

Royal Decree-Law 11/2022, of 25 June (*Real Decreto-ley 11/2022, de 25 de junio, por el que se adoptan y se prorrogan determinadas medidas para responder a las consecuencias económicas y sociales de la guerra en Ucrania, para hacer frente a situaciones de vulnerabilidad social y económica, y para la recuperación económica y social de la isla de La Palma*) (RD-L 11/2022), was published on the Official Gazette (*Boletín Oficial del Estado*) this Sunday 26 June. Pursuant to final provision six, RD-L 11/2022 will enter into force on Monday 27 June.

By means of this new regulation:

- Additional measures were adopted to respond to the economic and social consequences of the Russia/Ukraine conflict, to deal with situations of social and economic vulnerability, and for the economic and social recovery of the island of La Palma
- The effects of other measures that had already been adopted were extended

Although RD-L 11/2022 includes measures affecting different sectors, the purpose of this legal alert is to highlight those effects on the energy sector.

Considering the above, the following lines identify and summarise the main measures provided by RD-L 11/2022:

• **Effects Over Measures Set by Royal Decree-Law 6/2022, of 29 March (RD-L 6/2022)**

The basic purpose of this regulation was lowering energy prices for all citizens and businesses, support for the most affected sectors, as well as the most vulnerable groups, and the strengthening of price stability. It focused on (i) limiting the economic and social costs of geopolitical distortion in price of gas; (ii) tackling the inflationary process at its root and facilitating the adaptation of the economy to this temporary situation; and (iii) reinforcing the foundations of the economic recovery and the creation of quality employment.

Within the above regime and focused on the energy sector aspects of the regulation, RD-L 11/2022 modifies the terms of RD-L 6/2022 with the following purposes:

- Setting a limitation to those projects located entirely in areas of low sensitivity according to the environmental zoning of the ministry to benefit from the procedure for determining environmental impact.



However, those projects located in areas of moderate sensitivity to the environmental zoning that had already initiated their processing at the time of the entry into force of RD-L 11/2022 may continue with it.

- Incorporating the obligation to include an announcement in the BOE regarding the report on environmental impact.
- Introducing an express reference to the fact that appropriate environmental observations may be made within the 30-day public hearing set by articles 125 and 126 of Royal Decree 1955/2000, of 1 December (*periodo de información pública*).

- **Effects Over Measures Set by Royal Decree-Law 17/2021, of 14 September (RD-L 17/2021)**

Among other measures, RD-L 17/2021 introduced a mechanism for reducing the remuneration obtained by certain generating facilities considered excessive due to the marginal cost price setting of the energy market. This measure affected those generating facilities that do not emit greenhouse gases. The reduction 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.

By means of RD-L 11/2022, this mechanism to reduce the excess remuneration is extended until 31 December 2022.

Additionally, RD-L 11/2022 sets an extension of the terms set by RD-L 17/2021 with regard to the revisions of the price of the last resort tariff for natural gas. RD-L 11/2022 sets at 15% the maximum increase in the cost of raw material (Cn variable) extending this measure to the revisions corresponding to 1 April 2022, 1 July 2022, 1 July 2022, 1 October 2022 and 1 January 2023.

- **Effects Over Measures Set by Royal Decree-Law 23/2020, of 23 June (RD-L 23/2020)**

In order to provide an adequate response to the observations submitted with regard to the proposed order that calls for a tender for access capacity in certain nodes of the transmission network and balance the penalty regime, a reference to RD-L 23/2020 is introduced.

The purpose is to avoid the cancellation of access and connection permits when it originates from a delay in injection of energy into the network within the time limit engaged in a tender provided that the deadlines established in RD-L 23/2020 are not exceeded.

Moreover, with regard to the fair transition nodes (*nudos de transición justa*) set by the annex to RD-L 23/2020, RD-L 11/2022 includes an additional provision. If the access capacity calculated with the planning of the electricity transmission network horizon 2026 is lower than the capacity calculated with the planning of the transmission network 2015-2020, the system operator will assign to these nodes the greater of the two access capacity values.

Said capacity values will be fully reserved from the entry into force of RD-L 11/2022 until the tender takes place. If the tender is not called within the following five years, the capacity will be re-evaluated according to the general criteria that govern at that time.

- **Effects Over Measures Set by Royal Decree 1183/2020, of 29 December (RD 1183/2020)**

In addition to the foregoing, RD-L 11/2022 includes an additional rule affecting the terms set by RD 1183/2020. The purpose of this is to provide clear interpretation of the terms provided for its article 20.6.

In this context, in the event that the 12-month period referred to by said article elapses and the access tender is not called, the access capacity reserved for the public tender in said node will be released for its granting under the principle of temporal priority when expressly established by the Secretary of State for Energy.

Contact

Antonio Bañon

Legal director of public law

M +34 696 907 768

E antonio.banon@squirepb.com

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