

THE CLIMATE CHANGE AND ENERGY TRANSITION ACT IS APPROVED

Public Law and Energy
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The Spanish Official Gazette (BOE) published today, 21 May 2021, the Climate Change and Energy Transition Act 7/2021, of 20 May (the Act), which will come into force the day after its publication, except for the provisions related to charging points to be installed by concession holders throughout the national road network.

The new Act has two main pillars. First, there are a series of measures to combat climate change. And second, it being accepted that the effects of climate change are now being felt, measures are laid down to adjust to this situation.

As one would expect, the first group of measures is the most significant part of the Act. Thus, article 1, which defines the purpose of the Act, lists above all the future measures to be taken to combat climate change, there being only a brief reference to the adjustment measures required.

1. THE PURPOSE OF THE ACT AND THE PRINCIPLES ON WHICH IT IS BASED

The purpose of the Act is to ensure compliance with the Paris Agreement, to facilitate the decarbonisation of the Spanish economy and its transition to a circular model, guaranteeing a rational and fair use of resources, to foster adjustment to the impact of climate change and to implement a sustainable model of development (article 1).

To achieve these objectives, the Act establishes both intermediate and final goals:

- Thus, the target to reach by **2030** is a significant reduction of greenhouse gases (23%), an increase in the final consumption of renewable energy (42%) and generation of electricity from renewable sources (74%), plus a reduction in the consumption of primary energy (39%).
- by **2050** - earlier if possible - the Act foresees the achievement of the "climate neutral" goal.



To this end, the Act is based, among others, on the following **principles**:

- ✓ Sustainable development
- ✓ Decarbonisation of the Spanish economy
- ✓ Application of the "polluter pays" principle
- ✓ No regression
- ✓ Quality and safety of the energy supply
- ✓ Universal accessibility
- ✓ Protection of vulnerable groups

2. POSITIVE MEASURES AND LIMITATIONS AND PROHIBITIONS TO COMBAT CLIMATE CHANGE

The Act contains two main blocks of measures aimed at achieving the above goals in the fight against climate change: **positive measures and measures that impose limitations or prohibitions.**

A. Positive measures

There is a very close connection between the measures providing incentives for change in the Act and the provisions of the Recovery, Transformation and Resilience Plan (Recovery Plan). In each case, this connection will be highlighted.

a) Energy efficiency and renovation of buildings

This involves promoting the use of renewable energy, both in new builds and renovations. This is a measure that the Government particularly wished to encourage, making it the

central focus of component 2 of the Recovery Plan, the purpose of which is to develop an urban renovation and regeneration plan.

b) Encouraging the use of renewable gas

This includes the use of biogas, biomethane, hydrogen and other gases obtained through using renewable energy. It is worth highlighting here the obtaining of hydrogen by alternative measures that are more efficient, economic and ecological than those currently used.

The importance that the Government attaches to this vector of renewable energies is clear if we consider that the *Renewable hydrogen roadmap* is one of the components of the Recovery Plan (component 9) and also that is the subject matter of one of the Strategic Projects for Economic Recovery and Transformation (PERTE) foreseen by the Government.

c) Measures related to mobility and zero-emissions transport

One of the goals of the Act is to reach 2050 with zero-emission cars and light commercial vehicles on the road. To this end, the Act foresees the progressive use of alternative fuels, and the installation of charging points on the network of Spanish roads. Again, the act links up with the Recovery Plan, component 1 of which concerns an emergency plan for sustainable mobility.

As regards charging points, the Act requires service station owners to install these within a period of between 21 and 27 months from when the Act comes into force, depending on their turnover in 2019 (article 14 and final provision 14).

The concession holders of the state road network are exempted from complying with these time periods, since time will only start to run from when the Regulation on charging points comes into force (final provision 15).

In addition, the power of the charging points to be installed will depend on turnover. Thus, the Act varies the power to be installed as follows:

- i) minimum of 150kW in service stations with annual sales of ≥ 10 million litres in 2019.
- ii) minimum of 50kW in service stations with annual sales of ≥ 5 million litres and less than 10 million litres in 2019.
- iii) minimum of 50kW in new facilities or those that carry out or complete renovations that require a review of the administrative licence as from 2021.

d) Priority of pumped-storage hydroelectric power plants

As an additional measure to encourage renewable energies, the Act provides an incentive for pumped-storage hydroelectric power plants compared to run-of-river hydropower, so that the former will be given priority in the grant of public hydraulic concessions.

B. Limitation and prohibition measures

a) Limitation of aid to fossil fuel products

The application of new tax benefits to fossil-fuel products must be properly justified once the Act comes into force, on the grounds of social or economic interest, or due to the non-existence of alternative technologies.

b) Prohibition on the exploration, investigation and exploitation of hydrocarbons and coal

The Act prohibits the grant of new authorisations for exploration, investigation permits and concessions for fossil fuel exploration in national territory, including in territorial waters, the exclusive economic zone and the continental shelf.

This prohibition covers the requests for authorisation of explorations and permits to investigate fossil fuels that are being processed at the time that the Act comes into force, with the exception of applications for an exploitation concession associated with a valid investigation permit that is being processed prior to the entry into force of the Act, which will be governed by the applicable legislation at the time that the permit was awarded.

The prohibition covers coal on the terms laid down in article 29 of the Act.

c) Prohibition on the exploration, investigation and exploitation of radioactive mineral deposits

The Act extends the above prohibition so that it also covers the exploitation of radioactive minerals, as well as the authorisation of radioactive facilities for the processing of these minerals and makes reference to the definition of facilities contained in Royal Decree 1836/1999, of 3 December, approving the Regulation on nuclear and radioactive facilities.

3. ADJUSTMENT TO CLIMATE CHANGE AND JUST TRANSITION

A. National Climate Change Adjustment Plan

The Act defines the National Climate Change Adjustment Plan (PNACC) as the basic planning instrument for promoting coordinated and coherent action against the effects of climate change, which must be approved by Resolution of the Council of Ministers.

B. Adjustment measures in different sectors

The Act introduces measures that aim to reduce the effects of climate change in relation to the following sectors and activities:

- Planning and management of water
- Urban planning and management
- Transport infrastructure
- Food security and diet
- Public Health
- Biodiversity
- Rural development

Worthy of note among these measures are those **related to hydrological planning and management**, which must reconcile goals such as ensuring the supply of water, biodiversity and economic activities.

It is also worth mentioning the **provisions on territorial and planning management**, which attempt to ensure that construction works, infrastructure and even facilities to generate energy from renewable sources do not have a severe impact on biodiversity and other natural values.

Finally, we would point out the Act's objective of improving knowledge of **the capacity of species and ecosystems to absorb climate change**, enabling the best possible strategy for their conservation to be developed.

C. Just transition measures

These measures will be achieved through the Just Transition Strategy (**which coincides with component 10 of the Recovery Plan**), which will have, among others, the following content:

- Identification of vulnerable groups and sectors in the transition towards a green economy.
- Analysis of the opportunities for the creation of economic activity and employment linked to the energy transition.
- Definition of the reference framework of the Just Transition Conventions referred to in article 28 of the Act.

4. STATUTORY AMENDMENTS

A. Environmental criteria in public procurement

In addition to the importance that the current Public Sector Contracts Act gives to the environmental features of the contract, there is now an amendment of the Act that obliges the procurement bodies to include in the tender conditions award criteria that are related to energy sustainability. This requirement is stricter for works contracts or works concessions (article 31 of the Act).

B. Other statutory amendments

The final provisions of the Act include a series of measures for the amendment of different statutes, including the following:

- Electricity Sector Act 24/2013, of 26 December, concerning the method of remuneration of the transport and distribution activities.
- Act 3/2013, of 4 June, on the creation of the National Markets and Competition Commission, strengthening the information obligations of managers of electricity and natural gas transport networks.

For further information and to obtain specific legal advice,
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