PRELIMINARY DRAFT LAW ESTABLISHING, FOR THE REGULATORY PERIOD 2020-2025, THE FINANCIAL REMUNERATION RATE FOR ELECTRICITY TRANSMISSION AND DISTRIBUTION ACTIVITIES AND PRODUCTION IN ELECTRICITY SYSTEMS IN NON-MAINLAND TERRITORIES WITH AN ADDITIONAL REMUNERATION SYSTEM AND ESTABLISHING THE REASONABLE PROFITABILITY OF ELECTRICITY PRODUCTION ACTIVITIES USING RENEWABLE ENERGY SOURCES, HIGH EFFICIENCY COGENERATION AND WASTE WITH A SPECIFIC REMUNERATION SYSTEM.

I

Article 14 of Law 24/2013, of 26 December, on the Electricity Sector, establishes the basic principles that will govern the remuneration of the various activities of the electricity sector. The aforementioned law determines that the remuneration parameters for this activity will be set taking into account the cyclical situation of the economy, electricity demand and the adequate profitability for these activities for regulatory periods of six years. These remuneration parameters may be reviewed before the beginning of each six-year regulatory period. If this review is not carried out, they shall be deemed to be extended for the entire next regulatory period.

II

With respect to transmission and distribution activities, article 14.8 of the aforementioned Electricity Sector Act establishes that, in order to allow adequate remuneration for a low-risk activity, the financial remuneration rate of the assets entitled to remuneration in the electricity system of transmission and distribution companies shall be linked to the performance of the ten-year State Obligations in the secondary market increased by an appropriate differential.

Article 8 of Royal Decree 1047/2013, of 27 December, establishing the methodology for calculating the remuneration of the electricity transmission activity, and Article 14 of Royal Decree 1048/2013, of 27 December, establishing the methodology for calculating the remuneration of the electricity distribution activity, establish the procedures for updating the remuneration rate of the respective activities. Thus, these texts state that the financial remuneration rate will be calculated as the average of the 24 months prior to the month of May of the year prior to the beginning of the regulatory period for the performance of ten-year government bonds on the secondary market, increased by a spread. Although the updating of the rate of remuneration has an automatic character, the differential with which the Obligaciones del Estado increase can be modified according to a series of circumstances assessed in these royal decrees.

For the establishment of the new differential that is added to the State Obligations, a procedure is established that begins with the remission before March 1, 2018.

to the current Ministry for the Ecological Transition with reasoned proposals from the affected companies. Subsequently, the law states that the Ministry may request a report to the National Commission on Competition Markets, which was done and completed with the issuance of a report by the National Commission on Markets and Competition. Once this information has been gathered, the royal decrees provide that before 1 January of the last year of the corresponding regulatory period, i.e. before 1 January 2019, the Minister for the Ecological Transition will submit to the Council of Ministers a preliminary bill containing a proposal for the value that the differential mentioned in the previous section will take in the following regulatory period. Once the legal standard has been approved before the start of the next regulatory period, the rate of remuneration will be modified, taking into account that, in order to avoid sudden changes in the levels of remuneration, the variation in the rate of financial remuneration used between two consecutive years may be greater than 50 basis points in absolute value.

In addition, it should be noted that in the case of network activities, in order to avoid abrupt changes in the years of changes in the regulatory period, it is established that the final variation in the financial remuneration rate may not suffer variations between two consecutive years of more than 50 basic points both upwards and downwards. To this end, if the variation in the resulting financial remuneration rate between two regulatory periods is greater than 50 basis points, said variation shall be carried out in as many years as necessary in order not to exceed said threshold.

By virtue of the provisions of the above-mentioned royal decrees, during the month of June 2018 the Ministry of Energy requested a report with a reasoned proposal from the National Commission on Markets and Competition. This Committee submitted to the Secretariat of State for Energy the "Agreement approving the proposed methodology for calculating the financial remuneration rate for electricity transmission and distribution activities for the second regulatory period 2020-2025" approved by the regulatory supervision chamber at its meeting on 30 October 2018 (INF/DE/044/18). In this report the Commission proposes to use a methodology for calculating the rate of financial remuneration based on the calculation of the WACC (Weighted Average Cost of Capital), the value of which is intended to reflect the cost of obtaining the financial resources, both own and external, of companies in the sector. Once said value is obtained, and in order to obtain the differential added to the State Obligations, the value of said obligations is subtracted from the rate obtained by the aforementioned WACC methodology.

III

With regard to the production of electrical energy in the electrical systems of non-mainland territories, Law 24/2013 of 26 December provides that there may be special features taking into account the specificities deriving from their territorial location and their isolated nature.

In addition, Article 14.6 of the aforementioned law establishes that the Government may determine an additional remuneration item to cover the difference between the investment and operating costs of the electrical energy production activity carried out in the electrical systems of non-mainland territories and the income from said production activity.

As in the case of networks, Law 24/2013, of 26 December, stipulates that the rate of financial remuneration of the recognised net investment shall be linked to the yield of the ten-year State Obligations in the secondary market increased by an appropriate differential for the purpose of allowing an adequate remuneration to that of a low-risk activity.

For its part, Royal Decree 738/2015, of 31 July, which regulates electricity production activity and the dispatch procedure in electricity systems in non-mainland territories, establishes in article 28 and its first additional provision a procedure similar to that of the networks, with regard to the revision of the differential added to the State Obligations for the calculation of the financial remuneration rate.

By virtue of the provisions of article 28.1 of the aforementioned Royal Decree 738/2015, of 31 July, the Secretary of State for Energy requested a report from the National Commission on Markets and Competition, on 4 July 2018, proposing a revised financial remuneration rate for the following regulatory period applicable to remuneration in non-mainland territories.

In response to the above requirement, on November 2 the "Agreement approving the proposed financial compensation rate for electricity production activity in non-mainland systems for the second regulatory period 2020-2025" approved by the regulatory oversight chamber at its meeting on October 30, 2018 (INF/DE/119/18) was entered into the general registry of the Ministry for Ecological Transition.

In this agreement, the National Commission on Markets and Competition proposes to apply the same rate of financial remuneration for the production of electricity in non-mainland electricity systems as for the transmission and distribution of electricity in the second regulatory period, whose value is 5.58%.

IV

In addition, Law 24/2013, of 26 December, established the new remuneration framework for production from renewable energy sources, cogeneration and waste. This new framework has been set out, firstly, in Royal Decree 413/2014, of 6 June, regulating the production of electricity from renewable energy sources, cogeneration and waste and, subsequently, through the approval of Order IET/1045/2014, of 16 June, approving the remuneration parameters for standard installations applicable to certain installations producing electricity from renewable energy sources, cogeneration and waste. In addition, various provisions have been approving other standard installations and their remuneration parameters.

Article 14.4 of Law 24/2013, of 26 December, and articles 19 and 20 of Royal Decree 413/2014, of 6 June, establish that at the end of each regulatory period, which will have a duration of six years, the remuneration parameters of standard installations may be reviewed, except for the regulatory useful life and the standard value of the initial investment, while at the end of each regulatory semi-period, which will have a duration of three years, the estimates of income from the sale of energy will be revised for the rest of the regulatory period by order of the former Minister of Industry, Energy and Tourism and currently of the Minister for the Ecological Transition, given the new distribution of powers carried out by Royal Decree 355/2018 of 6 June, which restructures the ministerial departments.

In addition, the aforementioned precepts establish that, at least annually, the operating remuneration for those type installations to which it is applicable and whose operating costs depend essentially on the price of the fuel shall be reviewed, in accordance with the methodology established in the regulations.

One of the objectives of this law is to update the reasonable profitability applicable to installations producing electricity from renewable energy sources, high-efficiency cogeneration and waste, with a specific remuneration system for the rest of the useful life of typical installations, as provided for in article 14.4 of Law 24/2013, of 26 December, on the Electricity Sector and article 19 of Royal Decree 413/2014, of 6 June.

In accordance with the provisions of the tenth additional provision of Law 24/2013, of 26 December, in the first regulatory period, which ends on 31 December 2019, the value on which the reasonable profitability of the benchmark rate projects revolves was calculated as the average yield on the secondary market in the three months prior to the entry into force of Royal Decree-Law 9/2013, of 12 July, of the ten-year Obligaciones del Estado increased by 300 basis points, resulting in a 7.503% increase.

In the case of installations entitled to receive the economic regime prior to the entry into force of Royal Decree-Law 9/2013, in accordance with the second additional provision.5 of Royal Decree 413/2014, reasonable profitability was calculated as the average yield on the secondary market in the ten years prior to the entry into force of Royal Decree-Law 9/2013, of 12 July, of the ten-year State Obligations increased by 300 basic points, resulting in 7.389% of the total yield on the secondary market in the ten years prior to the entry into force of Royal Decree-Law 9/2013, of 12 July, of the ten-year State Obligations increased by 300 basic points, resulting in 7.389%.

Article 19 of Royal Decree 413/2014, of 6 June, establishes the criteria to be considered for the review of these securities on which reasonable profitability revolves. According to the aforementioned article, the value on which the reasonable profitability of standard installations will revolve will be calculated as the average yield of the ten-year State Obligations in the secondary market during the 24 months prior to the month of May of the year prior to the beginning of the regulatory period, increased by a differential, applicable for the remainder of the regulatory useful life of standard installations.

This article 19, in its second section, provides that before 1 January of the last year of the corresponding regulatory period, in this case 1 January 2019, the former Minister of Industry, Energy and Tourism, currently, for the reasons set out above, the Minister for Ecological Transition, will submit to the Council of Ministers a draft law which will include a proposal of the value that will take the differential indicated in the first section in the following regulatory period, in accordance with the criteria set out in the article.

14.4 of Law 24/2013 of 26 December. It also states that, in order to establish this value, the Ministry may obtain a report from the National Commission on Markets and Competition (CNMC).

In response to the request of the Ministry for the Ecological Transition, the CNMC submitted a report with the proposed methodology for calculating the financial remuneration rate of the activity of producing electricity from renewable energy sources, cogeneration and waste for the second regulatory period 2020-2025 (INF/DE/113/18) which is the basis for the proposal contained in this Act.

The application of the methodology set out in the CNMC report results in a value on which the reasonable return should turn of 7.09% for the second regulatory period. Once the data corresponding to the price of the ten-year Obligaciones del Estado are available between May 2017 and April 2019, the differential referred to in article 19 of Royal Decree 413/2014, of 6 June, may be calculated as the differential that needs to be added to the average of the said price of the Obligaciones del Estado in order to reach a value of 7.09%.

The new value of reasonable profitability will be applicable for the remainder of the regulatory useful life of standard installations, without prejudice to the revisions in each regulatory period provided for in article 19 of Royal Decree 413/2014, of 6 June.

V

It is the Government's objective to ensure a stable regulatory and economic framework as a key factor for the development of renewable energies.

The modification of the legal and economic regime for installations producing electrical energy from renewable energy sources, cogeneration and waste operated on the basis of the mandate contained in the aforementioned Royal Decree-Law 9/2013, of 12 July, had a special impact on the installations that had been granted the economic regime prior to the entry into force of the aforementioned regulation.

As stated above, for these facilities, reasonable profitability was calculated as the average secondary market yield in the ten years prior to the entry into force of Royal Decree-Law 9/2013, of 12 July, of the ten-year State Obligations increased by 300 basis points, without prejudice to the review provided for in Article
14.4 of Law 24/2013 of 26 December.

The establishment of this new legal and economic framework for installations producing electricity from renewable energy sources, cogeneration and waste has been the subject of major internal and international litigation.

Internally, the Constitutional Court confirmed the constitutionality of Royal Decree Law 9/2013 of 12 July and the Supreme Court, with the sole exception of plants dedicated to the treatment of slurry, has confirmed the conformity to law of Royal Decree 413/2014 of 6 June and Order IET/1045/2014 of 16 June.

To date, seven arbitration awards have been rendered, of which two have been in favour of the Kingdom of Spain and five have been partially condemnatory. Although at the date of entry into force of this Law the awards are not final, they do reveal a trend that justifies the need to adopt measures aimed at ending or, where appropriate, mitigating this situation that particularly affects the ability to attract investment.

Since a total of 35 international investment arbitration proceedings against the Kingdom of Spain are pending resolution to date, it is considered necessary to adopt measures that immediately send a positive signal to international investors in order to avoid new arbitration proceedings or, where appropriate, to put an end to existing ones, since the modification is intended to avoid, for two consecutive regulatory periods, a downward revision of the profitability of these investments.

The amendment thus made applies to both international holders of the affected plants and national holders, who also benefit from the measure.

This modification is not applicable, however, to installations with a recognised remuneration system after the entry into force of Royal Decree-Law 9/2013, since the owners of these installations were already aware of the possibility of reviewing the profitability when they made the corresponding investment.

With this objective, a final provision third bis is introduced in Law 24/2013, of 26 December, on the Electricity Sector, the purpose of which is to guarantee installations entitled to primary remuneration prior to the entry into force of Royal Decree Law 9/2013 that the reasonable rate of return established for the first regulatory period ending 31 December 2019, may not be modified during the two regulatory periods which, in accordance with the tenth additional provision of this same law, follow one another consecutively from 1 January 2020, in such a way that a kind of "partial crystallisation" is carried out for a further 12 years, until 31 December 2031, of the reasonable rate of return fixed for the first regulatory period.

This guarantees the stability of the remuneration framework of the installations affected by this modification, which for a period of 12 years may decide not to undergo the downward revision of the rate of return set for the first regulatory period.

The amendment is justified by the extraordinary litigiousness that the Kingdom of Spain is experiencing in the field of international arbitration and which requires the adoption of measures that, on the one hand, are aimed at avoiding the introduction of new arbitration procedures and, on the other, allow the possible withdrawal of existing procedures.

VI

In accordance with the foregoing, and once the reports submitted by the National Commission on Markets and Competition have been analysed, for the 2020-2025 regulatory period, the values of the remuneration rates are updated in this law.

and the differential values of this rate of remuneration for electricity transmission and distribution activities and for the production activity in the electricity systems of non-mainland territories with an additional remuneration system, as well as the value of the reasonable profitability of the production activities from renewable energy sources, high-efficiency cogeneration and waste with a specific retributive regime applicable to the remainder of the regulatory useful life of the typical installations, and on the basis of which the rest of the retributive parameters for the second regulatory period between January 1, 2020 and December 31, 2025 will be revised.

TITLE I

General provisions

Article 1. Purpose of the Law.

The object of this Act is the establishment, for the second regulatory period between 1 January 2020 and 31 December 2025, of:

a) The rate of financial remuneration and the differential in electricity transmission and distribution activities.

b) The financial remuneration rate and the differential of the production activity in non-mainland electricity systems with an additional remuneration system.

c) Reasonable profitability and the differential of electricity production from renewable energy sources, high-efficiency cogeneration and waste with a specific retributive regime.

Article 2. Scope of application.

This law shall apply to companies that carry out electricity transmission and distribution activities, as well as to those that carry out production activities in the electricity systems of non-mainland territories with an additional remuneration system, and those that carry out the activity of producing electricity from renewable energy sources, high-efficiency cogeneration and waste with a specific remuneration system.

TITLE II

Remuneration rates

Article 3. Financial and differential remuneration rate for electricity transmission and distribution activities.

1. The financial remuneration rate for electricity transmission and distribution activities in the second regulatory period will be 5.58%.

2. The differential to be added to the ten-year Obligaciones del Estado in the secondary market for the 24 months prior to May 2019, in order to obtain the rate of financial remuneration for electricity transmission and distribution activities in the second regulatory period, will be the result of subtracting the value of the ten-year Obligaciones del Estado in the secondary market for the 24 months prior to May 2019 from the value of the financial remuneration rate.

3. Notwithstanding the foregoing, in no case may the variation in the rate of financial remuneration used in the calculation of financial remuneration between two consecutive years exceed 50 basis points in absolute value. In the event of a higher variation, the change in the value of the rate of remuneration shall be made over the number of years necessary in order not to exceed that limit.

Article 4. Financial and differential remuneration rate for production activity in non-mainland electricity systems with additional remuneration system.

1. The financial remuneration rate for the production activity in non-mainland electricity systems with an additional remuneration system in the second regulatory period will be 5.58%.

2.The differential to be added to the ten-year Obligaciones del Estado in the secondary market for the 24 months prior to May 2019, in order to obtain the financial remuneration rate for the production activity in non-mainland electricity systems with an additional remuneration regime in the second regulatory period, will be the result of subtracting from the value of the financial remuneration rate the value of the ten-year Obligaciones del Estado in the secondary market for the 24 months prior to May 2019.

3. Notwithstanding the foregoing, in no case may the variation in the rate of financial remuneration used between two consecutive years be greater than 50 basis points in absolute value. In the event of a higher variation, the proposal to change the value in the rate of remuneration shall be made for the number of years necessary in order not to exceed this limit.

Article 5. Value of the fair return and the differential applied to the specific remuneration system.

1. The reasonable profitability applicable to the remaining regulatory useful life of standard installations, which will be used to review and update the remuneration parameters that will be applicable during the second regulatory period, pursuant to article 14.4 of Law 24/2013, of 26 December and articles 19 and 20 of Royal Decree 413/2014, of 6 June, before taxes, will be 7.09%.

2. The differential to be added to the value of the ten-year Obligaciones del Estado on the secondary market for the 24 months prior to May 2019 will be the result of subtracting from the value of the aforementioned reasonable return the value of the ten-year Obligaciones del Estado on the secondary market for the 24 months prior to May 2019.

First final provision. A Final Provision three bis is introduced in Law 24/2013, of 26 December, on the Electricity Sector, with the following literal tenor:

"Final provision three bis.

Exceptionally, for installations producing electricity from renewable energy sources, cogeneration and waste that had recognised primary remuneration when Royal Decree-Law 9/2013 of 12 July came into force, the value on which the reasonable profitability established for the first regulatory period will revolve may not be revised during the two consecutive regulatory periods that follow one another, consecutively, from 1 January 2020.

Nevertheless, the body in charge of settling the specific remuneration system for the installations referred to in the previous paragraph shall deduct the amount corresponding to the difference between the remuneration to be paid to them, maintaining the profitability according to the previous paragraph, and that which would have corresponded to them with the profitability resulting from the application of article 5 of this law, the amount corresponding to indemnities or compensations that must be paid as a result of a final resolution issued in any judicial or arbitration instance and that are based on the modification of the specific remuneration system operated after the entry into force of Royal Decree-Law 9/2013, of 12 July and its implementing rules, unless the authoritative waiver of its receipt is accredited.

To this end, the State Attorney General's Office, Directorate of the State Legal Service, shall notify the body in charge of settling the specific remuneration system of any final judicial or arbitral decision referred to in the previous paragraph.

The installations provided for in the first paragraph may waive the application of the provisions of this provision, and must express their waiver in writing to the Directorate General for Energy Policy and Mines before 1 January 2020. In this case, for the calculation of the retribution that corresponds to them to receive, the value of the reasonable profitability that is established for each regulatory period in accordance with the provisions of article 14 of Law 24/2013, of the Electricity Sector, will be taken into account.

Second final provision. Competential titles.

This Law is enacted under the protection of rules 13 and 25 of article 149.1 of the Constitution, which grants the State exclusive competence in matters of bases and coordination of the general planning of economic activity and bases of the mining and energy regime, respectively.

In addition to the foregoing provision, article 28 of Royal Decree 738/2015 of 31 July, article 8 of Royal Decree 1047/2013 of 27 December and article 14 of Royal Decree 1048/2013 of 27 December, which lay down the procedure for updating the rate of remuneration for production activities in electricity systems in non-mainland territories, must be taken into account, and in electricity transmission and distribution activities, and article 19 of Royal Decree 413/2014, of 6 June, which establishes a review of the value on which reasonable profitability will revolve for the production activity with a specific remuneration system.

Third final provision. Regulatory development.

The Government is empowered, within the scope of its powers, to approve such provisions as may be necessary for the application, execution and development of the provisions of this Law.

Fourth final provision. Entry into force.

This Law shall enter into force on the day following that of its publication in the "Official State Gazette".