

KEY ASPECTS OF THE CLIMATE CHANGE AND ENERGY TRANSITION ACT

The BOE of 21 May 2021 has published Law 7/2021, of 20 May, on climate change and energy transition (the "LCCTE").

The publication of the LCCTE concludes a regulatory process that began in February 2019, with the Council of Ministers' adoption of the first Preliminary Draft of the LCCTE. The regulation, as stated in its explanatory memorandum, aims to establish greenhouse gas ("GHG") emissions neutrality in Spain by 2050 and an efficient and renewable energy system, enabling a fair transition and guaranteeing consistency with the public and private sector objectives.

In this Legal Briefing, we analyse the main environmental and energy aspects of the LCCTE.

1. ENVIRONMENTAL ASPECTS

A. Objectives of the Act: sustainable development and rational use of resources

The main objectives of Article 1 of the LCCTE are: (i) to ensure compliance with the commitments of the Paris Agreement of 12 December 2015; (ii) to achieve the decarbonisation of the economy, reducing dependence on fossil fuels and evolving towards a circular model in the use of natural resources; and (iii) to reconcile respect for the environment with a model of sustainable development from an economic, social and environmental point of view.

In particular, regarding the overall GHG emissions reduction target, the LCCTE establishes minimum reduction percentages, with two timetables for achieving these objectives:

- (i) 2030:
 - Emissions: the Spanish economy must have reduced its emissions by at least 23% when compared to 1990.
 - End-use energy consumption: 42% must be of renewable origin.
 - Electricity system: 74% must be of renewable origin.
 - Primary energy consumption: reduction of at least 39.5% in relation to the baseline under EU regulations.

- (ii) 2050: "climate neutrality" must be achieved, whereby 100% of the electricity system is based on renewable energy.

B. Tools to achieve the targets: Plans and Strategies

The Integrated National Energy and Climate Plans ("PNIEC") are the basic planning tool to achieve the LCCTE's objectives.

In this regard, as previously analysed in [our legal briefing of June 2020 on the PNIEC 2021-2030](#), the PNIEC for the period 2021-2030 has already been drafted and submitted to Brussels for assessment and has already obtained the relevant Strategic Environmental Statement necessary for its final approval.

Thus, the PNIEC 2021-2030 currently being processed develops the tools and measures to be implemented to achieve the LCCTE's objectives, including cross-cutting measures that affect sectors such as transport, construction, industry, agriculture and forestry, and waste management.

Furthermore, the Decarbonisation Strategy for 2050 is another tool provided for in the legislation to achieve the stated objectives. In particular, this Strategy, which will be reviewed every five years, aims to pave the way for reducing GHG emissions and increasing the absorption of GHG removals by carbon sinks in the Spanish economy.

Similarly, the LCCTE provides for the gradual introduction of digital technology and artificial intelligence in the economy to increase the efficiency and effectiveness of all production sectors thereby facilitating the achievement of the objectives.

The LCCTE also provides for the approval of National Plans for Adaptation to Climate Change ("PNACC"), the basic planning tool for mitigating and anticipating climate change risks.

Furthermore, the LCCTE also provides for the approval of Just Transition Strategies and Agreements, which will evaluate and establish the basis for achieving a sustainable economic, social, employment and environmental model guaranteeing equality and solidarity between countries and people.

C. Mobility and transport

The LCCTE identifies this issue as one of the key pillars for achieving its objectives, providing for the promotion and development of public transport and its electrification, as well as private electric vehicles – with the aim that, by 2050, the fleet of passenger cars and light commercial vehicles should have no direct CO₂ emissions.

Another of the key measures provided for in the LCCTE is that municipalities and island territories with more than 50,000 inhabitants must approve low-emission zones to reduce emissions from transport by 2023.

Similarly, the LCCTE promotes the installation of electric recharging points through the granting of public funding. In particular, the Act establishes that before 1 January 2023, all non-residential buildings with more than 20 parking spaces (either indoors or in a designated outdoor space) must comply with the electric vehicle charging infrastructure standards established in the Technical Building Code.

Furthermore, owners of vehicle refuelling facilities with an aggregate annual volume of petrol and diesel A sales in 2019 equal to or greater than 5 million litres must install at least one electric recharging point with a capacity equal to or greater than 50kW in each of the facilities within 27 months of the Act's entry into force. In facilities with a sales volume of 10 million litres or more, the power of the electric recharging points must be equal to or greater than 150 kW and the deadline is 21 months. Other specific provisions are established for territories where there are no facilities with these sales volumes.

The obligation to have at least one electric recharging point with a capacity equal to or greater than 50 kW will be enforceable for new facilities or those that undergo refurbishment requiring the revision of their administrative title, regardless of the volume of sales, from the LCCTE's entry into force. The LCCTE also identifies sustainable maritime transport as an element that will enable the achievement of climate neutrality, promoting the use of green energies in state-owned ports, improving their rail and road connections and promoting the development of the "Motorways of the Sea".

D. Measures to adapt to the effects and risks of climate change

In addition to providing for the approval of the PNACC as basic tools in this area, the LCCTE also paves the way for planning and managing the impact of climate change in specific sectors, such as (i) water management (through the preparation of Water Strategies for Ecological Transition); (ii) the maritime-terrestrial public domain (through the preparation of Strategies for the Adaptation of the Coast to the Effects of Climate Change); (iii) public health and food safety; (iv) biodiversity (through the approval of Strategic Plans for Natural Heritage and Biodiversity and State Strategies for Green Infrastructure and Connectivity and Biodiversity); (v) the rural environment, woodlands and forest soils; and (vi) terrestrial and marine carbon sinks.

In turn, Article 21 of the LCCTE focuses on adaptation to the effects of climate change in terms of urban and regional planning, establishing that both in the preparation of urban planning tools and in the design, remodelling and construction of buildings, the risks arising from climate change and the measures to mitigate them must be assessed.

Accordingly, the LCCTE amends section c) of Article 20.1 of the Land and Urban Rehabilitation Act, approved by Royal Legislative Decree 7/2015, of 30 October, thereby expressly including the prevention of natural risks arising from climate change as a basic criterion in the use of land. Thus, in the processing of urban and land-use planning tools, the relevant planning authorities must analyse the potential risks of flooding, extreme weather events, risks arising from high temperatures, the loss of ecosystems and biodiversity and fire risks.

However, the practical application of these measures in urban and regional planning could raise doubts of interpretation because of Transitional Provision 3 of the Act, which determines that "*they shall not apply to plans, programmes and studies whose processing had already been completed at the time of this act's entry into force*".

In this respect, since the LCCTE is not adapted to the terminology used in urban planning regulations for the processing of planning (i.e. initial approval and final approval), it may be susceptible to different interpretations, in such a way that the amendment could affect all tools not formally approved on the date of the LCCTE's entry into force - even if they already had initial approval - or, conversely, for those whose processing was initiated after the LCCTE entered into force.

E. Mobilisation of resources, public procurement and green finance

To achieve the stated objectives, the LCCTE provides for the mobilisation of public resources to finance the necessary measures. Thus, a part of the General State Budget (the equivalent of that agreed in the European Union's Multiannual Financial Framework) will be earmarked for the fight against climate change.

Similarly, the LCCTE provides that revenues from the auctioning of GHG emission allowances will be used to meet climate change and energy transition targets.

Furthermore, the LCCTE provides that, in the area of public procurement, the fight against climate change, emission reductions and the carbon footprint will be included as criteria for awarding contracts.

Regarding the private sector, the LCCTE requires companies whose securities are admitted to trading on regulated markets, credit institutions, insurance and reinsurance companies and other large companies to financially assess the impact that climate risks may have on their business.

2. ENERGY ASPECTS

A. Electricity sector

(i) Objectives: The LCCTE, together with the PNIEC, sets national renewable energy and energy efficiency targets for 2030, which are as follows:

- Achieve market share by renewable energies of at least 42% of end-user energy consumption.
- Create an electricity system that generates at least 74% of its energy from renewable sources.
- Improve energy efficiency by reducing primary energy consumption by at least 35% against the baseline in line with EU regulations.

By 2050, the objective is that the electricity system should be based exclusively on renewable energy sources.

(ii) Renewable energies:

- Regarding electricity generation in the public water sector, the LCCTE establishes that **new concessions granted in the public water sector** for electricity generation must prioritise support for the integration of renewable technologies into the electricity system, stating that reversible or pumped hydroelectric plants will be specifically promoted. Furthermore, the use of water from urban supply and sanitation systems for electricity generation will be promoted for urban water cycle uses.
- In each year's budgetary legislation, at least 450 million euros of revenues from the auctioning of GHG emission rights will be earmarked to finance the costs associated with the promotion of renewable energies in the electricity system.
- Within the just transition measures, the **Just Transition Agreements** that will be signed are designed to promote economic activity and its modernisation, as well as the employability of vulnerable workers and groups at risk of social exclusion in the transition to a low-carbon economy, specifically, in the event of the closure or conversion of facilities.

It specifically provides that these agreements may include priority access to part or all of the electricity transmission capacity, as well as the priority right to the use and volume of water of those concessions that are discontinued

following the closure of electricity generation facilities under Royal Decree-law 17/2019, i.e., in favour of renewable generation facilities.

B. Hydrocarbons, biogas and biofuels sector

- After the LCCTE's entry into force, the granting of **new exploration authorisations, hydrocarbon research permits and extraction concessions** for hydrocarbons is prohibited. However, the transitory provisions make an exception for applications for operating permits associated with existing research permits that were being processed at the time of the LCCTE's entry into force, but expressly exclude the possibility of extending them.

In the case of research permits and extraction concessions already in force for hydrocarbon deposits that are located in the territorial waters, the exclusive economic zone and the continental shelf, under no circumstances may they be extended beyond 31 December 2042.

- After the LCCTE's entry into force, the granting of authorisations to carry out any hydrocarbon mining activity in which the use of **hydraulic fracturing or fracking** is planned is prohibited.
- It establishes that the holder of a hydrocarbon extraction concession must submit, five years before the end of its term, a report outlining the potential for conversion of its facilities or its location for other uses of the subsoil, including geothermal energy, or for other economic activities, in particular the establishment of renewable energies, and which must provide for the maintenance of employment levels.
- It provides for a limitation on **funding for fossil fuels**, requiring that, after the LCCTE's entry into force, the application of new tax benefits for fossil fuels must be justified on the grounds of social and economic interest or the absence of technological alternatives.
- The Government is urged to promote, through the approval of specific plans, the **adoption of renewable gases**, including biogas, biomethane, hydrogen and other fuels manufactured using only renewable raw materials and energies or which allow the reuse of organic waste or animal or vegetable by-products.
- The Government is also urged to set annual targets for the integration of renewable energies and the supply of alternative fuels in transport, with special emphasis on advanced biofuels and other renewable fuels of non-biological origin.

- It also addresses divestment from fossil fuels by the Government and public sector bodies and entities, with a status report and a proposed timetable for these entities to divest shareholdings or securities in companies or organisations whose business includes the extraction, refining or processing of fossil fuels.

C. Radioactive minerals

- After the LCCTE's entry into force, it will prohibit the admission of new applications (i) for the granting of exploration permits, research permits or direct extraction concessions, including their renewals, for radioactive minerals; and (ii) for the authorisation of nuclear facilities for the processing of radioactive minerals.

D. Regulated activities in the electricity and natural gas sector

- Regarding debt levels of companies engaged in regulated activities (i) it limits the granting of intra-group loans and guarantees by these companies; and (ii) it expressly states that the remuneration calculations for regulated activities in the electricity and gas sectors must include economic incentives, whether positive or negative, linked to debt levels¹.
- Regarding the communication of the acquisition of shareholdings in groups of companies designated as electricity and natural gas distribution operators, the 9th Additional Provision of Law 3/2013 of 4 June, creating the National Markets and Competition Commission, is amended to subject to ex-post control the acquisitions of shareholdings in other companies carried out by the parent companies of the companies designated as electricity and natural gas transmission system operators².
- The Electricity System Operator (OS), the Technical Manager of the gas system (GTS) and the Hydrocarbons Logistics Company (CLH) are required to submit a report every two years assessing the risks and opportunities associated with a decarbonised energy system in terms of the entity's activities, strategy and financial planning.

¹ In fact, the regulation of these incentives is already contained in the aforementioned systems, in particular in Articles 5, 19 and the third additional provision of Circular 5/2019 of 5 December; in Articles 5, 29 and the tenth additional provision of Circular 6/2019 of 5 December; in Article 28 and the eleventh additional provision of Circular 9/2019 of 12 December; and in Article 13 and the fifth additional provision of Circular 4/2020 of 31 March.

² Until the reform introduced by the LCCTE, this obligation only applied to operations carried out by the companies engaged in the regulated activity or those controlled by them.

E. Energy efficiency

The Government is urged to promote and facilitate the efficient use of energy in general and, in particular, the use of energy from renewable sources in buildings.

Public authorities are empowered to establish incentives that favour the achievement of energy efficiency objectives and, in particular, the introduction of renewable energies in the refurbishment of dwellings, encouraging consumption of domestic products³, low capacity facilities, and zero-emission heating and cooling.

F. Reform of the electricity sector

The CNMC and the Government are urged to present a proposal for the regulatory framework for energy within twelve months of the LCCTE's entry into force, with the objectives specified in the regulation itself.

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³ To this end, the Government is urged to propose, within a maximum period of one year of the LCCTE's entry into force, the amendment of the Horizontal Property Act to facilitate and increase the flexibility of self-consumption photovoltaic installations in homeowners' associations.