

## Introduction

The basic Spanish legal framework for promoting electricity generated from renewable resources was adopted on November 27, 1997 through the adoption of the Electricity Sector Act (Act 54/1997), which came into force on November 29, 1997. This Act establishes the basic legal framework for generation, transmission, distribution, and sale of electricity. It left behind the public service system approach and provided the basis for the liberalization or privatization of the electricity sector. It sets out both an ordinary regime and a special regime to govern generation of electricity from renewable resources. It also addresses electricity produced through cogeneration and the treatment, reduction and incineration of waste, for facilities with installed capacity of equal to or less than 50 MW. Those facilities subject to the special regime must be registered within the General Administrative Register of Electricity Generation Installations under a set of prescribed categories.

The Electricity Sector Law has been amended several times to comply with EU directives and developed through a number of regulations<sup>1</sup>. Royal Decree 661/2007, of May 25 (which came into force on June 27, 2007) governs electricity production subject to the special regime. The Decree replaces Royal Decree 436/2004, of March 12<sup>2</sup>.

To get an accurate picture, it is important to emphasize that the Electricity Sector Act 54/1997, sets what in Spanish law is known as “basic legislation”, meaning that legislation passed by any of the seventeen Spanish Autonomous Regions about the regulation of electricity must comply with the existing basic legislation. Furthermore, the Autonomous Regions must apply Act 54/1997, and regulations promulgated under it, within their territories including registering installations subject to the special regime<sup>3</sup>.

In addition to these legislative measures, on December 30, 1999, the Spanish Minister Council approved the so-called 2000-2001 Plan to Promote Renewable Energies in Spain. On August 26, 2005 it approved the 2005-2010 Renewable Energies Plan. This Plan predicts that by 2010, 12.1% of the primary energy consumption<sup>4</sup> for Spain will come from renewable resources.

In addition, the 2005-2007 Action Plan for Energy Conservation and the 2004-2012 Efficiency Strategy for Spain aim to generate an accumulated energy savings of the equivalent to 12 million tons of petrol -- that is, 8.5% of primary energy consumption, and 20% of the petrol imports for 2004. This would accomplish a reduction of 32.5 million tons of CO<sub>2</sub> emissions<sup>5</sup>.

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<sup>1</sup> Although not always up to date, the website of the Spanish Ministry of Industry, Tourism and Trade – Directorate General of Energy - provides access to laws related to electricity (available only in Spanish) at: <http://www.mityc.es/Electricidad/Seccion/Legislacion/Basica/>

<sup>2</sup> Repeal provision of Royal Decree 661/2007.

<sup>3</sup> Access to different regional performance is provided at: <http://www.idae.es/index.asp?i=es>

<sup>4</sup> Extracted from IDAE webpage: <http://www.idae.es/index.asp?i=es>

<sup>5</sup> Extracted from IDAE webpage: <http://www.idae.es/index.asp?i=en>

The following is a brief assessment of Spanish REFIT law checked against the features of a good REFIT law. Briefly explained: “*a good REFIT law is a law of immediate effect, supporting a target for the amount for electricity to be supplied from renewable energy sources, under which a grid connection must be provided to qualifying renewable energy producers who are given a right to receive a specified, technology-based, adjustable tariff, for a long period at levels which exceed the current electricity feed-in prices, with no upper limit on the amount of electricity that can be sold.*”<sup>6</sup>

### 1. - A law, not a policy.

Royal Decree 661/2007, of May 25, regulating electricity generation as a special regime, is a law with immediate legal effect<sup>7</sup>.

However, it must be highlighted that this Decree allows the producer to choose between selling the energy to the distributor in return for a specified flat tariff for all the scheduling periods; or selling it directly on the day-ahead market or the futures market, or through a bilateral contract. In these last three cases, the producer receives the negotiated price plus a premium<sup>8</sup>. The choice must be made for at least a one-year term and communicated at least one month in advance to the responsible authority that will record the decision under the Administrative Register of Electricity Generation Installations<sup>9</sup>.

In addition, the Decree establishes the right of the producer to sell all, or part, of the net production through “*direct lines*”. The energy sold through a direct line will not be governed by the economic regime set under this Royal Decree<sup>10</sup>.

Chapter III, *Rights and Obligations of Installations Subject to the Special Regime*, includes an obligation for the producer and the distributor to enter into a contract using a standard contract provided by the General Directorate of Energy Policy and Mining<sup>11</sup>. This contract will set the technical relations between them. The distributor is obligated to enter into this contract with the producer, even if the installation does not produce a net generation<sup>12</sup>.

### 2. - Target for the amount of electricity that should be generated from renewable energy sources by a specific date.

Royal Decree 661/2007 is linked to achieving the national targets for 2010 set out in EU Directive 2001/77/CE, of September 27, on the promotion of renewable electricity<sup>13</sup>. The Royal Decree sets the same targets as the 2005-2010 Renewable Energies Plan and the

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<sup>6</sup> See page 9 of “REFIT law pages of the LAP website: initial thoughts on template”. 3<sup>rd</sup> August 2007.

<sup>7</sup> See Final Disposition no. 6 – entry into force – of Royal Decree 661/2007.

<sup>8</sup> Art. 24 (1) of Royal Decree 661/2007.

<sup>9</sup> Art. 24 (4) and 24 (5) of Royal Decree 661/2007.

<sup>10</sup> Art. 17 (d) and 24 (3) of Royal Decree 661/2007.

<sup>11</sup> Art. 16 of Royal Decree 661/2007.

<sup>12</sup> Art. 16 (1) last paragraph of Royal Decree 661/2007.

<sup>13</sup> Preamble of Royal Decree 661/2007.

2004-2012 Efficiency Strategy<sup>14</sup>. All of the targets for the different categories of electricity generation under the special regime are regulated under the remuneration system established under this Royal Decree<sup>15</sup>.

Royal Decree 661/2007 implements article 27 (1) of the Electricity Sector Act 54/1997<sup>16</sup>, which establishes that electricity produced from different types of renewable sources as well as cogeneration and the treatment, reduction and incinerator of waste will be regulated under the special regime. This applies to facilities with installed capacity of equal to or less than 50 MW.

### 3. - Grid connection

As described above, under Chapter III of the Royal Decree 661/2007, *Rights and Obligations of Installations Subject to the Special Regime*, article 16 sets out the obligation for the producer and the distributor to enter into a contract using a standard contract provided by the General Directorate of Energy Policy and Mining. This contract will set the technical relations between them. The distributor is obligated to enter into this contract with the producer, even if the installation does not produce a net generation<sup>17</sup>. Article 16 lists the minimum requirements of the standard contract including describing reasons for amending or cancelling the contract, and listing conditions for the grid connection, and circumstances under which it would be considered technically impossible to absorb the energy surpluses. It refers to article 58 of Royal Decree 1955/2000, of December 1, which regulates the content of the technical contract for accessing the grid.

It also states that contracting producers must provide administrative licences and authorisation for their installations as well as authorization for the installations of connection from the point of energy production to the point of connection to the grid<sup>18</sup>. To be subject to the special regime generators must get appropriate authorisations and be

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<sup>14</sup> Preamble of Royal Decree 661/2007.

<sup>15</sup> Chapter IV of Royal Decree 661/2007 – Economic regime -

<sup>16</sup> Article 27 (1) of Act 54/1997, of November 27, Energy Sector Act: “*Electricity generation activities shall be regarded as generation under the special system in the following cases whenever they are carried out from installations whose installed capacity is no greater than 50 MW:*

- a) *Self-generators using cogeneration or other forms of electricity generation associated with non-electricity operations, provided they involve high energy output.*
- b) *Whenever non-consumable renewable energies, biomass or biofuels of any type are used as primary energy, provided their holder does not engage in generation activities under the ordinary system.*
- c) *Whenever non-renewable waste is used as primary energy.*

*The generation of electricity from reduction and treatment installations using waste from the farming, livestock and services sectors with an installed power equal to or less than 25 MW shall also be regarded as generation under the special system whenever high power output is obtained.”*

<sup>17</sup> Art. 16 (1) last paragraph of Royal Decree 661/2007.

<sup>18</sup> Art. 16 of Royal Decree 661/2007.

registered with the Administrative Register of Electricity Generation Installations under categories established by article 2 of the Royal Decree 661/2007<sup>19</sup>.

#### 4. - Specified, technology-based, adjustable tariff, for a long period

Chapter IV of Royal Decree 661/2007 governs the tariffs, premiums and supplements to be paid to energy producers subject to the special regime.

The tariff is a fixed-rate tariff set for all scheduling periods. The rate is based on the category, group, or sub-group of the generator, the installed capacity, and the installation's date of entry into service<sup>20</sup>.

The premium is applied when the producer chooses to sell its electricity on the market. In these cases, the premium is added to the price obtained on the market. The rate is also based on the category, group, or sub-group of the generator, the installed capacity, and the installation's date of entry into service<sup>21</sup>.

There are two types of supplements: an efficiency supplement and a supplement for reactive power<sup>22</sup>. The efficiency supplement is paid to those special regime installations required to meet electric efficiency standards defined in Annex I when they prove that they exceeded the required minimum efficiency standard. [The supplement for reactive power is paid to guarantee that the installations maintain specific values on power factor no matter whether the electricity produced will be reimbursed through a tariff or a market price. This supplement is fixed using a percentage regulated in Annex V of the Royal Decree 661/2007 and reviewed annually. ]

#### Annex I – Relevant Spanish legislation

- Act 54/1997, of November 27, Electricity Sector Act (unofficial English translation and Spanish text).

- Royal Decree 661/2007, of May 25, regulating electricity energy generation activity under the special regime (available only in Spanish).

- Royal Decree 436/2004, of March 12 (available in English and Spanish).

- Royal Decree 1955/2000, of December 1, governing transport, distribution, sale and supply and authorisation procedures for electricity installations (available only in Spanish).

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<sup>19</sup> Chapter II of the Royal Decree 661/2007 – Administrative procedures for including an electricity energy production installation under the special regime -.

<sup>20</sup> Art. 25 in connection with articles 35 to 42 of Royal Decree 661/2007.

<sup>21</sup> Art. 27 of Royal Decree 661/2007 with a reference to articles 35 to 42.

<sup>22</sup> Articles 28 and 29 respectively of Royal Decree 661/2007.