

Spain's Climate Change and Energy Transition Act 7/2021

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Over the past few years Spain's energy policies have focussed on adopting **regulatory measures to decarbonise the economy** and succeed in meeting obligations to cut greenhouse gas emissions.

In order to do so, Spain is following the principles and promises reached on a global level by the United Nation's 2015 Paris Agreement on climate change (the "**Paris Agreement**").

The Paris Agreement - as well as rules that were rolled out at Katowice and found in the 2030 Agenda for Sustainable Development- sets out the road map for transforming the economic model and outlines a new social contract of inclusive prosperity. Subsequently, at the 2019 United Nations Climate Change Conference held in Madrid, the international community renewed its commitment to meeting the agreed timetable.

Given this background, the **EU issued a Communication on the European Green Deal** which set out the aim to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gasses in 2050.

Furthermore, an **Agreement issued by the Council of Ministers on March 16, 2021** adopted the final version of the 2021-2030 National Integrated Energy and Climate Plan ("PNIEC" by its Spanish acronym), which aims to have 100% renewable electricity by 2050.

After two years of negotiations, the regulatory elements of this first PNIEC, as well as those that will be presented to the European Commission in order to meet the stated aims, have been incorporated into the Draft Bill on climate change and the energy transition approved by the Council of Ministers on May 19, 2020

What is important to note is that **many of the rules that originally appeared in the draft version of this Bill were included in emergency provisions** such as Royal Decree-law 23/2020 dated June 23, 2020 which approved energy measures and others to reactivate the economy (RDley 23/2020).

Having passed through Congress and the Senate, the Climate Change and Energy Transition Act was approved on May 13, 2021, was made public in the Official State Gazette on May 21, 2021 and became law the following day.

The provisions of this law (hereinafter referred to as "**Law 7/2021**") will be discussed below, paying greater attention to those which **have direct regulatory application due to** programmed provisions that require specific regulatory development.

Guiding principles and aims of Law 7/2021

The **aim of this Law** is to meet the Paris Agreement objectives through the **decarbonisation of the Spanish economy**, promoting ways to adapt to the impact of climate change and implementing a sustainable development model that generates employment.

The adopted measures are based on **guiding principles** fixed in European and international law. Among these is article 2 which includes: sustainable development, decarbonisation, environmental protection, social and territorial cohesion, non-regression, "polluter pays", resilience and equality between men and women.

Planning the energy transition requires reaching a series of **objectives** that Spain must meet by 2030 (the minimum objectives) and the setting out of a framework so that by **2050 the country reaches climate neutrality**. In both cases the Council of Ministers can make upward adjustments.

With regards to environmental regulations, the Law allows for **Autonomous Regions** duly authorised in these matters to **set higher protection levels** than those contemplated in basic national law.

Objectives on greenhouse gas reductions, renewables and energy efficiency				
2030 Objective				2050 Objective
Complete reduction of emissions	Penetration of renewable energy in final consumption	Penetration of renewable energy in the electricity system	Reduction of raw energy consumption	
23%	42%	74%	39,50%	Climate neutrality

Framework for the forthcoming reform of the Electricity Sector

The first thing to point out is that the **eleventh provision states** that **before a set deadline of May 22, 2022** the government, together with the National Commission for Markets and Competition (CNMC) must present, a proposal to reform the energy regulation framework that includes:

- Consumer participation in energy markets (including independent aggregation).
- Investments in the generation of variable and flexible renewable energy as well as **distributed generation**.
- Energy **storage**.
- Making the most of electricity grids, flexible use and local energy markets.
- **Energy consumers** access to their **data**.
- Innovation in the energy field.

Therefore, as a consequence of this, an important part of consumer participation in the electricity sector will be referred to a future reform of the same.

Measures for investigating and innovating renewable energies

Going beyond the indicated objectives and specific measures covering renewable gases, the introduction of renewable resources in transport and measures related to public water resources, there is only one provision in Law 7/2021 concerning generation facilities using renewable technology.

This is the eighth additional provision which states that the Government will regulate a **specific framework for testing facilities** which will include simplified proceedings for their categorisation and permits, exemptions and sources of funding which will in no way affect the regulated resources of the gas and electricity systems.

Once regulated **these pilot projects will not be subject to specific regulations**, however carrying out these trials and pilot projects **will not mean that commercial or**

industrial grants have been permitted or have any such authorisation that is beyond that of research and development.

Measures concerning fossil fuels and nuclear energy

In order to decarbonise the economy, several measures concerning combustibles (hydrocarbons and coal) and nuclear energy will be adopted.

- From the moment this Law enters into force, no new permits will be granted for hydrocarbon operations, for exploration or for concessions in all of national territory, including territorial waters, the exclusive economic area and the continental platform.
- In the same way, **no permits will be granted** for hydrocarbon operations that include use a **fracking method**.
- Any operation permits that were still valid at the time this Law enters into force should send a report to the Ministry for the Ecological Transition and the Demographic Challenge (MITECO) at least five months before the permit expires in which it outlines the potential options for converting the facilities or other uses of the subsurface.
- No new applications or extensions relating to exploration operations, research or direct concession permits for radioactive minerals will be granted. Nor will new permits be granted for radioactive facilities that process radioactive minerals for the nuclear fuel cycle.
- The **tax benefits for fossil fuel energy production** should be justified on the basis of social or economic interests, where no alternative economic options exist. The Treasury will publish an annual report concerning the **applicable tax regime and grants** that support their use.

- Measures to promote engagement in carbon absorption among owners and managers will be set out in accordance to the framework governed by The National Climate Council and the Coordination Commission of Climate Change Policies.
- In accordance with the **Closure Plan for Uncompetitive Coal Mines in Spain**, any permits that are granted, conceded, extended or assigned for coal resources will be subject to the **returning of coal aid received** as set out in this Plan and the EU's framework.
- The possible requirement of **market players, system operators, transport workers and distributors** to present a decarbonisation strategy is set out, to apply to their own field of activity, within the context of the 2050 Decarbonisation Strategy.
- The second additional provision establishes the limits on the **Spanish State Administration and public bodies** to dispense with all partnerships or financial involvement with companies whose commercial activities include refinery, mining or processing fossil fuels.
- Companies will be obliged to calculate and publish their **carbon footprint** as per a government regulations to be drawn up.
- Enresa's work in carrying out the General Plan of Radioactive Waste is declared to be public works of general interest.

Renewable gases

Article 12 contains the **only regulation in Law 7/2021 that covers hydrogen** and other renewable gases (biogas and biomethane) **which has been produced exclusively from raw materials and energy from renewable sources** or which allow for the reuse of organic waste or animal by-products.

It states that the Government will encourage **the penetration of renewable gases** by approving specific plans that include:

- Yearly goals for the penetration of renewable gases in the sale and consumption of natural gas.
- **A certification system** which will cover the control and supervision of these obligations.
- Regulations that will benefit **direct industrial use** of such gases in the workplace for **mobility** and their **inclusion in natural gas networks**.

These are, therefore, programmed measures that depend upon necessary regulatory implementation.

Public water resource management

With the aim of contributing to the roll out of renewable energies, the following measures have been set out **concerning water**:

- The integration of renewable energies is made a priority by means of concessions granted over **public water resources** for generating electricity. With particular focus on **Pumped Storage Hydro Plants (PSPs)**.
- Regulations are set for the technical conditions of **pumps, storage and turbines**.
- These conditions will be promoted for use in the urban water cycle, taking advantage of water supply systems and urban sewerage systems to generate electricity.
- Water management and planning should meet the directives and measures to be developed by the Water Strategy for the Ecological Transition.
- The Spanish coastline must adopt measures to meet the **EU Strategy on Adaptation of Coastlines to Climate Change**.
- The certificates of occupancy of the public shoreline, and their extensions, are to be fulfilled. Those administrative decisions issued after the entering into force of the Law that are in breach of the time limits set in the Spanish Coastal Law the Spanish Law of Heritage and Public Administration will be declared fully null and void.

Buildings and urban developments

Law 7/2021 provides for a series of plans to promote and encourage the use of renewable energy in building projects:

- The goal to be reached in both **building and refurbishing projects** is that only carbon-free materials are used.
- Accessibility and usability conditions for buildings and facilities have been improved.
- In order to renew and refurbish existing housing stock in both the private and public sector, the Government will draw up a **Programme for Refurbishment of Housing and Urban Regeneration** (due by November 22, 2021).
- Self-consumption will be encouraged, as will small-scale installations and zero-emissions heating and cooling. The Government is expected to change the Horizontal Property Law to ease the installation of self-consumption photovoltaic systems on blocks of flats.

- A series of objectives aimed at adapting urban and transport infrastructure to climate change effects (such as managing the reduction of "urban heat islands").
- Changing Basic criteria on the use of land to include risks arising from climate change and to prevent natural disasters and major incidents.

Transport and mobility

In the area of transport and mobility, the following has been set out in order to achieve the supply of alternative fuel supplies that will lead to decarbonisation:

- **Advanced biofuels** will be encouraged and other renewable fuels from non-biological sources.
- Measures will be adopted in order to achieve the integration of renewable energies and the supply of renewable fuels for transport, especially aviation, which may include (i) the types of products that must meet these objectives and which are subject to those requirements; (ii) the certification system that could permit the supervision and control of requirements.
- Biofuels and other renewable fuels from **non-biological sources** that are introduced to aviation must meet the **sustainability criteria** defined in European and national regulations.
- Measures will be adopted to make sure that by 2050 new passenger car and light commercial vehicle fleets in Spain will be free from CO2 emissions.
- The PNIEC, in line with the 2050 Decarbonisation Strategy, aims to have zero emission cars in circulation by 2040 (cars with **0gCO2/km**). In order to reach this goal, R&D measures will be considered. Some emission-cutting measures have been set out that affect towns with more than 50,000 residents (also applicable to areas with more than 20,000 residents).
- By May 22, 2022 information about recharging points will be made public through the National Access Point which provides real-time traffic information, informing drivers of the location, availability and charging prices of each point.
- Differing deadlines obliging fuel supply facility owners to offer electric recharging points in accordance their sales threshold.

Recharging points at existing service stations		
Criteria	Minimum mains supply power (Kw) at the recharging point	Time to install the service from entry into force of this Law
Combined gas and diesel sales A ≥ 10MM of litres	P ≥ 150 KW	21 months
10 MM of litres ≥ Combined gas and diesel sales A ≥ 5MM of litres	P ≥ 50 KW	27 months
Service stations that had 10% of total sales in provinces, self-governing cities or islands that did not meet the above-mentioned criteria.	P ≥ 50KW	27 months
New service stations that undergo renovations that require monitoring of the administrative licence.	P ≥ 50 KW	From the moment renovations have been financed or begin

- The **Technical Building Code** establishes requirements relating to the installation of EV recharging points in newbuilds and for installations in existing buildings.
- With regards to petrol stations that are situated on the **national road network, the requirements to install recharging points corresponds to the licensees of the same.**
- In order to reduce emissions from **maritime transport** and ports Law 7/2021 announces the adoption of measures to achieve a **zero emissions objective by 2050**, by promoting the coordination and consolidation of sustainable logistics chains with origin or destination at ports; the generation or concentration of renewable energy; an improvement in the mains electricity supply to ports; an improvement in railway networks that travel to and from ports and the development of seaways and regular Roll-on Roll-off transport lines.
- Furthermore, aviation companies, airport managers and air transport service providers must include opportunities to improve the reduction in emissions.
- The final eighth provision covers the future law on Sustainable Mobility and Public Transport Funding so that, through this, the use of passenger railways can be increased. Furthermore, there is going to be a Strategy to boost rail freight transportation.

Company obligations for climate change risks

The Law sets out a series of **required information** that is incumbent to certain companies:

- Those **shareholding Companies which are allowed to work in regulated markets and are obliged to file consolidated accounts** must provide as part of their management reports an annual report concerning the financial impact that risks associated with climate change may have.
- To this end, the Bank of Spain, the National Securities Market Commission and the General Directorate of Insurance and Pension Funds are obliged to provide a report on the risk that climate change imposes on the Spanish financial system, to be updated every two years.
- In order to provide better intervention and control of the financial and business activities of companies that carry out regulated activities in the electricity or gas sectors, requirements are introduced to inform about or limit certain operations such as granting loans, extending guarantees or backing loans to other companies within the same group. Furthermore, tax regimes will be introduced to the electricity and gas sectors with incentives such as a positive or negative sign that will guarantee an adequate level of debt.

Governing the fight against climate change

- Law 7/2021 includes creating a series of bodies and commissions, it establishes supply plans and requirements, it updates data and assigns public resources and administrative regulatory measures to win the fight against climate change. They are as follows:
- The Plan Nacional de Adaptación al Cambio Climático (National Adaptation to Climate Change Plan) - **PNACC** - to be promoted by the Council of Ministers. The PNACC will be an instrument by which coordinated and coherent action can be taken against climate change, and where basic actions points are set. The PNACC should include:
 - **Identification and evaluation** of the impact and consequent risks of climate change.
 - Evaluation of the **vulnerability** of natural ecosystems, lands, populations and socio-economic sectors.
 - Firm strategic objectives.
 - Measures to reduce any of the vulnerabilities detected.

The PNACC will be based on **Work Programmes** which will define the guidelines to meet the Plan's objectives.

- The body in charge of climate change matters is the **Climate Change and Energy Transition Committee of Experts**, who will have an independent character. The membership, organisation and workings of this committee will be determined by regulation.
- The Ministry for Ecological Transition and the Demographic Challenge should publish reports every five years on the **evolution of the impact and risk deriving from climate change**, as well as on the measures that have been adopted in Spain.
- Regulations should be set to cover the measures that guarantee coordination, adherence, evaluation, publicity, reports and notifications to the European Commission, to the United Nations Framework Convention on Climate Change and whatsoever other body that requests it, **data relating to greenhouse gas emissions registered on a national level**, protections from emissions and policies and measures that have been adopted and foreseen in order to meet PNIEC. The deadlines of setting these regulations is also set for May 22, 2022.
- It anticipates that the Budget will include spending assigned to the Ministry for Ecological Transition and the Demographic Challenge for increasing renewable energies, social measures and the mitigation of the impact of climate change.

- The Government should set up a group of experts to evaluate a tax reform that will consider green taxation.
- The third additional provision mentions that the **International Climate Finance Strategy must be adopted through a Council of Ministers Agreement**.
- A special mention should be given to Public Procurement concerning which the Law states that contracts must include criteria to reduce emissions and the carbon footprint in order to combat the adverse effects of climate change, as per article 126.4 of the Law on Public Sector and Public Administration Contracts.

The Just Transition Strategy

Law 7/2021 establishes a series of measures that encompass a range of social interventions that are beneficial for unions, sectors, companies and lands that are rendered potentially vulnerable by the decarbonisation process.

- The Government is required to approve a **Just Transition Strategy** every five years, directed towards setting up consistent measures for a fairer and more inclusive transition for workers and lands towards the reduction of greenhouse gas emissions.
- The Law includes minimum content that should be covered by the Strategy. It also acknowledges the existence of **Just Transition Conventions** that could lead to the objectives outlined in Law 7/2021 being met.

Public Health, biodiversity and rural development

- Public Administrative bodies must promote awareness about the effects of climate change in areas such as security, nutrition and public health. Certain special conditions may be introduced to public contracts that cover the purchase of fresh or seasonal food.
- With regards to biodiversity and rural development the Law establishes a series of measures that should be carried out by the Government and Public Administrative bodies. Specifically, said article is worded as follows:
 - Public Administrative bodies must, as a way of learning more about the vulnerability and resilience of wild species and habitats towards climate change, present a plan within three months that looks at the **conservation and restoration of the ecosystem**.
 - A study of the **medium and long-term representation of Natura 2000 spaces**.
 - The national atlas established in Royal Decree 566/2011, dated April 20, 2011 must be **updated within five years**, in order to develop a Spanish Inventory of Natural Resources and Biodiversity.
 - The Government is obliged to establish soil policy and rural development plans, to be applied within the **Common Agricultural Policy** and the **Spanish National Forestry Plan**, thereby increasing resilience towards climate change.



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