

ENVIRONMENTAL LEGISLATION

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Prof. Blanca LOZANO* and Diana COGILNICEANU**

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* Public Law Professor of the País Vasco University and Academic Advisor of Gómez-Acebo & Pombo law firm.

** Lawyer of Gómez-Acebo & Pombo law firm.

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1. Act 40/2010, of 29 December, on geological storage of carbon dioxide

Published in the Official State Gazette on December 30th, 2010, with the aim to incorporate into the Spanish legal system the Directive 2009/31/CE, regarding the capture of carbon dioxide (CO₂) emitted by industries, its transport for storage through pipes or tanks and, finally, its injection into an appropriate underground geological formation for its permanent storage.

The main administrative instruments that are required: **(i)** the research license and **(ii)** the storage concession, granted both of them by the Ministry of Industry, Tourism and Commerce, prior positive reports of the Ministry of Agriculture, Food and Environment and the Autonomous Community where the location of the storage is foreseen. The first one determines the applier's capacity to storage the CO₂, conferring him the exclusive right to investigate during a 6 years period of time (extendable up to 3 years). The second one,

consequently, offers to the applier the exclusive right to storage the CO₂ during a 30 years period of time, extendable for two successive periods of 10 years.

Both of them may be legally transferred to a third party, prior authorization from the Ministry of Industry, Tourism and Commerce. Once the professional activity is finished, it is the State who will assume the ownership and control of the place of storage, with the corresponding transfer of liabilities.

2. Act 41/2010, of 29 December, on marine environment protection

This Act incorporates into the Spanish legal system the Directive 2008/56/CE of the European Parliament, on Marine Strategy Framework, of June 17th, 2008. Its legal provisions shall be applied to the territorial sea, to the Atlantic exclusive economic zone and Bay of Biscay, to the Mediterranean protected fishing zone and the Continental Shelf (that includes all marine waters, the sea bed, subsoil and natural resources). The same Act also establishes a legal framework applicable to waste discharges into the sea from ships and aircraft, the incineration and the placement of materials on the sea bed.

The marine environment regulatory framework will be drawn up using "marine strategies", and the Ministry of Agriculture, Food and Environment, prior consultation of the Autonomous Communities, will define a Programme of Measures for a 6 years period of time, designed to reach or maintain a save environmental condition of national waters.

The liability for the environmental damages caused to the marine environment shall be determined according to the provisions contained in the Act 26/2007, of 23 October, on Environmental Liability.

3. Royal Decree 301/2011, of 4 March, on mitigation measures equivalent to the participation in the emission trading scheme, for the purpose of exclusion of small facilities

This RD relies on the legislative power granted to competent autonomous bodies to exclude from the emission trading scheme the facilities located in their territories considered as small emission issuers and hospitals, from January 1st, 2013, according to the Fourth Additional Provision of the Act 13/2010, modifying the Act 1/2005, on regulation of trading greenhouse gas emission scheme. Shall be considered small issuers the facilities that have registered less than 25,000 tonnes of carbon dioxide equivalent, that have carried out combustion activities and have a rated thermal input below 35 MW.

The regulatory text contains provisions regarding mitigation measures that are considered equivalent to those previewed in the emission trading scheme, as well as a monitoring, verification and notification system designed for the excluded facilities and simplified measures for facilities, according to their annual volume of verified emissions.

The mitigation measures are the following: **a)** in case of facilities submitted to the emission trading scheme, the obligation to reduce their emissions to 21% by 2020, with regard to the year 2005; **b)** the obligation to deliver carbon credits equivalent to the amount of CO₂ emissions that exceed the allowed limit, according to the free allocation rules; **c)** the existence of a CO₂ emissions fee applied to the facilities that exceed the amount of emissions granted to them according to the free allocation rules.

4. Royal Decree 556/2011, of 20 April, for the development of the Spanish Inventory of Natural Heritage and Biodiversity

The referred Royal Decree regulates the Spanish Inventory of Natural Heritage and Biodiversity, composed by maps, inventories, lists or catalogues that collect information regarding the areas listed in its Annex I (ecosystems, fauna and flora, natural and genetic

resources, protected areas and areas of interest, adverse effects on the natural heritage and the biodiversity, etc.).

The primary objective of this new regulatory tool is to include instruments that contain information on the risks to the natural heritage and biodiversity. As consequence, an integrated information system is created, called *Databank of Nature*, which has assigned the functions of harmonization, analysis and dissemination of the information contained in the Spanish Inventory of Natural Heritage and Biodiversity.

The Ministry of Agriculture, Food and Environment will carry out the task of control, developing an annual report on the Natural Heritage and Biodiversity situation, in collaboration with the autonomous communities.

5. Act 22/2011, of 28 July, on waste and contaminated soils

By means of this act is transposed into the Spanish legal framework the Directive 2008/98/CE and updated the legal framework on waste, established in Spain more than 10 years ago. Its purpose is to regulate the waste management, promoting appropriate measures to prevent its generation, and to mitigate adverse impacts on human health and the Environment, as well as to normalize the legal framework applicable to contaminated soils.

The Act also describes the coordination that must be achieved between the different Public Administrations, identifying the obligations imposed to waste producers and managers, and creating the required instruments to carry them out.

It contains the polluter pays principle, under which the costs generated by the waste management will have to be charged to the first producer of waste, to the previous or current holder of waste. But, on the other hand, is created the legal figure of the extended liability of waste producers, in order to support the prevention and improve the reuse of waste. The new act strengthens the functions of monitoring, inspection and control, by

simplifying the administrative procedures, creating a specialized registry shared between the different Public Administrations.

The Second Additional Provision of the Act establishes a timeframe until 2018 regarding the replacement of single-use plastic bags non-biodegradable.

6. Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011, on the restriction of the use of certain hazardous substances in electrical and electronic equipment

This Directive determines the rules applicable to restrictions on the use of hazardous substances in electrical and electronic equipment (EEE), as to ensure the protection of human health and Environment. It is applicable to large and small household appliances, computers and telecommunication equipment, lighting devices, toys, sporting goods and leisure equipment, and other EEE listed in its Annex I.

It introduces the legal term of *EU Declaration of Conformity*, which implies the assumption by the manufacturer of the responsibilities established by the Directive. Member States shall ensure that the EEE entering into the European market do not contain the substances specified in its Annex II, and the manufacturers, at the same time, are obliged to ensure that the EEE introduced on the European market have been designed and manufactured in accordance with the European requirements. There is also previewed certain obligations on importers, who must be sure that the EEE introduced on the EU market comply with the regulation contained in this Directive; for example, that the EU mark is duly placed.

Member states must incorporate this Directive to their national legislative framework until January 2nd, 2013.

7. Royal Decree-Law 12/2011, of 26 August, amending the Act 1/2000, of 7 January, on Civil Procedure, for the implementation of the International Convention on Arrest of Ships and regulation the competencies of autonomous communities on hydraulic public domain police powers

The Council of Ministers celebrated on 26 August 2011 approved this Royal Decree which amends the consolidated legal text of Water Act, in order to transfer the so-called “police” powers on hydraulic public domain to the autonomous communities which have assumed in their Statutes the executive jurisdiction over these powers. The *police powers* that are been transferred are, among others, the inspection and control of the public domain, the inspection and surveillance of all the public waters exploitations, the performance of capacity and quality controls, and the leading of fluvial control services.

8. National Air Quality Improvement Plan

On November 4th, 2011, the Council of Ministers adopted the National Air Quality Improvement Plan, to promote a model of development and sustainable welfare, and improve the quality of the information received from managers and citizens. The Plan aims also to strengthen the coordination between other regional plans of air quality that the autonomous communities and local entities have intention to adopt.

The Plan provides concrete action strategies designed to ensure the compliance with the established limit values for nitrogen dioxide and particulate material, as well as the reduction of ozone precursors in agglomerated areas, creating for this purpose a System of Information, Monitoring and Prevention of Air Pollution, as to ensure the functioning of mechanisms for exchange of information in situations of risk to health.

9. Royal Decree 1494/2011, of 24 October, regulating the Carbon Fund for a Sustainable Economy

This Royal Decree normalizes the activity and organization of the Fund referred in the Article 91 of the Act 2/2011, of 4 March, on Sustainable Economy. It is a public Fund, without legal personality, attached to the Secretary of State for Climate Change, which will contribute to the fulfillment of the objectives of reducing greenhouse gas emissions taken by Spain with the acquisition of carbon credits. The acquisition of carbon credits itself is not subject to the Act 30/2007, of 30 October, on Public Sector Contracts, but to the national or foreign legislation that may be applicable in each case.

The purchased carbon credits are considered assets of the State, and the administration, management and direction of the Fund will be realized by a Governing Council and its Executive Committee.