



Income reduction for electricity producers: what's new in Royal Decree-Law 23/2021?

Update on our Q&A “*The income reduction for electricity producers in Royal Decree-Law 17/2021*”

28 October 2021

On 26 October 2021, the Government has approved the Royal Decree-Law 23/2021¹ providing for new urgent measures in response to the on-going situation of high gas and electricity prices (**RDL 23/2021**). Among others, the RDL 23/2021 includes additional provisions affecting the so-called “*mechanism for reducing the excess remuneration of the electricity market caused by the high price of natural gas in international markets*” (the **Mechanism**).

The Mechanism was introduced as a temporary measure (i.e. from 16 September 2021 to 31 March 2022) by Royal Decree-Law 17/2021 (**RDL 17/2021**). The wording of RDL 17/2021 raised many questions and concerns. The competent Ministry initially clarified that the Mechanism was not applicable to energy already committed at a fixed price under contractual arrangements before the entry into force of RDL 17/2021 (the **Clarifications**). However, this exception was not supposed to apply to contractual arrangements entered into within vertically integrated groups and companies.

Following the Communication on Energy Prices issued by the European Commission on 13 October 2021 and several rounds of meetings with the sector, on 14 October 2021 the Minister declared at the Congress that the Mechanism should not apply “*to those who have guaranteed stable prices before the escalating prices*” nor to “*those who guarantee ex novo stable prices that do not internalise the gas prices*”.

¹ Royal Decree-law 23/2021, of October 26, on urgent measures in the field of energy for the protection of consumers and the introduction of transparency in the wholesale and retail electricity and natural gas markets.

In that sense, RDL 23/2021 has modified RDL 17/2021 by introducing a new Additional Provision 8th, which reflects the statements quoted above. On 30 September 2021, we published a **Q&A addressing some of the more frequent questions about the Mechanism as initially regulated by RDL 17/2021**.

As a result of the amendments, we address below the update of our Q&A, as follows:

Q: What are the main new developments introduced by RDL 23/2021 in relation to the Mechanism?

A: That the reduction does not apply to energy committed at a fixed price under contractual arrangements:

- Entered into before the entry into force of RDL 17/2021 (i.e. 16 September 2021); or
- Entered into after 16 September 2021, for a period or more than one year.

Compared to the previous situation, now (i) post-16 September 2021 contracts could also be eligible for avoiding the Mechanism; and (ii) vertically integrated groups and companies may benefit from this (of course, if all the corresponding requirements are met).

Q: Are there more relevant measures in RDL 23/2020 related to the Mechanism?

A: Yes. Section 4 of the aforementioned Additional Provision 8th explains the procedure for proving the existence of contractual arrangements that would be eligible for avoiding the Mechanism.

This was already included in the Clarifications but now more detail is provided. In particular, a standard form for the monthly reports to Red Eléctrica de España is introduced by RDL 23/2021.

Q: Are there other relevant measures in RDL 23/2020 for electric producers?

A: Yes. Although not strictly related to the Mechanism, RDL 23/2020 introduces new obligations to disclose information to the regulator (i.e. CNMC) in relation to pricing and contractual arrangements for the sale and purchase of electricity.

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