

---

# Remuneration for renewable energy plants as of January 1, 2020 and other new developments relevant to the energy sector

Legal flash – Energy

November 2019

---

On November 23, 2019, Spanish Royal Decree-Law 17/2019 of November 22, on adoption of urgent measures in response to the need to adapt the remuneration parameters affecting the electrical system and addressing the process for shutting down thermal generation power plants (“[Royal Decree Law 17/2019](#)”) was published in the Official Gazette of the Spanish State (BOE).



---

## Highlights

- This new law establishes the **reasonable profit rate** to be applied during the second remuneration period (January 1, 2020 to December 31, 2025) for renewable energy, cogeneration, and waste plants.
- It announces that **by February 29, 2020**, Spain’s Ministry for the Ecological Transition must approve the **ministerial order with the remuneration parameters adjusted to the new profit rate**.
- It establishes exceptional measures for facilities **entitled to feed-in tariffs** prior to entry into force of Spanish Royal Decree-Law 9/2013.
- It establishes specific measures for production plants currently involved in **judicial or arbitration proceedings**, or that will be in the future, for claims for compensation because of the reform introduced by Royal Decree Law 9/2013 and its implementing regulations.

It also includes new rules for shutting down **coal-powered and nuclear facilities**.



---

## Reasonable profit rate for production activities based on renewable energy sources, cogeneration, and waste

Royal Decree Law 17/2019 addresses the reasonable profit rate for production activities based on renewable energy sources, cogeneration, and waste, which depends on updating the specific remuneration regime for the second regulatory period (2020-2025) that must be reviewed before the start of the next regulatory period on January 1, 2020. Specifically, it establishes the following measures:

- **Reasonable profit rate:** Royal Decree Law 17/2019 sets the **reasonable profit rate** for renewable energy production plants, cogeneration plants, and waste-to-energy plants at **7.09%** for the second remuneration period (January 1, 2020 through December 31, 2025).
- **Non-mainland territories:** It also establishes the financial remuneration rate for production facilities located in Spain's non-mainland territories at **5.58%**.
- **New remuneration parameters:** Prior to February 29, 2020, Spain's Ministry for Ecological Transition must approve the ministerial order with the remuneration parameters adjusted to the new profit rate. Until then, the current remuneration levels will continue to be paid, and once the ministerial order is approved, the resulting differences will be settled.

---

## Measures on facilities entitled to feed-in tariffs prior to entry into force of Royal Decree Law 9/2013 and their impact on judicial and arbitration proceedings based on the change of remuneration regime

- As an exception, **facilities based on renewable energies, cogeneration, and waste, entitled to feed-in tariffs at the time of entry into force of Royal Decree-Law 9/2013** (i.e., those that were in operation prior to July 14, 2013) will not have their profit rate reviewed during the next two remuneration periods (2020-2031). This means that they will be able to continue receiving remuneration at the current 7.398% rate.
- This measure for maintaining the 7.398% rate for 12 years will not apply to plants involved in current **judicial or arbitration proceedings**, or those that may be initiated in the future, in relation to claims for compensation based on the reform introduced by Royal Decree Law 9/2013 and its implementing regulations.



- However, any facilities that prior to September 30, 2020 can prove before Spain's General Office of Energy Policy and Mining the early conclusion of such judicial or arbitration proceedings and commit to withdrawing from such proceedings and not receive compensation or damages will be entitled to remuneration at 7.398% for the next 12 years (2020-2031).
- In all cases, if any such damages or compensation is actually received before or after that date, then the right to receive remuneration at the 7.398% rate for 12 years will be forfeited, taking effect on October 1, 2020 and with an additional requirement to return any excess amounts received. The procedure to apply this rule must be approved by appropriate implementing regulations.
- These judicial or arbitration proceedings must be understood to include, among others, those being pursued by (i) any of the plant owners; (ii) the shareholders or investors; (iii) the previous owners, shareholders or investors that have retained the right to pursue a claim; and (iv) third parties that have obtained the right to receive all or any portion of the possible remuneration.

---

## Specific measures on shutdown of coal-powered and nuclear facilities

Royal Decree Law 17/2019 includes two specific rules for shutting down coal-powered and nuclear facilities:

- **Water concessions:** Water concessions associated with such facilities can be granted to new projects and initiatives in the same geographical area, based on economic, social, and environmental criteria.
- **Access capacity:** The access capacity to the electrical grid corresponding to installations that have been shut down can be allocated to new renewable energy plants, in conformity with environmental and social criteria that the Ministry for Ecological Transition will determine.

---

## Entry into force of the new Royal Decree Law and process for its ratification



- **Entry into effect:** Royal Decree Law 17/2019 went into effect on November 24.
- **Co-validation procedure:** Since the new measures described have been approved via a Royal Decree-Law (*Real Decreto-Ley*), they are provisional rules approved by the Spanish government in a situation of extraordinary and urgent need. This means that the Royal Decree Law must be co-validated by Spain's Congress of Deputies (*Congreso de los Diputados*) within 30 days after it is enacted. The Congress of Deputies must decide whether it will co-validate it, in which case it would no longer be a provisional law but fully integrated into Spain's legal system, or to refuse to co-validate it, which would cause immediate termination of its legal effects and its elimination from the legal system, although any effects produced during the time when it was in effect would not be reversed. If the Royal Decree Law is repealed because co-validation is refused, then it will be necessary to start the process over to pass rules that will be applicable on January 1, 2020.
- **Process as draft legislation:** During that same time period, the Congress of Deputies could agree to treat the co-validated Royal Decree Law as draft legislation, which would then be processed under urgent procedures, with the possibility of introducing amendments to the final text.

---

For additional information regarding the contents of this document, please get in touch with your usual contact person at Cuatrecasas.

©2019 CUATRECASAS

All rights reserved.

This document is a compilation of legal information prepared by Cuatrecasas. The information and comments included herein do not constitute any form of legal advice.

Cuatrecasas is the owner of the intellectual property rights over this document. Reproduction of this document by any medium, whether in whole, in part, or as excerpts, is prohibited, as is its distribution, transmission, or any other type of use, unless authorized in advance by Cuatrecasas.