



# New energy sector developments introduced by Royal Decree-Law 8/2023

Legal Alert



January 2024

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**Royal Decree-Law 8/2023 of 27 December 2023 on the adoption of measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, and to mitigate the effects of drought, was published in the Official State Gazette on 28 December 2023.**

**This RD-Law was ratified by the Lower House of the Spanish Parliament on 10 January 2024 and will now be processed as a bill.**

27 December 2023 saw the approval by the Cabinet of Royal Decree-Law 8/2023 (“**RD-L 8/2023**”), virtually all of the provisions of which entered into force on the day following its publication in the Official State Gazette (28 December 2023). The Lower House of the Spanish Parliament, sitting in plenary session, ratified RD-L 8/2023 on 10 January 2024, and it will now be processed as a bill via the fast-track procedure, allowing for its amendment. The ratified wording will nonetheless remain in force until such time as it can only be amended or revoked by a provision having the same force of law.

RD-L 8/2023 contains a battery of measures affecting various areas and sectors such as finance, taxation (see our [Tax Alert](#) on the measures introduced in this area) and energy - the topic of this Legal Alert.

## 1. Extension of the deadlines for achieving the administrative milestones provided for in Royal Decree-Law 23/2020

With regard to **renewable electricity production facilities**, Title III of the Royal Decree-Law sets out new deadlines for complying with the obligations laid down in Royal Decree-Law 23/2020, relating to achievement of the various administrative milestones to ensure the right of access and connection to the grid.

**The deadlines** for achieving milestones four and five (obtaining the administrative building permit and the definitive administrative operating licence, respectively) **have thus been extended**.

### 1.1. Extension of the deadline for obtaining an administrative building permit:

The 43-month time limit for obtaining an administrative building permit under Royal Decree-Law 5/2023, i.e. prior to the entry into force of RD-L 8/2023, has now been **extended by six months, to 49 months**.

The above time limit will be calculated as follows:

- From 25 June 2020, for facilities that obtained access permits between 31 December 2017 and that date.
- From the date on which the permits are obtained, for facilities that obtained them after 25 June 2020 and prior to the entry into force of RD-L 8/2023.

### 1.2. Extension of the deadline for obtaining a definitive operating licence.

As regards licences to definitively operate facilities for which access permits were obtained between 31 December 2017 and the entry into force of RD-L 8/2023, the Royal Decree-Law provides that facility developers may request an extension of the time limit for obtaining such licence, which may be extended to eight years, subject to the following premises and conditions:

- Where an administrative building permit has already been obtained by the facility by the date on which RD-L 8/2023 enters into force, the extension must be requested by 29 March 2024.
- If not, the extension of the deadline must be requested within three months of the date on which the permit is obtained.

The deadline extension request, which must be submitted to the body with jurisdiction to grant the administrative building permit, must contain the following information:

- (i) the half of the calendar year in which the facility will obtain the administrative operating licence; and
- (ii) an undertaking to expressly accept that it is impossible to obtain a provisional or definitive administrative operating licence, or preliminary or definitive registration on the administrative register of electricity production facilities, prior to the commencement of the six-month period in question.

Note too that failure by the competent body to expressly rule on the request **within six months** will mean that the request has been **rejected**.

As in the case of the previous measure, the deadline will be calculated from 25 June 2020 for facilities that have obtained an access permit prior to such date, or from the date on which the permit is obtained, where this occurs subsequently.

In addition, as regards achievement of the milestone relating to **obtaining a definitive administrative operating licence**, RD-L 8/2023 provides that where transmission and distribution network managers have not obtained a definitive operating licence for the transmission or distribution substation positions to which the power generation facilities are connected, the milestone will be deemed achieved by the developers of such power generation facilities where it is duly demonstrated to the manager of the network to which they are connected that a provisional operating licence has been obtained for testing purposes, provided that such licence covers both the generation facilities and the evacuation infrastructure up to at least the final 100 metres from the transmission or distribution substation at which their connection point is located.

Lastly, RD-L 8/2023 also provides for the possibility of requesting an extension of the deadline for meeting the milestone corresponding to obtaining the definitive operating licence for hydroelectric **pumping facilities and offshore wind farms**, establishing a maximum total processing period of nine years for electricity production facilities that use hydropower pumping and offshore wind technologies.

## 2. Self-supply-related measures: release of capacity for self-supply at nodes subject to tender processes

Prior to the entry into force of RD-L 8/2023, Royal Decree 1183/2020 of 29 December 2020 on access and connection to electricity transmission and distribution networks provided for the possibility of the Secretary of State for Energy issuing invitations to tender for access capacity at certain nodes.

Under RD-L 6/2022, it was agreed that 10% of the capacity available at transmission network nodes already reserved for tender would be released and awarded to facilities with self-supply capacity, provided that certain requirements were met.

RD-L 8/2023 extends this reservation of 10% of the available capacity for self-supply to all nodes reserved for tender as of the entry into force of the abovementioned RD-L 6/2022, and to any nodes that may be reserved in the future.

This released capacity may be granted to both facilities with direct access to the transmission network and those accessing it via the distribution network, where they require an acceptability report from the transmission network manager.

This same released capacity may also be granted, on a first come, first served basis, to new renewable facilities with self-supply capacity, provided that the contracted capacity in period P1 to installed generation capacity ratio is at least 0.5.

## 3. Measures relating to electricity demand access and connection permits

RD-L 8/2023 amends Royal Decree 1183/2020 as regards **electricity demand access permits**. Thus:

- Demand access permits may not be granted for a capacity exceeding 50% of the access capacity of the generation facility in the case of demand access requests for self-supply connected to transmission network power generation positions for which generation access permits have already been granted.
- Invitations to tender must be issued for demand access capacity requests at transmission network nodes that meet certain requirements, where the asset to be awarded will be access capacity for consumption.
- Certain guarantees must be provided, except at demand facilities with connection points with voltages lower than 36kV.

The amount of such guarantees will be equal to €40/kW requested. In the case of storage facilities, a guarantee of €20/kW requested must be provided prior to the request for access to serve electricity demand.

- The purpose of this guarantee is the supply to a specific consumption, and it will be cancelled where the requesting party executes an access contract for contracted capacity in P1 of at least 50% of the access capacity granted.
- Lastly, RD-L 8/2023 provides for the expiry of access and connection permits where a technical access contract for power equal to at least 50% of the access capacity under the permit has not been executed within five years.

#### 4. Extension of the validity of limited operation notices

For electricity generation modules that obtained a **Limited Operation Notice** per transitional provision one of Royal Decree 647/2020 of 7 July 2020, the extension of the period granted to obtain the Final Operation Notice will end on 2 February 2024.

Failure to obtain the Final Operation Notice before the end of the above period will result in cancellation of definitive registration of the relevant facility on the administrative register of electricity generation facilities or the self-supply register.

RD-L 8/2023 further extends the above period by eight months and the deadline is now 2 October 2024.

#### 5. Amendment of the Electricity Industry Law

RD-L 8/2023 amends the Electricity Industry Law, essentially as regards the framework for the remuneration to be received under competitive procedures.

More specifically, the RD-L provides that in auctions for the allocation of access to the Economic Regime for Renewable Energies, up to 30% of the award criteria may be non-financial. These may include contribution to resilience, environmental sustainability, innovation, the project's socio-economic impact or other aspects that will enhance the integration of renewable energy sources into the electricity system.

#### 6. Amendment of the Hydrocarbons Industry Law

Per the preamble to RD-L 8/2023, the purpose of the amendment of the Hydrocarbons Industry Law is to put an end to certain fraudulent practices in the liquid hydrocarbons sector.

Thus, the most salient reforms introduced include the prohibition on supplies between retailers and supplies by retailers to wholesalers, which, while it will not enter into force until 28 March 2024, is particularly noteworthy as non-compliance will be classed as a very serious infringement and may lead to a fine of up to Euros 30 million. This is in addition to the possibility, provided for in Hydrocarbons Industry Law 34/1998 of 7 October 1998, of the competent authority revoking or suspending the relevant administrative authorisation and the resulting temporary disqualification from pursuit of the activity.

Meanwhile, access to liquid hydrocarbons facilities is open not just to wholesalers but also to other agents in the supply chain, including retail distributors.

Finally, the infringement by a wholesaler of its obligations, where the infringement in question is classed as very serious, will be grounds for disqualification.

As regards hydrogen (assumed it refers to the one produce from a renewable energy source), additional provision nine provides that the managers of the natural gas transmission network (i.e. ENAGAS):

- will have four months as of the entry into force of this Royal Decree-Law to submit a non-binding ten-year proposal for the development of the hydrogen backbone infrastructure to the Directorate-General of Energy Policy and Mines.
- may act as representatives in the European Network of Hydrogen Network Operators.
- may provisionally exercise development functions on the hydrogen backbone network within the scope of projects in the common European interest, by resolution of the Cabinet and via horizontally separate legal entities.

#### 7. Water-related amendments

The water-related amendments introduced by RD-L 8/2023 essentially refer to **reversible hydropower plants** provided for in Law 7/2021 of 20 May 2021, on climate change and the energy transition, which stated that the priority of hydropower concessions must be to support the integration of renewable technologies into the electricity system.

Per the preamble to RD-L 8/2023, applications for concessions for reversible hydropower plants currently face hurdles that stand in the way of their success.

The Government has thus sought to unblock the situation by introducing the following reforms to the Water Law:

- The introduction of a new use of water in relation to reversible hydropower, consisting of the “storage of hydropower”, which is specifically distinguished from, and given priority with respect to, “industrial” uses.

The new order of priority means that hydropower storage now only falls behind the use of water for urban supply.

- It also provides for the possibility whereby, in cases in which any of the existing reversible hydropower plants are to be repowered, concession holders may, on a one-off basis, obtain a new concession for the same use, for which purpose they must file their application with at least 15 years still to run on the term of the current concession. The new concession may only be granted for sufficient time to recoup the investment, and on no account may it exceed 50 years.
- Finally, with respect to procedures for granting water concessions for the storage of hydropower commencing prior to the entry into force of RD-L 8/2023, which may affect hydroelectric plants with concessions already in force, the RD-L provides for the possibility of the basin agency declaring, and notifying all of the interested parties of, the retroactivity of the concession procedure to a date prior to the project tender, to allow the current concession holder to participate.

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