

SPAIN: GOVERNMENT EXCLUDES FIXED-PRICE PPAS FROM REMUNERATION REDUCTION MECHANISM DUE TO THE INTERNALISATION OF NATURAL GAS COSTS AND IMPOSES STRICT INFORMATION AND DOCUMENTATION SUBMISSION OBLIGATIONS

WHAT IS THE AIM

This measure aims to exclude from the remuneration reduction mechanism, effective as of 16 September 2021, the electricity covered by those Power Purchase Agreements ("PPAs") in which the price is not indexed to the Spanish mainland's wholesale electricity market, provided the PPAs were entered into after 16 September 2021 for a term of one year or more. In addition, certain information and documentation must now be submitted in order to fulfil the declared aim of increasing transparency.

WHAT HAPPENS TO INTRAGROUP PPAS?

No provisions or clarifications are made in this regard. The application of the mechanism to intragroup PPAs was construed from the "clarification" that the Spanish Ministry published in reply to REE in its capacity as system operator. As nothing is established in this regard, the law would permit no discrimination between these intragroup PPAs and those signed with third parties. As a result, fixed-price intragroup agreements meeting the requirements set will be excluded from the reduction of remuneration mechanism. In any event, it would have been desirable for the provision to expressly confirm this issue.

FOR PPA SIGNED AFTER 16 SEPTEMBER, WHY MUST THE TERM BE AT LEAST ONE YEAR?

No explanation is given regarding the minimum one-year term, which is surprising since this measure will, in principle, only have an initial duration until 31 March 2022.

WHAT INFORMATION AND DOCUMENTS MUST BE SUBMITTED, AND BY WHOM AND HOW OFTEN, TO PREVENT THE MECHANISM FROM BEING APPLIED?

The following must be submitted:

- a statement of compliance, according to the standard form approved in Royal Decree-Law 23/2021 (which may be modified by Ministerial Order), which includes at least: i) the monthly amount of energy subject to the PPA; ii) the date of execution of the PPA; iii) the volume; iv) price; and v) date of delivery or liquidation of the energy under the PPA.
- documentation confirming the agreement for the power being purchased;

Key issues

- Electricity covered by fixed-price PPAs entered into after 16 September for a term of at least one year, is excluded from the remuneration reduction mechanism due to the internalisation of the cost of natural gas.
- The documentation required for the power to be excluded from the remuneration reduction mechanism is now regulated.
- Strict information obligations are imposed.

- documentation confirming that the PPA has been duly notified to the corresponding body, or the reason for not doing so, as the case may be;
- any other documentation needed to support and prove the accuracy of the information.

The statement of compliance must be submitted monthly, within the 5 business days following the end of each month.

It must be signed by the managing director or "person holding a post with similar responsibility" at the company or corporate group.

WHAT ARE THE MAIN INFORMATION OBLIGATIONS, GENERALLY SPEAKING, FOR ELECTRICITY PRODUCERS IN RELATION TO PPAS?

What was previously a general reference is now a direct referral to the law, which notably increase and specify the information obligations imposed on energy producers.

In fact, producers must now submit at least the following information, monthly, to the Spanish Markets and Competition Commission (*Comisión Nacional de los Mercados y de la Competencia*, "**CNMC**"), using the format and criteria established by it:

- PPAs entered into, indicating at least: (i) the date of execution of the PPA; (ii) the date of delivery or liquidation; (iii) the volume of energy affected; (iv) the counterparty; (v) the price; (vi) the profile; and (vii) the type of product traded.
- In addition, if the producer belongs to a corporate group which carries out electricity distribution activities, or if the producer itself does this, it must also inform the CNMC of:
 - (i) any sale transactions entered into with the group or with third parties;
 - (ii) any agreements entered into by the energy producer and group companies, and between such companies and the companies of the group carrying out electricity distribution activities.

Similar obligations to inform the CNMC are also now imposed upon power distribution companies in relation to any PPAs they have entered into.

These strict information obligations may create significant compatibility issues with European Union law.

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