Public funding of the electricity system: approval of an extraordinary credit facility to contain the 2013 tariff deficit

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Owing to rising electricity system costs, declining revenue and the decision to avoid further increases in consumer energy prices, Act 15/2013, of 17 October, provides for: a) funding from the Spanish Government Budget of electricity system costs caused by economic incentives to promote the production of electricity from renewable energy sources, and b) granting of a credit facility in the amount of 2,200 million euros within the budget of the Ministry of Industry, Energy and Tourism.

The Official Journal of Spain (BOE, its acronym in Spanish), of 18 October, publishes Act 15/2013, of 17 October, providing for: a) funding from the Spanish Government Budget of electricity system costs caused by economic incentives to promote the production of electricity from renewable energy sources, and b) granting of a credit facility in the amount of 2,200,000,000 euros within the budget of the Ministry of Industry, Energy and Tourism.

1. **Increased funding from the Spanish Government Budget of electricity system costs**

   Public funding of electricity system costs was one of the main changes introduced by the Fiscal Measures for Energy Sustainability Act 15/2012, of 27 December. As a result of the new wording this Act gave to article 15.2 of the Electricity Industry Act, electricity system costs are no longer borne exclusively by the system itself (so-called access tolls [connection charges] paid by consumers and producers), but also by the Spanish Government Budget (final provision 1.1, Act 15/2012).

   According to additional provision 2 of Act 15/2012, the costs covered by article 16 of Act 54/1997, which include the costs of diversification and security of supply and, in particular, the remuneration payable to renewable energy production facilities, will be borne by government budgets. In pursuance of additional provision 2 of Act 15/2012, the 2013 Spanish Government Budget Act 17/2012 of 28 December specifies contributions to the funding of the electricity industry, stipulating that the bulk of these will defray the costs related to the promotion of renewable energy. The amount will be equivalent to the sum of the expected revenue resulting from the implementation of the new taxes included in the Fiscal Measures for Energy Sustainability Act and to 90% of the proceeds from the auction of greenhouse gas emission allowances, up to a maximum of 450 million euros (additional provision 5).

Therefore, **the novelty of this newly published Act** is not the public funding of these costs, but the **amount by which the public purse pays the debt generated by the electricity system and the source of that funding**, which is neither electricity system taxes, nor the proceeds from emission allowance auctions, but public debt. Thus, **the State will fund in 2013, up to a maximum of 2,200 million euros, part of the electricity system costs caused by economic**

incentives for the promotion of electricity production from renewable energy sources as provided under the Electricity Industry Act 54/1997, of 27 November (art.1.1 Act 15/2013). The new Act delegates to the Economic Affairs Committee the determination of the time limits and amounts of this funding.

2. Extraordinary credit facility

Owing to the new obligations to fund the electricity system costs imposed on the State (art. 1.1), Act 15/2013 grants an extraordinary credit facility amounting to 2,200 million euros in the current budget of the Ministry of Industry, Energy and Tourism (art.2.1)[1]. This credit facility will be financed through public debt.

The 2013 Budget Act earmarked for the Ministry of Industry, Energy and Tourism budget an amount of 2,921,467,000.86 euros allocated to the funding of electricity system costs provided under article 16 of Act 54/1997. However, this figure proves to be insufficient, because although the expected revenue resulting from the new taxes created by Act 15/2012 amounts to precisely the same amount (EUR 2,921,467,000.86), the estimated cost of the electricity system exceeds that figure.

Given the increased remuneration costs of the special scheme on account of the excess production of renewable energy facilities, the increased remuneration values by pegging the price of Brent , the decline in access toll revenues due to the fall in demand and because it is economically and socially unsustainable to raise energy prices paid by both home and business users, the Government considers that the least harmful option for the public interest is to defray these costs through a special credit facility financed with public debt and chooses to almost double the initial budget allocation.

It should be noted that the principle of sufficient access tolls , - so often invoked by the Supreme Court against the freezing of tariffs (judgments of 31 October 2011, JUR 2011\393225; 4 and 16 November 2011, JUR 2011\393226 and JUR 2011\404908, respectively, and orders of 20 December 2011 and 2 and 8 March 2012), is no longer a legal requirement (new wording of additional provision 21.1 of Act 54/1997 given by final provision 4 of Royal Decree Act 29/2012, of 28 December) . However, the sufficiency of revenue continues to be essential to ensure the economic sustainability of the electricity system.

3. Extraordinary and temporary measure pending further reforms

The law will come into force on 19 October and aims to respond to a problem described as "cyclical" - although it could be said that such a problem has already become structural. Hence it is extraordinary and temporary, limited to the **year 2013** in anticipation of new electricity industry rules, most notably the Electricity Industry Bill (121/ 000064), currently passing through Parliament, which should serve to adjust electricity system costs and make unnecessary this type of solution in the future.

1 Specifically, the extended item is chapter 20 "Ministry of Industry, Energy and Tourism", Service 18 "Junior Ministry of Energy", Programme 425A "Energy Rules and Implementations", Part 7 "Capital Transfers", Item 749 "To the National Energy Regulator (CNE, its acronym in Spanish) to fund electricity system costs caused by economic incentives to promote the production of electricity from renewable energy sources as provided under the Electricity Industry Act 54/1997, of 27 November"