



Competences of the CNMC in Royal Decree-Law 1/2019, of 11 January.

1. Background
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3. CNMC 2019 Action Plan
4. Reference to the 'winter package'

1. Background

- The third package: Directives 2009/72 and 2009/73
 - Harmonisation of the competences of National Regulatory Authorities.
 - Independence, objectives and competences.

- Reference to the transposition process into our law
 - Royal Decree-Law 13/2012, of 30 March.

- EU infringement procedure:
 - September 2016 reasoned opinion.
 - Areas of conflict.

- Government–CNMC litigation
 - Context of challenges.
 - Insecurity.
 - Direct effect of EU regulations.
 - Adoption of contradictory decisions.

2. Content of Royal Decree-Law 1/2019.

➤ **Object**

Amendment of Act 3/2013, of 4 June, on the creation of the CNMC; Act 24/2013, of 26 December, on the Electricity Sector; Act 34/1998, of 7 October, on the Hydrocarbons Sector; and Act 18/2014, of 15 October, on urgent measures for development, competitiveness and efficiency (concerning the economic regime for natural gas).

➤ **Coordination mechanisms**

- ❑ Intended to ‘ensure the proper exercise of the competences which are the responsibility of the regulator with exclusive competence over bases of the energy regime which article 149.1.25. of the Spanish Constitution assigns to the State’.

- ❑ Assignment to MITECO, subject to agreement by the Delegate Committee for Economic Affairs, of the competences to approve 'energy policy guidance', which the CNMC must take into consideration when approving regulatory circulars which may have an impact on aspects of energy policy.
 - Non-binding nature of the guidance.

Concept of energy policy guidelines in EU law:

- ✓ Article 35.4 of Directive 2009/72/EC and 39.4 of Directive 2009/73/CE: 'general policy guidelines issued by the Government not related to the regulatory powers of article 37 and 41'.
- ✓ EC interpretative note of 22 January 2010,

*The Electricity and Gas Directives do not deprive the government of the **possibility of establishing and issuing its national energy policy**. This means that, depending on the national constitution, it could be the government's competency to determine the policy framework within which the NRA must operate, e.g. concerning security of supply, renewables or energy efficiency targets. However, general energy policy guidelines issued by the government must not encroach on the NRA's independence and autonomy.*

The core duties of the NRA as regards network tariffs do not deprive the Member State of the possibility to issue general policy guidelines which ultimately will have to be translated by the NRA into the tariff structure and methodology. However, these guidelines should not encroach on the NRA's competences or infringe any of the requirements of the Electricity and Gas Directives and Regulations. Although a Member State could e.g. issue a general policy guideline with regard to attracting investments in renewables, the Commission's services would consider a rule setting the profit margin in the cost-plus tariff as a prohibited direct instruction to the NRA.

✓ Proposed amendment to Directive 2009/72:

Considering 62 (a) and article 57 (same terms).

- ❑ Cooperation committee between MITECO and CNMC: Aim: seek understanding between MITECO and CNMC.
- ❑ Other mechanisms implemented in other member states:
 - ✓ French 'double key' system.
 - ✓ The Energy Regulatory Commission (CRE) takes into account the energy policy guidelines indicated by the administrative authority. It keeps the administrative authority informed during the tariff development stage.
 - ✓ The CRE sends its considered decisions to the administrative authority for publication in the Official Journal of the French Republic.
 - ✓ Within the two months following this notification, if the administrative authority believes that the CRE's deliberation does not take energy policy guidelines into account, the former may request a new deliberation by reasoned decision published in the Official Journal of the French Republic.

➤ **Functions of the CNMC**

- **Economic regime of the electricity and natural gas system:**

Approval of the tolling methodology, specific values of tolls, remuneration parameters for transmission and distribution (except – in the case of natural gas – in relation to underground storage facilities) and annual remuneration for these activities.

The tolling methodology and remuneration parameters will be established by means of circular, and the specific values of the tolls and amounts of the retribution will be established by means of resolution. Publication in the Official State Gazette (BOE).

Approval of the financial remuneration rate, which may not exceed (except in exceptional cases) the limits set forth by law in this regard.

Approval of the remuneration (and respective methodology) for the Electricity System Operator and the Technical Manager of the Gas System.

Interim arrangements:

- ✓ Approval of tolls shall be done by the CNMC once the same approves its methodology (which shall not apply prior to 1st January 2020).
- ✓ The remuneration methodologies shall apply after the end of the first regulatory period established for gas and electricity, respectively.
- ✓ The CNMC will begin setting the remuneration on 1st January 2020.

Access and connection:

Approval, by means of circular, of access and connection methodology and conditions:

- ✓ economic criteria,
- ✓ capacity evaluation criteria,
- ✓ reasons for denial,
- ✓ content of applications, permits and contracts,
- ✓ obligations regarding public disclosure and transparency of relevant information for access and connection.

Organised markets:

Approval of the rules for organised markets in the aspects which, according to European regulations, are the responsibility of the national regulatory authority.

In the case of natural gas, the CNMC will approve the technical management regulations relating to:

- ✓ balancing calculation procedure,
- ✓ scheduling and nomination system,
- ✓ losses and self-consumption, and the procedure for management and use of international interconnections.

It is anticipated that the regulations approved by the CNMC in exercising this competence will be published in the BOE.

Aspects relating to mechanisms to guarantee the necessary level of supply, replacement plans, measurement and control requirements for national system inputs and outputs are the responsibility of MITECO.

Investment plans:

The function of the CNMC is clarified with regard to oversight of investment plans for managers of the transmission network, providing for various actions:

- ✓ Inclusion of the results of CNMC oversight in the annual report to be sent to ACER,
- ✓ Submitting a report at the proposal of the transmission network manager at the start of the planning procedure, and
- ✓ Sending a report to MITECO during the final planning comment period (evaluating aspects not considered in the initial report, and with the ability to convene the Ministry and CNMC Cooperation Committee).

Inspection:

It is expressly established that the CNMC can inspect all those matters over which it has been assigned competence, through the Directorate of Energy.

Sanctions:

The CNMC is assigned new competences to sanction types of offences envisaged in electricity and hydrocarbon industry legislation (as regards, in terms of the latter, the case of combustible gases), among others:

- ✓ Failure to fulfill the obligations relating to the tolling system,
- ✓ Falsifying information resulting in the right to remuneration for transmission and distribution,
- ✓ Lack of proper maintenance of installations,
- ✓ Breach of confidentiality obligations,
- ✓ Unjustified interruption or suspension of supply.

3. CNMC 2019 Action Plan

- Circular establishing the calculation methodology of the financial remuneration rate for electricity transmission and distribution and natural gas regasification, transmission and distribution activities.
- Circular establishing the methodology for calculating the remuneration for electricity transmission activity.
- Circular establishing the methodology for calculating the remuneration for electricity distribution activity.
- Circular establishing the remuneration methodology for the electricity system operator.
- Circular establishing the remuneration methodology for regulated natural gas transmission and regasification activities.
- Circular establishing the remuneration methodology for regulated natural gas distribution activity.
- Circular establishing the remuneration methodology for the gas system technical manager.
- Circular establishing the methodology for calculating tolls for electricity transmission and distribution.
- Circular establishing the methodology for calculating tolls for natural gas regasification, transmission and distribution.

- Circular establishing the methodology relating to the operation of the wholesale electricity production market.
- Circular establishing the methodology and conditions for access and connection to the transmission and distribution networks of electricity production facilities.
- Circular establishing regulations for natural gas balancing.
- Circular establishing the mechanisms for access and capacity allocation to be applied to the natural gas system.

4. Reference to the ‘winter package’

The **oversight functions** of NRAs are reinforced: over the managers of transmission and distribution networks, in the implementation of the development and promotion of smart grids, investments in storage facilities, investment plans in distribution networks, impact of contracts with dynamic tariffs, etc.

The **regulatory and/or quasi-regulatory** competences of the NRAs are reinforced: development of network codes according to electricity EU Reg, quality of service standards, demand share schemes, etc.

Regional cooperation among NRAs is reinforced.



CNMC

COMISIÓN NACIONAL DE LOS
MERCADOS Y LA COMPETENCIA

Gracias por su asistencia.