

I. Renewable Energy Communities

Renewable energy communities were initially defined in Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable

² As is generally known, this period is calculated from 25 June 2020, for electricity generation facilities that obtained access permits between 1 January 2018 and 24 June 2020, and from the date on which the permits were obtained for those holders of access permits that had obtained them since 25 June 2020.

³ Royal Decree 413/2014, of 6 June, which governs the activity of electricity production from renewable energy sources, cogeneration and waste.

⁴ It should be noted that at the time of publication of RDL 5/2023, the Order updating the remuneration parameters of the standard facilities applicable to certain electricity production facilities using renewable energy sources, cogeneration and waste is pending approval, for the purposes of its application to the regulatory half-period starting on 1 January 2023. Article 3 of the proposed Order submitted to the public information process establishes that, under the provisions of Article 22.1 of RD. 413/2014, the estimated market price values for 2023, 2024 and 2025 are approved, which are respectively €207.88/MWh, €129.66/MWh and €78.19/MWh. These market price estimates should therefore be replaced by those provided for in Article 187 of RDL 5/2023, which are lower for 2024 and 2026.

⁵ Royal Decree-law 20/2022, of 27 December, on measures in response to the economic and social consequences of the war in Ukraine and to support the reconstruction of the island of La Palma and other situations of vulnerability.

sources and introduced into our legal system through RDL 23/2020, which included them in Article 6 of the LSE as one of the components of the electricity system⁶.

Once the Renewable Energy Communities are incorporated as a component of the electricity system, RDL 5/2023 will add Article 12.bis to the LSE which establishes the regulatory principles of this new community and, in particular, its rights and obligations, with the aim of completing its implementation⁷.

II. Citizens Energy Communities

In this case, RDL 5/2023 introduces a new subparagraph to Article 6 of the LSE to include the Citizens Energy Communities as a new element of the electricity system.

Accordingly, the definition of Citizens Energy Communities is introduced to our legal system as "*legal entities based on voluntary and open participation, whose effective control is exercised by partners or members who are natural persons, local authorities, including municipalities, or small companies, and whose main objective is to offer environmental, economic or social benefits to their members, partners or the locality in which they carry out their activity, rather than to generate financial profitability*".

In addition, Article 12 ter has been added to the LSE which sets out the regulatory principles to which the regulatory development of these communities must adhere.

3. Measures for vehicle charging stations

Article 183 of RDL 5/2023 introduces certain additional measures to promote electric mobility through the deployment of electric vehicle charging points.

Thus, in order to simplify the administrative processing of these charging points, the power threshold for charging infrastructures that must be authorised by the General State Administration is raised from 250 kW to 3MW, thereby amending the LSE and adapting Royal Decree 184/2022, of 8 March, which governs the provision of electric vehicle charging services.

As the Explanatory Memorandum of the regulation states, "*this increase in the power threshold seeks to find the point of balance between the greater administrative facilities for the deployment of recharging points when these do not have to be subject to the authorisation regime provided for in Article 53 of Law 24/2013, of 26 December, on the electricity sector, and the declaration of public utility that continues to be essential when projects acquire a certain scale, with this 3 MW threshold being the optimum meeting point between these two realities*".

4. Other measures

- (i) A provision has been made for the immediate allocation of the Electricity Sector's 2022 financial year surplus to the 2023 financial year to finance measures aimed at mitigating the effects of the war in Ukraine.
- (ii) The support mechanism to guarantee the competitiveness of the electro-intensive industry, contained in Article 1 of Royal Decree-law 6/2022 of 29 March, has been extended until 31 December 2023.

⁶ Specifically, the following definition is included in Article 6.1.j) of the LSE: "*Renewable energy communities, which are legal entities based on open and voluntary participation, autonomous and effectively controlled by partners or members that are located in the vicinity of renewable energy projects owned and developed by such legal entities, whose partners or members are natural persons, SMEs or local authorities, including municipalities and whose primary purpose is to provide environmental, economic or social benefits to their partners or members or to the local areas where they operate, rather than financial gain*".

⁷ The third paragraph of Article 12a is particularly relevant, which states that renewable energy communities have the right to:

- a) produce, consume, store and sell renewable energies, in particular through renewable electricity purchase contracts;
- b) share, within the renewable energy community, the renewable energy produced by the production units owned by the renewable energy community, provided that the other requirements set out in this article are met and that the rights and obligations of the members of the renewable energy community as consumers are maintained;
- c) access all appropriate energy markets both directly and through aggregation on a non-discriminatory basis.

- (iii) Article 19 of Royal Decree-law 11/2022 of 25 June has been amended, extending until 31 December 2023 the temporary scope of the limit on the maximum selling price of bottled liquefied petroleum gases ("LPG").
- (iv) Article 17 of Royal Decree-law 6/2022, of 29 March, has been amended in order to facilitate and streamline the management of the rebate on the price of certain energy products that took place in 2022.

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