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## Approval of Royal Decree 962/2024, of 24 September, regulating the production of electricity from renewable sources at offshore facilities.

On 25 September, Royal Decree 962/2024 of 24 September, regulating the production of electricity from renewable sources at offshore facilities (“**RD 962/2024**”) was published in the Official State Gazette.

RD 962/2024, which repeals Royal Decree 1028/2007, of 20 July, establishing the administrative procedure for processing applications for authorisation of electricity generation facilities in the territorial sea, aims to regulate the production of electricity from renewable sources at offshore facilities. A distinction is made between facilities that must participate in a competitive process to begin their administrative procedures and those that, due to their innovative nature or location in Ports of General State Interest, are exempt from such processes.

The publication of RD 962/2024 culminates the process initiated in February of this year by the Ministry for Ecological Transition and the Demographic Challenge (using the Spanish acronym, the “**MITERD**”) with the opening of the public information process for the draft Royal Decree regulating the production of electricity at offshore facilities (the “**Draft RD**”), which we analysed in a previous [Legal Briefing](#) (available in Spanish). The legislation that was ultimately approved has some differences which will be addressed in this Briefing.

It is important to note that the timing of the approval and publication of RD 962/2024 coincides with that of Royal Decree 986/2024, of 24 September, which updates the National Integrated Energy and Climate Plan 2023-2030 and aims to achieve a target of 3 GW of offshore wind energy by 2030.

RD 962/2024 is based on the following pillars:

- i) the regulation of a competitive tendering procedure, required prior to the processing of the corresponding administrative authorisations;
- ii) the need to follow the administrative authorisation procedure applicable to electricity production facilities, with certain special features; and
- iii) the remuneration regime for these facilities, for which it refers to the economic regime for renewable energy (using the Spanish acronym, the “**REER**”) regulated in Royal Decree 960/2020 of 3 November, regulating the economic regime for renewable energy for electricity generation facilities (“**RD 960/2023**”), again with some special features.

This Legal Briefing analyses the main aspects of RD 962/2024.

### I. Competitive tendering procedure

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It is first worth noting that the competitive tendering procedure will be applicable to offshore renewable facilities located in the sea (including the seabed, subsoil and natural resources), except for those that are considered innovative facilities or facilities located in the internal and external port waters of Ports of General State Interest, which, as noted, may begin their administrative processing without needing to participate in the competitive tendering procedure.

In view of the above, RD 962/2024 establishes that through a competitive tendering procedure, which is a necessary condition for the subsequent processing of the authorisation of offshore renewable facilities, the

following will be granted simultaneously: (i) the **REER**; (ii) the **reservation of access capacity** at a specific node of the transmission grid; and (iii) **priority in the granting of the concession** for the occupation of the maritime-terrestrial public domain. However, these rights are conditional upon registration in the REER's electronic register with operational status, which differs from the initial proposal of the Draft RD, which made these rights conditional upon obtaining access and connection permits and the authorisations required for electricity generation facilities.

The competitive tendering procedure consists of three phases:

- i) Approval of the bases of the competitive tendering procedure by Ministerial Order of the MITERD: the Order establishing the bases for the competitive tendering procedure will regulate, among others, the following aspects: (a) the maximum power quota to be awarded; (b) the geographical areas in which the generating plants will be located, which must be included in the areas of high potential for the development of offshore wind energy defined in the maritime spatial plans ("*planes de ordenación del espacio marítimo*"); (c) the access capacity reserved for each area and the specific connection nodes of the transmission grid; (d) the technologies, characteristics and requirements to be met by both promoters and awarded facilities; (e) the term of the concession of the maritime-terrestrial public domain; and (f) the amount of the guarantees to be submitted for registration in the REER electronic register with pre-assignment status.

In addition, the Order establishing the bases for the competitive tendering procedure should regulate the details of the public dialogue phase and determine the aspects, parameters or criteria that may be subject to this public dialogue phase, which may, among others, be those relating to the areas in which the facilities will be located, the power quota or certain issues relating to the design and construction of the projects and the requirements placed on the promoters.

Likewise, RD 962/2024 establishes that the Order establishing the bases for the competitive tendering procedure should stipulate:

- » Requirements to be met by the participants: in order to ensure the **highest rate of implementation of the projects**, and without prejudice to the need to deposit the guarantee, the Order establishing the bases for the competitive tendering procedure may require participants to meet requirements relating to their legal structure, technical solvency, experience, size or other economic factors.
  - » Requirements to be met by the facilities: the Order establishing the bases for the competitive tendering procedure may establish a minimum score depending on the degree of compliance with certain pre-established **objective requirements**, such as design, environmental impact of the project, socio-economic impact, possibilities of dismantling the facility, as well as its capacity to contribute to the quality and security of electricity supply and its impact on national defence and the integrity and adequate conservation of the maritime-terrestrial public domain.
- ii) Public dialogue phase: which includes the participation of stakeholders affected by offshore renewable facilities in the competitive tendering procedure in order to promote the industrial development of coastal regions close to the facilities and coexistence with other uses of the sea. Unlike the Draft RD, which proposed the inclusion of an optional public-private dialogue phase, RD 962/2024 makes this public dialogue phase **compulsory**, albeit limited to the terms established in the Order establishing the bases for the competitive tendering procedure.
  - iii) Call for applications by Ministerial Order of the MITERD: The Order will establish, among other matters, (a) the predicted timetable for the competitive tendering procedure; (b) the information and documentation to be included in the application; (c) a maximum offer price (reserve price) and, on an optional basis, a minimum financial offer price (risk price); as well as (d) the aspects of the Order establishing the bases for the competitive tendering procedure that have been subject to modification after the public dialogue phase.

The application to participate in the competitive tendering procedure must be addressed to the Directorate General for Energy Policy and Mines (using the Spanish acronym, the "**DGPEM**") within the period and in the manner determined by the Order establishing the bases for the competitive tendering procedure, and must be accompanied by the receipt from the Government Depository certifying that the financial guarantee regulated in RD 962/2024 has been deposited. Once the applications have been assessed, the DGPEM will publish the

**provisional lists of eligible and unsuccessful applications**, providing justification for its decisions. This will allow for challenges to exclusions to be submitted within 10 working days of the publication date.

After this step, a **definitive list of eligible applications** will be published, which will go on to the evaluation phase by a Technical Evaluation Committee, which will also include those that were excluded. Again, the possibility of submitting challenges will be offered within 10 working days from the date of publication of the list, also in relation to those applications that have been excluded.

Once the eligible applications have been assessed, the Technical Assessment Committee will submit a list to the DGPEM assigning a provisional score to each of the applications in accordance with the assessment criteria, on the basis of which the DGPEM will approve the list of eligible applications for the assessment phase with the provisional score, which will be published in the Official State Gazette. Once the provisional score list is published, a third period of 10 days will be granted for the presentation of challenges, after which the Technical Evaluation Committee will submit to the DGPEM a **definitive score list of the applications**.

The DGPEM will resolve the competitive tendering procedure and the registration of the successful bidders in the REER electronic register with pre-assignment status. The Award Resolution, against which an appeal may be lodged with the Secretary of State for Energy, will also include: (i) the identification of the successful bidder; (ii) the capacity awarded to each participant; (iii) the award price (which will be that of the economic offer submitted); (iv) a list with the definitive score of all eligible applications; (v) the reserved access capacity and the specific node that is reserved.

It is worth noting that, although there is a possibility of including some **non-economic criteria** among the **awarding criteria** (as long as they are appropriate for the aims pursued), these may not exceed 30% of the weighting, so that the application obtaining the highest score in the procedure on the basis of mainly economic criteria will be awarded the contract.

## II. Administrative procedures and their special features in the framework of the Draft RD

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RD 962/2024 establishes that the authorisation of offshore renewable facilities will be governed by Title VII of Royal Decree 1955/2000 of 1 December, regulating the activities of transmission, distribution, commercialisation, supply and authorisation procedures for electricity facilities ("**RD 1955/2000**"), while the processing of the concession for the occupation of the maritime-terrestrial public domain and the administrative procedures relating to the REER electronic register will be governed by the corresponding applicable regulations. It should be borne in mind that, in order to be able to start the processing of authorisations, concessions and registration with the REER, participants must have previously been a successful bidder in the competitive tendering procedure, unless it is an innovative offshore renewable facility or it is located in Ports of General State Interest.

In this regard, it should be mentioned that RD 962/2024 rejects the proposal of the Draft RD, which consisted of combining the prior administrative authorisation of the facility, its environmental impact assessment and the concession of the maritime-terrestrial public domain in a single 30-day public information procedure.

Another change with respect to the text of the Draft RD is the regulation of the **guarantees required in the context of the competitive tendering procedure**. In this respect, RD 962/2024 provides for an exemption from presenting the grid bonds foreseen in Article 23 of Royal Decree 1183/2020, of 29 December, on access and connection to the electricity transmission and distribution grids ("**RD 1183/2020**") and in Article 124 of RD 1955/2000, with the deposit of the guarantee for registration in the REER electronic register with pre-assignment status serving the same purpose, provided that the following conditions are met:

- i) A copy of the proof of provision of the financial guarantee for entry in the electronic register of the REER with pre-assignment status is submitted to the competent body; and
- ii) This guarantee remains deposited at least until the definitive operating permit for the offshore renewable facility is obtained.

In addition, RD 962/2024 states that the guarantee for registration in the electronic register of the REER with pre-assignment status will be taken into account as part of the definitive deposit required in the processing of the

concession for occupation of the maritime-terrestrial public domain. According to the explanatory memorandum of RD 962/2024, this new regulation consolidates previously redundant guarantees.

### III. Economic regime for renewable energy: special features for offshore facilities

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With regard to the REER, RD 962/2024 refers to the auction system established in Chapter III of RD 960/2020, expressly regulating that the specific remuneration of each facility receiving the REER will be obtained on the basis of (i) its award price, (ii) the remuneration parameters of the technology to which it corresponds, (iii) the characteristics of each facility and (iv) its participation in the electricity market.

The Order establishing the bases for the competitive tendering procedure should define the **remuneration parameters**, which must include (without prejudice to their modification in the public-private dialogue phase, if appropriate) at least the following: (i) the date of availability of the facility and, where applicable, the circumstances for granting extensions; (ii) the starting date of the maximum delivery period; (iii) the maximum delivery period; (iv) the minimum and maximum number of equivalent annual operating hours; (v) the market adjustment percentage; and (vi) the existence of intermediate control milestones and their penalties.

Contrary to the Draft RD, RD 962/2024 establishes that the facilities awarded in the competitive tendering procedure are to be declared electricity infrastructures of general interest for the purposes of calculating the fee for occupation of the maritime-terrestrial public domain, clarifying that, when the occupation takes place in the territorial sea, these facilities will be considered to be for the exploitation of energy resources in accordance with the provisions of Law 22/1988, of 28 July, on Coasts.

### IV. Access and connection to grids according to RD 962/2024

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With regard to the allocation of access capacity, RD 962/2024 establishes that the reservation of access capacity at a specific node of the transmission grid that is granted to successful bidders in the competitive tendering procedure will not grant either the right of access or the right of connection to the electricity grid, so successful bidders must apply for access and connection permits on the basis of RD 1183/2020, although in this case the time priority criterion will not be applicable. For this purpose, account should be taken of the provisions of the Order establishing the bases for the competitive tendering procedure, which may include a maximum time limit for the successful bidders in these procedures to submit the application for the permits and the consequences of failing to comply with the time limit.

As indicated above, applicants for access do not need to provide a new guarantee, provided that the receipt of the guarantee provided for registration in the REER electronic register with pre-assignment status is submitted and that this guarantee is maintained until the final operating authorisation is obtained.

In addition, RD 962/2024 empowers the DGPEM to use the nodes reserved for tendering by resolution of the Secretary of State for Energy, based on Chapter V of RD 1183/2020, to receive energy generated by offshore renewable facilities.

### V. Other relevant aspects regulated by RD 962/2024

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#### 1. Change of ownership

RD 962/2024 provides for prior authorisation by the DGPEM in cases where there is a change in the ownership of rights attributed by the competitive tendering procedure (i.e., the REER, the capacity reserve and priority in the awarding of concessions in the maritime-terrestrial public domain).

#### 2. Exceptions to the competitive tendering procedure

RD 962/2024 exempts two types of facilities from the need to undergo the competitive tendering procedure:

- i) Innovative offshore renewable facilities. Their innovative nature must be demonstrated by means of reports from the Ministry of Science, Innovation and Universities and the Institute for the Diversification and Saving of Energy, and applies to two types of facilities:
  - 1) offshore wind facilities with an installed capacity not exceeding 50 MW; and
  - 2) offshore non-wind renewable facilities with an installed capacity not exceeding 20 MW.
- ii) Facilities located in the internal and external port waters of the Ports of General State Interest.

### 3. Extension of the final date for the availability of the facility

RD 962/2024 foresees that the Order establishing the bases for the competitive tendering procedure may regulate situations in which an extension of the deadline for the availability of the facility and, where appropriate, the date of expulsion, could be granted, although in no case may the extension resolution extend the deadline for the availability of the facility beyond the date of obtaining the definitive administrative authorisation for operation regulated in Article 1 of Royal Decree-law 23/2020<sup>1</sup>.

### 4. Withdrawal of the promoter and failure to register in the REER electronic register

The withdrawal of the successful bidder from the project will lead to the following: (i) cancellation for failing to register in the REER electronic register; (ii) enforcement of the guarantee, unless the withdrawal was due to a report or resolution of an administration that prevented construction and is requested by the promoter; (iii) waiver of the concession of the maritime-terrestrial public domain; (iv) the obligation to proceed with the dismantling of the works at the promoter's expense; and (v) the immediate expiry of the access and connection permits granted.

In this regard, cancellation for failing to register in the REER electronic register with pre-assignment status will also lead to the immediate expiry of the access and connection permits granted and the revocation of the priority in the granting of the concession of the maritime-terrestrial public domain (and, where appropriate, its extinction). Unlike in cases of withdrawal by the promoter, RD 962/2024 does not expressly mention that cancellation due to non-compliance implies the enforcement of the guarantee.

### 5. Modification of the awarded project

Provision is made for the possibility of modifying, in exceptional cases and for duly justified reasons, certain aspects of the awarded project, subject to the prior approval of the Secretary of State for Energy (e.g. if the modifications do not result in the emergence of a different successful bidder in the competitive tendering procedure, do not entail an increase in the price awarded or if the electricity generating plant can be considered to be the same in accordance with Annex II of RD 1955/200.).

### 6. Procedure for granting authorisations prior to RD 962/2024

RD 962/2024 terminates the procedures initiated following applications for administrative authorisation of offshore wind power facilities submitted under Royal Decree 1028/2007, of 20 July, which establishes the administrative procedure for processing applications for authorisation of electricity generation facilities in the territorial sea, with the exception of applications for wind power facilities with a capacity not exceeding 50 MW or for facilities using technology other than wind power, which may continue to be processed.

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<sup>1</sup> Under Article 1.1 of Royal Decree-law 23/2020, as amended by Article 29 of Royal Decree-law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of the drought, the extension of the period for obtaining the definitive administrative authorisation for the operation of offshore wind technology facilities may not exceed nine years from the date of obtaining the access and connection permit, as is the case for pumped-storage hydro technology facilities.

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