



C/M/S/

Law . Tax

Regulation of auctions and the  
Economic Regime for Renewable  
Energy after the publication of  
the call to the first auction by  
Resolution dated 10 December  
2020

CMS Spain

December 2020

# Regulation of auctions and the Economic Regime of Renewable Energy after the publication for the call to the first auction by Resolution dated 10 December 2020

The recent energy policy in Spain is aimed at the adoption of regulatory measures to achieve the decarbonisation of its economy and to ensure compliance with the obligation to reduce greenhouse gas emissions, in order to achieve the so-called "climate neutrality".

The current government has submitted the National Integrated Energy and Climate Plan ("NIECP") 2021-2030 to Brussels, which aims at a 100% renewable electricity system by 2050<sup>1</sup>. The evolution of the installed power capacity foreseen by the NIECP is as follows:

Evolution of the installed power of electrical energy (MW)				
Target Scenario Generation Park (MW)				
Year	2015	2020*	2025*	2030*
Wind (also marine)	22.925	28.033	40.633	50.333
Solar photovoltaic	4.854	9.071	21.713	39.181
S. thermoelectric	2.300	2.303	4.803	7.303
Hydraulics	14.104	14.109	14.359	14.609
Mixed Pumping	2.687	2.687	2.687	2.687
Pure Pumping	3.337	3.337	4.212	6.837
Biogas	223	211	241	241
Other renewables	0	0	40	80
Biomass	677	613	815	1.408
Coal	11.311	7.897	2.165	0
Combined cycle	26.612	26.612	26.612	26.612
Cogeneration	6.143	5.239	4.373	3.670
Fuel and fuel/gas	3.708	3.708	2.781	1.854
Waste and others	893	610	470	341
Nuclear	7.399	7.399	7.399	3.181
Storage	0	0	500	2.500
<b>Total</b>	<b>107.173</b>	<b>111.829</b>	<b>133.802</b>	<b>160.837</b>

\*Data for 2020, 2025 and 2030 are Target Scenario estimates from the updated draft of the NIECP.

Thus a total installed power in the electricity sector of 160,837 MW (105,100 at present) is foreseen by 2030, of which 50,333 will be wind energy, 39,181 solar photovoltaic, 26,612 gas combined cycle plants, 17,296 hydraulic and mixed pumping and 7,303 solar thermoelectric.

59 GW of renewable power and 6 GW of storage (3.5 GW of pumping and 2.5 GW of batteries) are expected to be put into operation. Therefore, very ambitious targets are therefore set which will take into account the maintenance of security and guarantee of supply, the technological evolution and development of networks, where international interconnections will have a significant influence.

<sup>1</sup>The recent agreement reached by the European Union to raise the objective for carbon emission reductions from 40% to 55% is important as it means that national objectives will need to be revised.

The private initiative for the development of new renewable installations has been highlighted by the existence of access permits for around 100GW requested and granted by network managers. All this after the reduction of 40GW as a result of the application of the rules included in the Royal Decree - law 23/2020, 23 June, which introduced energy and other measures for economic recovery.

However, in order to further promote this private initiative which is leading to the development of multiple projects (which also have to reach some milestones which if not met involve the loss of access permits and, where appropriate, the enforcement of the guarantee deposited), the following mechanisms have been introduced:

- New auctions (object of analysis of this note).
- Grants for investment in renewable energy financed by the European Regional Development Fund (*Fondo Europeo de Desarrollo Regional*) and implemented by the Institute for Energy Diversification and Saving (*Instituto para Diversificación y Ahorro de la Energía*).
- Public guarantees for medium and long-term electricity supply agreements (PPAs).

We refer to the auction system for the promotion of renewable energy below.

### **The Specific Remuneration Regime and the 2016 and 2017 auctions**

The regulation of renewable technologies and the implementation of remuneration systems has led to the further development of the renewable energy sector in Spain. As a result of Act 54/1997, of 27 November, on the Electricity Sector, the economic regimes introduced led to a strong increase in wind power installations and thus contributed to the objectives of the Plan for the Promotion of Renewable Energy 2000-2010.

The subsequent enactment of Royal Decree 661/2007 of 25 May, which regulates the production of electricity under the special regime, allowed for the construction of small-scale photovoltaic installations with a total capacity of 4,000 MW. Investors were guaranteed a reasonable rate of return on their investments based on the remuneration of the energy produced at a fixed price (*feed in tariff*).

Subsequently, an important regulatory change took place, which was implemented by means of Royal Decree-law 9/2013 of July 12, adopting urgent measures to guarantee the financial stability of the electrical system ("Royal Decree Law 9/2013"), and Act 24/2013 of December 26, in the Electricity Sector ("ESA 2013").

Therefore, the specific remuneration regime is maintained despite the new legislation, though the new installations resulting from the auction process will be subject to a different remuneration system.

In addition, the new regulation differs from the one which applied to the auctions 2016 and 2017, in which 9,300MW of renewable capacity were awarded, mainly to wind and photovoltaic installations. These installations came into operation before January 1, 2020. Under this regime, these installations will only receive income from the network when the price obtained from the sale of electricity on the market is lower than the floor price offered in the auction (the return on the investment offered was zero). In addition, the updating of their remuneration is carried out in accordance with the provisions of Royal Decree 413/2014, of 6 June, which regulates the activity of electricity production from renewable energy sources, cogeneration and waste<sup>2</sup>.

---

<sup>2</sup>The specific remuneration system for the installations awarded in the last auctions held was established by Articles 3 to 8 of Order ETU/315/2017, of 6 April, which regulates the procedure for assigning the specific remuneration system in the call for tenders for new installations for the production of electricity from renewable sources, called under Royal Decree 359/2017, of 31 March, and approves the remuneration parameters to which Order ETU/615/2017, of 27 June, also refers.

The auctions were held using the closed envelope method with a marginal system, i.e., the percentage reduction applicable to each bid that was awarded was the percentage reduction of the last matched bid. The bidders in the auction could submit bids relating to the percentage of reduction of the standard value of the initial investment of the reference standard installation, in accordance with the rules determined by the resolution of the invitation. As a result of the auction, the power awarded to each bidder for each technology was obtained, as well as the percentage of reduction of the standard value of the initial investment of the reference standard installation.

The remuneration parameters of the standard installation were calculated based on the parameters of the standard reference installations and on the result of the auction held in accordance with the provisions of the order regulating the corresponding call. From the latter value and the rest of the remuneration parameters of the standard installations, the investment remuneration of the standard installation was obtained by applying the remuneration methodology determined by Royal Decree 413/2014.

## The new economic regime for renewable energies

Royal Decree-law 23/2020, of 23 June<sup>3</sup>, on energy measures for economic recovery, has established the regulatory basis for the new remuneration framework for the generation of electricity from renewable sources through an auction system. It is based on the long-term recognition of a fixed price for the energy produced.

Therefore, this is an additional remuneration regime to that already provided for in Article 14.7 of the ESA 2013, which will be granted through competitive bidding procedures at which the electrical energy, the installed power capacity or a combination of both are auctioned. The variable on which the tenders will be based is the remuneration price of said energy.

This remuneration regime, which must be oriented towards cost efficiency, makes a distinction between different generation technologies including technical characteristics, size, management levels, location, technological maturity and others, all in line with the decarbonisation of the economy.

Royal Decree-law 23/2020 envisages the possibility of excluding small-scale installations and demonstration projects from this competitive procedure.

As a result, this norm has legally foreseen the possibility of using different criteria for the auction, which may be specified in future regulations.

In this sense, the following regulations have been passed developing Royal Decree-law 23/2020:

- Royal Decree 960/2020, of 3 November, which regulates the economic regime for renewable energy for electricity production installations ("RD 960/2020").
- Order TED/1161/2020, of 4 December, regulating the first auction mechanism for the granting of the economic regime for renewable energy and establishing the indicative calendar for the period 2020-2025 ("Order 1161/2020").
- Resolution of 10 December 2020, issued by the Secretary of State for Energy, in which the first call to auction was announced, to grant an economic regime for renewable energy within the framework of what was outlined in Order TED/1161/2020, of 4 December (Resolution of the first auction).

Therefore, each auction requires regulatory implementation<sup>4</sup>, which in this case has already happened with the publication in the Spanish Official Gazette of 12 December 2020, which contained the resolution from the Secretary of State for Energy calling the first auction.

## Auction Calendar

Order 1161/2020 has established an indicative calendar for the allocation of the Economic Regime for Renewable Energy ("ERRE") for the period 2020-2025, including indicative deadlines, frequency of calls, expected capacity and technologies.

---

<sup>3</sup>Article 2 of the Royal Decree - law 23/2020, adds a paragraph 7 bis to Article 14 of Act 24/2013 on the Electricity Sector, provides for the regulation of another remuneration framework for the generation of electricity from renewable sources.

<sup>4</sup>In accordance with article 6 of the ORDER 1161/2020, the resolution calling the auction sets out the following points:

- a) The date of the auction and its calendar.
- b) The quota of the product to be auctioned and, if applicable, minimum reserves.
- c) Detailed specifications and forms to be filled in to participate in the auction.
- d) The information and documents to be included in the application to participate in the auction.
- e) The deadline for the installation's availability.
- f) The date of expulsion from the ERRE.
- g) The maximum delivery period
- h) Start date for the maximum delivery period
- i) Reservation price.
- j) Risk price.
- k) The maximum size of an indivisible section of a bid.
- l) Percentage of excess quota in the matching process.

Technology/year	Installed Capacity Amounts					
	2020	2021	2022	2023	2024	2025
Wind	1.000	2.500	4.000	5.500	7.000	8.500
Photovoltaic	1.000	2.800	4.600	6.400	8.200	10.000
Solar thermoelectric		200	200	400	400	600
Biomass		140	140	260	260	380
Others (biogas, hydraulics, tidal power, etc.)		20	20	40	40	60

For biomass and solar thermal technologies, auctions are planned every two years, accumulating the annual objectives. Likewise, it will be possible to call for auctions for renewable installations made up of one or several technologies (hybridisation) allowing for storage as long as this is used to manage the energy produced by the installations.

The Resolution of the first auction sets out a production quota of 3,000 MW of installed power capacity, which includes two minimum production reserves, one of 1,000 MW intended for photovoltaic technologies and another 1,000 MW intended for onshore wind energy technology in line with the approved indicative calendar.

Further auctions will be called throughout 2021 in line with the indicative calendar outlined in Order 1161/2020. In order to implement this, the Resolution of the first auction approved the following calendar:

Event	Date and time
Opening of the delivery deadline for submission of documentation for pre-qualification and qualification	15/12/2020, 13:00
Deadline for submission of documentation for qualification and prequalification	19/01/2021, 13:00
Deadline for clarifying and rectifying mistakes	21/01/2021, 13:00
Auction trials with qualified bidders	22/01/2021, 09:00
Testing access to auction system and digital signature	25/01/2021
Auction date	26/01/2021
Opening of period to receive bids	26/01/2021 09:00
Closure of period to receive bids	26/01/2021 11:00
Maximum time limit for the appeal process and publication of interim results	26/01/2021 14:00
Period of complaints by participants about the provisional results	26/01/2021, 2h after the provisional results have been shared with the agents
Confirmation deadline for the auction	Twenty four hours after the period of complaints has ended.

Thus, the date for submitting documentation will begin on 15 December 2020 at 13:00h and bids will begin at 9:00h on 26 January 2021 and will finish at 11:00h.

### Scope of the new auctions

Payment of the new ERRE is subject to the installations arising from new investments made after the auction was held<sup>5</sup> whether it is a new installation or an extension or modification to an existing installation<sup>6</sup> (more than 15 years old and when the modification is significant).

<sup>5</sup>In addition, they cannot have a storage system or, if they have it, the storage system can only be used to store the energy produced by the installations.

The installations which can be awarded with the ERRE according to Order 1161/2020 and the Resolution of the first auction, will be those that use photovoltaic technology, wind (marine or terrestrial), hydraulic, thermosolar or biomass, excluding gas, coal and fuel<sup>7</sup> cogeneration installations.

However, regarding the installations, they will only receive ERRE for the part corresponding to the new investment.

Storage is only allowed when it is used exclusively for the energy produced in the installation.

## Product to be auctioned

The product to be auctioned will be the installed power capacity and the State Secretariat of Energy ("SSE") will establish a quota to be auctioned for each product in a resolution.

The SSE's resolution will set the Maximum Delivery Period (period between 10 and 15 years extendable to 20) and the obligation to sell the Minimum Auction Energy (volume of energy sold that must be reached by each installation).

The deadline for supplying the allocated energy has been set for 12 years for photovoltaic, thermosolar, onshore wind energy and marine and hydroelectric energy, and 15 years for biomass, biogas and bioliquid energy.

The submission deadline, as well as the time limit during which the installation must be available and the date from the ERRE are shown in the table below:

Technologies	Subgroup defined in article 2 of Royal Decree 413/2014, of 6 June	Deadline for the availability of the installation	Removal date from economic regime for renewable energy	Start date for the delivery deadline	Delivery deadline / years
Photovoltaic	b.1.1	28/02/2023	30/06/2023	30/09/2023	12
Solar thermoelectric	b.1.2	29/02/2024	30/06/2024	30/09/2024	12
Onshore wind	b.2.1	29/02/2024	30/06/2024	30/09/2024	12
Offshore wind	b.2.2	28/02/2025	30/06/2025	30/09/2025	12
Other renewable energy technologies	b.3	28/02/2025	30/06/2025	30/09/2025	12
Hydroelectric power stations (installed power capacity below or equal to 10 MW)	B.4	28/02/2025	30/06/2025	30/09/2025	12

<sup>6</sup>Article 2.3 of Order 1161/2020 provides:

"The installations may be new, extension or modification of an existing installations.

An installation is considered to be new when its construction does not involve the closure or power reduction of another installation in the same location and with the same technology. It will be understood that an extension of an existing installation is carried out when the new investment involves an increase in the power of that installation and does not involve the elimination of generating equipment from the initial installation.

It will be understood that a modification of an existing installation is carried out when the new investment implies the replacement of the generating equipment of the initial installation, or in those other situations that cannot be considered as a new installation or as an extension of an existing installation".

Furthermore, the Resolution for the first auction states that they should be:

- a) New installations or extensions of installations that already exist
- b) They should belong to the mainland electrical system
- c) They should not have a storage system, or if they do, the storage system should only be used exclusively for electricity produced in the installation.

<sup>7</sup>The scope of application of Royal Decree 960/2020 includes those installations producing electrical energy from renewable sources, as defined in Royal Decree 413/2014 of 6 June, which regulates the production of electrical energy from renewable energy sources, cogeneration and waste, which will continue to apply to them, except for the provisions of the specific remuneration scheme. However, Order 1161/2020 is limited to regulating the auctions for installations included in category b) defined in Article 2.1 of Royal Decree 413/2014, of 6 June, basically all installations with a renewable energy source, excluding cogenerations of gas, coal and fuel and black liquors (categories a) and c)).

Hydroelectric power stations (installed power capacity above 10MW)	b.5	28/02/2025	30/06/2025	30/09/2025	12
Biomass	b.6	28/02/2025	30/06/2025	30/09/2025	15
Biogas, Bioliquids	b.7	28/02/2025	30/06/2025	30/09/2025	15
Biomass	b.8	28/02/2025	30/06/2025	30/09/2025	15

The auction will be held by electronic means and the awarding process will be carried out using the closed envelope auction method, according to a pay-per-bid mechanism.

The managing entity of the auction will be OMI-Polo Español, S.A. ("OMIE"), via the subsidiary OMEL Diversificación S.A.U, before which the interested parties must present new guarantees for the participation in the auction.

The auction will be supervised by the National Commission of Markets and Competition ("CNMC") which will confirm that the process has been objective, transparent, non-discriminatory, and that the auction was carried out competitively, noting no anticompetitive practices.

It is worth noting that the volume of product awarded to the same company or business group may not exceed 50% of the total volume of the auctioned product. For this first call, the volume of the product allocated to one company or business group cannot be over 1,500 MW.

## Auction Processes

The successful bidder in the auction must have passed the following:

- The pre-qualification process, through which the bidder has right to receive information related to the auction, participate in the training sessions that may be carried out and request the qualification for the auction. A "pre-qualification guide" has been set out in Appendix III of the Resolution to the first auction.
- The qualification process, through which bidders which have been pre-qualified will be allowed to participate in the auction for a certain power declared by the bidder, which will determine their maximum qualification volume for the product.

Prior to the holding of the auction, the entity administering the auction shall verify that the volume of product actually qualified is at least 20% higher than the quota of each product to be auctioned. If this is not the case, the quota of said product to be auctioned shall be automatically reduced, giving rise to a reduced quota.

- The auction process, through which qualified bidders may participate, following to the steps below:

1.º The auction process is initiated by enabling a period of time during which qualified bidders can place their bids<sup>8</sup>. A different bid may be submitted for each product, technology and category and for a maximum of 100 sections<sup>9</sup>. The sections bid for will include a number of blocks and a price. The minimum bidding price per section is one block, which is equivalent to 1KW.

Only one bid per bidder will be admitted which can be modified or altered. The last one shall be considered as valid. The Resolution establishes that the maximum size of an indivisible bid is 180MW.

<sup>8</sup>The process in which qualified bidders can place their offers begins. The sections of the offers whose price is higher than the reserve price or lower than the risk price are discarded. Aggregate bidding curves are formed, ordering the sections from lowest to highest. If there is a minimum reserve per product, the offer sections linked to this reserve are selected. Then the remaining offer sections are selected until the quota is covered. Each bidder is assigned to the set of blocks selected by him. The award price is assigned, which coincides with the bid price of each block.

<sup>9</sup>Each section will include the power offered in that section, expressed in blocks of 1 kW, the price offered for the energy, expressed in euros/MWh with two decimals, and an identifier relating to the divisibility of the section. Bids may be divisible or indivisible:

- Indivisible: In these, if all the power offered cannot be awarded, it will be excluded from the appeal in its entirety.

2.º Once the period for placing bids has ended, the auction will be closed, and the entity administering the auction will apply the allocation mechanisms set out in Article 10 of Order 1161/2020, which establishes the cassation process, together with the detailed specifications of the auction to be set by the SSE<sup>10</sup>.

3.º At the end of the auction, bidders will have a period to file claims should they need to.

During the cassation phase, it will be verified that the total volume for each product is at least 20% higher than the quota of the product to be auctioned. If this is not the case, the quota will be automatically reduced, thus obtaining a new reduced quota.

Once the cassation process is completed, OMIE will send the provisional results<sup>11</sup> to the agents and to the supervising entity and when the latter declares that the auction has been carried out in an objective, transparent and non-discriminatory manner, the results will be made public and the General Directorate of Energy Policy and Mines (hereinafter, "GDPEM") will issue a Resolution finalising the auction which will be published in the Spanish Official Gazette<sup>12</sup>.

Annex I of the Resolution of the first auction outlines the Specification Details of the auction, or the "auction rules" which include forms to fill out in order to take part in the auction, including the information and documents to be submitted with the application form.

Annex II contains confidential information concerning the reserved price for each technology, which will be handed over to the auction administrator between 7:00h and 9:00h on the bidding day.

Furthermore, a 6% excess quota percentage in the cassation period has been agreed, meaning that the energy assigned will be no higher than 3,180MW.

### **Post-awarding procedures**

The regulation of the auctions also includes a series of milestones that must be complied with and which must be presented before the Electronic Registry of the Economic Regime of Renewable Energies ("ERRE Registry").

To this end, the obligation to provide guarantees is imposed. These will be executed if the following milestones are not met:

- Registration in the ERRE Registry in pre-allocation status: Each successful bidder must present its application for registration in the ERRE Registry within 2 months from the date of publication of the resolution of the auction in the Spanish Official Gazette.

---

-Divisible: Even if not all the power can be awarded, partial awards may be made. However, different divisible sections expressed at the same price shall not be admitted.

<sup>10</sup>However, it should be noted that those sections of the offers whose price is higher than the reserve price or lower than the risk price will be discarded, if it has been defined.

<sup>11</sup> Pending validation by the entity supervising the auction.

<sup>12</sup>A deadline of 24h from the reception of the above-mentioned results has been set by which the auction administrator must validate the same and the procedure followed in the auction. The administrator will submit a report to this effect, addressed to the appointed director within the General Directorate of Energy Policy and Mines (DGPEM in its Spanish initials).

Thereafter, the entity administering the auction shall notify each participating party of the result of the supervisory body's pronouncement on the validity of the auction, in the absence of a ruling by the appointed director within the General Directorate of Energy Policy and Mines on the resolution of the auction. In the event that the auction is declared invalid by the entity supervising the auction, the auction mechanism shall be rendered ineffective by a decision of the head of the Secretary of State for Energy.

In the event that the auction is declared valid, the appointed director of the General Directorate of Energy Policy and Mines shall issue a resolution closing the auction, which shall be published in the "Spanish Official Gazette", indicating the results of the auction for each product and one or more technologies, to be separated by their specifications, as has been outlined in the call resolution.

- Identification of the installation: The maximum period of identification before the GDEPM is 6 months from the publication in the Spanish Official Gazette of the registration of the installation in the ERRE Registry in Pre-assignment status. Installations with a total installed power equal to or less than the power registered in the ERRE Registry in pre-allocation status increased by 50 percent may be identified. After the resolution of the application, the data of the installation cannot be modified, and other installations cannot be registered in order to obtain the ERRE.
- Evidence of having obtained an administrative authorisation for construction: The maximum period to provide this evidence is 12 months from the publication in the Spanish Official Gazette of the resolution of registration in the ERRE Registry in Pre-assignment status. The administrative authorisation will include the evacuation infrastructures, connection to the network and, if applicable, transformation of the energy.
- Registration of the installation in the ERRE Registry in operation status: The registration must be done before the end of the maximum period of one month from the deadline of availability of the installation or, in its case, from the date of exclusion from the ERRE established in the resolution by which the auction is called<sup>13</sup>. The installation must have the same owner that is recorded, at that time, in the ERRE Registry in a pre-allocation status and in the Administrative Registry of Electricity Production Installations.

### Strategic plan

The Resolution of the first auction also introduces the obligation to submit a strategic plan<sup>14</sup> along with the registration into the ERRE Registry application, including an estimate of how local employment and the industry value chain will be affected, which will be published on the website for the Ministry for the Ecological Transition and the Demographic Challenge (MITECO).

While operations are being carried out, a final plan must be submitted and will include the degree of compliance for the projections made in the plan submitted upon identification of the installations. Said plan shall be updated and detailed in specific plans for each individual installation and shall be submitted to the DGPEyM within a period not longer than three months starting from the deadline set for the identification of installations. The plan shall be made public on the website of the Ministry for the Ecological Transition and the Demographic Challenge

### Remuneration of the awarded installations: The market

Since the product to be auctioned will be the installed power, bidders will bid the price they are willing to receive for the energy generated by the installations and the price for each successful bidder will coincide with the price they bid for (“pay as bid”).

---

<sup>13</sup>The application for registration will include identification of the installation, location and power, and various statements of responsibility:

- Compliance with the fact that no storage is available or that the storage will be dedicated to energy storage.
- Dates of the beginning of the construction and the first firm commitment of the equipment order.
- In new installation, that it does not imply the closing or reduction of power of another installation in the same location and technology. When they are part of expansion plans, that the new investment means an increase in power and does not involve the elimination of generating equipment.
- Certificate of the market operator regarding the sale of energy in the market; and
- Any other documentation necessary to prove the requirements and conditions.

<sup>14</sup>This plan should at least include the following:

- a) General description of investment to be made.
  - b) Purchasing and contracting strategy.
  - c) An estimate of the direct and indirect job creation that the construction and setting up of these installations will bring, as well as during operation of the same, distinguishing between local, regional and national impact.
  - d) Opportunities for the industry value chain on a local, regional, national and European level. This should include a breakdown of the financial assessment in percentages covering the manufacture of the equipment, supplies, assembly, transportation and the rest of the services provided by companies located in the mentioned geographical areas, in relation to the total amount of investment to be made.
  - e) The circular economy strategy concerning the end-of-life treatment of the equipment.
  - f) Analysis of the carbon footprint during the life cycle of the installations, including manufacturing and transport of the main equipment included.
- componentes

This price will not be updated, but some considerations must be taken into account:

- The beneficiary installations will participate in the daily and intraday market and shall receive, for the energy sold on said markets, the price established in the auction, corrected, where appropriate, for the determined exposure to the market that is applicable, up to a determined volume of energy and for a maximum period of time.
- In addition, these installations may participate in the adjustment and balance, where they will charge the market price for such services. The price resulting from the auction will also be corrected with incentives for the successful bidder to participate in the market, introducing, as a consequence, certain exposure of the installations to the electricity market.

Both the Resolution of the first call and Order 1161/2020, set the market adjustment percentage at 25% for technologies with the capacity to manage their production level and at 5% for those without such capacity<sup>15</sup>.

Technologies	Subgroup defined in article 2 of Royal Decree 413/2014, of 6 June	Market adjustment percentage	
		Installations with management capacity	Installations without management capacity
Photovoltaic	b.1.1	0,25	0,05
Solar thermoelectric	b.1.2	0,25	
Wind	b.2	0,25	0.05
Other renewable energy technologies	b.3	0,25	0.05
Hydroelectric power stations (installed power capacity below or equal to 10 MW)	b.4	0,05	
Hydroelectric power stations (installed power capacity above 10MW)	b.5	0,05	
Biomass, Biogas o Bioliquids	b.6 b.7 b.8	0,25	

The minimum number of hours equivalent to the annual running time and the maximum number of equivalent hours are set out in Order 1161/2020 which includes the following:

Technologies	Subgroup defined in article 2 of Royal Decree 413/2014, of 6 June	Minimum number of hours equivalent to the annual running time (hours)	Maximum number of hours equivalent to the annual running time (hours)
Photovoltaic	b,1,1	1500	2300
Solar thermoelectric	b.1.2	3000	4000
Wind	b.2	2200	3500
Other renewable energy technologies	b.3	2000	4000
Hydroelectric power stations (installed power capacity below or equal to 10 MW)	b.4	1600	2500
Hydroelectric power stations (installed power capacity above 10MW)	b.5	2000	3000
Biomass	b.6	6000	8000

<sup>15</sup>Photovoltaic, wind and other installations will be considered to have management capacity when they have a storage system that makes it possible to store an amount of energy equal to or greater than that resulting from multiplying the power of the installation by 2 hours.

Biogas, Bioliquids	b.7	6000	8000
Biomass	b.8	6000	8000

When determining the remuneration to be obtained, the concept of a “Remuneration Unit” should be borne in mind, where a unit refers to a part of the installation wholly applicable within the payment regime. Each remuneration unit constitutes one bidding unit<sup>16</sup>.

Thus, the specific remuneration of the Remuneration Unit will be obtained from its awarding price, the remuneration parameters of the technology to which it corresponds (by the percentage of market adjustment and equivalent hours of operation), the characteristics of each installation and its participation in the electricity market.

The settlement to be received by each installation will be made by the market operator (OMIE) and will consist in the difference between the price to be received by each Remuneration Unit and that obtained from the sale of the energy in the market.

### Registration in the ERRE Registry

In order to receive the ERRE, the installations must be registered in the Electronic Registry of the Economic Regime of Renewable Energies in a pre-allocation status or in an exploitation status. Compliance with the milestones and requirements set forth in RD 960/2020 and Order 1161/2020 must be accredited before this Registry.

Furthermore, the importance of the ERRE Registry lies in the fact that the information contained therein is taken for the return of the guarantees and for the calculation of the retribution corresponding to each installation, without prejudice to any other data recorded, for other purposes, in the Registry of electricity production installations or in any other registry. In order to comply with this purpose, the registration information shall be sent to the market operator (OMIE) and to the system operator (REE) periodically and automatically.

### Warranties and costs

The guarantees established in the regulation of the auction are different from those that apply for permission to access the transport and distribution networks. The following guarantees are required:

- Guarantee of participation in the auction: 60 €/kW offered. It will be returned once the resolution of the auction is published in the Spanish Official Gazette<sup>17</sup>.
- Guarantee of registration of the pre-allocation in the ERRE Registry: 60 €/KW of power to be registered. It will be returned according to the following calendar:
  - 12€/kW when the installation is correctly identified<sup>18</sup>.
  - 18€/kW when the administrative construction authorisation is obtained and for the power included in it<sup>19</sup>.
  - 30 €/kW when the installations is registered in the ERRE Registry in exploitation status<sup>20</sup>.

On the other hand, the cost of organising the auction will be borne by the successful bidders and will be distributed according to the amount of product awarded to each of them (0.08 euros per kW awarded).

<sup>16</sup>In the case of extensions or modifications, only the part corresponding to the new investment will be eligible for the ERRE.

<sup>17</sup>The total or partial cancellation will be made in accordance with the provisions of Article 26.4 of RD 960/2020.

<sup>18</sup>If the difference between the power registered in pre-allocation and that identified is less than 5%, this part of the guarantee will be returned.

<sup>19</sup>If the difference between the power registered in pre-allocation and the accredited power is less than 5%, this part of the guarantee will be returned.

<sup>20</sup>The amount corresponds to the power registered with the limit of the lesser of the powers between the one registered in pre-allocation and the one previously identified. In the case of late registration, a proportional part of the remaining 30 €/kW of guarantee will be enforced

## Penalties

In order to encourage the fulfilment of the obligations related to the minimum energy of auction acquired by the installations receiving the ERRE, the following penalties are established:

- Penalty for non-compliance with intermediate milestones: There are intermediate control milestones of 3 years in which a minimum energy delivery must be achieved. The minimum auction delivery of each milestone will be 5€/ MWh per penalised energy and will be calculated according to a formula.
- Penalty for the cancellation of the registration in the ERRE Registry when it is in exploitation and before the maximum delivery: If the registration is cancelled before the end of the delivery period and the minimum auction energy has not been reached, a penalty of 5 €/MWh will be established for the energy that may be penalised. This energy shall be calculated according to a formula.
- Penalty for failure to comply with the maximum delivery period: If in the maximum delivery time the minimum energy is not reached, a penalty of 5 €/MWh will be established for the energy susceptible to be penalised. This energy will be calculated according to a formula.

The GDEPM will initiate the procedures ex officio for the execution of guarantees once it has verified that the milestones and requirements have not been met. The execution of guarantees according to the established procedure shall not prevent the imposition of sanctions.

## Resolution deadlines

The maximum period of resolution and notification for any type of request before the GDEPM and the ERRE Registry is three months.

## Ignacio Grangel

*Partner, Head of the Public Law and Regulated Sectors Department*

**T** +34 91 187 19 05

**E** ignacio.grangel@cms-asl.com

The information contained in this Legal Notice is of a general nature and does not constitute legal advice.

More info:

[cms-asl@cms-asl.com](mailto:cms-asl@cms-asl.com) | [cms.law](http://cms.law)



Law . Tax

**Your free online legal information service.**

A subscription service for legal articles on a variety of topics delivered by email.

**cms-lawnow.com**

-----  
The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

-----  
**cms.law**

