

**Royal Decree-Law 17/2021,
dated 14 September, on urgent
measures to mitigate the
impact of the rise in natural gas
prices on the retail gas and
electricity markets**

Royal Decree-Law 17/2021, dated 14 September, on urgent measures to mitigate the impact of the rise in natural gas prices on the retail gas and electricity markets

On 15 September 2021, the Official State Gazette published Royal Decree Law 17/2021 on urgent measures to mitigate the impact of rising natural gas prices on the retail gas and electricity markets (hereinafter “**RDL 17/2021**”). This RDL will enter into force on 16 September 2021.

RDL 17/2021, aims to address the increase of more than 250% in the price of natural gas in European markets, which has had an impact on the price of electricity in the wholesale market since February 2021, when the average price stood at 28,49 €/MWh until reaching a daily average of 154.16 €/MWh in mid-September.

These measures are introduced as a mechanism to cushion the escalation of electricity prices and counteract the current level of consumers electricity bills.

Similarly, the Explanatory Memorandum states that the evolving price of natural gas may have a negative impact on any achievements made towards the decarbonisation of the economy, given that the greenhouse emission reduction targets can only be achieved by increasing the degree of electrification of energy end-users.

Finally, the Council of Ministers agreed to request the urgent processing of two bills, which are already before Parliament: (i) the Bill to create the National Fund for the Sustainability of the Electricity System; and (ii) the Bill to act on the remuneration of CO2 not emitted from the electricity market.

As a result, the introduction of certain criteria, such as the consideration given to installations of less than 10MW in the mechanism described below, could lead to a revision of the limits and scope of application of these future laws.

The purpose of this report is to outline the essential aspects of this RDL 17/2021, although we are carrying out a detailed study of its impact, especially for electricity generation facilities with non-CO2 emitting technology and with long term contracts. At first glance, there seems to be a certain lack of legal basis and regulatory support for the adoption of some measures, which could render them unlawful.

Mechanisms for diminishing the excessive returns within the electricity market due to the price of gas

One of the measures approved consists in establishing a mechanism to reduce the excess remuneration that certain installations receive due to the marginal cost price setting of the energy market.

In order to do this, RDL 17/2021 establishes the reduction of returns on the electricity generating activity of production facilities that do not emit greenhouse gases. This reduction has a limited duration until 31 March 2022¹.

The amount² will be proportional to the greater income obtained by the energy generating facilities as a result of competitive wholesale electricity prices incorporating the cost of natural gas on marginal emissions technologies.

Furthermore, it will apply to the owners of each of the zero-emission electricity generating facilities within the Spanish peninsula, regardless of the technology they use or the type of contract.

The following exceptions apply:

- Electricity generating facilities of non-peninsular territories.
- Electricity generating facilities that have a recognised remuneration framework in accordance with article 14 of Law 24/2013, of 26 December on the Electricity Sector (Facilities under the specific remuneration regime³ and the economic regime for renewable energies from auctions⁴).
- Production facilities with a net power equal to or less than 10 MW, regardless of the date of commissioning.

Furthermore, article 7 outlines that when calculating the amount of the reduction, if in those hours in which the marginal price has been set by a bidding unit that groups together various physical installations of different technologies, it will be assumed that this bid has included the price of natural gas in the event that there were bids from combined cycle installations in the vicinity ($\pm 10\%$) of this marginal price.

¹ Article 4 and subsequent. RDL 17/2021.

²As a curiosity, it is interesting to note that if the facilities change ownership, the amounts accrued by the facilities during the reduction periods will be calculated per owner, based on the number of days that they have owned the facility.

³ RD 661/2007, dated 25 May 2007, which regulates the activity of electricity production under the special regime and RD 413/2014, of 6 June, which regulates the activity of electricity production from renewable energy sources, cogeneration and waste.

⁴ RD 960/2020, dated 3 November 2020, which regulates the economic regime of renewable energies for electricity production facilities.

The amounts received by collecting reduction payments - which should be done on a monthly basis - will be used to cover those costs paid for by the electricity system and to cover temporary mismatches between the incomes and costs of the system.

Mechanisms for fixed term electricity procurement

In order to encourage new entries to the market and to strengthen smaller market participants, Article 3 RDL 17/2021 offers a new market mechanism to encourage fixed term electricity procurement.⁵

It consists of auctions⁶ of long-term power purchase contracts under the conditions and for the time period to be provided for in the call for tenders⁷.

The sellers will be those energy producers that have the status of dominant operators in the generation of electricity⁸. The total amount of energy to be auctioned at the first auction - to be celebrated before the 31 December 2021 - shall be 15,830.08 GWh. The selling parties shall be the following groups, which shall bid the GWh indicated below:

- Grupo Endesa: 6,737.26 GWh.
- Grupo Iberdrola: 7,323.63 GWh.
- Grupo Naturgy; 1,405.8 GWh.
- Grupo EDP: 363.72 GWh.

Buyers shall be those who meet the conditions and guarantees established in each of the auctions. In any case, they will have to be (i) distribution companies with a portfolio of customers; (ii) direct consumers in the market or their corresponding representatives; (iii) those well-known distributors who supply electricity at the Voluntary Price for Small Consumers (hereinafter "PVPC").⁹¹⁰

⁵ The ultimate aim of this measure is, according to the RDL, among others, to increase the liquidity of the electricity markets.

⁶ The entity administering the auction shall be OMIE - Polo Español S.A. (OMIE directly through one of its subsidiaries).

⁷ Article 3.7 establishes that the Government, "through a decision made by the Secretary of State for Energy, following a report from the National Markets and Competition Commission, shall define: a) the auction method and the settlement rate; b) the selling parties; c) the date on which the auction is to be held and the agenda; d) the settlement period for the products; e) the specific energy to be auctioned"

⁸ In accordance with the provisions of article 7 of Law 3/2013, of 4 June, on the creation of the National Commission for Markets and Competition.

⁹ Defined in Article 6 of Law 24/2013, dated 26 December 2013, on the Electricity Sector.

¹⁰ To this end, RDL 17/2021 expects that the Government to review the formula for determining the cost of energy production of the PVPC, incorporating the auction price reference with a maximum weighting of 10%.

Measures on water resources

A series of measures are introduced based on the rational use of water resources where, for reservoirs with a total capacity of more than 50 hm³ ¹¹, the overall public authority will establish the following limits at the beginning of each hydrological year:

- A minimum and maximum regime of average monthly flows to be released for situations of hydrological normality and prolonged drought.
- A regime of minimum reservoir volumes for each month.
- The minimum monthly reserve that must remain stored in the reservoir.

Fiscal measures

As a contribution to reducing the costs of the final electricity bill, RDL 17/2021 establishes a series of tax measures.

Firstly, the temporary suspension of the tax on the Value of Electricity Production, which is on 7% of generated electricity is extended to the fourth annual quarter, as it had been initially suspended in the third quarter by RDL 12/2021, dated 24 June 2021. Article 2 establishes the rules for determining the taxable base and the amount of the fractioned payments of the aforementioned tax. ¹²

Secondly, the tax rate of the Special Tax on Electricity (IEE), regulated in Law 38/1992, of 28 December, on Special Taxes, will be reduced from 5.11269632% to 0.5% until December 31 2021. The quotas resulting from the application of this tax rate may not be less than the following amounts:

- 0.5 €/MWh, when the electricity supplied or consumed is used for industrial purposes ¹³
- 1€/MWh, when the electricity supplied or consumed is used for other purposes.

Finally, in order to finance the costs of the electricity system, the first final provision, which modifies Law 11/2020, dated 30 December 2020, on General State Budgets for 2021, increases the contribution from the collection of CO₂ allowance auctions by 900 million euros, rising from the 1,100 million euros initially planned to 2,000 million euros.

¹¹ Whose main uses are other than water supply, irrigation and other agricultural uses.

¹² Article 8 of Law 15/2012 dated 27 December 2012, on fiscal measures for energy sustainability.

¹³ The following are considered industrial uses: (i) those carried out at high voltage or in industrial plants and installations; (ii) those carried out at low voltage for agricultural irrigation purposes

Social measures

The RDL establishes a Minimum Vital Supply (hereinafter "**SMV**") for vulnerable consumers who are beneficiaries of the subsidised rate scheme. That is, those who meet the requirements to be considered as vulnerable consumers, and who are supplied under or have contracted the PVPC. Thus, the period of four months for the consumer not to have their electricity supply cut off is extended by six months, making a total of ten months of guaranteed minimum supply of 3.5Kw.

On the other hand, as part of the social measures, Royal Decree-Law 5/2021, dated 12 March 2021, on extraordinary measures to support business solvency in response to the COVID-19 pandemic, was amended. In this way, direct aid to self-employed individuals is extended until 30 September 2021.

Other measures

In addition to the aforementioned measures, RDL 17/2021 establishes others that must be taken into consideration.

The seventh additional provision limits the increase in the regulated natural gas tariff (TUR) for families and SMEs from 1 October 2021. In this regard, the cost of the raw material to be charged to the last resort natural gas tariff, calculated in accordance with the methodology established in Order ITC/1660/2009, may not exceed 35% of the current value.

The difference between the cost of raw material and the cost of such raw material that arises from calculations mentioned in the previous paragraph will be recovered in the last resort tariff beginning in January 2022 in accordance with the following:

- If the increase in the cost of the raw material in relation to the value applied in the previous revision is greater than or equal to 15%, no amount will be recovered.
- If the increase in the cost of the raw material in relation to the value applied in the previous review is less than 15%, this value shall be increased up to the maximum limit of 15%.

Finally, the third additional provision updates the prices of the power, energy and recharging costs for electric vehicles until 31 December 2021.