



Offshore renewable electricity generation (Royal Decree 962/2024)

Legal Alert



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24 September 2024 saw the approval by the Cabinet -at the proposal of the Ministry for Ecological Transition and Demographic Challenge (in Spanish, MITERD)- of Royal Decree 962/2024, regulating offshore renewable electricity generation.

Royal Decree 962/2024, regulating offshore renewable energy generation and repealing Royal Decree 1028/2007 of 20 July 2007, setting out the administrative procedure for processing applications for the authorisation of electricity generation facilities in territorial waters, was approved by the Cabinet on 24 September 2024. The new Royal Decree entered into force on 25 September.

This legislation provides a regulatory framework of reference for the participatory and flexible development of such facilities, with a view to maximising positive externalities while keeping environmental impacts to a minimum.

The Royal Decree affects not only **offshore wind facilities** but also **other renewable energy facilities** that may be located at sea or harness offshore energy, such as wave energy, and establishes an exception to the liberalised scope of electricity generation.

This Legal Alert analyses the **most significant new developments** ushered in with the approval of the Royal Decree.

1. Approval of the National Energy and Climate Plan and setting of targets

In parallel to the adoption of Royal Decree 962/2024, the Cabinet approved the updated 2023-2030 National Energy and Climate Plan (in Spanish, PNIEC).

Following the approval of the PNIEC, the 2030 wind energy installation targets remain unchanged at 62 GW, including 3 GW of offshore wind energy.

Less than 0.1% of Spanish territorial waters will be needed to develop 3 GW of offshore wind energy. It is worth noting in this regard that while the Maritime Spatial Plans approved in 2023 included high-potential renewable energy zones covering 5,000 km², it is estimated that less than 1,000 km² will be needed to achieve the total offshore wind development targets.

2. Competitive tendering procedures

2.1. General features of the competitive tendering procedure

The most significant new measure introduced by the Royal Decree is the simultaneous awarding, on a competitive basis (auctions), of the renewable energies economic regime, grid capacity reservations at a specific node and priority in awarding concessions for the occupation of the Public Offshore-Onshore Domain.

Nevertheless, participation in the competitive tendering procedure will not be required for the development of certain innovative offshore renewable facilities (provided that the installed capacity does not exceed 50 MW for offshore wind farms or 20 MW for non-wind offshore renewable facilities) located outside high-potential renewable energy zones, or those located at ports of general State interest, to which the ordinary procedure will apply.

2.2. Phases of the competitive tendering procedure

A) Rules governing the competitive tendering procedure

The competitive tendering procedure will be regulated by a **Ministerial Order** that will set out the rules of the procedure and include, among other aspects:

- a. The capacity quota to be awarded: providing for the possibility of requiring the entire capacity to be awarded to a single bidder or to several bidders linked to lower-capacity facilities. In the case of the latter option, the procedure for avoiding possible overlap will need to be determined.

- b. The area or areas in which the projects will be located.
- c. For each area, the access capacity and specific connection nodes of the transmission network where the facility is to be connected.
- d. The period for which the public offshore-onshore domain concession will be granted.
- e. The technologies to be employed, and requirements to be met, by the facilities linked to the bids.
- f. Weighting criteria.
- g. The guarantees to be provided.

B) Public dialogue phase

This will be followed by the public dialogue phase, in which all **stakeholders affected** by offshore renewable facilities may **submit comments or proposals for improvement** in relation to the aspects, parameters or criteria set out in the aforementioned Ministerial Order, with a view to fostering social acceptance of these facilities, as well as their integration and coexistence.

It should be borne in mind that since the public information and hearing formalities provided for in the applicable industry, environmental and offshore-onshore public domain regulations must also be carried out, comments and proposals referring to such areas will not be taken into account at this initial stage.

C) Call for bids

The conclusion of the public dialogue phase will trigger preparation of the **Ministerial Order**, by means of which the competitive tendering procedure will be announced.

This Order, which will be published in the Official State Gazette, may contain all or some of the proposals and alternatives received and, in any case, must include:

- a. The **timeline** for the competitive tendering procedure.
- b. The **information and documents to be included** in the application to participate in the procedure.
- c. The **reserve price** (maximum economic bid price) and, where appropriate, the **risk price** (minimum economic bid price), both of which may be confidential.

The Ministerial Order must also set out the **requirements to be met** by participants, which may be related to the company's legal form, technical solvency or experience, among other aspects.

D) Requirements and eligibility criteria to be met by facilities

In addition to the requirements to be fulfilled by bidders, the new Royal Decree sets out a series of **conditions** to be satisfied by the **facilities associated with the bids submitted**.

Such requirements will be established in the Ministerial Order announcing the procedure and may include, inter alia:

- a. Criteria related to the **design of the facility**: space occupancy rate, distance from the coast, number of wind turbines, etc.
- b. Criteria related to **environmental impact**: measures to minimise impacts on the environment and landscape, in particular on marine ecosystems, habitats and species, and fishery resources, and on any marine protected areas and fishery protection zones.
- c. Criteria related to **socio-economic impact**: the potential for industrial and economic development resulting from the facility, its potential impact on other sectors of activity, such as the fisheries sector, its impact on local employment and on the local, regional, national and EU industrial value chain, etc.
- d. Criteria related to the **dismantling of the facility**.
- e. Criteria related to the **ability to contribute to the quality and security of electricity supply**, to which end the criteria to be applied will depend on the node.
- f. Criteria related to the **integrity and proper preservation of the offshore-onshore public domain**, etc.

E) Application assessment phase.

Following admission of the various facilities, on having duly fulfilled the requirements set out in the relevant Ministerial Order, the assessment phase will commence.

To this end, the new Royal Decree provides for the creation of a **Technical Assessment Committee** that will submit both the applications it considers eligible for the assessment phase and those to be excluded to the Directorate-General for Energy Policy and Mines, together with the scores resulting from application of the weighting criteria.

The Directorate-General for Energy Policy and Mines will approve the **provisional list of applications eligible** for the assessment phase **and excluded** applications, which will be published in the Official State Gazette so that excluded applicants may file the submissions they see fit within a period of ten days.

Once the Technical Assessment Committee has submitted the **final list** of applications eligible for the assessment phase and excluded applications, the Directorate-General for Energy Policy and Mines will approve it and it will be published in the Official State Gazette.

After assessing the eligible applications, the Technical Assessment Committee will submit a **list** to the Directorate-General for Energy Policy and Mines, assigning a **provisional score to each of the applications** in accordance with the established assessment criteria. The Directorate-General will then approve the list for subsequent publication in the Official State Gazette.

Once the relevant submissions have been filed, the Technical Assessment Committee will submit a **list** to the Directorate-General for Energy Policy and Mines assigning a **definitive score** to each of the applications.

Under Royal Decree 962/2024, the Ministerial Order approving the rules of the procedure may provide that the assessment phase is to be carried out in two different phases, first assessing the non-financial criteria and then the financial criteria.

Lastly, the Director-General for Energy Policy and Mines will award the tender and enter the successful bidders on the electronic register of the renewable energies economic regime under pre-allocated status.

The award decision must contain: the details of the successful bidder, the capacity awarded to each participant and entered on the aforementioned register under pre-allocated status, the award price, i.e. the economic bid price, the minimum and maximum pre-allocated power auctioned, the technologies used and a list containing the final scores of all eligible applications, the reserved access capacity and the specific node where it is reserved, as well as the geographical area in which the wind farms will be located.

The Directorate-General for Energy Policy and Mines will also issue, where appropriate, an order to cancel the guarantees extended to participate in the competitive tendering procedure for unawarded capacity.

The decision will not exhaust the available administrative remedies, and may therefore be appealed before the Secretary of State for Energy.

3. Economic regime

The economic regime governing the facilities will be granted in accordance with the **parameters defined in Royal Decree 960/2020** of 3 November 2020.

Thus, with regard to the economic regime, the Order approving the rules of the competitive procedure must define the following parameters:

- a. The facility availability deadline and, where applicable, the conditions for granting extensions.
- b. The date on which the maximum delivery period begins to run.
- c. The delivery deadline.
- d. The minimum number of equivalent annual operating hours.
- e. The maximum number of equivalent annual operating hours.

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- f. The market adjustment rate.
- g. The existence of intermediate control milestones and their associated penalties.
- b. Environmental impact statement, required for all facilities without exception.
- c. Concession for occupation of the public offshore-onshore domain.

Moreover, the price to which the successful bidder will be entitled will be the award price, which will be the same as their economic bid.

Lastly, the facilities linked to awarded tenders will be declared general-interest electricity infrastructure for the purposes of calculating the public domain occupation fee, which will amount to €0.006 per m² of occupied surface area, plus any returns expected to be obtained from the use of the domain, which on no account may be lower than 20% of the amount of the investment to be undertaken.

Where such occupation takes place in territorial waters, the facilities in question will be deemed used for the exploitation of energy resources and, consequently, for the purposes of the fee, the occupied property will be valued at €0.006 per m² of occupied surface area, to which the estimated average amount of the annual net profits, before tax, expected to be obtained from the use of the public domain over a period of ten years must be added.

4. Grid access and connection

The awarding of the tender and subsequent entry on the pre-allocation register does not entail the grant of the relevant access and connection permits but rather the **reservation of access capacity in favour of the successful bidders**, who must then apply for such grid access and connection permits in accordance with Royal Decree 1183/2020. However, such application will not be subject to the priority criterion provided for in the above Royal Decree.

The Order approving the rules of the competitive tendering procedure may include a maximum period for the successful bidders to apply to the transmission network manager for the relevant access and connection permits, as well as the consequences of not filing such an application in due time.

5. Administrative proceedings

Successful bidders must **apply for the administrative permits** required for **electricity generation facilities**, namely:

- a. Preliminary administrative permits for construction and operation.

The Order setting out the rules of the procedure may specify the cases in which the Directorate-General for Energy Policy and Mines may grant an extension of the period for obtaining the operating permit, subject to a reasoned request from the developer and for a period of less than nine years.

6. Permitting procedures commenced prior to the publication of Royal Decree 962/2024

Royal Decree-Law 12/2021 of 24 June 2021 established a moratorium on the acceptance of new applications for administrative permits and the reservation of areas in territorial waters under Royal Decree 1028/2007 of 20 July 2007, until such time as a new framework adapting the current procedure to the maritime spatial planning resulting from the processing of the relevant plans and the content of the roadmap is developed.

Exemptions from the moratorium included not just applications for administrative permits submitted prior to 25 June 2021 but also offshore wind generation facilities that had already obtained preliminary administrative authorisation or were associated with the creation or expansion of infrastructure for the testing, demonstration or validation of prototypes and new technologies associated with offshore wind energy, including the infrastructure necessary for electricity evacuation, where applicable.

Additional provision two of the new Royal Decree provides that the Directorate-General for Energy Policy and Mines will resolve to **shelve**, for want of subject matter, any pending applications submitted prior to the entry into force of this Royal Decree under Royal Decree 1028/2007, thereby putting an end to the related procedures.

Meanwhile, the sole additional provision provides that:

- (i) applications for administrative permits submitted in respect of **offshore facilities powered by technology other than wind and offshore wind power facilities with a capacity not exceeding 50 MW** shall continue to be processed in accordance with the provisions of Title VII of Royal Decree 1955/2000 of 1 December 2000, and **shall not therefore be subject to the competitive tendering procedure** regulated in Title I of the Royal Decree; and

- (ii) **offshore wind power generation facilities that had obtained preliminary administrative authorisation** prior to the enactment of Royal Decree-Law 12/2021, or that were **associated with the creation or expansion of infrastructure** for the testing, demonstration or validation of prototypes and new technologies associated with offshore wind energy, **may still be located in high-potential renewable energy zones** and **will continue to be processed without being subject to the competitive tendering procedure.**

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