

IN-DEPTH

Environment And Climate Change Law

EDITION 8

Contributing editor

Tallat Hussain

White & Case

 LEXOLOGY



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In-Depth: Environment and Climate Change Law (formerly The Environment and Climate Change Law Review) provides a global overview of environmental protection laws and regulations, as well as legislative and policy initiatives to combat climate change. It analyses the essential features of the legal and enforcement frameworks in major jurisdictions worldwide, while also examining the most consequential recent developments and offering an outlook for future changes.

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Editor's Preface

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The importance of climate change has been increasingly visible all around the world in 2023, with impacts ranging from floods and forest fires to significant global temperature rises and irregular weather cycles. Climate change is having social, economic and environmental impacts globally. Biodiversity conservation, water and natural resources management, land use, food security and air emissions are facing some of the repercussions. Solutions for energy transition and net zero commitments give rise to the need for climate change adaptation measures, clean technologies and accountability – and all eyes are on how legal mechanisms for pivoting corporate and individual conduct, enforcing commitments and mandating solutions can help tackle these myriad issues from various angles.

Not surprisingly, 2023 has seen some of the largest volume of advances in environmental and climate change policy and regulation. These have aimed to address a variety of issues, from reporting and non-financial disclosure to carbon trading and biodiversity conservation. Alongside this, 2023 saw the trajectory of climate change-related litigation continuing upward. The focus of national and multinational corporate attention to environmental, social and governance issues, especially in light of energy transition, has become more widespread. COP28, held in Dubai, resulted in key outcomes from the first five-year 'global stocktake' under the Paris Agreement. Some of the highlights of the meeting include agreement on a just and equitable transition towards decarbonisation through emissions reductions and scaled-up finance; the need to reflect linkages between climate, biodiversity and pollution in updated national plans; commitments to continued funding for loss and damage; and collaboration between civil society, government and business for climate adaptation and resilience. Entrenching the commitments in country regimes is the next step.

Accelerating decarbonisation has been a major driver of shifts in environmental and climate change law and policy over the course of 2023. This emphasis is not expected to decline in the years ahead. In many countries, transitioning to a low carbon economy is a national priority. In Kenya, for example, it is entrenched in its Vision 2030. Acknowledging the need for emissions reduction, abatement and removal in almost every sector and industry is facilitating the call on governments to enable and support the solutions through legislative changes. In India, the focus on sustainable development recognises intervention through government policies supported by legal mechanisms as one way to promote ecologically sustainable best practices in core industrial sectors such as mining and infrastructure development. For some countries, like Panama, where natural resources are key to economic development, protection of natural resources is regulated. In Thailand, innovations such as adopting a voluntary traffic light system to distinguish between green, amber (transitional) and red economic activities are a first step in considering the environmental impact of activities. This acknowledgement by countries around the world that solutions are required for the long term is a positive signal. In 2023, the South Korea

administration unveiled its first 'national basic plan for carbon neutrality and green growth', which spans 20 years, from 2023 to 2042, with updates every five years.

In the United Kingdom, the government and legislators are still dealing with the impact of Brexit in 2023. Government agencies have developed important policy frameworks in several areas to lay the groundwork for future legislation to support ambitious environmental commitments, such as the CCUS Net Zero Investment Roadmap. In Europe, states are also addressing reporting and disclosure. Countries (e.g., Spain) are working on laws regulating sustainability information and reporting on the financial impact of climate change risks to address the EU Corporate Sustainability Reporting Directive. Progress in policies and regulation of transparency, disclosure and reporting for corporates and financial institutions is a hallmark of 2023.

Of course, the reality of the current political and economic backdrop cannot be overlooked. Conflicts around the world and their repercussions, including on energy security, are changing the conversation on nuclear power, clean technologies and supply chains. Some countries, like Italy, have placed significant attention on the green transition to address both environmental and energy security concerns, adding a focus on renewable power and the permitting process.

Whether a factor of climate change-related impacts or global economic conditions, countries around the world are focusing on policies to protect, maintain or rehabilitate the natural environment, protecting their natural resources and repurposing elements of existing mechanisms such as permitting and taxation regimes. In Germany, for example, cross-sector assessment on compliance with climate targets has been introduced, along with climate adaptation legislation and a planning framework for a hydrogen core grid.

This is by no means the whole story. This eighth edition of *Lexology In-Depth: Environment and Climate Change* is an important look into the ways in which countries are tackling increasingly important issues that affect not only their own economies and citizens but also air, water and nature globally. The authors of all the chapters in this edition have provided a starting point to understanding environmental and climate change-related issues in their respective countries, with an overview of some of the actions being taken by regulators to address the issues and a bit of horizon scanning.

With many thanks to all who participated in crafting this important work, and to our readers, we hope that it proves a useful resource.

Tallat Hussain

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London

February 2024

Spain

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Introduction

Following the commitments assumed under the Paris Agreement (ratified by Spain on 22 April 2016) and the European Union's energy, environment and climate change policy, Spain has developed a strong and comprehensive legislative framework on environment-related issues. This framework is aligned with that in the rest of the European countries, in terms of both legislation and enforcement. Thus, Spain is deeply committed to the fight against climate change.

In 2023, no relevant or major new environmental laws were enacted and there have been no changes in policy relating to the environment and climate change. However, several laws and regulations that complete and update the legislative framework were approved, as explained in Section II, below.

Year in review

The main highlights of 2023 regarding environmental and climate change matters can be summarised as follows:

1. Royal Decree 1055/2022, of 27 December, on packaging and packaging waste was passed, with the purpose of fulfilling the objectives set out by the circular economy package directives;
2. Law 1/2023, of 20 February, on Cooperation for Sustainable Development and Global Solidarity establishes the legal regime of the Spanish policy for sustainable development with the aim of contributing to the global goals set out in, among others, the 2030 Agenda;
3. Law 5/2023, of 17 March, on sustainable fishing and fishing research brings the Spanish fisheries regime into line with European regulations and promotes the sustainable development and management of fishery resources;
4. Royal Decree 445/2023, of 13 June, amending Annexes I, II and III of Law 21/2013, of 9 December, on environmental assessment partially transposes Directive 2014/52/EU, of 16 April 2014, amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment; and
5. Royal Decree 665/2023, of 18 July, amending the Hydraulic Public Domain Regulation, the Public Administration of Water Regulation and Royal Decree 9/2005, of 14 January, establishes the list of potentially soil-polluting activities and the criteria and standards for the declaration of contaminated soils.

In addition, the Spanish government is currently processing a modification of Law 1/2005 governing the greenhouse gas (GHG) emissions trading scheme, as well as a law regulating the sustainability information, which will transpose Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate sustainability reporting into national law, and a royal decree regulating the content of reports on the estimation of the financial impact of risks associated with climate change for financial institutions, listed companies and other large companies.

Legislative framework

Spanish environmental law is governed primarily by the 1978 Constitution. Article 45 sets out the right to enjoy an adequate environment for the development of the people and the duty to preserve the environment. Article 45 also draws a distinction between three different areas of environmental responsibility: administrative; civil; and criminal liability.

The mandates of the Constitution are implemented by laws, and those, in turn, are complemented by regulations.

The main national environmental regulations, most of which implement EU directives, are the following:

1. Law 22/1988 on coasts, which aims to protect the maritime-terrestrial public domain (e.g., by submitting to prior concession or authorisation certain activities and establishing easements and limitations to the ownership of land near the public domain);
2. Royal Legislative Decree 1/2001 on water, which aims to protect the hydraulic public domain by submitting to previous concession or authorisation certain activities and establishing easements and limitations on the ownership of land near the public domain;
3. Law 1/2005 governing the GHG emissions trading scheme;
4. Law 27/2006 on the Right to Have Access to Information, Public Participation and Access to Justice in Environmental Matters, which allows access to environmental information at the disposal of the public authorities, as well as participation in public decisions on environmental matters and the possibility of requesting the judicial review of public acts or omissions that may constitute environmental offences;
5. Law 26/2007 on Environmental Liability, which imposes the obligation to foresee, prevent and restore environmental damage in accordance with the precautionary principle and 'polluter pays' principle;
6. Law 34/2007 on Air Quality and Atmospheric Environment Protection, which aims to establish the basic rules to prevent, monitor and reduce air pollution to minimise damage to people and the environment;
7. Law 42/2007 on Natural Heritage and Biodiversity, which establishes five basic types of protected natural spaces – parks, natural reserves, natural monuments, protected landscapes and protected marine areas – each with specific protection measures. In addition, according to European regulations and international treaties, other types of areas are protected in Spain. This is the case, for instance, for sites of community importance and special conservation areas. This Law also governs the protection of wild flora and fauna species. As a general rule, activities in any environmental protected area are restricted and authorised only when their compatibility with the environmental values is assured;
8. Law 21/2013 on Environmental Assessment, which unifies under a single act the provisions relating to the environmental assessment of projects, plans and programmes. Environmental assessments are not authorisations, but it is a prior and binding requirement to obtain a certain authorisation or to issue a certain resolution.

Authorisations or resolutions are null and void if the required environmental assessment was not conducted at all or was conducted in a defective manner;

9. Royal Legislative Decree 1/2016 on Integrated Pollution Prevention and Control, which applies to certain industries as listed in Annex I, such as certain combustion and chemical or waste management industries. It provides for a proceeding that incorporates the most relevant environmental permits and other administrative steps in a single authorisation: the integrated environmental authorisation. The main aspects covered by this authorisation are air and water emissions, production and management of waste, and environmental impact assessments;
10. Law 7/2021, of 20 May 2021, on Climate Change and Energy Transition, which aims to ensure that Spain complies with the objectives of the Paris Agreement. Thus, the purpose of this Law is to achieve the objective of neutrality of GHG emissions in Spain before 2050 and an efficient and renewable energy system, facilitating a just transition and ensuring consistency with the objectives in public and private action; and
11. Law 7/2022 on Waste and Polluted Soils for a Circular Economy, which aims to prevent the generation of waste and, where this is not possible, to minimise the adverse effects on human health and the environment deriving from waste production and treatment. This Law also includes articles specifically devoted to tackling soil pollution. Additionally, Law 7/2022 transposes the European Union's Single-Use Plastics Directive and establishes two new taxes to incentivise the circular economy.

In addition to the above administrative rules, the Spanish Criminal and Civil Codes must be taken into consideration. The Criminal Code includes a wide range of environmental offences, and the Civil Code includes general civil rules that may apply to tort, contractual liability and ownership in relation to environmental matters.

However, autonomous regions may enact laws and regulations on environmental matters of their own, provided that they do not reduce the level of environmental protection established by the national rules. Furthermore, municipalities may issue environmental regulations, which must always respect national and regional laws.

These environmental rules are further complemented by international environmental treaties, such as:

1. the Convention on Wetlands, Ramsar, 1971;
2. the International Convention for the Prevention of Pollution From Ships, London, 1973;
3. the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, DC, 1973;
4. the Convention for the Protection of the Mediterranean Sea Against Pollution, Barcelona, 1976;
5. the Convention on the Conservation of European Wildlife and Natural Habitats, Berne, 1979;
6. the United Nations Convention on Law of the Sea, Montego Bay, 1982;

7. the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989;
8. the United Nations Framework Convention on Climate Change (UNFCCC), New York, 1992; and
9. the Paris Agreement under the 21st Conference of the United Nations Framework Convention on Climate Change of 12 December 2015.

International treaties are binding in Spain when they are published in the Official Gazette. Unless otherwise indicated, reference is made to national rules only in this chapter.

Regulatory oversight

As stated, powers on environmental matters in Spain are shared between the state, the autonomous regions and the municipalities as follows:

1. The state has the power to enact basic environmental legislation and to control (e.g., by granting authorisations or sanctioning) certain specific environmental areas, namely those concerning rivers when affecting more than one autonomous region, certain aspects of the GHG emissions regime and environmental assessments relating to certain specific projects. The state powers are generally executed through the Ministry for the Ecological Transition and the Demographic Challenge.
2. The autonomous regions may issue rules for stricter environmental protection on top of the national legislation. In addition, they have the power to control most of the environmental areas, such as integrated environmental authorisations and waste and air emissions. Regional powers are exercised through the environmental department of the government of the autonomous region.
3. Municipalities' environmental powers relate mainly to local environmental permits, urban waste, air quality and noise limits. As previously indicated, city councils must respect national and regional laws when approving their own regulations.

Administrative resolutions (whether national, regional or municipal) may be appealed before the administration authority and before courts.

In cases in which there is a higher administrative authority than the one that issued the administrative resolution, it is necessary to file an administrative appeal before going to court, so that the higher authority can decide on the administrative appeal. If no higher authority exists, it is possible (but not compulsory) to appeal before the same authority that issued the resolution before going to court.

Courts may confirm or quash any administrative resolution if appealed. On request, courts may suspend the administrative resolutions challenged, provided that the execution of the resolution could cause serious damage. If the suspension is granted, the issuance of guarantees could be imposed to ensure the protection of the interests of those affected.

Enforcement

Different types of liabilities may derive from environmental regulations.

Different types of liabilities may derive from environmental regulations.

i Environmental liability

Environmental liability is a quasi-objective liability that may arise if damage or risk of damage to the environment is caused by an activity. Operators of activities have the obligation to foresee, prevent and restore environmental damage in accordance with the precautionary and polluter pays principles. For these obligations to be applicable, it is not required that the operator breaches environmental regulations or commits an administrative infringement.

ii Administrative sanctioning liability

Administrative sanctioning liability arises when an administrative offence is committed. A sanctioning administrative procedure must be processed in order to assess whether the offence has actually been committed and what sanctions are to be imposed. The potential offender will have the right to be heard and to file allegations within the administrative proceeding. Fines could be imposed as well as other measures, such as the suspension of the activity, closure of the premises or disqualification. Sanctions may be appealed, as indicated in Section IV.

In addition to the sanctions, offenders may be obliged to restore things to their prior state.

Except as otherwise specified, the general limitation period for environmental administrative offences is three years for very serious offences, two years for serious offences and six months for minor offences.

iii Criminal liability

The Spanish Criminal Code devotes an entire section (Title XVI), plus some other articles (e.g., Articles 343 and 345), to crimes concerning the protection of national heritage and the environment. Among other penalties, sanctions may entail imprisonment, fines or disqualification.

For an action or omission to be deemed a criminal offence, it must be proven that the defendant acted either negligently – if the Criminal Code expressly punishes negligent commission of said crime – or intentionally. Spanish case law has broadened the concept of 'intention' or 'purpose' so that it also comprises recklessness (i.e., consciously disregarding a high risk of criminal offence) and, in certain cases, 'wilful blindness' (i.e., intentionally refusing to know the circumstances of a criminal offence that is being committed within one's area of competence, despite knowing that said criminal offence is taking place).

Legal entities may also be held criminally liable. This liability is not alternative but is cumulative to that of the individuals who have committed the criminal offence.

To prevent the criminal liability of legal entities, the Criminal Code includes a specific exonerating circumstance: the establishment of compliance programmes ('organisation

and management models'). These compliance programmes must be both approved and implemented to constitute a valid exonerating circumstance.

The basic environmental crime is regulated by Article 325 of the Criminal Code as follows:

Whoever, breaking the laws or other provisions of a general nature that protect the environment, directly or indirectly causes or makes emissions, spillages, radiation, extractions or excavations, filling with earth, noises, vibrations, injections or deposits, in the atmosphere, the ground, the subsoil or the surface water, ground water or sea water, including the high seas, even those affecting cross border spaces, as well as the water catchment basins that, by themselves or in conjunction with others, cause or may cause significant damage to the quality of the air, soil, water, or to animals or plants shall be punished with a prison sentence of six months to two years, a fine of ten to fourteen months and special barring from his profession or trade for a period of one to two years.^[2]

If the aforementioned conduct may cause serious damage to the balance of the natural systems, it may be sanctioned more severely with imprisonment of up to five years, a fine of up to 24 months and disqualification of up to three years.^[3]

Criminal regulations calculate the total amount of the fine based on time, so a fine will be measured in days or months. According to the seriousness of the offence and the economic capacity of the offender, an amount per day will be established and the total fine will be a multiple of this and expressed in days or months.

iv Civil liability

In Spain, civil provisions do not protect the environment itself, but they provide for the obligation to restore or indemnify the damage caused to a third private party as a consequence of environmental damage. It is an independent liability from those mentioned above and therefore applies irrespective of, and in addition to, criminal liability or administrative sanctions. The general limitation period is one year for tort actions and five years if there is a contract between the parties.

Reporting and disclosure

Operators whose activities can affect the environment are usually subject to periodic monitoring and reporting obligations as provided for in the applicable laws or in their permits. For instance, integrated environmental authorisations must include periodic reporting obligations as well as the obligation to report immediately to the authorities any incident or accident that may affect the environment.

Furthermore, Law 21/2013 on Environmental Assessment includes the obligation to carry out monitoring plans, the result of which must be handed over to the authorities. Similarly, Law 26/2007 imposes on operators the obligation to immediately notify to the authorities any environmental damage or imminent threat thereof caused by them.

Failure to comply with these obligations may lead to administrative liability.

Companies also have obligations on information disclosure in their financial reports as to environmental matters. Rules in this regard are set by the Commerce Code; the Companies Law, approved by Royal Legislative Decree 1/2010, of 2 July; Law 22/2015 on Account Auditing; Royal Decree 1514/2007, which enacts the General Accounting Plan; Resolution of 25 March 2002 of the Institute on Accountability and Account Auditing; and Law 11/2018, of 28 December 2018, which modified several regulations, including the Code of Commerce. Financial statements must include a specific chapter containing environmental information, such as expenditure incurred in environmental protection, environmental risks assured and pending judicial proceedings affecting the company, contingencies and investment owing to environmental reasons.

Article 32 of Law 7/2021 establishes the obligation of listed companies, credit entities and insurance companies, among others, to include in their annual report an analysis of the financial impact of the risks associated with climate change generated by the exposure of their activity to climate change, including the risks of the transition to a sustainable economy and the measures taken to address these risks.

In addition, EU Regulation 2019/2088 (applicable as from 10 March 2021) requires financial market participants to disclose to investors how they consider sustainability objectives. In parallel, from 2023, credit entities will have to publish decarbonisation objectives for their investment and loan portfolios. On 14 December 2022, the European Parliament approved Directive (EU) 2022/2464 amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

In relation to protection for whistle-blowers, Article 62.4 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations states that the authorities must exempt from administrative sanctions the first complainant participating in the commission of an offence, provided that:

1. the whistle-blower gives evidence of the offence that allows for its confirmation or to initiate sanctioning proceedings against the rest of the offenders;
2. the authorities did not have enough grounds to initiate the sanctioning proceedings at the time of the complaint; and
3. the damage is repaired.

If the aforementioned requirements are not fully met, the authorities must reduce the sanctions to be imposed if the whistle-blower provides evidence that implies a significant added value to the evidence that the authorities had.

In either case, protected whistle-blowers must cease their participation in the offence and must not have destroyed any evidence relating to the offence.

Currently, it remains unclear how the authorities and courts will apply Article 62.4. Given its ambiguous wording in relevant elements, it may be anticipated that this Article will have a limited application.

There is no similar protection for whistle-blowers regarding criminal offences.

Environmental protection

i Air quality

Law 34/2007 governs the activities considered as potentially pollutant of the atmosphere.

This Law:

1. identifies the polluting substances that must be subject to certain emission limits;
2. imposes that certain activities must obtain a previous air emission authorisation (labelled as A or B) or require a previous communication (labelled as C); and
3. imposes additional obligations such as self-control and keeping an official registry book on air emissions.

The air emission limit values are established by the regional authorities, taking into account:

1. the implementation of best available techniques or other appropriate measures to prevent air pollution;
2. technical characteristics of the installation, location and local environmental conditions;
3. the nature of the air emissions, potential to transfer pollution from one medium to another, and incidence for people and the environment;
4. plans or programmes regarding air quality or gas emission reduction; and
5. air emission limit values imposed by laws and regulations or international treaties to which Spain is party (Article 5 of Royal Decree 100/2011).

Implementing rules govern specific activities or pollutants. For instance, large combustion plants are subject to certain specific conditions under Royal Decree 815/2013 on industrial emissions and in Royal Decree 430/2004 establishing new regulations on limitations of atmospheric emissions from large combustion plants, whereas medium combustion plants are subject to Royal Decree 1042/2017 on industrial emissions.

ii Water quality

Royal Legislative Decree 1/2001 governs fresh water and its associated land (the hydraulic public domain). Under this rule, the use of water for private purposes is subject to obtaining a concession granted by the basin authority. Other activities, such as the use of the river bed or the discharge of waste water, require an authorisation, also granted by the basin authority.

Law 22/1988, which governs seawater and its associated land (the maritime-terrestrial public domain), follows a similar structure. Thus, the use of, occupation of or works on the maritime-terrestrial public domain are subject to authorisation or concession. In addition, discharges from land into the sea require previous authorisation. Law 22/1988 is completed

by Law 41/2010 on the protection of the maritime environment, which governs the planning, conservation, protection and improvement of the environmental status of the maritime environment.

To better protect both the hydraulic and maritime-terrestrial public domains, easements and limitations are imposed on the ownership of adjacent plots. Planning is also key for achieving an appropriate level of protection.

Regarding the hydraulic public domain, each basin has its own plans aimed at, inter alia, achieving good water conditions and adequately protecting water resources, satisfying water demands, achieving balanced and harmonised regional and sectorial development, increasing the availability of the resource, protecting its quality and reducing the cost of its use.

Regarding the maritime-terrestrial public domain, Law 41/2010 sets out the obligation to draft specific strategic plans for each maritime area. The plans for each of the five Spanish maritime areas were approved by Royal Decree 1365/2018.

Furthermore, granting intake concessions or discharge authorisation from the hydraulic public domain is based on the environmental status of the medium and the compatibility between the water intake or discharge and environmental sustainability. To determine both, the content of the applicable specific basin plan is key.

Regarding water discharges, as it is difficult to determine unique maximum limits of general applicability, the applicable discharge limit values are set out in accordance with the specific circumstances at stake. Among those circumstances to be considered is the content of the applicable specific plan, which usually includes maximum discharge limit values or quality objectives, as well as the specific characteristics of the discharge to be authorised (e.g., location, pollutants or quantity).

Similar considerations are applicable when granting discharge authorisations to the maritime public domain. On the basis of the applicable quality objectives and the specific characteristics of the discharge, applications for discharges into maritime public domain authorisations may be rejected or limited, to guarantee that no significant environmental alteration is caused (Article 57.3 of Law 22/1988).

iii Chemicals

The main Spanish provisions on chemicals, similar to most environmental legislation in Spain, come from EU rules. Indeed, one of the outstanding rules on chemicals is EU Regulation 1907/2006 on Registration, Evaluation, Authorisation and Restriction of Chemicals. This Regulation sets out specific duties and obligations (e.g., registration of substances and uses with the European Chemicals Agency) on manufacturers, importers and downstream users of substances on their own, in preparations and in articles. In addition, EU Regulation 1272/2008 governs the classification, labelling and packaging of chemical substances and preparations.

The national Law 8/2010 sets out the penalties applicable for any infringement of EU Regulations 1907/2006 and 1272/2008. As a complement, Royal Decrees 255/2003 and 363/1995 govern certain specific aspects on the classification, labelling and packaging of hazardous substances and preparations.

Furthermore, Royal Decree 840/2015 on risk control for serious accidents where hazardous substances are involved requires notification for the installation of activities that use certain hazardous substances and subjects those installations to several preventive conditions, such as the preparation of preventive policy plans, security reports or emergency plans. Depending on the existing quantity of dangerous substances, the facilities are classified as low- or high-risk facilities. High-risk facilities are subject to stricter obligations and requirements.

iv Solid and hazardous waste

Law 7/2022 defines 'waste' as any substance that the possessor disposes of or has the intention or obligation to do so. The Law includes definitions of different types of waste, such as hazardous, domestic, commercial, industrial or biowaste, as well as waste oils and construction and demolition waste.

Hazardous waste is that which has a hazardous characteristic as listed in Annex I to Law 7/2022 and is considered as such by EU, national or regional regulations. The treatment of hazardous waste is subject to specific authorisations and must meet special conditions of storage, labelling and packaging, as well as documentary obligations. In addition, the production of hazardous waste is subject to prior communication to the authorities or registration with the Hazardous Waste Small Producers Public Registry. The producer of hazardous waste shall be obliged to provide an insurance or any other financial guarantee to cover the liabilities to which their activities may give rise, as well as to have a minimisation plan containing the practices to be adopted in order to reduce the amount of hazardous waste.

The collection of domestic waste is entrusted to the municipalities (as may be non-hazardous commercial waste), whereas producers of industrial waste have the obligation to hand it over to authorised waste managers and keep record of its proper delivery and final management of waste. Waste managers must obtain a previous authorisation and have financial guarantees.

Certain types of waste are also subject to specific regulations. This is the case, among others, for waste packages currently governed by Royal Decree 1055/2022, waste from electrical and electronic equipment governed by Royal Decree 110/2015, construction and demolition waste governed by Royal Decree 105/2008, oil waste governed by Royal Decree 679/2006 and waste batteries governed by Royal Decree 106/2008.

In addition, Spanish waste legislation includes the extended producer responsibility (i.e., the responsibility of the manufacturer of a product for its entire life cycle, and especially for its return, recycling and final disposal). Manufacturers may comply with these obligations on their own or collectively by means of an integrated management system, an organisation that assumes said obligations on behalf of all the adhering parties.

v Contaminated land

Law 7/2022 and Royal Decree 9/2005 (on the creation of a list of potentially land-polluting activities and the criteria to declare polluted soils) are the main rules governing soil pollution.

Operators of activities included in the list of potentially soil-polluting activities under Royal Decree 9/2005 that produce, handle or store more than 10 tonnes per year of certain hazardous substances, or that have a fuel tank for private use with an average yearly consumption higher than 300,000 litres and a total storage volume of 50,000 litres or higher, had to file a preliminary soil report before 7 February 2007.

Thereafter, in view of the content of this report, the authorities had the option to request more detailed information. Operators then must update the soil report periodically before the regional authorities – the regularity of this update is determined by each autonomous region – and, in any case, when installing, enlarging or closing the activity. Similarly, owners must prepare a soil report when changing the use of the land or applying for a permit for a different activity.

In addition, owners of soil in which potential soil-polluting activities are or have been carried out must disclose this circumstance in the public deed of transfer of rights over the soil in question.

As a general rule, regional authorities are the ones with the power to declare a soil as polluted. For this purpose, risk for human health or the environment, taking into account the specific use of the land, must exist. The criteria to be considered for this declaration are set forth by Royal Decree 9/2005, which differentiates between industrial, urban and other uses of the land.

The persons obliged to clean up the site – in the manner imposed by the authorities – are, in this order, the polluter, the owner of the polluted site and the possessor thereof.

The declaration of soil as polluted must be included within the Property Registry and can be removed only when the regional authorities confirm that the clean-up has been duly carried out and that therefore there is no unacceptable risk to human health or the environment.

Climate change

Spain is a signatory party to the 1992 UNFCCC, which entered into force on 21 March 1994. In addition, on 22 April 2016, Spain signed the Paris Agreement resulting from the Paris Climate Conference, which sets out a global action plan to avoid dangerous climate change. The Paris Agreement entered into force on 4 November 2016.

The Ministry for the Ecological Transition and the Demographic Challenge is the administrative body that, at the national level, is responsible for the implementation and administration of climate change policies. Within that Ministry, certain subsidiary administrative bodies have been created with different responsibilities, such as the Spanish Climate Change Office, which is in charge of shaping the national climate change policy; the National Climate Commission, which is in charge of issuing recommendations in relation to climate change-related plans, programmes and lines of action; and the Climate Change Policies Coordination Committee, which is in charge of the coordination between the national and the regional authorities in this area. In addition, the autonomous regions have created specific bodies to implement policies on climate change within the scope of their powers.

The European Union has approved several regulations on climate change with the aim of obtaining a reduction of the GHG emissions of the Member States in an effective and

efficient manner. One of the most important measures has been the implementation of an emissions trading system that aims to reduce GHGs by means of setting a cap on the total amount that can be emitted by certain installations, a cap that is reduced over time so that total emissions decrease.

EU Directive 2003/87/EC (as subsequently amended) establishes a scheme for GHG emissions allowance trading. This Directive has been implemented in Spain by means of Law 1/2005 (also amended several times to implement the amendments to the Directive), which applies to facilities included in Annex I that generate certain GHG emissions and to certain aviation activities with origin or destination within the European Economic Area.

Directive (EU) 2018/410 regulating the 2021 to 2030 trading period has been officially transposed by Law 9/2020, amending Law 1/2005.

Facilities under Law 1/2005, amended by Law 9/2020, must obtain a specific authorisation for emitting GHGs, unless the facility is considered a small-scale installation. Regional authorities have the power to issue this authorisation. Any change in the nature, operating procedures or size of the facilities or any other change entailing a significant enlargement or reduction to the capacity of the facilities, as well as any change affecting the identity or domicile of the operator, must be notified.

Operators subject to Law 1/2005 must have an emission allowance per each equivalent tonne of carbon dioxide emitted from its facility (or aircraft). Emission allowances are transferable and registered within the Spanish Section of the Union Registry.

Although auction remains the main method for the allocation of emissions allowances, free allocation allowances may be requested to the Climate Change Office in certain cases.

In this regard, facilities included in sectors exposed to a significant risk of carbon leaks will be granted 100 per cent free allocations.

Other sectors that do not pose a significant risk of carbon leaks may also receive free allocations up to a maximum of 30 per cent, a percentage that will decrease by equal amounts after 2026 (except for district heating), with the aim of reaching a level of no free allocations in 2030. The rest of the required allowances must be acquired in the auctions.

Power generators and capture, transportation and geological storage of carbon installations do not receive any free allowances except for certain high-efficiency cogeneration and urban heating and certain waste gases combustion power generators.

Aviation is also subject to free allocation of allowances, as the number of allowances to be auctioned by Spain in each period shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year, as reported and verified.

Activities emitting GHGs must send the regional authorities a verified report on GHG emissions of the previous year before 28 February each year. This report will be assessed by the authorities to verify (among other circumstances) that the operator has obtained all the required GHG emission allowances.

Furthermore, aviation operators must have a monitoring plan that includes certain measures to monitor and notify the data of their yearly emissions and tonne-kilometres transported. This monitoring plan must be approved by the Ministry for the Ecological Transition and the Demographic Challenge.

However, Law 7/2021 directly tackles climate change. Its purpose is to ensure Spain's compliance with the objectives of the Paris Agreement and to facilitate the decarbonisation of the Spanish economy and its transition to a circular model. In this regard, Law 7/2021 establishes that the Spanish economy must be carbon neutral by 2050, and it sets up the following targets for 2030:

1. a 23 per cent reduction in GHG compared with 1990 levels;
2. 42 per cent of total energy consumption coming from renewable sources;
3. 74 per cent of renewable energy in the electricity sector; and
4. a 39.5 per cent improvement of energy efficiency.

Furthermore, Law 7/2021 has also forbidden the granting of new exploration, investigation or exploitation permits for hydrocarbons and has required the installation of electric recharging infrastructure to non-residential buildings with more than 20 parking spots and to certain gas stations. Moreover, several autonomous regions have also adopted regional laws on the matter.^[4]

In addition to Law 1/2005 and Law 7/2021, other national rules on climate change have been passed on energy efficiency and carbon dioxide absorption.

Outlook and conclusions

Spain is aligned with the rest of the European countries on environment-related issues, in terms of both 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.

Endnotes

- 1 Jesús Sedano is a partner and Íñigo Ormaeche is a junior associate at Uría Menéndez. [^ Back to section](#)
- 2 Article 325.1. [^ Back to section](#)
- 3 Article 325.2. [^ Back to section](#)
- 4 For instance, Balearic Islands (Law 10/2019, of 22 February, on Climate Change and Energy Transition), Andalusia (Law 8/2018, of 8 October, on measures tackling climate change and on the transition to a new energy model in Andalusia), Catalonia (Law 16/2017, of 1 August, on Climate Change) and Navarra (Law 4/2022, of 22 March, on Climate Change and Energy Transition). [^ Back to section](#)