



RECENT CHANGES ON THE RENEWABLE ENERGY SECTOR INTRODUCED UNDER ROYAL DECREE-LAW 9/2013, OF 12 JULY

Royal Decree-Law 9/2013, of 12 July, adopting urgent measures in order to ensure financial stability of the electricity system (hereinafter, “**RD-L 9/2013**”) was published in the Official Spanish Gazette (“**BOE**”) on 13 July 2013.

FRAMEWORK FOR THE APPROVAL OF RD-L 9/2013

Over the last decade, the Spanish electricity system has been showing a tariff deficit. This deficit is due to the actual costs associated to the regulated activities and operation of the electricity system being higher than the tariffs established by the Government and paid by the consumers.

In order to correct such deficit, urgent measures have been adopted over the last few years with an impact on both to the costs and the income of the electricity sector. However, the different legal and regulatory measures have

proven inefficient due to certain factors such as the reduction in electricity demand due to the economic crisis – with the consequent reduction in income from access tariffs -, and the increase in the generation produced by facilities entitled to special incentives compared to that originally estimated – with the consequent increase in the system costs.

In this scenario, the Council of Ministers approved on 12 July 2013 a package of measures to reform the electricity sector, among which is RD-L 9/2013, implementing a series of measures affecting all the activities of the electricity market, for the purposes of ensuring financial stability and economic sustainability of the electricity system.

Below there is a summary of the key measures set forth by RD-L 9/2013 that have an impact on the remuneration scheme of facilities producing electricity from renewable sources, co-generation and waste.

(A) REMUNERATION SCHEME APPLICABLE TO THE NEW FACILITIES PRODUCING ELECTRICITY FROM RENEWABLE SOURCES, CO-GENERATION AND WASTE THAT ARE ENTITLED TO SPECIAL INCENTIVES

RD-L 9/2013 amends paragraphs 4 and 5 of section 30 of the Electricity Sector Law, authorising the Government to approve a new legal and economic regime for the facilities producing electricity from renewable sources, co-generation and waste. This new legal and economic regime (to be further developed in detail through different regulatory measures) will be applicable as from the date of entry into force of RD-L 9/2013¹, and is based on the following principles:

- The remuneration of the electricity production facilities under a special regime shall be determined by:
 - (i) the sale of the electricity generated, paid at the market price, plus
 - (ii) a specific remuneration comprised of a component per each power unit installed, which, if necessary, shall cover the investment costs of a standard facility that are not to be recovered with the sale of electricity at the market price, as well as a component per operation covering, if any, the difference between the operating costs and the income obtained from the sale of electricity in the market.
- The amount of the specific remuneration, for each type of facility, throughout their regulatory service life, and with reference to an efficient and well-managed business, shall be calculated based on (i) the standard income obtained from the sale of the electricity generated, at the market price, (ii) the standard operating costs necessary to carry out its business, and (iii) the standard value of the initial investment².
- The concept of “efficient and well-managed business” is explained in the preamble to RD-L 9/2013 by

reference to EU case-law as “any company holding the means necessary for the performance of its business, the costs of which are those of an efficient company within the sector, taking into account the relevant income and a reasonable return for the performance of its activities”.

- The remuneration scheme for each type of facility shall not exceed the minimum level necessary to cover the costs enabling such facility to compete on equal terms in the electricity market, and to obtain a “reasonable return”. Such reasonable return shall be calculated, before taxes, on the interest rate yielded by 10-year Government Bonds plus a spread.
- The main parameters of this remuneration scheme shall be reviewed every six years.
- With respect to the granting and monitoring of the special remuneration to production facilities using renewable energy, co-generation and waste, a Special Remuneration Regime Registry is created within the Ministry of Industry, Energy and Tourism. This Registry shall reflect the remuneration parameters applicable to such facilities. Registration of the facilities with such Registry shall be a compulsory requirement for the application of the special remuneration regime.

(B) REMUNERATION SCHEME APPLICABLE TO THE EXISTING FACILITIES UNDER THE FEED-IN TARIFF REGIME

RD-L 9/2013 supersedes any laws regulating the legal and economic regime applicable to any existing electricity-generating facilities from renewable energy sources, co-generation and waste that benefit from the feed-in tariff regime. Additionally, RD-L 9/2013 provides that the Government shall approve, at the proposal of the Ministry of Industry, Energy and Tourism, a Royal Decree establishing a new remuneration regime for such facilities based on the following principles:

- The remuneration shall observe the new wording of section 30.4 LSE, i.e.
 - (i) participation in the electricity market,
 - (ii) a reasonable return, and
 - (iii) an efficient and well-managed business.

¹14 July 2013.

²In determining the value of initial investment for each type of facility, the costs or investments arising from administrative acts or regulations that are not generally applicable to the whole Spanish territory shall not be considered.

- With respect to those facilities that, as at the date of entry into force of RD-L 9/2013, are entitled to the feed-in tariff regime, a reasonable return shall be calculated, before taxes, on the interest rate yielded by 10-year Government Bonds plus a spread of 300 basis points, subject to review every six years.
- The new remuneration model for these facilities shall apply upon RD-L 9/2013 becoming effective, that is, as from 14 July 2013. Nevertheless, until the approval of the relevant provisions necessary for the full implementation of RD-L 9/2013, the provisions repealed by RD-L 9/2013 shall continue to apply, with certain exceptions³.
- As a consequence, from 14 July 2013 any remuneration received by the existing facilities that benefit from the feed-in tariff shall be deemed as provisional, on account of the remuneration to be received under the new regime. Once the relevant regulations necessary for the application of the new economic regime are approved, these facilities shall be subject to the corresponding regularisation, effective from 4 July 2013.

CONTACTS



Javier Santos

T +34 91 319 1212
javier.santos@dlapiper.com



José Ignacio Monedero

T +34 91 319 1212
joseignacio.monedero@dlapiper.com



José Manuel Sala

T +34 91 319 1212
jose.sala@dlapiper.com

³The efficiency complementary payment, and the payment related to the reactive energy regime are both suppressed with immediate effects.

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.
Further details of these entities can be found at www.dlapiper.com
Copyright © 2013 DLA Piper. All rights reserved. | NOV13 | 2673841