REPOWERING RENEWABLE ENERGY ASSETS IN SPAIN

Spain's Ministry for the Ecological Transition has approved grants for wind repowering, hydro renewal and wind turbine blade recycling projects, allocating EUR 222.5 million of Next Generation funds. However, there are numerous regulatory restrictions on using these grants for repowering. The restrictions will impact almost 24,000 MW of wind power (set to increase to 33,000 MW by 2025) that is over 15-years old, the age after which unrestricted repowering is the best solution for extending the useful life of renewable energy projects.

Key issues

- The "swift" and "simplified" procedure called for by Directive 2018/2001 to facilitate repowering faces obstacles under Spanish legislation, which only facilitates repowering projects that meet very specific requirements.
- Spanish legislation sets significant restrictions on the ability of repowered plants to benefit from streamlined administrative process: it excludes hybridisation and the use of storage systems (for which only the update of access and connection permits is simplified) and increases in capacity in excess of 5%.
- Only repowering that involves new investment made after the auction is held will be entitled to receive the REER.

WHAT DOES REPOWERING MEAN?

The repowering of renewable energy plants usually refers to increasing the capacity of such plants after they have been in service for a number of years. This can be achieved by replacing their technical equipment with newer, more efficient alternatives.

However, **repowering does not necessarily involve increasing capacity**. The only legal definition of this term is found in Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 (the **Directive**) on the promotion of the use of energy from renewable sources. In this context, repowering refers only to the repowering of power plants, not the repowering of transmission lines.

Article 2 of the Directive defines repowering as follows:

> "*…renewing power plants that produce renewable energy, including the full or partial replacement of installations or operation systems and equipment for the purposes of replacing capacity or increasing the efficiency or capacity of the installation*"

ARE SWIFT AND SIMPLIFIED PROCEDURES AVAILABLE UNDER SPANISH LAW?

Based on the above, repowering can – but does not necessarily – involve increasing the installation's existing capacity. In both scenarios, article 16 of the Directive indicates that streamlined permit-granting processes must be established, requiring that Member States "*facilitate the repowering of existing renewable energy plants by ensuring a simplified and swift permit-granting process*". Spanish legislation only provides for a swift and simplified permit-

granting process for repowering when the installation can be considered "the same" and the repowering does not entail a "substantial change".

Note that the Directive does not distinguish between repowering that entails an increase in capacity and repowering that does not. Furthermore, when it comes to **repowering that does entail an increase in power, it does not set any limits on such increase**; the repowering must be facilitated in any case and the granting process for all permits must be simplified and swift.

Simplified, because the Directive requires the Member States to designate one or more contact points who, upon request by the applicant, will guide them through and facilitate the entire administrative permit application and granting process. The applicant has a single contact point for the entire process.

Swift, because the Directive provides that the permit-granting process for repowering renewable energy plants will not take more than a year, except where there are compelling safety reasons.

The reality, though, is that **the procedure currently available to developers is neither simplified nor swift**.

Firstly because, as mentioned above, the Directive refers to "*the entire administrative permit application and granting process*", which covers (i) grid access and connection permits, which are processed by the transport or distribution network manager; (ii) sectoral permits, processed by the Ministry for the Ecological Transition or the relevant autonomous community, depending on the total capacity and location of the project; and (iii) municipal permits, processed by each of the municipalities affected not only by the installation but also by its evacuation infrastructure. In most cases, permits would also be needed from the public bodies affected by road crossings, livestock routes, riverbanks, railway routes, etc.

Given the number of permits to be processed and the number of authorities involved, the Spanish process is far from achieving the single contact point to which the directive refers, and which has already been successfully adopted by some other EU states, such as Denmark and its "one-stop-shop", established by the Danish Energy Agency. The Electric Power Projects Division (*División de Proyectos de Energía Eléctrica*), recently created by an order dated 21 February, appears to have the same goal as the *one-stop-shop*. However, it will only process administrative permits, not access and connection permits, for projects of more than 50 MW or which affect several autonomous communities and, moreover, will not prevent multiple authorities from being involved in processing the permits referred to above.

Secondly because, without any basis in the text of the Directive, swift repowering is limited in the current system to scenarios where the installation can be considered "**the same**" and does not entail a "**substantial change**".

WHEN IS A REPOWERED FACILITY CONSIDERED TO BE "THE SAME"?

Annex II of Spanish Royal Decree 1955/2000, of 1 December, governing transmission, distribution, marketing and supply activities and the authorisation process for power plants (**RD 1955/2000**), states that a power plant is the same as another for which access and connection permits have already been applied for or granted when none of the following characteristics are changed:

- Generation technology, maintaining its synchronous or asynchronous nature and the classification group under Royal Decree 413/2014, of 6 June;
- Capacity, which cannot be increased by more than 5%;
- Geographical location, which cannot be altered by more than 10 km from the geometric centre of the power plant initially proposed.

In accordance with article 115.3 of RD 1955/2000, substantial changes are those that:

- Fall within the scope of act 21/ 2013, of 9 December, on environmental assessments;
- Represent an alteration of the basic technical characteristics (power, transformation or transport capacity, etc.) in excess of 10% of the installation's capacity;
- Represent safety alterations of both the main installation and its auxiliary installations in service;
- Require a specific declaration of public utility;
- Modifications of lines that cause easement changes on the route;
- Modifications of lines that, even causing changes of easement without modifying the route, have been made without the agreement of those affected;
- Line modifications involving replacement of supports or conductors due to deterioration or breakage, without maintaining the conditions of the original project;
- Alteration of a substation's configuration causing a change in the number of streets or positions;
- Changes to transport or distribution installations that involve changes in remuneration.

Only in cases where the above restrictions have been complied with, and the installation can be considered "the same" for the purposes of access and connection permits and does not involve a "substantial change", can repowering be carried out by updating the access and connection permits and obtaining a new "**AAE**" (*autorización administrativa de explotación*) operating authorisation.

However, if the above restrictions are not complied with, the repowering will require the re-grant of (i) network access and connection permits, the main barrier to entry in the sector given the current saturation of most of the hubs of the electricity transmission and distribution networks in Spain; and (ii) sectoral permits (i.e. prior administrative authorisation (*autorización administrativa previa*; "**AAP**"), construction authorisation (*autorización administrativa de construcción*; "**AAC**") and AAE). It is also possible that new municipal and/or sectoral permits will need to be obtained.

REPOWERING AND THE "REER"

Royal Decree 960/2020, of 3 November "**RD 960/2020**" established the new remuneration framework for power generation from renewable energy sources, granted through auctions (renewable energy economic regime or "**REER**").

Four REER auctions have been held to date under RD 960/2020 and Order TED/1161/2020, of 4 December, which regulates the first auction mechanism for granting access to the REER and establishes the indicative schedule for 2020–2025.

However, only power plants using renewable energy sources (including those that use more than one technology or have storage systems) in which **a new investment is made after the auction is held** will qualify for the REER. Qualifying investments include both those where the investment results in a new installation and those where the investment is an expansion or alteration of an existing installation. In fact, three of the four auctions held under RD 960/2020 were intended to apply to new or expanded facilities and one to new or altered installations. In all cases, the REER will only be granted for the part of the project that corresponds to the new investment.

To receive the REER, the installation must have the necessary measurement equipment to determine the amount of power generated by the expansion or alteration, so that the appropriate remuneration from the regimes that apply to the repowered installation is guaranteed.

CONCLUSION

As we can see, the instances in which Spanish legislation facilitates repowering are very specific and subject to very rigid restrictions.

The Spanish regime excludes projects in which capacity is increased by more than 5% from the scenarios in which repowering must be facilitated without any justification. We should bear in mind that in most cases an increase in capacity is intended to better utilise the resource, optimising the capacity granted in the access and connection permit.

However, the regime also excludes projects where, while capacity is not increased by more than 5%, the repowering is implemented through hybridisation or storage, as this represents a change in technology. As such, while the updating of access permits will be simplified to some extent in these cases, they will be subject to the slow process of obtaining all the sectoral and municipal permits described above. In addition, only repowered projects where investment (aimed at expanding or altering the installation) was made after the REER auction will be entitled to receive the REER.

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