
Electricity-intensive consumers statute

Legal Flash Public Law

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On December 17, 2020, [*Royal Decree 1106/2020*](#), of December 15, regulating the electricity-intensive consumers statute (“RD 1106/2020”) was published in the Official Gazette of the Spanish State.

The legislation, which comes into force on December 18, 2020, giving effect to the mandate provided in [*Royal Decree Law 20/2018*](#), of December 7, on urgent measures to boost economic competitiveness in the trade and industry sector in Spain (“RDL 20/2018”), provides a specific legal and economic framework for large electricity consumers.

Specifically, the legislation establishes the requirements they must meet, and the obligations and commitments they must assume in relation to energy efficiency, replacement of contaminating energy sources, investment in R+D+I and employment, among others.

The implementation of the measures is subject to budgetary availability and prior authorization from the European Commission.

Main developments

- It sets out the requirements electricity-intensive consumers must meet and the obligations and commitments they must assume.
- It indicates the procedure for requesting electricity-intensive consumer certification.
- It regulates the aid that companies with electricity-intensive consumer certification can apply for.



Requirements to opt for the electricity-intensive consumer category

- **Requirements:** Electricity consumers that wish to opt for the electricity-intensive consumer category for each supply point or facility must meet the following requirements:
 - **Energy contracting:** They must contract their energy on the electricity production market using any of the forms provided by law.
 - **Consumption:** They must have consumed, in at least two of the three previous years, an annual volume of electricity exceeding 1 GWh, and at least 50% of the energy at times belonging to the off-peak rate period.
 - **CNAE code:** They must operate in a sector or subsector belonging to one of the CNAE (National Classification of Economic Activities) codes included in the [annex](#) of RD 1106/2020.
 - **Ratio:** The ratio between annual consumption and gross added value of the supply point facility for which it has the category of electricity-intensive consumer must exceed 1.5 kWh/€ in at least two of the three previous years. This value will be revised annually.
 - **Business incorporation:** The business that owns the supply point or facility must be validly incorporated under the laws in force.

- **Newly created facilities or supply points:** They must prove compliance with the consumption and ratio requirements on the basis of projections.

Certification of electricity-intensive consumer status

- **System of certification:** RD 1106/2020 establishes a system for electricity-intensive consumer certification, which must be issued by the Directorate General of Industry and Small and Medium-sized Enterprises, of the Ministry of Industry, Trade and Tourism, following verification of compliance with the requirements and a report of the system operator.

- **Application:** Applications must be submitted online through the Ministry of Industry, Trade and Tourism website (<https://sede.serviciosmin.gob.es>), attaching certain documents, such as (i) an electronic questionnaire including a statement of compliance; and (ii) powers of attorney, except for entities registered in the Registry of Entities requesting aid from the Ministry of Industry, Trade and Tourism; and (iii) a report issued



by an auditor registered in the Official Auditors Registry certifying the correct calculation of the gross added value of each of the last three years, or the estimated data for facilities that have been in existence for less than one year.

- **Electronic procedure:** Applicants must use the online portal to complete the all formalities required to fulfill the certification procedure.
- **Time limits:** The deadline for adopting and notifying the resolution that ends the procedure will be six months from the date the application for certification is submitted, after which the application can be considered accepted through administrative silence.
- **Validity and renewal of the certificate:** The electricity-intensive consumer certificate will be valid for the year for which it was requested and until April 30 of the following year. It must then be renewed by submitting to the Directorate General of Industry and Small and Medium-sized Enterprises (i) the relevant documentation stipulated to begin the certification procedure, and (ii) a statement of compliance declaring that the remaining requirements continue to be in effect and are observed, and that the obligations imposed under the statute are fulfilled.

Electricity-intensive consumers' obligations

- **Predictable consumption:** Electricity-intensive consumers will be obliged to specify a predictable consumption, making available to the system operator, either directly or through their marketer, their monthly estimated consumption with an accuracy of at least 75% on an average monthly basis of their schedule of consumption hours, according to the procedure system operator will publish on its website.
- **Equipment:** Electricity-intensive consumers must have the equipment, systems and communications required under applicable law. The system operator will publish the characteristics of this equipment on its website, as well as the procedure and documentation necessary to obtain the relevant certification substantiating that the electricity-intensive consumer fulfills this requirement.
- **Obligations relating to energy management and energy efficiency:** By December 18, 2022, electricity-intensive consumers must implement an energy management system audited and certified in accordance with the UNE-EN ISO 50001:2018 standard, or the regulation that may replace it in the future. Also, at least every four years for each location included in the management system, electricity-intensive consumers subject to chapter II of Royal Decree 56/2016 must carry out the steps for the improvement of



energy performance considered cost-efficient, i.e., the steps for which the period for recovery of the investment does not exceed three years.

- **Contracting obligations:** With the exception of small and medium-sized enterprises (“PYMEs”), electricity-intensive consumers must prove that they contract at least 10% of their annual electricity consumption through contractual/financial instruments, directly or indirectly, of electricity of renewable origin with a minimum duration of five years.

- **Commitment to maintain jobs and the activity:** Under RDL 20/2018, the production activity must be maintained for three years from the date the benefits are granted, except in business crisis situations. Electricity-intensive consumers will be considered to have breached this obligation if they effectively reduce their production by more than 85% or a collective layoff occurs resulting in a reduction of over 85% of their entire workforce, in which case the recipient will be obliged to repay the benefits. However, RD 1106/2020 also provides that this repayment may be canceled if the activity is restarted, recovering at least 50% of its prior production and of its prior employment level, and if the electricity-intensive consumer requirements are met for three years following the initial grant of the aid.

Support mechanisms

- **Mechanism for compensation of charges for financing specific remuneration of renewables and high-efficiency cogeneration and for additional financing in non-peninsular territories**
 - **Purpose:** To compensate electricity-intensive consumers up to a maximum of 85% of the costs incurred for charges relating to remuneration specific to renewable energies and high-efficiency cogeneration, and for specific remuneration in non-peninsular territories in electricity supply prices.
 - **Sectors:** This aid will be allocated to the electricity sectors involved in manufacturing specified in annex 3 of European Commission Communication 2014/C 200/01, on “Guidelines on State aid for environmental protection and energy 2014-2020,” excluding those of the extractive industry.
 - **Calculation:** Compensation will be calculated on the basis of the amounts paid, applying the prices of the charges arising from the method for calculating charges of the electricity system, to be approved by the government. Until the above charges method is approved, a transitional procedure is regulated for the implied calculation of the charges borne by consumers for the financing of renewables, high-efficiency cogeneration and the non-peninsular additional cost.



- **Procedure and timescale:** RD 1106/2020 sets out the rules governing the grant of aid, which will be provided under the competitive procedure organized annually until the expiration of the “Guidelines on State aid for environmental protection and energy 2014-2020.”

- **Mechanism covering risks arising from electricity-intensive consumers’ medium and long-term purchase of electricity:**
 - The Spanish Export Credit Insurance Company (“**CESCE**”), appointed as exclusive managing agent, will manage as insurer/guarantor, on its own behalf and on behalf of the state, the coverage of the risks the state assumes in relation to any of the risks of *de facto* or *de jure* insolvency in the context of contracts electricity-intensive consumers may sign.
 - The state, through the Spanish Reserve Fund for Guarantees of Electricity-intensive Entities (“**FERGEI**”), will assume the results of the coverage of the risks arising from electricity-intensive consumers’ medium and long-term purchase of electricity.
 - The managing agent will not assume the legal risk of the transaction nor of the documentation signed by the insured party.

For additional information, please contact Cuatrecasas.

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