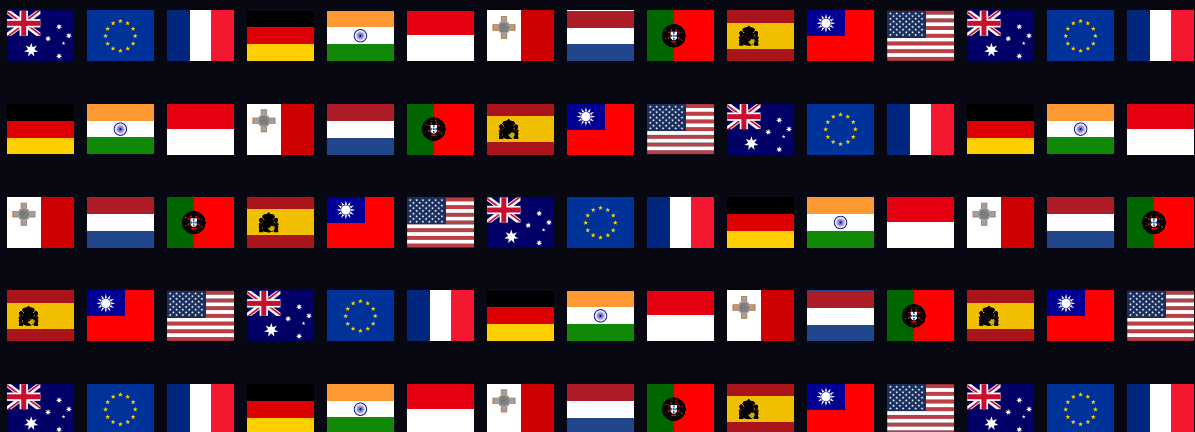


ENVIRONMENT

Spain



Environment

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Quick reference guide enabling side-by-side comparison of local insights, including legislation and main environmental regulations; regulation of hazardous activities and substances; environmental aspects in M&A, public procurement and other transactions; environmental impact assessment; regulatory authorities; judicial proceedings; applicable international treaties and institutions; and recent trends.

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LEGISLATION

Main environmental regulations

What are the main statutes and regulations relating to the environment?

Spanish environmental law is governed primarily by the Constitution. Article 45 sets forth the right to enjoy an adequate environment for the development of the person, as well as the duty to preserve the environment. This article is also the basis for establishing sanctions for breach of environmental rules.

Below this, the basic rules of each of the 17 Spanish autonomous regions grant powers to the regional authorities on environmental matters. In addition, certain environmental powers are entrusted to the municipalities, mainly pursuant to Law No. 7/1985 on local government.

Following these basic rules, there are several statutes enacted by the Spanish state and autonomous regions on specific environmental matters. Among the basic statutes of the state, the following should be highlighted:

- Law No. 22/1988 of 28 July on Coasts;
- Law No. 11/1997 of 24 April on Packaging and Packaging Waste;
- Royal Legislative Decree No. 1/2001 of 20 July on Water;
- Law No. 37/2003 of 17 November on Noise;
- Law No. 1/2005 of 9 March regulating the greenhouse gas emissions trading scheme;
- Law No. 27/2006 of 18 July on the right to have access to information, public participation and access to justice in environmental matters;
- Law No. 26/2007 of 23 October on Environmental Liability;
- Law No. 34/2007 of 15 November on Air Quality and Atmospheric Environment Protection;
- Law No. 42/2007 of 13 December on Natural Heritage and Biodiversity;
- Law No. 40/2010 of 29 December on the geological storage of carbon dioxide;
- Law No. 2/2011 of 4 March on sustainable economy;
- Law No. 22/2011 of 28 July on Waste and Polluted Soils;
- Law No. 21/2013 of 9 December on Environmental Assessment;
- Royal Legislative Decree No. 1/2016 of 16 December on Integrated Pollution Prevention and Control;
- Organic Law No. 10/1995 of 23 November on the Spanish Criminal Code;
- Royal Decree of 24 July 1889 on the Spanish Civil Code;
- Law No. 7/2021, of 20 May, on Climate Change and Energy Transition;
- Law No. 7/2022 of 8 April on Waste and Polluted Soils for a Circular Economy; and
- Royal Decree 1055/2022 of 27 December, on Packages and Packaging Waste.

Autonomous regions may also enact regulations on environmental matters. Unless otherwise indicated, reference is made to state regulations only.

Law stated - 17 February 2023

Integrated pollution prevention and control

Is there a system of integrated control of pollution?

There is a system of integrated pollution control. Royal Legislative Decree No. 1/2016 on Integrated Pollution Prevention and Control applies to several categories of industries including, among others, combustion and chemical

or waste management industries that meet certain parameters (the complete list is included in its Annex I).

Royal Legislative Decree No. 1/2016 provides for a single proceeding incorporating the most relevant environmental permits and other administrative steps in a single authorisation: the integrated environmental authorisation. The main aspects covered by this are air and water emissions, the production and management of waste and environmental impact assessments. Together with Royal Decree No. 815/2013 of 18 October on industrial emissions, Royal Legislative Decree No. 1/2016 implements the provisions of Directive 2010/75/EU, of the European Parliament and of the Council, of 24 November 2010, on industrial emissions.

Law stated - 17 February 2023

Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

The new Law No. 7/2022 on Waste and Polluted Soils, and Royal Decree No. 9/2005 on the creation of a list of potentially land pollutant activities and the criteria to declare polluted soils, are the main rules governing soil pollution. They tackle activities that can potentially pollute the soil, the declaration of land as polluted and the clean-up obligations. Other rules that may also deal with soil pollution from a different perspective are Royal Legislative Decree No. 1/2016 on Integrated Pollution Prevention and Control and Law No. 26/2007 on Environmental Liability.

According to Law No. 7/2022, the autonomous regions shall declare, define and make an inventory of land that is polluted owing to the existence of dangerous components caused by humans.

The declaration of land as polluted, which is based on the concept of risk (for human health or the environment) and uses of the land, shall be made by the autonomous regions on the basis of the criteria set forth by Royal Decree No. 9/2005, and will require the carrying out of those activities necessary to clean up the soil. The persons compelled to carry out these activities are the polluters. If they can't be identified or they are unable to carry the clean-up activities, subsidiary responsibility can be required firstly to the non-occupying legal owners of the polluted land and finally to the occupiers.

In addition, there are obligations to provide periodic information to the authorities regarding the potential pollution of the soil, as well as to disclose the fact that potential soil-polluting activities are being carried or have been carried out in the public deed of transfer of rights over the soil in question.

Law stated - 17 February 2023

Regulation of waste

What types of waste are regulated and how?

Article 2(a) of Law No. 7/2022 defines waste as any substance or object that the owner disposes of or has the intention or obligation to do so. This general definition must be complemented with the concept of by-product (article 4), as well as with the regulation of end-of-waste criteria (article 5). Both definitions follow EU criteria on waste status, as established on Directive (EU) 2018/851 and Directive (EU) 2008/98/CE.

More specifically, the law includes definitions of different types of waste. Hazardous waste is that which has hazardous characteristics listed in Annex I of Law No. 7/2022 and is listed as such by the European Union or national or regional regulations, as well as its packaging or receptacle. The treatment of hazardous waste is subject to specific authorisations and must fulfil special conditions of storage, labelling and packaging as well as strict documentary obligations. Certain original producers of hazardous waste are also obliged to implement a minimisation plan that includes practices oriented to reduce both the amount and hazard level of produced waste. The production of

hazardous waste is subject to prior communication to the relevant authorities.

In addition, Law No. 7/2022 also refers to 'domestic waste', that is, the waste generated by domestic or similar-to-domestic activities (such as waste generated in offices), the collection of which is entrusted to the municipalities; 'commercial waste', that is, the waste generated by commercial activities, supermarkets, restaurants and the rest of activities included within the services sector; and 'industrial waste', that is, the waste generated within the production, transformation, use, consumption, cleaning or maintenance process of industrial activities.

Further to that general classification, certain types of waste are also subject to specific rules and regulations. This is the case, among others, for waste packages, waste from electrical and electronic equipment, waste from construction and demolition works, waste oils or waste batteries.

Law 7/2022 introduces into Spanish legislation the definition of 'circular economy', conceived as the economic system in which the value of resources lasts as long as possible, fostering efficient use and reducing residues and hazardous substance liberation on all life cycle stages. As stated on article 1, transitioning to a low-carbon circular economy involves innovative and sustainable business schemes, products and materials that can ensure an efficient inner market and ensure state competitiveness in the long term.

Law stated - 17 February 2023

Regulation of air emissions

What are the main features of the rules governing air emissions?

Law No. 34/2007 on Air Quality and Atmospheric Environment Protection refers to those activities considered as potential pollutants of the atmosphere. This regulation imposes emission limits for these activities, as well as other obligations such as self-control and keeping an official registry book on emissions. Certain activities must obtain a previous authorisation. In addition, limits on the concentration of certain pollutants in the air are also established.

Regarding the energy efficiency of buildings, Royal Decree No. 390/2021, of 1 June, on the basic procedure applicable to the energy efficiency of buildings certificate, should be mentioned. According to this rule, new buildings, parts of buildings that are sold or rented to new tenants, buildings or parts of buildings that are occupied by public administrations and renovations of buildings when the conditions of article 3 are met, must obtain the energy efficiency certificate. The energy efficiency certificate must be available to buyers and a copy must be attached to the contracts of lease. The energy efficiency certificate of buildings proves that the building complies with the energy efficiency requirements as included in the Technical Building Code approved by Royal Decree No. 314/2006 of 17 March.

Also in relation to energy efficiency, Royal Decree No. 56/2016 must be considered. This rule introduces the obligation of making an energy audit for large companies, and groups of companies, as defined in the Decree itself. Energy audits must comprise at least the 85 per cent of the total final energy consumption of the company in Spain, including transportation, if applicable. It should take into consideration, whenever possible, profitability criteria in the life cycle cost analysis. The audit must provide a reliable picture of the global energetic performance so that improvement measures may be identified.

Large combustion plants are subject to certain specific regulations on atmosphere emissions set forth in Royal Decree No. 815/2013, of 18 October, on industrial emissions and in Royal Decree No. 430/2004, of 12 March, establishing new regulations on limitations of atmospheric emissions from large combustion plants. Both rules include special emission limit values as well as the corrective and monitoring measures applicable to this type of plants. In the application of Royal Decree No. 430/2004, Spain approved a National Emission Reduction Plan for Existing Large Combustion Plants.

Law stated - 17 February 2023

Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

Royal Legislative Decree No. 1/2001 on Water governs fresh water and its associated land (the hydraulic public domain). Pursuant to this rule, the use of water for private purposes from the hydraulic public domain is subject to obtaining the relevant concession granted by the Basin Authority. In addition, the performance of works affecting, or the discharge of wastewater into, the hydraulic public domain also requires the relevant authorisations granted by the Basin Authority.

Moreover, Law No. 22/1988 on Coasts governs seawater and its associated land (the maritime-terrestrial public domain). Pursuant to Law No. 22/1988 the use of, and works on, the maritime-terrestrial public domain is subject to the relevant administrative authorisation or concession. In 2013, Law No. 22/1988 was amended to introduce several new rules, in certain cases of a relevant nature, such as new criteria to define the maritime-terrestrial public domain.

Law stated - 17 February 2023

Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

According to Law No. 42/2007 on Natural Heritage and Biodiversity, five basic types of protected natural spaces are regulated: parks, natural reserves, natural monuments, protected landscapes and protected marine areas, and each has specific protection measures.

As a general rule, activities in protected areas are restricted. Other rights may also be restricted where the protection of a natural space is at stake (subject in certain cases to the payment of an indemnity). For instance, the public authorities usually have a first right of refusal on plots within protected natural spaces.

In addition to this general protection scheme, Law No. 19/2022 granted legal personality to the Mar Menor Lagoon, located in Murcia. As such, it is considered as a subject of the rights of protection, conservation, restoration and natural evolution. Civil, criminal and administrative liability can derive from any act that violates said rights.

According to European regulations and international treaties, other types of areas are protected in the Spanish territory. This is the case, for instance, for sites of community importance and special protected areas.

Law stated - 17 February 2023

Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

Law No. 42/2007 governs the protection of wild flora and fauna species. As a general rule, destroying or disturbing protected wild species of flora and fauna is prohibited, as it is the possession or trade of such species. This regulation creates, inter alia, the list of wild species subject to a special protection regime; the inclusion of a species within the list entails certain restrictions concerning its possession, commercialisation and any other activity that may harm the species. The list also includes the catalogue of threatened species, which is distinguished by one of two categories (in danger of extinction and vulnerability) depending on the relevant type of threat, and provides specific protection measures for these categories.

Law stated - 17 February 2023

Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

According to Law No. 37/2003 on Noise, state and local authorities shall approve noise maps establishing acoustic areas as well as maximum noise levels allowed for each area according to their prevailing use, which should be considered within the procedures for the granting of environmental permits. In this sense, Royal Decree No. 1367/2007, of 19 October, with regard to acoustic zoning, quality objectives and acoustic emissions, develops the aforementioned issues. For the purpose of Law No. 37/2003, 'noise' includes vibrations. There is no general rule specifically governing odours.

Law stated - 17 February 2023

Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Law No. 26/2007 on Environmental Liability implements Directive 2004/35/EC on Environmental Liability.

Law No. 26/2007 sets out an administrative liability regime according to which operators of activities causing environmental damage or imminent threat of environmental damage shall be held liable for such damage or imminent threat. This is a strictly objective liability regime, except for the reparation of damage caused by activities not included in Annex III of the law, where fault is required. Operators are obliged to take measures to prevent the damage, to avoid new damage and to repair the damage already caused in the terms set out in this law.

Operators who carry out activities listed in Annex III of Law No. 26/2007 will be obliged to constitute a guarantee to secure their obligations arising from Law No. 26/2007.

Law stated - 17 February 2023

Environmental taxes

Is there any type of environmental tax?

Following Law No. 7/2021 of 20 May, on Climate Change and Energy Transition, that imposed an obligation on the government to implement green taxation in Spain, the new Law No. 7/2022 has created two new environmental taxes.

The first one is a national tax directly imposed on all Spanish regions that taxes the fabrication, importing, intracommunity acquisition or irregular introduction of products that contain plastic and that are not reusable. The tax rate is calculated from the quantity of non-recyclable plastic (in kg) that taxable products contain. The second one is also a national tax, but its management, collection, inspection and liquidation is competence of the autonomous regions. It taxes landfill disposal, incineration and co-incineration of waste. Different tax rates are established for different installations (landfills, incineration and co-incineration facilities) and different waste types (non-hazardous, hazardous, inert waste, municipal, etc).

In addition, local entities are obliged by Law No. 7/2021 to create, within a maximum period of three years, a specific, differentiated and non-deficient fee to implement pay-as-you-generate systems that reflects the real cost of collection, transport and treatment of waste.

Aside from these, legislative acts such as the Royal Legislative Decree No. 1/2001 on Water sets out, inter alia, a charge on wastewater discharges into the hydraulic public domain. The tax rate will depend on the authorised volume of wastewaters to be discharged. Likewise, Law No. 22/1988 on Coasts sets out a charge on wastewater spillages into

the maritime public domain. The amount of this tax depends on the pollutant charge of the spillage.

On the other hand, Law No. 7/2021, of 20 May, on Climate Change and Energy Transition, imposes an obligation on the government to evaluate a tax reform in Spain that will assess a further implementation of green taxation. It is therefore likely that the number of environmental taxes will increase in the near future.

Certain autonomous regions have developed specific environmental tax schemes and have established taxes on disposal of waste and air pollution, among other things. The taxable events and the criteria for the calculation of the tax depend on the regional legislation.

According to the Spanish regulations, as a general rule, the autonomous regions are not entitled to establish taxes that may affect to the same taxable event of other taxes established at national or local level. There is a legal discussion in Spain on the potential double taxation that could be caused by certain environmental taxes established by some autonomous regions. In fact, the Spanish Constitutional Court has declared that certain environmental taxes established by several autonomous regions are null because they overlap with the taxable event of local taxes on the property.

Law stated - 17 February 2023

Environmental reporting

Are there any notable environmental reporting requirements (eg, regarding emissions, energy consumption or related environmental, social and governance (ESG) reporting obligations)?

Yes. Companies obligated to prepare a non-financial statement (NFS) as part of the management report of the annual accounts must include significant information on environmental issues. According to article 49.6.I. of the Commercial Code (approved by Royal Decree of 22 August 1885), such information shall be:

- the current and foreseeable effects of the company's activities on the environment and, where appropriate, on health and safety;
- the environmental assessment or certification procedures;
- the resources assigned to the prevention of environmental risks;
- the application of the precautionary principle; and
- the amount of provisions and guarantees covering environmental risks.

In addition, specific information concerning the following areas must also be provided:

- Emissions: measures taken to prevent, reduce or remediate carbon emissions that have a significant impact on the environment; any kind of atmospheric pollution from an activity must be considered.
- Circular economy and waste prevention and management: waste prevention, recycling and reuse measures adopted, and other forms of waste recovery and disposal implemented.
- Sustainable use of resources: water usage and water supply in accordance with local constraints; consumption of raw materials and measures taken to improve the efficiency of their use; direct and indirect energy consumption, measures taken to improve energy efficiency and the use of renewable energies.
- Climate change: the significant factors of greenhouse gas emissions generated as a result of the company's activities, including the use of the goods and services it produces; the measures taken to adapt to the consequences of climate change; the reduction targets voluntarily set in the medium and long term to reduce greenhouse gas emissions and the measures implemented to this end.
- Biodiversity protection: measures taken to preserve or restore biodiversity; impact caused by activities or

operations in protected areas.

Additionally, Law No. 7/2021, of 20 May, on Climate Change and Energy Transition has introduced an obligation for certain companies to submit, as part of their non-financial reporting obligations, an annual report assessing the financial impact on the company of the risks associated with climate change caused by the exposure of its activity to climate change, including the risks of the transition to a sustainable economy and the measures adopted to address these financial risks.

Law stated - 17 February 2023

Government policy

How would you describe the general government policy for environmental issues? How are environmental policy objectives influencing the legislative agenda?

Spanish environmental policies are aligned with EU and international trends, both in terms of legislation and enforcement. There is a complete set of environmental legislation that covers a wide range of environmental areas with a reasonable level of enforcement.

The current Ministry for Ecological Transition and the Demographic Challenge has a relevant role in the Spanish government and in the legislative policy. This is evidenced by the passing in 2021 of the Law on Climate Change and Energy Transition, and the approval of various strategies (soft law documents) on different environmental aspects (for example, the National Integrated Energy and Climate Plan 2021–2030, or the Spanish Circular Economy Strategy).

Law stated - 17 February 2023

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Most regions have enacted their own legislation governing hazardous activities from the standpoint of protecting the environment and human health. As a general rule, and depending on the type of activity, hazardous activities require an environmental permit from the environmental authorities prior to the commencement of installation works, and, occasionally, a material verification from the same authorities confirming that the requirements imposed have been fully complied with. A communication must be filed prior to commissioning less hazardous activities. The legislation enacted by the autonomous region usually lists those activities required to obtain an environmental permit and the specific permit that is required. In general, a wide variety of activities is generally subject to obtaining an environmental permit or to environmental control.

In addition, pursuant to Decree of 17 June 1955 on Services from Local Authorities as amended by Law No. 17/2009 of 23 November on Free Access to Service Activities, municipalities may also subject the opening of activities to a municipal licence provided that it is regulated in the corresponding municipal ordinance and is aimed at verifying that the premises fulfil security and safety requirements as well as the relevant urban planning provisions.

Law stated - 17 February 2023

Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

There are different regulations that provide a definition of 'hazardous substance'. Among others, and for the purposes of the protection of waters covered by the Royal Legislative Decree No. 1/2001 on Water, Royal Decree No. 817/2015, of 11 September, establishing criteria for monitoring and evaluating the status of surface waters and environmental quality standards, defines 'hazardous substance' as substances or groups of substances that are toxic, persistent and bioaccumulative, as well as other substances or groups of substances that involve a similar level of risk. In addition, Royal Legislative Decree No. 1/2016 considers as a 'hazardous substance' the substances or mixtures as defined in article 3 of Regulation No. 1272/2008/EC.

According to Royal Decree No. 840/2015, authorisation for the installation of activities that use certain hazardous substances is subject to several preventive conditions, such as the preparation of preventive policy plans, security reports or emergency plans.

Additionally, Decree No. 2204/1975 governs the use, storage and management of fuel and hydrocarbons and imposes certain conditions on the composition and usage of hydrocarbons.

With regard to chemical substances, Regulation No. 1907/2006/EC on Registration, Evaluation, Authorisation and Restriction of Chemicals sets out specific duties and obligations (eg, registration of substances with the European Chemicals Agency) on manufacturers, importers and downstream users of substances on their own, in preparations (defined in this Regulation as a mixture or solution composed of two or more substances) and in articles. The classification labelling and packaging of chemical substances and preparations are specifically governed by Regulation No. 1272/2008/EC.

Law No. 8/2010 of 31 March sets out the penalties applicable for any infringement of Regulation No. 1907/2006/EC concerning the registration, evaluation, authorisation and restriction of chemical substances and mixtures and for any infringement of Regulation No. 1272/2008/EC on the classification, labelling and packaging of substances and mixtures, which amended it.

In addition, at the state level, Royal Decree No. 255/2003 governs the classification, labelling and packaging of hazardous preparations, establishing the obligation to notify the administration of new preparations containing hazardous substances and to label and package preparations containing hazardous substances in accordance with certain conditions. The classification, labelling and packaging of hazardous substances are governed by Royal Decree No. 363/1995.

Finally, Royal Decree No. 258/1989, of 10 March, establishes general regulations on discharges of hazardous substances from land to the sea.

Law stated - 17 February 2023

Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

The main prevention measures concerning industrial accidents are set forth in Law No. 21/1992 on Industry. Pursuant to this, security regulations for the different types of industries must impose compulsory obligations to prevent industrial accidents. Furthermore, authorities may suspend or close any activity when a material risk for human health or for the environment is detected.

In addition, Royal Decree No. 840/2015 imposes on certain industries involving hazardous substances the obligation to

define a risk avoidance strategy and to afford certain measures accordingly (such as to have a prevention plan).

Law stated - 17 February 2023

ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT

Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

The main environmental aspects to consider in a merger or acquisition are the following:

- the availability of the relevant environmental permits: in particular, the activity and operation licences, the water intake and wastewater discharge authorisations, the waste production and management authorisations and the integrated environmental authorisation are the most important environmental permits;
- compliance with the relevant environmental obligations: in particular, the most relevant obligations usually relate to emission limits and to waste management conditions;
- the existence of pollution in the soil and associated water; and
- the existence of administrative or judicial proceedings (existing or envisaged).

In terms of emission limits, it is important to note that certain industrial facilities need to purchase a specific amount of greenhouse gas (GHG) emission allowances to operate. Therefore, in this kind of transaction is important to verify that the facilities have obtained the relevant authorisation to emit GHGs, to establish that the amount of GHG emission allowances required every year have been obtained and to verify that the company has fulfilled its obligations of obtaining, registering and returning the GHG emission allowances. Otherwise, large penalties could be imposed and the functioning of the facilities could be affected.

In addition, it is imperative to verify whether the transaction is implemented by means of a share acquisition or an asset acquisition. The acquisition of shares entails that all environmental liabilities are assumed by the buyer. On the contrary, asset purchases may reduce the liabilities to be assumed by the buyer, but require the transfer or obtaining of all the permits to carry out the activity.

Law stated - 17 February 2023

Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

In general terms, the environmental aspects to consider in mergers and acquisitions also apply to a wide variety of transactions.

In transactions regarding financing or capital markets, compliance with environmental obligations and the availability of the relevant permits to carry out the activity would be the most relevant concerns. In real estate transactions, soil and water pollution is the biggest issue in most cases. In corporate restructuring and bankruptcy proceedings it must be taken into consideration that if the activity is assigned to another entity, the relevant permits and concessions must also be transferred, and that the closure or dismantling of certain types of industries may be subject to specific environmental permits.

Law stated - 17 February 2023

Environmental aspects in public procurement

Is environmental protection taken into consideration by public procurement regulations?

Yes. Law No. 9/2017, of 8 November, on contracts of the public sector includes certain provisions according to which the environmental protection must be considered when designing and awarding a public contract.

Pursuant to this rule, the administrative and the technical terms sheets of the public contracts must include those environmental protection conditions needed depending on the specific subject matter of the contract. These conditions must take into consideration the principles on environmental protection set forth in Royal Legislative Decree No. 1/2016.

The degree of fulfilment of environmental conditions in the offers submitted must be considered by the public authorities. Depending on the circumstances of the case, the contracting authority could exclude the offers that do not comply with the environmental requirements or grant a higher score in the tender to the offers that ensure more environmental protection.

Furthermore, bidders can include in their technical offers more stringent conditions on environmental protection that should be considered in order to award the contract.

Public contracts can also include certain special conditions of execution with the aim of ensuring that it is properly executed from the environmental protection perspective.

This general obligation has also been included in Law No. 7/2021, of 20 May, on Climate Change and Energy Transition, which recalls the obligations to incorporate environmental and energy sustainability criteria in public procurement when they are related to the object of the contract, as well as to use, in public works contracts, award criteria in line with the objectives of the fight against climate change, such as: (1) energy savings and efficiency that favour a high level of thermal insulation in constructions, renewable energies and low emissions from installations; (2) use of sustainable construction materials; or (3) measures to reduce greenhouse gas emissions and other atmospheric pollutants in the different phases of the construction process.

Law stated - 17 February 2023

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

Regulations on environmental assessment have been amended by Law No. 21/2013 on Environmental Assessment. Law No. 21/2013 unifies under a single act the provisions related both to the environmental impact assessment of projects and to environmental assessment of plans (that were previously governed by Royal Legislative Decree No. 1/2008 and Law No. 9/2006 on Environmental Assessment of Plans, respectively). Furthermore, Law No. 21/2013 introduces certain procedural amendments with the aim of simplifying the environmental assessment procedures.

Pursuant to Law No. 21/2013, certain projects within the following categories are subject to an environmental impact assessment: agriculture, mining, petrol, power generation, the steel and chemical industries, infrastructures, hydraulic works and waste management facilities.

In particular, projects listed in Annex I are unavoidably subject to an environmental impact assessment, whereas projects listed in article 7.2 are subject to a simplified assessment and would be subject to the ordinary environmental impact assessment only if the relevant environmental authorities so decide on the basis of the criteria set forth in Annex III.

In addition, the plans and programmes prepared by public authorities listed in article 6.1(a) and (b) are subject to an environmental assessment. On the other hand, projects listed in article 6.1(c) and (d) would be subject to the environmental assessment only if the relevant environmental authorities so decide on the basis of the criteria set forth in Annex V. Furthermore, projects listed in article 6.2 would be subject to a simplified assessment.

Environmental assessments do not act as licences but as a prior and binding requirement to obtain a certain authorisation or resolution. Note, however, that certain autonomous regions have substituted the obtaining of certain environmental permits (namely, activity licences) with the environmental impact assessment.

Within the context of the rise in energy prices due to the war in Ukraine, EU guidelines have demanded member states to accelerate renewable energy projects to reduce dependence on Russian gas. As a result, recent Royal Legislative Decree No. 6/2022 regulates a new abbreviated proceeding of 'environmental affection determination' applicable to renewable energy projects that comply with certain requisites. By Royal Decree 20/2022, this simplified environmental affection has been provisionally and exceptionally extended to all renewable energy installations, except those located on natural protected sites and marine environments and those that require high-voltage power lines of over 15km.

Law stated - 17 February 2023

Environmental assessment process

What are the main steps of the environmental assessment process?

The main steps of the environmental impact assessment procedure of projects are as follows:

- the promoter could optionally file a basic project proposal before the relevant authority, which will forward it to certain specific institutions to obtain their feedback in order to determine the scope of the environmental impact study;
- the relevant authority conveying feedback to the promoter;
- the promoter filing the project and the environmental impact study with the relevant authority;
- the public consultation;
- the amending (if necessary) of the impact study in view of allegations made during the public consultation; and
- the issuing of the environmental impact declaration by the environmental authority.

The main steps to be followed in the environmental assessment for plans and programmes are similar to those applicable to an environmental impact assessment.

Regarding the environmental affection determination regulated on Royal Legislative Decree No. 6/2022, steps are as follows.

- The promoter must submit specific documentation to the relevant authority, including the project, an environmental impact study and an executive summary including potential proven environmental impacts (affection to protected areas, waste generation, cultural heritage, socioeconomic impact, etc).
- The relevant authority will analyse potential environmental affections and gather information from environmental authorities.
- The relevant authority can decide to subject the project to an ordinary environmental assessment if any negative impacts on the environment are detected.
- The final report will be published and will be valid for two years. If the promoter does not achieve administrative authorisations within this deadline, the process will be restarted.

Both environmental assessment proceedings are set forth in Law No. 21/2013 of 9 December on Environmental

Assessment.

Law stated - 17 February 2023

REGULATORY AUTHORITIES

Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

In Spain, powers on environmental matters are shared between the state, the autonomous regions and the municipalities.

The state has the power to enact basic environmental legislation; in addition, the state has the power to control (ie, granting authorisations, sanctioning, etc) certain activities where more than one autonomous region is affected, namely, in relation to water, certain aspects of the greenhouse gas emissions regime and certain environmental assessments. State powers regarding the environment are generally executed through the Ministry for Ecological Transition and Demographic Challenge.

Within that Ministry, certain subsidiary administrative bodies have been created with different responsibilities, such as:

- the Spanish Climate Change Office, in charge of setting out the national climate change policy;
- the General Directorate of Sustainability of the Coast and the Sea, in charge of the determination, protection and conservation of the maritime-terrestrial public domain; and
- the General Directorate of Biodiversity and Environmental Quality, in charge of the formulation of the national policy on air quality, prevention, reduction and control of pollution (including noise pollution), environmental assessment, waste prevention and management, etc.

The autonomous regions implement the applicable regulations and may issue additional rules for stricter environmental protection; in addition, they have the power to control many relevant areas related to the environment, such as integrated environmental authorisations. The regions' powers regarding the environment are exercised through bodies equivalent to state ministries.

Finally, municipalities also have powers concerning environmental protection, which must be executed in accordance with the regulations issued by the state and the autonomous regions. The main environmental powers of the municipalities relate to municipal environmental permits, urban waste and noise limits.

Law stated - 17 February 2023

Investigation

What are the typical steps in an investigation?

Any administrative investigation regarding a breach of environmental regulations is subject to the rules established under Law No. 39/2015 and Law No. 40/2015 . The process usually starts with a complaint filed by a public officer or an individual. The examining officer then gathers and examines all available evidence. Finally, the relevant authority issues the resolution containing the sanctions imposed, should a violation be deemed to have been committed, or dismisses the complaint if no violation has been evidenced. The resolution can be appealed. Interested individuals or entities have the right to file allegations at any time before the final resolution is made by the relevant authority.

Administrative decisions

What is the procedure for making administrative decisions?

The general procedure for making an administrative decision is set out in Law No. 39/2015 and Law No. 40/2015. The procedure commences with the request of an individual or an authority. Then all relevant facts and allegations are collected and examined. Finally, the decision is issued by the competent authority, which may be appealed as a general rule.

The parties have the right to be heard at any time before the decision is made and the right to propose evidence (such as documents, oral statements from witnesses or any other evidence allowed by law).

Law stated - 17 February 2023

Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Sanctions and remedies that may be imposed by the regulator for violations are usually fines (in some cases, up to €1 million or even higher), the cessation of the activity, the closure of the premises, the publication of the penalty, the suspension or expiry of permits, or a prohibition on contracting with the public sector, among others.

In addition to the sanctions imposed, the offender may also have to repair the damage caused.

Law stated - 17 February 2023

Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

Any administrative resolution following an administrative proceeding may be appealed. Should there be a higher authority than the one that issued the resolution, an administrative appeal may be filed before that higher authority. If there is no higher authority, or if such an appeal has already been dismissed, a jurisdictional appeal may be filed before the courts. In addition, it is possible (but not necessary), prior to appealing to the higher authority or to the courts, to appeal directly before the same authority that issued the resolution.

Law stated - 17 February 2023

JUDICIAL PROCEEDINGS

Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Environmental law proceedings take place in administrative, civil and criminal courts, depending, in each case, on the affected interests and the applicable regulations.

Law stated - 17 February 2023

Powers of courts

What are the powers of courts in relation to infringements of environmental law?

In relation to infringements and breaches of environmental law, courts may confirm or quash any kind of administrative resolutions or acts, impose indemnities and, in criminal cases, impose imprisonment and other penalties.

As a general rule, upon request from the party concerned, the courts are allowed to suspend the administrative resolutions or acts challenged provided that the execution of the act or resolution can cause serious damage to the party and no damage to the environment or to a third party can derive from the suspension of the act or administrative resolution. If the suspension is granted, the courts can impose certain provisional measures to ensure the protection of the environment or the third party's interest.

Law stated - 17 February 2023

Civil claims

Are civil claims allowed regarding infringements of environmental law?

Actions brought before a civil court should be based on damage or a contractual breach, but not on a mere breach of environmental regulations. Thus, civil claims regarding breaches and infringements of environmental law are allowed when such breach or infringement of environmental law causes damage or nuisance that may lead to a civil action.

Law stated - 17 February 2023

Defences and indemnities

What defences or indemnities are available?

According to the Spanish Civil Code, the general limitation period is five years for personal actions and there is a specific period of one year for non-contractual actions. Both individuals and legal entities may be civilly liable. Theoretically, civil liability is several and fault-based. However, in practice, judgments in case law tend to apply strict, joint and several liability when dealing with civil liability derived from an environmental issue.

Pursuant to the Spanish Criminal Code, the limitation period for basic environmental crimes is, in most cases, five years. Criminal liability may be applied to individuals and to legal persons. Criminal liability is fault-based.

Finally, according to Law No. 40/2015, except as otherwise specified, the limitation period for environmental administrative infringements is three years for very serious offences, two years for serious offences and six months for minor offences. Administrative liability may be applied to both individuals and entities and is fault-based. If more than one person is under an obligation, liability for the infringement is generally joint and several.

Law stated - 17 February 2023

Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

In civil claims, the company may be held liable for the damage caused by a director or officer acting within the scope of the company's activity. The directors and officers of the company may also be held liable to the company itself, the shareholders and the company's creditors for any damage caused as a consequence of their negligent acts.

In the case of crimes committed within the scope of the company's activity, on behalf of the company or for its benefit, actions may be initiated directly against both the company itself and individuals that have committed the crime in question. Consequently, the company, together with the legal or de facto representatives of the company, may be held jointly and severally liable for the damage arising from the crime.

The Spanish Criminal Code includes a criminal liability exemption for the companies that have implemented effective crime prevention measures such as the criminal compliance programme.

In the case of offences committed by employees, the company will be exempt from criminal liability if, before the commission of the crime, it has adopted and effectively implemented an organisation and management model likely to prevent crimes of the same nature or significantly reduce the risk of their commission.

In the case of offences committed by company representatives, in addition to the requirement above, the company will be exempt from criminal liability if the following requirements are also met:

- the monitoring of the prevention model has been entrusted to a compliance officer or supervisory body with autonomous initiative and control powers, or to a corporate body legally entrusted with the supervision of the effectiveness of internal controls;
- the offender has committed the crime fraudulently avoiding prevention controls; and
- there has been no omission or oversight by the compliance officer or supervisory body.

With regard to administrative offences, the general rule is that the party liable is the company within whose authority the offence has been committed. Nevertheless, there are certain environmental regulations (such as the Law on Coasts and the Law on Industry) under which directors may be held administratively liable. Moreover, according to Law No. 26/2007 on Environmental Liability, persons other than the company may be held liable, for example, a person controlling the activity or with decisive economic power in the technical operation of the activity.

Law stated - 17 February 2023

Appeal process

What is the appeal process from trials?

First-instance judgments by civil courts may be appealed at second instance. Generally, judgments from administrative or criminal jurisdictions may be appealed, but pursuant to procedural rules, certain administrative matters may be resolved in a single instance without a possibility of appeal.

In some limited cases and complying with certain conditions, judgments ruled in a second or in a single instance may be appealed before the Supreme Court.

In certain cases, appeals may also be filed before the Constitutional Court when there is a violation of constitutional rights.

Law stated - 17 February 2023

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Spain is a contracting party to many relevant international treaties on the environment, including:

- the Paris Agreement, Paris, 2015;
- the International Convention for Tropical Timber, Geneva, 2006;
- the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 1998;
- the Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 1997;
- the United Nations Convention to Combat Desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, Paris, 1994;
- the United Nations Framework Convention on Climate Change, New York, 1992;
- the Convention for the Protection of the Marine Environment of the North-East Atlantic, Paris, 1992;
- the Convention on Biological Diversity, Rio de Janeiro, 1992;
- the United Nations Convention on Law of the Sea, Montego Bay, 1982;
- the Convention on the Conservation of European Wildlife and Natural Habitats, Berne, 1979; and
- the Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.

Law stated - 17 February 2023

International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

International treaties are binding in Spain as soon as they are published in the state's Official Gazette. Therefore, regulatory policy is directly affected by these international treaties to the same extent as state or autonomous regions' regulations.

Law stated - 17 February 2023

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in environment law in your jurisdiction?

Spain is aligned with the other EU countries in environment-related issues. As a result, the main legislative developments can be summarised as follows.

- Royal Decree 6/2022, which, among other things, regulates the acceleration and streamlining of authorisation of renewable energy installations and investment on innovative energy sources like hydrogen, following the REPowerEU strategy to grant independence from Russian fossil fuels well before 2030.
- The passing of the Law No. 7/2022 of 8 April on Waste and Polluted Soils for a Circular Economy, that foresees the implementation of regional green tax initiatives on non-reusable plastics, waste generation and disposal and other pollutant activities.

Law stated - 17 February 2023

Jurisdictions

	Australia	Johnson Winter Slattery
	European Union	Allen & Overy LLP
	France	Huglo Lepage Avocats
	Germany	Enderle Environmental Law
	India	Shardul Amarchand Mangaldas & Co
	Indonesia	SSEK Law Firm
	Malta	Camilleri Preziosi
	Netherlands	Van der Feltz attorneys
	Portugal	Uría Menéndez
	Spain	Uría Menéndez
	Taiwan	Lee and Li Attorneys at Law
	USA	Beveridge & Diamond PC