

Energy

Royal Decree-law 6/2022 of 29 March: main developments in the hydrocarbons sector

Main changes introduced in the hydrocarbon sector legislation by Royal Decree-law 6/2022, of 29 March, adopting urgent measures within the framework of the National Plan in response to the economic and social consequences of the war in Ukraine

ENERGY AREA

In its meeting of 29 March 2022, the Cabinet approved Royal Decree-law 6/2022, of 29 March 2022, adopting urgent measures within the framework of the National Plan in response to the economic and social consequences of the war in Ukraine (the “Royal Decree-Law 6/2022”).

Among other highly important issues, in this alert we will focus exclusively on the main changes introduced by Royal Decree-law 6/2022 that refer to different matters regulated by the Hydrocarbons Sector Act 34/1998 of 7 October (“LSH”, in its abbreviated form in Spanish) and its implementing regulations.

1. Reduction of greenhouse gas emission intensity over the life cycle of fuels

With effect from the entry into force of Royal Decree-law 6/2022, the obligation is established for certain persons to comply with a mandatory target of reducing life-cycle greenhouse gas emissions per unit of fuel and energy supplied in transport by 6 percent compared to the baseline for greenhouse gas emissions from fossil fuels used in the European Union in 2010, which is 94.1 g CO_{2eq}/MJ.

Article 12 of the Royal Decree-law defines the parties obliged to comply with this target and delimits its scope by reference to their

activities in the domestic market, excluding certain transactions with other obligors¹.

The target should be achieved through the use of biofuels that meet sustainability criteria, alternative fuels and reductions in flaring and venting at sites.

Obligors must evidence compliance with the greenhouse gas emissions intensity reduction targets, for which they must submit the information and documentation, audited by an independent company, as set out in Royal Decree 235/2018².

Failure to comply with the objectives and obligations in this area from the 2023 baseline year onwards is classified as a serious infringement of the LSH.

2. Extraordinary and temporary rebate on the final price of certain energy products

Article 15 of Royal Decree-law 6/2022 approves an extraordinary and temporary re-

bate on the retail price of certain energy products and additives. The products subject to the rebate are defined in Article 15(3) of Royal Decree-law 6/2022³.

The beneficiaries of the rebate will be the natural and legal persons that purchase the products and additives subject to rebate between 1 April and 30 June 2022, both included, from the collaborators in the management of the rebate.

The amount of the rebate will generally be 0.20 euros per litre or kilogram of product, as the case may be. Exceptionally, it is provided that the rebate will be reduced to 0.15 per litre or kilogram for operators who are subject to the non-tax public monetary consideration regulated in Article 21 of Royal Decree-law 6/2022⁴, *“reaching, with the appropriate discount, a minimum of 0.20 euros per litre or per kilogram in total”*.

The collaborators in the management of this rebate will be those who hold the rights

¹ In this regard, Article 12(1) of Royal Decree-Law 6/2022 includes as obligors, inter alia, wholesale operators of petroleum products for their annual sales on the domestic market (and excluding their sales to other wholesale operators) or companies engaged in the retail distribution of petroleum products for the part of their annual sales on the domestic market not supplied by wholesale operators or other retail operators.

² Royal Decree 235/2018, of 27 April, setting out calculation methods and information requirements in relation to the intensity of greenhouse gas emissions from fuels and energy in transport; amending Royal Decree 1597/2011, of 4 November 2011, regulating the sustainability criteria for biofuels and bioliquids, the National Sustainability Verification System and the dual value of certain biofuels for the purposes of their calculation; and laying down an indicative target for the sale or consumption of advanced biofuels (“Royal Decree 235/2018”).

³ The products subject to the rebate are (a) petrol, (b) diesel A and diesel A+, (c) diesel B, (d) marine diesel, (e) LPG, (f) CNG, (g) LNG, (h) bioethanol, (i) biodiesel, (j) blends of petrol with bioethanol or diesel with biodiesel requiring specific labelling. It also provides for a rebate for the additive AdBlue.

⁴ Article 21 of the Royal Decree-law provides for temporary non-tax public monetary consideration for wholesale operators of petroleum products with refining capacity in Spain and an annual turnover in excess of EUR 750 million. However, those parties who unequivocally undertake to make a discount on sales of the products subject to the rebate of 0.05 euros per litre or kilogram of product, as the case may be, are exempted from the application of the aforementioned monetary consideration. The duration of the monetary consideration referred to in this article is the same as the duration of the rebate on the price of the products.

to operate retail fuel supply facilities, as well as companies that make direct sales to end consumers. Articles 16 et seq. of the Royal Decree-law lay down the obligations of the collaborators in the management of the rebate and the procedure for requesting its refund from the competent tax authority.

3. Main amendments to the LSH

- a) Regasification plants located in the Canary Islands archipelago

Royal Decree-law 6/2022 rewords Article 55(3) LSH to specify that an administrative authorisation will not be required for regasification plant projects located in the Canary Islands whose main use is to supply electricity generation facilities, although they may have secondary uses such as supplying ports and ships.

Article 59(2)(b) LSH is amended to exempt such facilities, as well as the natural gas pipelines associated with them and dedicated exclusively to supplying power stations, ports and ships, from the facilities that make up the basic natural gas network.

Article 103(1) LSH is also amended to include the facilities referred to in the new wording of Article 55(3) among those considered of public convenience and necessity for the purposes of expropriation and the exercise of the right of way.

- b) Direct lines

Royal Decree-law 6/2022 amends Article 78 LSH to broaden the concept of direct line to include gas pipelines

whose purpose is to connect a renewable gas production plant to the gas system for the injection of gas into it. Producers of renewable gases are expressly allowed to construct direct lines by their own means or to request their construction from a transmission company or distribution company with administrative authorisation in the area.

The direct line will be owned by the consumer or renewable gas producer, and will be excluded from the remuneration scheme for transmission and distribution activities. However, the owner will be obliged to provide access to third parties in accordance with the regulations, and the Spanish Competition and Markets Authority (“CNMC”, in its abbreviated form in Spanish) will be responsible for resolving any connection and access disputes that may arise.

The processing of direct lines will be the responsibility of the devolved regions (“Autonomous Communities”) when they only run through the territory of one of them, the National Public Administration being competent otherwise. Direct injection lines will require a binding report from the Gas System Manager.

- c) Supply of renewable gas through insulated pipelines

A new thirty-eighth additional provision is introduced in the LSH, regulating the supply of renewable gas by means of isolated pipelines (not connected to the gas system), which will be considered an activity of general interest. Among others, green hydrogen is considered a renewable gas.

Isolated pipelines are of public convenience and necessity for the purposes of expropriation and the exercise of the right of way. As in the case of direct lines, their authorisation will be the responsibility of the Autonomous Community Public Administration or the National Public Administration, depending on whether they run through the territory of a single Autonomous Community or the territory of several Autonomous Communities.

The new provision also allows for third party access to these facilities, which will not receive regulated remuneration, and declares the activity to be compatible with the supply of natural gas and electricity, but subject to accounting separation.

The regulation of the supply of renewable gases by means of isolated pipelines is completed by reference to LSH rules relating to the regasification, transport and storage of natural gas (Chapter IV of Title IV of the LSH) and to the regulation of the roles of transporter and distributor, depending on the maximum design pressure of each facility, for the purposes of the provisions on rights, obligations, infringements, penalties, sanctioning procedures and security of supply applicable to them, with the qualifications deriving from the nature of the fuel supplied.

Consumers connected to these facilities shall be subject to the rights and obligations laid down for natural gas consumers and shall also be supplied in accordance with the provisions applicable to the supply of natural gas.