

Legal Status in Spain

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1. Energy

Energy

Climate Change and Energy Transition Law, the end of PPAs and the beginning of electric power auctions?

In recent times and until the beginning of the health crisis generated by the COVID-19, numerous Power Purchase Agreements, or “PPAs”, have been signed in Spain, with the main aim of making renewable energy generation projects bankable to favour predictability and stability for these projects’ revenues.

With the current fall in electricity prices, caused among other things by the fall in demand due to the health crisis generated by the COVID-19, many of the PPAs signed can be unprofitable for energy buyers, mainly electricity traders, who may end up paying a higher price than the market price. In this situation, and given the fluctuations in the energy market, doubts are emerging as to whether PPAs are in fact the right instruments to make renewable energy generation projects bankable or whether, on the contrary, there are other alternative formulas.

Along these lines of alternative formulas, the Climate Change and Energy Transition Law approved by the Council of Ministers on 19 May 2020 establishes that the Government must develop a new remuneration framework for the generation of electricity from renewable energy sources, based on the long-term recognition of a fixed energy price. This remuneration framework will take the form of competitive tendering procedures (“electric power auctions”) in which the product to be auctioned will be electricity, installed capacity or a combination of both and the variable on which it will be offered will be the remuneration price of this energy. The aforementioned Climate Change and Energy Transition Law provides that in competitive tendering procedures a distinction can be made between different generation technologies on the basis of their technical characteristics, manageability levels, location criteria, technological maturity and other factors that can guarantee the transition to a decarbonised economy.

The Climate Change and Energy Transition Law is virtually a blank slate in terms of electric power auctions and, therefore, it will be necessary to wait for its regulatory development in order to analyze its application. If they are provided with a stable regulatory framework, this could mean a definitive boost for renewable energies. In particular, it would be ideal for electric power auctions to include mechanisms for assigning additional prices, which would allow different actors to be awarded contracts. Furthermore, it will be necessary to analyse the total power auctioned and whether formulas are established that promote technological diversity.

In this context, and once the electricity market is reactivated after the health crisis generated by COVID-19, it seems that PPAs will continue to be a perfectly valid option for making renewable energy generation projects bankable. In order to provide greater security to the PPAs and to mitigate possible material changes in the electricity market, it is advisable to include a series of mechanisms in this type of contract, such as regulatory/market change clauses, which allow the price of the PPA to be revised in exceptional cases, without having to be tied to paying/receiving a “ruinous” price, especially taking into account that these contracts are generally long-term.

Therefore, it seems that PPPs will not be relegated by electric power auctions, they could rather be a supplementary mechanism, which in certain cases may represent an option that provides additional advantages. In any case, it will be necessary to wait for future electric power auctions to analyse how they are organised and how the market reacts to them.

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2. Litigation

Litigation

Suspension of procedural time limits.

Procedural and administrative time limits were suspended on March 14 by Royal Decree 463/2020, which established the State of Alarm.

Initially there was some legal discussion as to whether this suspension meant that on resumption the period would be restarted from zero or whether the days before March 14 would still be counted. The official interpretation, confirmed by the State Attorney, was that the time limits would continue, and that the days already elapsed would be counted.

However, the Spanish Government issued Royal Decree Law 16/2020, which completely amended this point by explicitly stating that the time limits would be restarted from zero for the sake of legal certainty, given the confusion that the calculation of the time limit could create if it was done in another way.

In addition to this, the rule included another new aspect: the time limit for appeals will, exceptionally, be doubled, i.e. instead of the usual 20 days to appeal against a judgement, there will be a 40-day time limit. This will apply not only to potential appeals against judgments notified before and during the State of Alarm, but also to those notified during the 20 days following the lifting of the State of Alarm. The aim of this rule is to try to ensure that these appeals are filed in stages and not all at once over the first few days.

The end date of the suspension of the procedural periods was June 4, and the first day counted for all procedural periods was June 5. The Government has not waited to make it coincide with the end of the State of Alarm.

It is worth noting that procedural periods are counted on working days (not holidays) from Monday to Friday and may vary depending on local and regional holidays.

Interestingly, the suspension of administrative time limits started earlier, on June 1, and the first day of calculation of administrative time limits was June 2.

Finally, we would like to point out that the aforementioned Royal Decree-Law 16/2020 established that exceptionally in this year 2020, the days between 11 and 31 August will be considered as working days for the purposes of procedural periods. The usual rule is that the whole month of August is considered non-working, but this exception was established to try to encourage the reactivation of legal proceedings in these months after the State of Alarm.

The regulation for all procedural time limits to be restarted from zero is positive because it creates security and avoids unnecessary confusion. However, the fact that time limits for appeals have been doubled does not make much sense. This will delay the proceedings, something that should always be avoided.

With regard to August, the fact that it will be a working month should mean more progress and fewer delays in procedures, and it could be a first step towards enabling the judicial sector to work in August as many other European countries do.

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