

## THE NEW RENEWABLES REMUNERATION SYSTEM, AWARDED BY AUCTION, IS APPROVED

Royal Decree 960/2020, of 3 November, establishes the new remuneration framework for 'clean energy' generated from renewable sources<sup>1</sup> (*régimen económico de energías renovables*, "REER"), which will be awarded by auction.

### WHICH GENERATION INSTALLATIONS ARE ELIGIBLE FOR THIS SYSTEM?

Those renewable energy power plants (including those that integrate more than one technology or have storage systems) that receive new investment after the auction entitling the plant to adhere to the REER is held. This includes both investments in a new plant and investments for the extension or modification of an existing plant, though in the latter case only the part invested will be eligible for the REER.

### HOW WILL THE AUCTIONS WORK?

- a) **PRODUCT AT AUCTION:** installed capacity, electricity<sup>2</sup> or a combination of the two. The product to be auctioned must be defined by the Ministerial order regulating the auction mechanism.
- b) **BID VARIABLE<sup>3</sup>:** the price per unit of electricity (expressed as euros/MWh with two decimal places).

The auction mechanism will be as follows<sup>4</sup>:

- The resolution calling the auction will set the auction quota (amount of product at auction).

<sup>1</sup> The REER is incompatible with the specific remuneration established by Royal Decree 413/2014 and with aid granted for the same purpose in relation to the same investment.

<sup>2</sup> If the agreed product at auction is electricity, a minimum capacity to be constructed will be established, which will be calculated on the basis of (i) the energy awarded and (ii) the full load hours of each technology. This value will be determined by the order regulating the auction mechanism.

<sup>3</sup> To guarantee effective competition, the product volume offered must exceed 20% of the product volume at auction. If this is not the case, the product volume at auction will be reduced until that percentage is achieved. The order regulating the auction mechanism may increase the percentage.

<sup>4</sup> Apart from any specificities and adaptations that the order regulating the auction mechanism may establish in the bid selection methodology according to the characteristics of each auction.

#### Key issues

- New remuneration system aims to promote renewable energy generation installations.
- An indicative planning for new auctions will be set out for the next five years.
- The REER is based on an acknowledged set price (with possible corrections, depending on market operation) during the specific period of time when it applies. This price cannot be modified.
- The resolution calling the auction will set the auction quota.

- Agents interested in participating in the auction will be required to present new guarantees.
- The resolution calling the auction will set a maximum price (ceiling price) and may set a minimum price (reserve price). Both may be confidential and will be expressed in euros/MWh with two decimal places, as a set value or as the result of a formula.
- Bids whose economic proposal exceeds the ceiling price will be rejected, along with those that are below the reserve price, if one has been set.
- Bids will be ordered by economic proposal, from lowest to highest value.
- Bids will be selected starting from the bid with the lowest economic proposal, until the auction quota set out in the resolution calling the auction is reached. No bid will be selected if its inclusion entails exceeding the auction quota<sup>5</sup>. Bids thus selected will be considered successful, depending on the auction price set for each power plant.

The auction will determine: (i) the capacity or energy awarded to each participant according to the product auctioned, as well as (ii) the auction price, which will match the economic proposal and cannot be modified.

The product volume awarded to one same company or corporate group cannot exceed 50% of the total product volume auctioned or the lower percentage set by the order regulating the auction mechanism.

The Royal Decree establishes that, in the auctions called, a distinction can be made between different generation technologies on the basis of their characteristics. It also gives the option for the order regulating the auction mechanism to exempt pilot projects and smaller installations (with an installed capacity less than 5 MW) from the auction process. In these cases, the outcome of the auction processes can be used as the basis for remuneration for the exempted projects.

## HOW DOES THE REER WORK?

The price to be received, during each negotiation period, for each unit of Energy at Auction traded on the daily and intraday market will be the auction price resulting from the auction, which will coincide with the economic proposal made.

However, the order regulating the auction mechanism may determine that this price is to be corrected based on the percentage of market adjustment.

Based on the above, the price will be calculated according to this formula<sup>6</sup>:

$$\text{Price to be received on Daily Market (€/MWh)} = \text{auction price (€/MWh)} + \text{percentage of market adjustment} * (\text{Daily Market Price (€/MWh)} - \text{auction price (€/MWh)}).$$

---

<sup>5</sup> The order regulating the auction mechanism may establish a system that allows the auction quota not covered by the bids selected to be awarded, even if it entails a moderate increase in the quota of product at auction.

<sup>6</sup> This remuneration mechanism may be adapted by the order regulating the auction mechanism to adjust it to those power plants having storage capacity that are eligible for the REER.

*Price to be received on Intraday Market (€/MWh) = auction price (€/MWh) + percentage of market adjustment \* (Daily Market Price (€/MWh) – auction price (€/MWh)).*

The percentage of market adjustment will be set by the order regulating the auction mechanism, it will be expressed on a per unit basis and will be between 0 and 0.5. Unless the order establishes otherwise, this percentage will be understood to be 0.

The successful bidder can in this way partially assume the risk of market price fluctuations, both those favourable and those unfavourable to it.

## KEY CONCEPTS

### WHAT IS ENERGY AT AUCTION?

It is the energy negotiated during the Maximum Delivery Period by those generation installations adhering to the REER through their participation in the market, and it cannot exceed the Maximum Energy at Auction.

### WHAT IS THE MAXIMUM DELIVERY PERIOD?

It is the maximum and non-renewable period of time in which those generation installations adhering to the REER must fulfil the obligation of selling the Minimum Energy at Auction. This period, determined in the resolution calling the auction, will be between 10 and 15 years and could be extended to 20 years an exception.

Once the Maximum Energy at Auction has been reached, the installations will receive the remuneration deriving from their free participation in the electricity generation market.

### WHAT IS THE MINIMUM ENERGY AT AUCTION?

It is the minimum volume of Energy at Auction that each power plant adhering to the REER must reach prior to the end of the Maximum Delivery Period. The order regulating the auction mechanism may also set interim milestones, at which the Energy at Auction calculated up to that milestone must exceed the Minimum Energy at Auction set for that milestone.

- a) When the product at auction is electricity, the Minimum Energy at Auction will coincide with the Maximum Energy at Auction.
- b) When the product at auction is installed capacity, the Minimum Energy at Auction will be calculated according to this formula:

*Minimum Energy at Auction = Capacity<sup>7</sup> \* Base load hours<sup>8</sup> \* Maximum Delivery Period expressed in years*

---

<sup>7</sup> Capacity will correspond to the lower of the capacities recorded at the online registry for the renewable energies remuneration system in the pre-assignment or exploitation stage.

<sup>8</sup> The base load hours will be established in the order regulating the auction mechanism.

The failure to comply with the Minimum Energy at Auction value can entail penalties, both in the case that the Minimum Energy at Auction set for the interim milestones is not met, and in the case that the Minimum Energy at Auction value is not exceeded by the end date of the Maximum Delivery Period.

## **WHAT IS THE MAXIMUM ENERGY AT AUCTION?**

It is the maximum volume of Energy at Auction that is eligible for the REER, calculated according to this formula:

$$\text{Maximum Energy at Auction} = \text{Capacity}^9 * \text{Full load hours}^{10} * \text{Maximum Delivery Period expressed in years}$$

Once the Maximum Energy at Auction has been reached, the installations will receive the remuneration deriving from their free participation in the electricity generation market.

## **WHAT IS THE COLLECTION EXEMPTION PRICE?**

In those negotiation periods in which the daily and intraday market price is equal to 0 euros/MWh (Collection Exemption Period), the price to be received by those installations adhering to the REER will be equal to the market price. This energy will not count as Energy at Auction. The order regulating the auction mechanism may also set a Collection Exemption Price greater than 0 euros/MWh.

## **HOW DOES THE LIQUIDATION OF THE ENERGY AT AUCTION WORK?**

The market operator must liquidate the difference (whether positive or negative) between the (daily and intraday) market prices and the price to be received by each power plant adhering to the REER.

Any economic surplus, in case the price of a bidding unit is higher than the price to be received, will turn into revenue for the market and will be distributed by the market operator among the national units acquired.

Any economic deficit, in case the price of a bidding unit is lower than the price to be received, will turn into a payment obligation for the market and will be distributed by the market operator among the national units acquired.

## **WHAT ARE THE CONDITIONS FOR PARTICIPATING IN THE MARKET FOR THOSE GENERATION INSTALLATIONS SUBJECT TO THE REER?**

1. Each electricity generation installation adhering to the REER will be set up as a bidding unit; aggregate bids will not be valid.

---

<sup>9</sup> Capacity will correspond to the lower of the capacities recorded at the online registry for the renewable energies remuneration system in the pre-assignment or exploitation stage.

<sup>10</sup> The full load hours will be established in the order regulating the auction mechanism.

2. The owners of the installations adhering to the REER will not be able to declare physical bilateral contracts with those installations.
3. Installations subject to the REER will be able to partake of adjustment and balancing services.

## **CONCLUSION**

To address its strong climate change commitments, the Spanish Government, through Royal Decree 960/2020, approves a new renewables remuneration system to promote new 'clean energy' generation installations, to be awarded by auction and in which successful bidders will be entitled to obtain the price of the electricity proposed at the auction (with possible corrections, so as to pass on to the successful bidder part of the market risk).

## CONTACTS



**Jaime Almenar**  
Partner

**T** +34 91 590 4148  
**E** jaime.almenar  
@cliffordchance.com



**José Luis Zamarro**  
Partner

**T** +34 91 590 7547  
**E** joseluis.zamarro  
@cliffordchance.com



**Alba Sande**  
Associate

**T** +34 91 590 4184  
**E** alba.sande  
@cliffordchance.com



**Mónica Romero**  
Associate

**T** +34 91 590 9482  
**E** monica.romero  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, Paseo de la Castellana 110,  
28046 Madrid, Spain

© Clifford Chance 2020

Clifford Chance, S.L.P.U.

Abu Dhabi • Amsterdam • Barcelona • Beijing •  
Brussels • Bucharest • Casablanca • Dubai •  
Düsseldorf • Frankfurt • Hong Kong • Istanbul •  
London • Luxembourg • Madrid • Milan •  
Moscow • Munich • Newcastle • New York •  
Paris • Perth • Prague • Rome • São Paulo •  
Seoul • Shanghai • Singapore • Sydney •  
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement  
with Abuhimed Alsheikh Alhagbani Law Firm  
in Riyadh.

Clifford Chance has a best friend relationship  
with Redcliffe Partners in Ukraine.