Spanish Government's Response Plan to the War in Ukraine

On 29 March 2022, the Spanish Council of Ministers adopted several measures to mitigate the economic and social impact in Spain of Russia's invasion of Ukraine. The measures were adopted urgently through Royal Decree-Law 6/2022, which sets out a plan to deploy EUR 16 billion ("Plan"). This briefing covers the Plan's main points. Most of the Plan's provisions apply from 31 March (except for those on fuel discounts, which do so from 1 April). Although the Plan is now in full force, Congress would need to ratify it within 30 days. Congress could also resolve to process the Plan as a bill, in which case Parliament could implement further changes.

1. MEASURES TO OFFER COMPANIES AND SELF-EMPLOYED WORKERS MORE LIQUIDITY

1.1 NEW STATE-BACKED LIQUIDITY LINE TO COVER FINANCING GRANTED BY FINANCIAL INSTITUTIONS

The EUR 10,000 million State-backed liquidity line that the Ministry of Economic Affairs and Digital Transformation (through the corporate State-owned entities ICO, CESCE and CERSA) is to grant until 31 December 2022 is one of the new measures implemented to support companies with liquidity problems as a result of the temporary rise in energy and fuel costs.

This guarantee line will be granted for credit institutions, financial credit establishments, electronic money institutions and payment institutions to give companies and self-employed workers financing to fulfil their liquidity and investment needs. The Council of Ministers is expected to approve the conditions and requirements to grant this guaranteed liquidity line, including the deadline to request it, in the coming weeks. No further legislation will be required.

This State-backed liquidity line requires the authorisation of the European Commission (EC) in the context of the applicable EU State Aid regulation, which means that it will not be granted until the EC has approved it; this is expected to be processed in the coming weeks.

1.2 AMENDING THE BEST PRACTICES CODE THE COUNCIL OF MINISTERS APPROVED ON 11 MAY 2021

The Spanish Government has decided[1] to amend the Best Practices Code approved back in May 2021 (as part of the extraordinary measures to support business solvency in response to the COVID-19

[1] Resolution of 29 March 2022 of the Secretary of Economy State and Company Support.

pandemic[2]) in the context of debtors' renegotiation of State-backed financing ("**Best Practices Code**"). The Best Practices Code was designed as a tool to make State-backed financing more flexible by getting credit institutions to assume certain commitments to facilitate the renegotiation of State-guaranteed debt granted from March 2020 to May 2021.

These commitments have now been amended with an additional measure to guarantee that the consequences of the Russian invasion of Ukraine do not jeopardise (i) economic stability and (ii) the return to normal of viable companies.

The purpose is to relax the conditions companies have to meet to benefit from the regime set out in the Best Practices Code.

- Firstly, the financial institutions that have adhered to the Best Practices Code will keep in force, at least until 30 September 2022, the limits and conditions of all working capital credit lines they have granted their clients between 17 March 2020 and 12 March 2021, especially those whose credits were State-guaranteed. These conditions must be upheld until 30 June 2023 in some cases.[3]
- The minimum requirement of a 30% drop in turnover in 2020 with respect to 2019 to be eligible for the measures set out in the Best Practices Code has been removed. This means that more debtors will be eligible to benefit from the extended maturity of State-backed financing transactions. In particular, companies and self-employed workers whose turnover has not dropped significantly as a result of the COVID-19 pandemic, but are now facing considerably higher costs due to their exposure to electricity prices and other raw materials will be able to benefit from the extended maturity.
- Finally, debtors can also request financial institutions to temporarily suspend instalments of repayments of principal for six months, either by extending the grace period by six months or by granting another grace period. This obligation only applies to debtors in the agricultural, stock, fishing or road transportation sectors who have been especially affected by rising energy prices.

Adhering to these amendments is voluntary for all financial institutions, as was the May 2021 Best Practices Code. However, financial institutions must inform the Spanish Government[4] in writing of their intention not to adhere to these amendments within 15 days; their decision will be made public.

[2] Royal Decree-Law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic that the Council of Ministers approved on 11 May 2021.

[3] Mainly if measures in Section 3 of the Best Practices Code are adopted.

[4] To the General Secretary of the Treasury and International Financing (*Secretaría General del Tesoro y Financiación Internacional*)

2. EMPLOYMENT AND SOCIAL SECURITY

Companies that have received direct aid under the Plan cannot justify objective dismissals on the basis of the increase in energy costs until 30 June 2022. If companies breach this obligation they must pay back the aid received.

Similarly, companies that, owing to Russia's invasion of Ukraine, have implemented the temporary measures listed in article 47 of the Spanish Statute of Workers, such as temporary lay-offs or reductions of working hours (ERTEs) and have received public benefits, will not be entitled to carry out dismissals on these grounds.

The Plan also establishes the possibility for companies and self-employed workers operating in the urban-road-transport from (April to July 2022), fishing (from March to June 2022) and agricultural (from March to June 2022) sectors to defer part of their social security contributions, with a reduced interest rate of 0.5%. In order to be able to request this debt deferment, companies must be up-to-date with their social security obligations and have no existing social security debt deferrals in place.

Although the Spanish Government has approved the RED Mechanism for employment flexibility and stabilisation for the travel agencies sector from 1 April to 31 December 2022, it has not been regulated in the Plan. This RED mechanism would allow travel agencies to reduce working hours and suspend employment contracts and apply partial exemptions in their social security contributions.

3. ENERGY

The measures adopted in connection with the energy sector are aimed at (i) reducing the impact of natural gas price increases on wholesale electricity prices; and (ii) protecting the economy and industry sectors most affected by the soaring energy prices as well as Spanish energy consumers who are more vulnerable to such price increases. While some of the measures are temporary, others are of a structural nature and seek to make the Spanish energy system and markets more flexible and efficient and less dependent on non-EU countries.

However, the new measures set out in the Plan are incomplete when it comes to energy markets. In the wake of the European Commission recently declaring Spain and Portugal an "energy island", the coming changes to the Iberian electricity market remain the elephant in the room. How, whether and to what extent the functioning of the Iberian electricity market will be adjusted to decouple it from the impact of soaring natural gas prices, are all questions that remain unanswered for the time being. The Spanish Government needs to finalise its proposal for such changes together with the Portuguese Government and then submit them to the European Commission for review and approval. Thus, a critical piece is still missing.

PROTECTING ENERGY CONSUMERS

(i) **80% reduction in grid access tolls for electricity intensive consumers**

In the last few years, certain businesses that are among the highest electricity consumers have benefitted from being considered as "electricity-intensive consumers" as well as from certain support

schemes. In view of the impact of the soaring electricity prices on such consumers, the Spanish Government has approved an 80% reduction in grid access tolls. The reduction has applied since 1 January 2022 and will remain in force until 31 December 2022 and affects both the fixed or capacity-related tolls as well as the variable or energy-related tolls, and other related costs.

(ii) **EUR 125 million in direct aid to gas intensive consumer industries**

EUR 125 million in direct aid has been granted to companies operating in certain types of gas-intensive industries (i.e. manufacturers of: (a) pulp, paper and paperboard; (b) artificial and synthetic fibres; (c) glass and glass products; (d) other refractory ceramics; and (e) ceramics for construction purposes).

Each beneficiary can receive up to EUR 400,000.

(iii) **Flexibility for gas supply contracts**

Certain regulatory changes implemented in September 2021, introducing flexibility in gas supply contracts (particularly as regards tolls and charges) have been extended until 30 June 2022.

Vulnerable consumers

Broader "vulnerable" consumer category

"Vulnerable consumers" benefit from subsidised rates and special terms and conditions for electricity and natural gas supplies. This category of consumer is now broader and the discounts available have been renewed until 30 June 2022.

All consumers

(i) **Renewal of temporary tax rebates and duty suspensions**

Certain tax rebates and duty suspensions that were to apply until 31 March 2022 have been renewed and extended until 30 June 2022. Namely: (a) VAT is reduced to 10% for electricity supplies to most domestic consumers (essentially, consumers with a maximum contracted capacity of 10 kW), but all other consumers will continue to be taxed at 21%; (b) the rate for the Special Electricity Tax (*Impuesto Especial de la Electricidad*) remains at 0.5%.

Additionally, the 7% Tax on the Cost of Electricity Generation (*Impuesto sobre el Valor de la Producción de Energía Eléctrica*), which has been suspended -but not scrapped- since September 2021, will remain suspended until 30 June 2022.

(ii) **Extraordinary and temporary rebate on fuel prices**

From 1 April 2022 until 30 June 2022, certain rebates (e.g. EUR 0.15 per litre of gasoline) will be applied to petrol and other transport fuels. This extraordinary rebate on the final price will be directly applied at the fuel pump and available to all consumers. Large fuel suppliers will contribute to such rebate by giving an additional EUR 0.05 minimum final discount, but may offer even larger discounts (as already announced by the dominant operators). All other suppliers will also have to advance a EUR 0.05 discount that will then be reimbursed by the Spanish authorities.

ENERGY PRODUCTION

(i) **Amendment and extension of the "*windfall clawback*" applicable to electricity production revenues**

In September (RDL 17/2021) and October (RDL 23/2021) of last year, Spain implemented certain other urgent measures in the energy markets, the most controversial being the so-called "windfall clawback" mechanism to reduce the alleged "extra" remuneration received by non-greenhouse gas emitting technology production facilities in the Spanish pool as a result of higher prices driven by significant increases in natural gas prices used in power generation. The new regulations extend the "windfall clawback" from 31 March to 30 June 2022 and refine the regulations applicable to power purchase agreements ("PPAs"):

(1) Electricity supplied under a (physical or financial) PPA with a longer than a year termis only exempt from the "windfall clawback" if the price agreed is fixed and does not exceed EUR 67 per MWh. If the agreed price is higher, the "windfall clawback" will apply to any electricity sold in excess of EUR 67 per MWh.

(2) The "windfall clawback" mechanism will also apply to intragroup PPAs executed between vertically integrated power generation and commercialisation companies. If final consumers pay a price in excess of EUR 67 per MWh, then the "windfall clawback" also applies to any excess.

(ii) **Fostering the development of renewable energy and self-consumption projects**

One of the major bottlenecks for developing and constructing new renewable energy capacity is the lengthy permitting process and, in particular, the thorough and protracted environmental approval proceedings. From now on, all renewable energy projects are classified as "urgent" for reasons of public interest resulting in the applicable legal deadlines being shortened to half the term.

Additionally, the environmental permitting process for renewable energy projects located in low and moderate environmental sensitivity areas (*Zonificación ambiental para la implantación de energías renovables* -which you can find here for wind energy projects and here for solar photovoltaic projects) will be prioritised.

While these changes apply even to projects that have already started their permitting process, the new rules apply only to central-government permitted projects (essentially, up to 50 MW), and not to projects permitted by regional authorities. However, it is likely that most regional authorities will follow suit and implement similar provisions to ease the environmental permitting process in their own regions.

Finally, 10% of grid access capacity intended to be set aside for public tender will be made available to new renewable energy facilities associated to self-consumption projects.

(iii) **Acceleration of the Ro remuneration resetting for feed-in tariff renewable energy plants**

Renewable energy plants that were commissioned on or before 14 July 2014 still benefit from a regulated or feed-in tariff remuneration. Such regulated remuneration ensures a specific regulated return (currently 7.39% for most projects). The return is updated every six years, but certain

operational parameters -essentially, regulated remuneration for running costs or "Ro"- are updated every three years (the so-called regulatory semi-periods). The current regulatory period comprises 2020 to 2025 and the next three-year update should take place during 2023. The Ro takes into account a collar of expected pool prices for the next three years.

In view of the high electricity prices experienced since mid-2021, the 2020-2022 market price forecasts in the regulations have been exceeded to such an extent that many of the renewable energy projects are said to have been "over-remunerated" and are likely to continue to be "over-remunerated" in the short term. However, over time, such projects will see their remuneration adjusted to ensure a 7.39% return. Therefore the Spanish Government -with the consent of most industry associations- will bring the updating of the Ro values forward to 2022 and adjust the market price collar. To this end, the current six-year regulatory period has now been split into three regulatory sub-periods: 2020-2021, 2022 and 2023-2025. The specific values of the market price collar for Ro purposes will be published in the next two months. Overall, the remuneration of such renewable power projects will not be impaired, but there is a financial benefit for the Spanish electricity system in that an otherwise necessary adjustment to the remuneration of such projects is brought forward by one year which allows for much needed cash to be re-allocated to lower the higher electricity bills for consumers.

As of 2023, such renewable energy projects (commissioned on or before 14 July 2014) will be allowed to sell their output in the pool or in any other markets (e.g. through PPAs) without jeopardising their regulated remuneration.

(iv) **Reinforced underground gas storage obligations**

In line with EU targets, the minimum security stock obligations for natural gas suppliers and direct consumers until 31 March 2023 have been increased from 20 to 27.5 days of firm sales or consumption in the preceding year. The additional amount of security stock will not be subject to further tolls or charges, but as at 1 November 2022, 90% of the minimum gas stock and 100% of the additional 7.5 days' worth of natural gas storage should be in underground storage facilities for any such supplier or direct consumer. At some point it was expected that any additional minimum gas stock could be stored at LNG regasification plants, but in the end the additional 7.5 days' worth of natural gas will have to be stored in underground facilities.

(v) **Permitting process for electricity storage facilities connected to the transmission and distribution grid**

Electricity storage facilities (essentially, battery-storage facilities) connected to the transmission and distribution grid will be treated as generation facilities for permitting purposes.

RENEWABLE GASES REGULATORY FRAMEWORK

The 1998 Hydrocarbons Law (Law 34/1998 of 7 October) has been amended to adapt its provisions to the development of renewable gases (such as green hydrogen). This will ease the construction of new pipelines to supply industries and consumers, and connections to the main gas network if directly undertaken by renewable gas producers will continue to be treated as direct lines. Third party

access to renewable gas pipelines are now regulated in this Law (as opposed to the regulated TPA regime).

4. MARITIME, PORTS, TRANSPORT AND FISHING

The increase in the price of fuel affects all industry sectors and particularly those with intensive use and reduced capacity to pass on the increase. The Plan sets out a series of measures concerning the maritime, ports, transport and fishing sectors.

4.1 MARITIME TRANSPORT AND PORTS

Port fees (*tasas portuarias*)

Between 1 April and 30 June 2022, an 80% rebate will apply cumulatively with other rebates for the vessel fee (T-1) and the cargo fee (T-3), to be settled by the port authorities of Ceuta, Melilla, the Balearic Islands, Las Palmas and Santa Cruz de Tenerife for the lines linking the Iberian peninsula with the ports managed by those port authorities.

Minimum traffic

Port authorities may eliminate or reduce the minimum traffic requirement for 2022 in the concession titles at the request of the concessionaire when it cannot reach the minimum traffic commitment.

During 2022, penalties for non-compliance with these minimum traffic requirements will not be applied.

Ukrainian crew members working on Spanish-flagged merchant ships

The crew members' temporary employment contracts, residence and work permits may be extended for up to 12 months at their request and through notification by the shipping company to the relevant authorities.

4.2 ROAD AND RAIL TRANSPORT

A total of EUR 450 million in direct aid for land transport and EUR 1.8 million for rail transport. EUR 450 million in direct aid is available for private companies and self-employed workers engaged in the land transportation of persons and goods, according to the number and type of vehicle operated by each beneficiary, up to a maximum of EUR 400,000.

In addition, direct aid is granted to privately owned railway companies engaged in freight transport for a total amount of EUR 1,815,000, with EUR 15,000 per diesel locomotive operated by each beneficiary company, up to a maximum of EUR 400,000 per beneficiary.

4.3 FISHING SECTOR

The Ministry of Agriculture, Fisheries and Food will grant aid on a direct concession basis to cover the additional costs arising from the increase in the production costs of each vessel that have been assumed by the shipowners during the period from 24 February to 30 June 2022. Also, direct aid will be granted to

cover the costs of aquaculture production that have been assumed by each aquaculture company during the period from 24 February to 30 June 2022.

In addition, it is possible to request the postponement of social security contributions for joint collection items in the maritime-fishing sector which accrual takes place between the months of March and June 2022.

5. TAX MEASURES

On the tax front, the Plan's measures are essentially limited to extending the existing tax cuts aimed at reducing the tax cost of electricity to 30 June 2022 (please see section 3 above).

It also expressly confirms that the approved EUR 0.20 per litre discount on supplied fuel is compatible with the partial Hydrocarbon Tax refunds for those who use diesel for business purposes. Refunds are now made on a monthly rather than quarterly basis.

Furthermore, it provides an 80% discount on tax fees charged on vessels and cargo with respect to maritime lines and services linking Spain's mainland with the ports of Ceuta, Melilla, the Balearic Islands, Las Palmas and Santa Cruz de Tenerife, which are all managed by the port authorities.

Finally, it exempts the fresh-fishing tax fee and the services tax due when using hydraulic public domain assets in Spain's inland aquaculture facilities. This exemption applies for six months after the RDL enters into force.

6. RESIDENTIAL LEASE AGREEMENTS

Under the section on "other measures to support workers and vulnerable groups", the Plan temporarily limits rent updates on residential lease agreements. It does so in its explanatory memorandum, to prevent the residential market from being affected by the temporarily runaway consumer price index (inflation has reached a 35-year high) which, in this context has ceased to be the benchmark index for these purposes.

The following are this measure's key features:

- It only applies to residential leases governed by the 1994 Urban Leases Law[5].
- This means that it applies neither to other types of leases governed by the 1994 Urban Leases Law such as seasonal (*de temporada*) or non-residential (*uso distinto de vivienda*) leases, nor to leases governed by other regulations – such as the Civil Code.
- It is transitory. It only applies to residential leases which rent is contractually scheduled to be reviewed between the date the Plan enters into force (31 March 2022) and 30 June 2022.

[5] *Law 24/1994 of 24 November, on urban leases.*

- It technically gives the parties freedom to determine how rent is to be reviewed, but subject to the following limitations:
  - large property owners (*grandes tenedores*), that is, those who own more than ten dwellings or 1,500 m^2 of residential gross leasable area (GLA) may only increase rent up to a maximum amount according to the Competitive Guarantee Index (*Índice de Garantía de Competitividad*, CGI) when the rent is to be updated.

    A Government representative stated on 29 March 2022 that the CGI is currently 2%.

    If the tenant and property owner are unable to agree on the rent update, it will be updated according to the CGI when the rent review was scheduled to take place (i.e. it acts as both a cap and a floor if the parties cannot reach an agreement).
  - other property owners are not subject to such cap but, if they are unable to agree on a rent update with the tenant, rent will be updated according to the CGI.

  But in practice, this freedom of contract is artificial because both parties are really tied down by the CGI (i.e. the landlord has no incentive to go lower nor does the tenant to accept a higher increase).

7. FURTHER CYBERSECURITY MEASURES TO PROTECT 5G NETWORKS

As cyberattack risks against 5G networks have increased significantly Spain, the Government has passed Royal Decree-Law 7/2022 to protect 5G infrastructure through a package of security measures ("**5G Cybersecurity Law**"). These new networks and services are comparably safer than previous generations. But they also present specific risks arising, for example, from their more complex, open and disaggregated network architecture, and their capacity to handle much greater volumes of information. How these networks are operated (by 5G operators) largely depends on the computer systems and services external suppliers provide (which the 5G Cybersecurity Law refers to as "suppliers"), which creates a dependency on them that could increase the risk levels to which they are exposed. The Spanish Government has therefore concluded that the existing cybersecurity regulations applicable in Spain do not properly address the new security challenges 5G networks have brought about.

The 5G Cybersecurity Law provides special rules on network and information systems security. It establishes security requirements to i) install, deploy and operate electronic communications networks, and ii) provide 5G technology-based wireless and electronic communications services. The cybersecurity measures are addressed to 5G network operators, suppliers and corporate users. In particular, suppliers are subject to stringent safety checks and security controls to ensure their technical reliability and independence from external cyberattacks.

8. FOOD PRODUCTION AND SUPPLY

The Plan highlights the negative effect that the invasion of Ukraine has had on the critical situation that most of the operators in the agricultural and fishing sectors were already facing, characterised by a sustained increase in production costs driven by the increase in the prices of raw materials for animal feed, energy and fuel. The conflict is directly affecting the global supply of food (especially wheat, corn, barley and sunflower oil) and the price of fertilizers and energy, which is significantly increasing production costs. To alleviate some of these pressures, the Plan sets out a series of measures relating to the agricultural industry and labelling obligations.

8.1 SUPPORT FOR THE AGRICULTURAL SECTOR

The Plan approves a package of State Aid measures to mitigate the cost increases for milk producers (EUR 169,000,000, per article 31). These will take the form of "direct subsidies" under article 22.2 b) of the General Law on Subsidies.

Article 34 provides for exceptional aid for the agricultural sector, totalling EUR 193,470,759, pursuant to Commission Delegated Regulation (EU) 2022/467. The agricultural sectors that will be entitled to request this aid will be set out in a royal decree, which will also establish the eligibility conditions and specific amounts available.

8.2 LIMITATIONS ON THE SALE OF GOODS

With the aim of mitigating the impact that these scarcities may have on the food chain, additional provision 13 of the Plan amends section 3 of article 9 of Law 7/1996 of 15 January on retail in order to exceptionally allow retailers to, when there are extraordinary or force majeure circumstances justifying it, limit the number of units of a particular product that each consumer can purchase from their stores. Said measures must be proportionate and justified by the need to avoid product shortages and to ensure access to goods under equitable conditions.

8.3 LABELLING OBLIGATIONS

In order to mitigate the impact that the scarcity of raw materials is having on the food chain, additional provision 20 provides that, as long as the availability of certain ingredients is affected for supply reasons, food-business operators can fulfil their obligations under Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers ("**Regulation 1169/2011**") by using adhesive labels or stickers, inkjet printing or equivalent systems to indicate when replacement ingredients have been used. The obligation to indicate any allergens that are contained in a food product remains the same.

Both food manufacturers and retailers may use other instruments (such as QR codes, web pages or posters in retail establishments) to provide information to consumers. These instruments are not considered equivalent to adhesive labels or inkjet printing, and can only be used to supplement the updated information on the labelling of the product.

When food-business operators have no alternative than to use packaging of previously manufactured products, with a different name or product composition to that actually used, they must add an adhesive label or use inkjet printing or equivalent means to cross out this information, in particular the ingredients that have been replaced, as well as any other graphic element that could mislead consumers as to the true composition of the product.

In any case, the information provided must not mislead consumers and must be easily visible and legible (this means the font size indicated in Annex IV of Regulation 1169/2011 must be used).

Finally, the Plan stresses that, in compliance with Article 7 of Regulation 1169/2011, the list of product ingredients cannot include substances that are not actually contained in the food product (nor even suggest that the substance may have been used to produce certain batches).

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