

Legal Status

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Regulatory Framework for Energy Storage in Spain



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In recent decades, Spain has been committed to the implementation of renewable energies as its main source of energy. However, this commitment implies a challenge in terms of consolidating a flexible and secure energy system. This situation is accentuated by particularities such as the energy isolation of the Iberian Peninsula, the growing penetration of non-manageable renewable sources, and the consequent demand for greater flexibility in the electricity system.

In this scenario, storage technologies emerge as an alternative that facilitates the integration of these clean sources, contributing to supply security and the optimization of grid management.

Currently, Spanish legislation on energy storage is in the development phase and lacks consolidated regulation, which generates a panorama of uncertainty for the sector.

I. National strategy and planning

The Energy Storage Strategy, approved by the Government in 2021, is part of the Strategic Energy and Climate Framework and articulates a long-term vision for the deployment of storage technologies. This strategy identifies the technological,

regulatory and economic challenges facing the sector.

In parallel, the PNIEC 2021-2030 incorporated an additional 6GW of storage within its objectives, which would enable better management of renewable generation, in addition to strengthening the security of the electricity system and facilitating demand management.

As support measures, MITECO has launched specific aid lines for storage facilities, both stand-alone and hybridized. In addition, the European Commission has recently authorized a new aid scheme co-financed by the ERDF Funds 2021-2027, endowed with 700 million euros. The aim is to boost the deployment of storage in Spain, including both hybrid systems and stand-alone solutions. The aid will be managed by the IDAE.

II. Regulatory framework

At the European level, *Directive 2019/944* establishes that storage must be able to participate in the electricity market on equal terms with other resources.

At the national level, although there is no unified regulation, several texts have outlined a preliminary framework:

- i. *RD 23/2020*: Introduces the figure of the storage holder. In addition, it promotes the hybridization of facilities and allows owners of storage facilities to obtain income from their participation in the production market.

- ii. *RD 1183/2020*: Regulates for the first time the integration of storage facilities into the grid, allowing their hybridization with generation plants.
- iii. *RD 1955/2000*: Incorporates specific provisions regarding hybridization and storage, in order to clarify the validity of access and connection authorizations. It establishes that incorporating storage systems into a facility will not be considered a change in the technology of such facility. It defines the procedure for authorizing storage facilities, both stand-alone and hybridized, granting them the same treatment as generation facilities.
- iv. *Law 21/2013*: Exempts storage facilities from environmental impact assessments, unless they affect protected or cultural environments. However, it will be required for *stand-alone* facilities.
- v. *CNMC Circular 3/2020*: Exempts batteries from paying transmission and distribution tolls, in line with Regulation (EU) 2019/943.
- vi. *RD 8/2023*: Introduces economic guarantees for connection access and sets administrative deadlines for operating authorization.

III. Types of installations

i. Hybrid installations

A storage facility can be integrated into other generation facilities, provided that certain conditions are met:

- If the generation facility already has an access and connection permit, it will only

be necessary to modify such permit to adapt it to the new configuration, in addition to submitting an economic guarantee corresponding to 50% of the value applicable to the new technology.

- If, on the other hand, the generation facility does not yet have an access and connection permit, the permit must be requested jointly for both technologies from the beginning or modified to include the storage technology. In this case, a 50% guarantee will also be required, calculated on the technology with the lowest power.

If the hybridization requirements are not met, the storage must obtain an independent permit, without affecting the permit granted to the generation plant. Likewise, to qualify for the renewable energy economic regime by auction, the storage must be used exclusively with energy from the hybridized plant.

Since there is only one access and connection permit, both facilities must have the same owner, which imposes limitations on the participation of third parties in hybridized projects (e.g., for project financing).

ii. Stand-alone installations

The regulation applicable to this technology is still in the development phase. However, market interest in this type of installation has been increasing, driven in large part by the significant reduction in the cost of lithium-ion batteries over the past decade.

From a technical and regulatory point of view, it should be noted that these types of facilities are considered generation facilities for the purposes of the access and connection procedure.

Additionally, the owners of these facilities may participate in the electricity market, either directly or through independent marketers or aggregators. This participation may include both the production market and the demand management market.

IV. Challenges and prospects

A regulatory framework is Currently expected to be developed to address key aspects such as the legal regime for storage owners, the simplification of administrative procedures, the integration of storage in the operation of the electricity system and its inclusion in the planning of the transmission grid.

In addition, the sector lacks adequate remuneration mechanisms, due to low price volatility, a lack of incentives for flexibility, and competition from other technologies such as hydrogen. Establishing a stable regulatory framework is essential to ensure a level playing field and to facilitate the integration of storage into the electricity market.

Finally, it is necessary to adapt to municipal urban plans, which in many cases do not contemplate energy storage, creating additional barriers to the deployment of these technologies.

V. Conclusions

- (i) The development of energy storage has become a strategic pillar for integrating renewable energies, guaranteeing security of supply and enhancing the stability of the electricity system.
- (ii) Although important regulatory steps have been taken to recognize storage and enable its integration into the grid, a clear and unified regulatory framework is still lacking. This creates legal uncertainty, especially for stand-alone facilities, which slows down the development of the sector.
- (iii) State aid provides significant financial support to accelerate storage projects, demonstrating a growing institutional commitment to this technology.
- (iv) The deployment of storage faces challenges, including inadequate remuneration mechanisms, low price volatility, competition from other technologies (such as hydrogen), and the need for regulatory adaptation.

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EMPLOYMENT

The Supreme Court Confirms that Compensation for Unfair Dismissal cannot be Increased by the Courts



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The Judicial Court has announced in a recent press release that the Plenary Session of the Labour Chamber of the Supreme Court has pronounced a judgement that consolidates its doctrine on the amount of compensation for unfair dismissal.

With this decision, ruling, the Supreme Court establishes that the compensation provided for in Provision 56.1 of the Workers' Statute cannot be increased by judges based on the particular circumstances of the case. Also, it maintains that the compensation provided for by law does not violate Provision 10 of ILO Convention 158 or Provision 24 of the revised European Social Charter.

This statement represents a turning point in a legal debate that had been gaining strength in recent years, especially following the decisions of the European Committee of Social Rights (ECSR). Specifically, in Complaint No. 218/2022, filed by Labour Commission and adopted on December 3, 2024, it concludes that Spain had violated Provision 24.b of the European Social Charter because

the statutory maximum limit of 24 months' salary was not sufficient to deter the employer and repair the damage suffered by the victim.

However, the Supreme Court, applying the conventionality test, considers that the expression of the right to "adequate compensation" provided for in Provision 24 of the European Social Charter and Provision 10 of ILO Convention 158 is "literally vague." Therefore, it cannot be understood as a directly applicable mandate.

It also expressly advocates on the legal value of the decisions of the ECSR. In this regard, the Supreme Court clarifies that these resolutions are not binding or enforceable, even before the Committee of Ministers of the Council of Europe itself, let alone before the domestic courts of the member states. Unlike the European Court of Human Rights or the Court of Justice of the European Union, the ECSR is not a judicial body, and its decisions cannot be interpreted as judgments that directly oblige the modification or extension of rights recognized by national law.

This interpretation is in line with the case law of other European courts, such as the French Supreme Court and the Italian Constitutional Court, which have already ruled in similar terms on the non-binding nature of the ECSR's decisions.

The Supreme Court recalls that the Constitutional Court has repeatedly endorsed that the compensation set out in national legislation constitutes adequate

compensation for the purposes required by international treaties. This system provides legal certainty and uniformity for all employees who, in the event of job loss, are compensated on identical terms.

This is not the first time that the Supreme Court has ruled in this direction. In judgment no. 1350/2024, of December 19, it rejected the possibility of recognizing compensation in addition to that legally assessed, stating that Provision 10 of Convention 158, although integrated into the Spanish legal system, lacks direct regulatory effectiveness. Furthermore, it emphasized that Provision 56.1 of the Workers' Statute itself complies with the objective parameters of seniority and salary set out in the aforementioned Convention.

The recent communication from the Judiciary Court confirms that the Supreme Court is unifying and reinforcing its doctrine in this area, now expressly extending its analysis to Provision 24 of the European Social Charter.

In short, the Supreme Court is committed to a literal and consistent interpretation of our legal system, reaffirming that the only compensation applicable in cases of unfair dismissal is that established by law. This rules out the possibility of judicial increases, thereby strengthening legal certainty in the field of labour law.

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TAX

Diet Regime for Administrators and Members of the Board of Directors



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What is the allowance system?

The allowance system is regulated in Article 9 of the Personal Income Tax Regulations (RIRPF). It applies when companies can compensate for normal living and subsistence expenses when employees move to a municipality other than their usual place of work and residence. In particular, the following are exempt:

- 0.26 per kilometer travelled, the amounts intended to cover tolls and parking costs, as well as travel costs (when using the vehicle itself) are exempt from tax.
- Amounts to compensate for hotel and restaurant expenses incurred in municipalities other than the place of work and residence.
- In the case of a lump-sum payment for living expenses, this will depend on whether or not there is an overnight stay and whether or not it is on Spanish territory:

	Without overnight stay	With overnight stay
Spanish Territory	26.67€	53.34€
Foreign Territory	48.08€	91.35€

These allowances are tax-exempt, except in the case of continuous trips lasting more than nine months.

Who can apply?

Until now, it has been applied restrictively only to employment relationships characterised by dependency, alterity and being outsourced.

However, the new decision of the Economic-Administrative Court no. 1475/2024 of 30 January 2025 makes this position more flexible and confirms the possibility of applying the per diem system to the directors or members of the board of directors of a company.

The ruling clarifies that the nature of a director is not incompatible with the characteristics of dependence, alienation and alterity. Consequently, directors or members of the board of directors may not apply the regime of Article 9 of the RIRPF to the allowances they receive for their functions as such (i.e. by virtue of their business relationship). They may, however, apply it to the benefits derived from their employment relationship with the company.

In order to determine whether or not the regime applies, it will be necessary to analyse the origin or cause of the remuneration. Therefore, if the director or member of the board of directors receives only remuneration for the commercial

relationship, without being an employee, he/she will not be entitled to apply the regime of Article 9 of the RIRPF. At the same time, if the director is an employee, and the allowance arises from that status, the application of the scheme and the compensation of the allowances cannot be denied.

It is crucial to remember that the bond theory cannot be used to absorb the employment relationship into the commercial relationship. Income must be considered separately for each status: director and employee of the company. This will ensure fair and equitable treatment, with a detailed assessment of the source of the allowances to determine the applicability of the exemption.

Concluding remarks

The new TEAC resolution marks a significant change in the application of the per diem regime, ending a previous restrictive application and relaxing the position towards an application in line with the non-absorption of the commercial relationship over the employment relationship. This approach ensures fair and equitable treatment, with a detailed assessment of the origin of the allowances to determine the applicability of the scheme.

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