
Urgent measures on energy: Royal Decree-Law 23/2021

On October 27, 2021, the Official Gazette of the Spanish State published [*Royal Decree-Law 23/2021, of October 26*](#), adopting urgent measures to protect energy consumers and bring transparency into the wholesale and retail electricity and natural gas markets, which introduces significant developments affecting consumers and companies in the sector (“RDL 23/2021”). Below we set out the main amendments affecting the mechanism to reduce over-remuneration implemented under Royal Decree-Law 17/2021.

Legal flash – Energy

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In view of the pressure placed on the energy markets and the rising prices, RDL 23/2021 is put forward as a follow-up to [*Royal Decree-Law 17/2021*](#), of September 14, on urgent measures to mitigate the impact of rising natural gas prices in gas and electricity retail markets (“RDL 17/2021”).

Key aspects

- It strengthens the mechanism to reduce over-remuneration introduced under RDL 17/2021.
- It increases social discount rates on electricity bills.
- It increases a minimum aid extended to beneficiaries of the social discount rates on heating bills.
- It imposes and reinforces information and advertising obligations concerning electricity suppliers.



Exemption for energy subject to forward and fixed-price contracts

- **Agreements concluded prior to RDL 27/2021:** Energy produced by power plants operating under the mechanism to reduce over-remuneration introduced under RDL 17/2021 (nuclear and renewable energy plants exceeding 10MW without a remuneration scheme) will not have to apply that mechanism if the energy was already subject to a forward and fixed-price contract, with physical delivery or financial clearance, if the contract was entered into before RDL 17/2021 came into force.

The application of the exemption on energy included in this type of contracts had already been announced by the Ministry for Ecological Transition and the Demographic Challenge in its reply to a query raised by the system operator on the application of RDL 17/2021.

- **Agreements concluded after RDL 17/2021:** The mechanism to reduce over-remuneration will not apply to energy produced by those same plants if, after RDL 17/2021 enters into force, a forward and fixed-price contract is signed for that energy with a term of at least one year.

This exemption from the mechanism is a new development that was not available under RDL 17/2021.

Regardless of the date on which the energy is procured, if the contracts do not merely establish a fixed price for all the procured energy, and part of its price is indexed on the organized power market's prices, the part of the energy affected by that indexation will be subject to the mechanism to reduce over-remuneration and will not benefit from the exemption provided under RDL 23/2021.

Forward contracting by the company group

- **Selling position of the company group:** Under the new RDL 23/2021, the volume of energy granting an exemption from the mechanism is determined for the company group based on its results in its position as seller.



Measures to protect vulnerable consumers

- **Monthly self-declaration form:** To be excluded from the mechanism to reduce over-remuneration, RDL 23/2021 requires the owners of affected plants to submit a self-declaration form to the system operator stating that they comply with the requirements to be excluded and providing evidence to prove it. RDL 23/2021 includes the self-declaration form that must be filled.
- **Verification of and potential fine for information in the self-declaration form.** The National Markets and Competition Commission alone will be in charge of examining the self-declaration forms submitted to the system operator. The provision of inaccurate or false information will be considered a very serious administrative offense.

For additional information, please contact Cuatrecasas.

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