

Public Law & Regulated Sectors

June 2022

Royal Decree Law 11/2022, of 25 June adopting and extending certain measures to respond to the economic and social consequences of the war in Ukraine, to deal with situations of social and economic vulnerability and for the economic and social recovery of the Island of La Palma

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Royal decree-law 11/2022 (hereinafter, RDL 11/2022) entered into force on the 27th of June, a day after it was published in the Official State Bulletin (hereinafter, the BOE, as per its Spanish acronym) thereby adopting and extending certain measures to respond to the economic and social consequences of the war in Ukraine, to deal with situations of social and economic vulnerability and for the economic and social recovery of the Island of La Palma

According to the Preamble, the Government promoted a National Plan to address the economic and social consequences of the war in Ukraine, which included both regulatory and non-regulatory measures. These regulatory measures had been outlined in a previous Royal Decree-Law 6/2022 dated 29 March 2022 which adopted urgent measures within the framework of the National Plan in order to respond to the economic and social consequences of the war in Ukraine (hereinafter "RDL 6/2022"). The basic objectives of this National Plan are mainly to lower energy prices for all citizens and businesses, to support the most affected sectors and the most vulnerable groups in society and to reinforce price stability.

However, RDL 6/2022 did not produce the desired effects and was subsequently amended by Royal Decree-Law 10/2022 dated 13 May, which temporarily established a production cost adjustment mechanism to reduce the price of electricity on the wholesale market (hereinafter "RDL 10/2022").

The new urgent rule is based on the fact that the international economic situation has continued to deteriorate and there has been a downward revision of economic growth forecasts by major international organisations.

Given this background, the Preamble defends the need to continue adopting the measures already provided for in RDL 6/2022, which fulfil the objectives pursued by the National Plan to respond to the economic and social consequences of the war in Ukraine. RDL 11/2022 therefore extends some of the measures already provided for in RDL 6/2022 and outlines new ones too.

In this note, we will analyse the most important regulatory aspects that could affect the energy system.

1. Access capacity at just transition nodes and network access tenders

According to the Preamble, the approval of the schedule of the electricity transmission grid for 2026 involves the investment of almost 7,000 million euros in transmission grids, of which a large amount will be used to promote the evacuation of electricity generated from renewable sources.

In the first transitory provision of RDL 6/2022, the electricity system operator (REE) **was granted a period of two months to reassess the capacity of all transmission grid nodes considering the new scenario, something which has since been carried out and published.**

Given the above, and the fact that the Government considers that these processes will generate much expectation and high social and economic impact, the **potentially available access capacity at the just transition nodes should be maintained and the release of capacity should be limited so that capacity can be allocated**

through the general access tenders. Thus the following has been foreseen:

- i. The access capacity margin resulting from the new 2026 horizon electricity transmission grid schedule and the frameworks associated with it, will show **lower values than those included in the last report submitted by the system operator**, which were calculated taking into account the 2015-2020 schedule and its associated frameworks, the system operator will assign a higher value of access capacity to these nodes than to the just transition nodes, and it will also be **kept fully secret** until these tenders are held, and may be increased in the event of capacity release. However, if no tender is held within 5 years, the capacity of the nodes will be re-evaluated in accordance with the general criteria in force at that time.

Accordingly, the capacity for just transition nodes is maintained at the higher amount for five years.

- ii. In the event that the **12-month period¹** provided for in the first paragraph of article 20.62 2 of Royal Decree 1183/2020, of 29 December, has elapsed without a call for tender, the **access capacity reserved for tender will not be released** for granting by the filing order preference criteria until this is expressly established by resolution of the Secretary of State for Energy.

The change is therefore to maintain the reserved access capacity for tenders on a permanent basis unless it is expressly released.

- iii. In the event that the holder of access and connection permits fails to comply with the commitments acquired in an access capacity tender, the permits will not automatically expire, provided that the deadlines established in article 1 of Royal Decree-Law 23/2020², of 23 June (which approves measures in the energy sector and other areas for economic reactivation), are not exceeded. All of the above should be understood without **prejudice to the financial penalties derived from delays in the power injection into the grid** and the possible execution of guarantees set out in the call for tender.

The aim of this measure is to avoid the cancellation of access and connection permits in parallel to the non-

¹ As stated in the Preamble to RDL 11/2022, it should be borne in mind that these clarifications are necessary and urgent since, on the one hand, the twelve-month period expired at the end of June and, with regard to the power injection criteria, the order calling for the first tender is currently at the hearing stage.

² The Ministry for Ecological Transition and the Demographic Challenge may include in the call for tender all or part of the nodes for which the Secretary of State for Energy has announced the forthcoming tender, in accordance with the provisions of this article. In any case, the order calling for a tender shall be issued within a maximum period of twelve months from the date of the decision of the Secretary of State for Energy announcing that a tender is going to be held.

fulfilment of the tender obligations, although the penalties remain in place.

This regulation should be set within the Proposal for an Order framework which calls for tenders for access capacity at certain nodes of the transmission network. These have begun to be proceeded and will lead to a tender for 17 of the 184 nodes where capacity is available.

In this way, the plan is to continue to call for tenders to assign access to the transmission and distribution network, the latter in certain cases, subject to the fulfilment of requirements additional to the merely technical ones.

2. Measures on the environmental processing of projects

RDL 11/2022 amends RDL 6/2022 in relation to measures to streamline procedures for renewable energy projects³.

It is established that new renewable energy projects must be located in areas identified as **being less sensitive to potential environmental impact**, and not those that are moderately sensitive to such, as per the "Environmental zoning for the implementation of renewable energies" tool which has been developed by the Ministry for Ecological Transition and the Demographic Challenge. In view of this regulatory change, the Single Transitional Provision stipulates that the **processing begun in accordance with RDL 6/2022**, for projects located in areas of moderate sensitivity, **will continue without being affected by the new regulation**.

Furthermore, in order to strengthen public participation in the procedure for issuing environmental impact reports, the environmental body is **obliged to publish the announcement in the BOE⁴**.

It also includes the possibility of making the appropriate **environmental observations during the public information procedures**.

3. Modification of the taxable base for the tax on the value of electricity production

Law 15/2012 of 27 December 2012 on tax measures for energy sustainability is amended, where Article 14⁵ in relation to the Production Value Tax of electrical energy

³ Firstly, the first and second paragraphs of Article 1 of RDL 11/2022 rewrite certain aspects of Articles 6 and 7 of RDL 6/2022.

⁴ Article 6(3)(e) of RDL 6/2022 is amended

⁵ When transactions are carried out between related persons or entities, in accordance with the provisions of Law 27/2014, of 27 November, on Corporate Income Tax, the remuneration may not be less than the market value. Market value shall be understood to be that which would have been agreed by independent persons or entities under conditions that respect the principle of free competition. Therefore, for the purposes of determining the market value, any of the methods set out in Law shall be applied. 27/2014 of 27 November

determines that when transactions are carried out between persons or entities in accordance with the provisions of Law 27/2014, of 27 November, on Corporate Income Tax (hereinafter, "**Law 27/2014**"), the price agreed between the parties, for the purposes of calculating the tax base, **may not be less than the market value**. To determine the market value, any of the methods set out in Law 27/2014 shall be applied.

This modification may lead to a significant increase in revenue due to the revision of the prices of intra-group contracts and on which the market value (to be differentiated from the market price) will be applied.

Furthermore, the temporary suspension of the IVEE tax has been extended for the whole of 2022.

4. Extension of the price reduction procedure for non-emitting technologies (RDL 17/2021)

Article 16 of RDL 11/2022 amends Article 4 of Royal Decree-Law 17/2021, of 14 September, on urgent measures to mitigate the impact of rising natural gas prices on the retail gas and electricity markets (hereinafter "**RDL 17/2021**"), to extend the reduction in the remuneration of the electricity production activity of production facilities using technologies that do not emit greenhouse gases until **31 December 2022**, in an amount proportional to the income obtained as a result of the incorporation into electricity prices on the wholesale market of the value of the price of natural gas by marginal emitting technologies.

5. Other tax measures

Firstly, it amends the first additional provision of RDL 29/2021 to extend the tax measures, consisting of **applying the special electricity tax rate to 0.5 percent, until 31 December 2022**.

In addition, one of the fiscal novelties is contained in article 18 of RDL 11/2022, where the Value Added Tax on electricity is reduced from 10% to **5% until 31 December 2022**.

6. Extension of energy price cuts

The possibility of extending measures to make **natural gas supply contracts more flexible** in order to protect the industrial sector from price increases has been considered.

In addition, the discounts for vulnerable electricity consumers are extended until 31 December 2022.

With regard to the Tariff of Last Resort for natural gas (hereinafter, the "**TUR**"), section sixteen of article 1 of RDL 11/2022 extends the seventh additional provision of RDL

17/2021. Thus, in addition to the extension of the TUR price reviews for natural gas corresponding to 1 April 2022 and 1 July 2022, the reviews scheduled for **1 October 2022 and 1 January 2023 are also included.**

7. Direct aid to gas intensive industries

Chapter II of RDL 11/2022, dedicated to transport measures, is made up of two sections: the first, dedicated to direct aid to urban and interurban public land transport; and the second, to other measures aimed at the sector.

Article 20 of RDL 11/2022 approves a line of direct grants to gas-intensive industries for 2022 to alleviate the detrimental effect of the increase in the cost of gas.

Likewise, the aid initially envisaged in RDL 6/2022 is extended to other sectors in which the same circumstances apply. This direct aid will have a maximum amount of 400,000 euros per company.

8. Butane cylinder price freeze

Article 19 of RDL 11/2022 limits the maximum selling price of bottled liquefied petroleum gas (LPG), more commonly known as the butane cylinder. **The price of 19.55 euros**, set in the last revision on 12 May, will be maintained until the end of the year.

9. Fuel rebate

Finally, another of the measures extended in RDL 11/2022 is the rebate of 20 cents per litre of fuel, which began to operate on 1 April and was scheduled to end on 30 June. However, given the persistence of price rises, this measure has been **extended until 31 December 2022**. The rebate mainly benefits hauliers, but also other users in other areas and household economies.