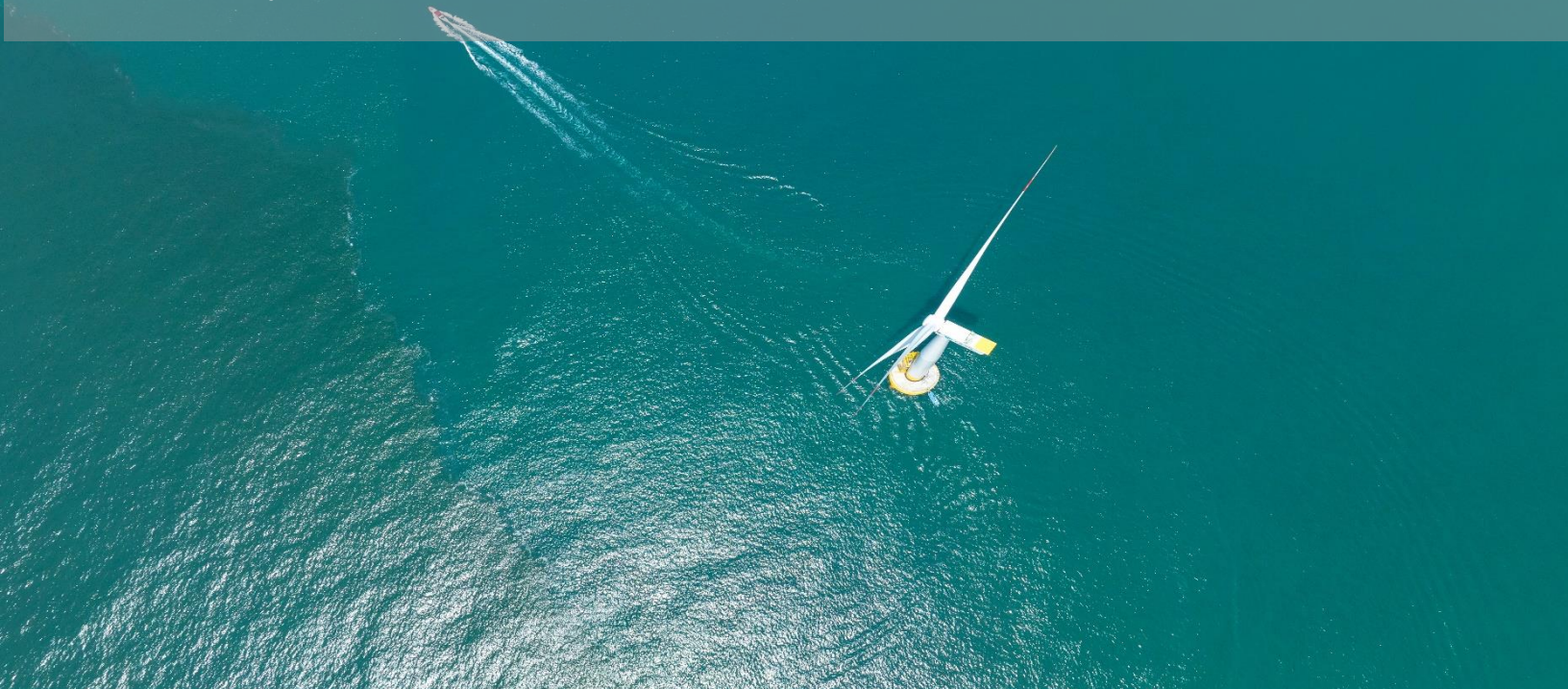


Royal Decree 962/2024, of 24 September, regulating the production of electricity from renewable sources in facilities located at sea



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In January 2023, European Union member states agreed on a series of non-binding targets to harness offshore renewable energy generation by 2050. At the national level, the Ministry for the Ecological Transition and the Demographic Challenge has also set ambitious targets for installed capacity for offshore wind (3 GW by 2030) and for marine energy. To meet the proposed goals, the Royal Decree regulating the production of electricity from renewable sources in facilities located at sea ("**Royal Decree**") has been approved, adapting to the technological advances in the sector and the new European framework.

In this alert we will address the measures contained in the Royal Decree that regulates, among others, the competitive procedures necessary for electricity generation facilities located in the territorial sea, which will allow the granting of the Economic Regime for Renewable Energies, the reservation of capacity to the electricity grid and the priority in the granting of the concession of occupation of the maritime-terrestrial public domain. Each competitive procedure will be regulated by a Ministerial Order that will include, among others, the area where the facilities will be located and the connection nodes, the power quota, the remuneration parameters or the concession term. Criteria may also be included for the minimisation of environmental impact, the generation of local employment, the use of recycled materials or measures to favour compatibility with other activities (fishing, etc.), as well as the bases of public dialogue between promoters and affected actors. Another Ministerial Order will call for tenders, establishing the calendar and other elements, and may modify the parameters and criteria, taking into account the prior public dialogue.

Object

The Royal Decree establishes the regulations for the generation of electricity from renewable sources in facilities located at sea (hereinafter, "**facilities**"). In addition, it also regulates the administrative procedures applicable to facilities that are considered innovative and to those located in zones I and II of ports of general interest to the State: none of these facilities participates in the competitive bidding procedure.

The Royal Decree presents the following as main novelties:

- ▶ It regulates the procedure for calling for and awarding the necessary administrative authorisations for offshore wind installations.
- ▶ It regulates the remuneration regime applicable to them.
- ▶ It regulates some specialities relating to access and connection of these facilities.
- ▶ Declares the termination, due to loss of purpose, of the applications for authorisation of offshore wind installations submitted to date.

This regulation represents the next phase in the development of offshore wind power in Spain, as we discussed in the alert on [Royal Decree 150/2023, of 28 February, approving the maritime spatial planning plans of the five Spanish marine demarcations](#).

Steps of the concurrent process. Call

Regarding the procedure, the Royal Decree introduces a process organised in three parts, among which the second one stands out as a novelty by introducing a dialogue between the interested promoters and all the *stakeholders* affected by the possible installation. The process is as follows:

- ▶ In a first phase, an Order establishing the rules of the competitive bidding process will be published, which will include both the power to be awarded and the area, which will be included within the high potential areas for offshore wind in the corresponding maritime spatial planning plans.

This Order will also include, among other aspects, the following:

- ▶ The technologies and requirements that the facilities must meet in order to be awarded.
- ▶ The access capacity and connection nodes for each area.
- ▶ The term of the concession of the maritime-terrestrial public domain.
- ▶ The parameters and other elements of the economic regime for renewable energies.

- ▶ The weighting criteria.
- ▶ The amount of the guarantees that must be submitted for registration in the register of the economic regime for renewable energies.

▶ Public dialogue

The Order approving the bases of the competitive procedure will also establish the details of the public dialogue phase and the elements that may be the subject of this dialogue.

The declared purpose of this phase is to promote the social acceptance of the installations and their coexistence with other uses, which is undoubtedly a fundamental aspect in the development of this type of energy.

The public dialogue phase, however, and despite its specific name, is in fact configured in a similar way to a usual public information procedure. A very broad criterion of legitimacy to participate (all those "affected") is established through the presentation of proposals or comments that will be responded to by the promoters after being examined by the Secretary of State for Energy. These comments and responses may or may not be incorporated into the regulation of the third phase, which is the competitive process considered in itself. Therefore, a more iterative process and direct interaction between promoters and possible affected parties is not established, nor is there a need to obtain consents, agreements or specific agreements that reflect a certain degree of social acceptance.

However, it is also necessary to take into account that in the process of preparing the maritime spatial planning plans there has been a relevant phase of consultations, and that the facilities that are awarded must also pass the corresponding sectorial and environmental authorisation procedures. In fact, the rule makes it explicit that the comments and considerations that have their best accommodation in these procedures will not be considered in this phase. Likewise, given that the assessment criteria will already be published in the first phase, and within the general criteria established in Article 13, it is possible that this phase of dialogue and its outcome will have some link with them.

In short, we will have to wait to see in practice the impact of this phase of dialogue as a means of effectively achieving the greatest possible social acceptance of these projects.

▶ Competitive phase

After the public dialogue, an Order of call for competitive concurrence will be published that will regulate the entire process until registration in the pre-assignment register, which we will see below.

Development and effects of the procedure

The call will include, among others, the calendar of the process, the documents to be included in the application for participation and the reserve price (and, where appropriate, risk). The application to participate in the process shall be addressed to the Directorate-General for Energy Policy and Mines, within the period and in the manner established in the Order convening the procedure. Those interested in participating must deposit an economic guarantee, proportional to the power to be requested, for the registration of the installation in the electronic registry of the economic regime for renewable energies.

The applications that obtain the highest score following the criteria established by the Order approving the bases of the procedure will be awarded, until the power quota is reached. The requirements for installations may relate to the design of the installation, environmental and socio-economic impact, decommissioning, the ability to contribute to the security of electricity supply, etc.

The procedure will be resolved with the registration, in a state of pre-allocation, of the successful bidders in the electronic registry of the economic regime for renewable energies. The awarded facilities will obtain the following rights: (i) the economic regime for renewable energies (ii), the reservation of access capacity in a specific node of the electricity transmission network, and (iii) priority in the granting of the concession for the occupation of the maritime-terrestrial public domain.

Economic regime

The remuneration of each installation will be obtained by considering its award price, the remuneration parameters of the technology used, the characteristics of each installation and its participation in the electricity market, in accordance with the provisions of Royal Decree 960/2020, of 3 November.

The order approving the terms and conditions shall define at least the parameters relating to (i) the deadline for availability of the installation, (ii) the maximum delivery period and its start date, (iii) the maximum and minimum number of equivalent hours of annual operation, (iv) the percentage of market adjustment and (v) the intermediate control milestones and their penalties.

Access and connection

The Royal Decree regulates some specialities of access and connection to the network of these facilities. This point is one of the most relevant for the development of this type of energy, and its regulation has been the subject of many expectations, especially in relation to the interaction of these facilities with the transport infrastructure, the shared ownership regime of the evacuation infrastructure, the possible delays of the same, etc.

In principle, the Royal Decree does not enter into these issues, limiting itself to enabling the use of reserved nodes for access and connection of these facilities and clarifying that the awarding of an authorisation under the Royal Decree regime does not include access and connection permits to the network, but it does include the capacity reserve.

Other regulations

The Royal Decree also contains other measures that we highlight here in relation to offshore wind installations:

- ▶ Exceptionally, and for duly justified supervening causes, the modification of certain aspects of the proposal awarded in the procedure may be authorised.
- ▶ Applications for authorisation submitted prior to the entry into force of this Royal Decree and which are pending resolution will be archived due to loss of purpose, thus putting an end to the procedure.

Finally, and as already mentioned, the Royal Decree also deals with the processing of facilities that do not participate in the competitive regime, such as (i) facilities that are considered innovative in accordance with the procedural criteria established in the Royal Decree and (ii) facilities located in Zones I and II of ports of general interest to the State. These facilities may obtain the authorisations required by the applicable regulations for their development and commissioning without the need to have bids awarded in the competitive procedure described above.

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