

Energy

Limits on reservoir releases: amendment to the Water Act by Royal Decree-law 17/2021 (VI)

Royal Decree-law 17/2021, of 14 September, on urgent measures to mitigate the impact of the escalation of natural gas prices in the retail gas and electricity markets: amendment to the Water Law.

ANA I. MENDOZA LOSANA

Associate Professor of Civil Law, Universidad de Castilla-La Mancha
Academic Counsel, Gómez-Acebo & Pombo

1. Introduction

The Official Journal of Spain of 15 September 2021 published the awaited set of Government measures to address the unstoppable rise in the price of electricity. These measures are contained in Royal Decree-law 17/2021, of 14 September, on urgent measures to mitigate the impact of the escalation of natural gas prices in the retail gas and electricity markets. These measures revolve around four axes: direct protection of consumers, exceptional and temporary reduction of taxes, elimination of barriers to competition by imposing forward power purchase agreements on dominant operators in the

generation market and reduction of the remuneration of the surplus revenue earned from the increase in the price of gas in a marginal cost pricing system. From these different levels, the aim is to act on the various elements which, in one way or another, put pressure on the price and are generating a situation of alarm and social unrest which is exacerbated every day when the news bulletins report that the price of electricity has reached a new all-time high.

Given that just a few minutes after its approval by the Cabinet and even before, all the media have reported on the piece of legislation and, in the midst of the heated

political dispute, they are disseminating it and submitting it to the opinion of the most disparate panellists, the series of documents dedicated to the new legislation aims to focus on its legal impact and analyse, with calmness and rigour, the measures adopted and their effect on the electricity system, on the legal system and on society as a whole, paying special attention now to the amendment to the Water Act.

2. Restrictions on the rights of water resource concessionaires

Article 10 of Royal Decree-law 17/2021 amends the recast version of the Water Act, approved by Royal Legislative Decree 1/2001 of 20 July, to entrust the basin organisation to set some hydrological variables at the beginning of the hydrological year, for reservoirs greater than 50 hm³ of total capacity, whose main uses are not supply, irrigation and other agricultural uses, in cases where appropriate in view of the reserve of water

reservoirs and seasonal forecasts. Specifically, the said basin organisation shall fix:

- A minimum and maximum scheme of average monthly flows to be released for situations of hydrological normality and prolonged drought.
- A scheme of minimum volumes of reservoirs for each month.
- The minimum monthly reserve that must remain stored in the reservoir to avoid undesirable environmental effects on the fauna and flora of the reservoir and associated water bodies.

This is intended to limit the margin of discretion of users of the publicly-owned water, under concession, whose uses are subordinated to the public interest, and to ensure that they continue to carry out their activities, in a context of increasing reduction in water availability due to climate change.