

Climate change aspects within SEA proceedings

Spain: SEA of the Renewable Energy Plan

Case Study

Justice and Environment 2012

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SEA of the Renewable Energy Plan

SPAIN

SEA procedures are closely linked to new investments, projects, strategic planning, extension or adaptation of existing plants, roads etc. At strategic level, SEA influences the fundamental nature of the development. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment (SEA Directive) contains some reference to climate change, however, this is far from being proportionate to the gravity of the problem. On the other hand, arguments referring to the problem of climate change often are used to justify environmental destruction, e.g. in planning and building water or wind power plants in special protection areas or having critical water impacts.

1. Short summary of the plan and/or program

1.1. Title of the case

Renewable Energy Plan (REP 2011-2020) of Spain

The Renewable Energy Plan (REP 2011-2020)¹ was approved by resolution of the Council of Ministers on November 11, 2011. This plan follows the REP 2005-2011 and it is in line with the “Energy Saving and Efficiency Strategy for Spain 2004-2012 (E4)” approved by the Spanish Government on November 2003 and the second National Action Plan on Energy Saving and Efficiency (2011-2020).

The REP 2011-2020 intends to contribute to the objectives set out in Directive 2009/28/EC of the European Parliament and the Council of 23 April 2009 on the promotion of the use of energy from renewable sources² and to the mandates provided in Royal Decree 661/2007, regulating the production of electricity under the special regime³ and in Law 2/2011 of 4 March, on Sustainable Economy⁴.

1.2. Location

The scope of implementation of the plan is at the national level. Therefore, it is intended to be implemented in the whole Spanish territory at the national, regional (autonomous communities) and local levels.. However, a plan is not a legally binding act in Spain. The REP was adopted by a Council of Ministers Accord which was not even published in the Spanish Official Journal (BOE). In accordance with Article 5.j of Law 50/1997, the Council of Ministers can adopt programmes, plans and guidelines binding on all organs of the General Administration of the State. This means that the REP shall guide the action of those bodies of the General Administration of the State but they in principle do not bind organs of the Autonomous Communities or of local administrations. However, it is important to take into consideration, as explained, that this plan was adopted following the provisions of Law 2/2011 of 4 March.

¹ Plan de Energía Renovable (2011-2010). This plan is available at http://www.idae.es/index.php/mod.documentos/mem.descarga?file=/documentos_11227_PER_2011-2020_def_93c624ab.pdf

² OJ L 140, of 5.06.2009.

³ Real Decreto 661/2007, de 25 de mayo, por el que se regula la actividad de producción de energía eléctrica en régimen especial (BOE núm. 126, of 26.05.2007).

⁴ Ley 2/2011, de 4 de marzo, de Economía Sostenible (BOE núm. 55, of 05.03.2011).

Its article 78(4) establishes that “(...) the Government shall adopt national plans of energy efficiency and saving and national plans on renewable energies which shall include guiding measures and measures to foster energy supply and consumption in a way which makes possible the compliance with the mentioned objectives⁵, and which allow the development of renewable energies in all Autonomous Communities”. Therefore, the REP is intended to apply to the whole Spanish territory. It is important to highlight that in Spain, some environmental national plans and programmes⁶ have been passed and published through Royal Decrees, i.e through a regulation that gives them the status of legally binding acts, as is the case of Royal Decree 1370/2006, of 24 November, approving the National Plan on Allocation of GHG Emissions Rights, 2008-2012.

1.3. Area for that the plan/program has been prepared.

The area for which the plan was prepared is the area of energy production from renewable sources. The REP 2011-2020 specifically takes into account the different renewable energy sources which can be summarized in: Biofuels and bioliquids (mainly used in the transport sector through bioethanol and biodiesel); Biomass and biogas (for thermal and electric use); Wind energy (marine and terrestrial wind power); Geothermal energy (designed for thermal uses and the production of electricity); Aerothermal energy; Hydropower; Marine energies (coming from tidal power, ocean currents, waves power and osmotic potency, and generally used for electric energy); municipal and industrial waste and sludge from waste water treatment plants; and finally the Solar energy on its different types (photovoltaic (PV), thermo-electrical and thermal energy).

1.4. Developer

The competent authority for the Renewable Energy Plan is the Ministry of Industry, Tourism and Trade, being the substantive competent body at the REP 2011-2020, according to article 15 of Law 9/2006, on the evaluation of the effects of certain plans and programs on the environment. Specifically the State Secretary of Energy of that Ministry through the Instituto para la Diversificación y el Ahorro de la Energía (IDAE- Institute for Diversification and Saving of Energy⁷) which is the office for the plan was in charge of its preparation. IDAE is also responsible for the regular monitoring of the implementation of the plan including its effects on the environment.

⁵ These are the objectives approved by the EU Council on the energy package..

⁶ Law 9/2006, of 28 April, on the assessment of certain plans and programmes on the environment defines plans and programmes in art. 2.a. as the group of strategies, guidelines and proposals provided by a public Administration to satisfy social needs, not directly applicable but through the development of a group of projects.

⁷ www.idae.es

2. Relevant national regulation

2.1. Which are the main provisions transposing the SEA Directive?

At the State level the main act transposing the SEA Directive is Law 9/2006, of 28 April, on the evaluation of the effects of certain plans and programs on the environment⁸. It provides for the Strategic Environmental Assessment procedure, as an instrument of prevention integrating environmental aspects in decision-making processes for the adoption of plans and programmes. It is important to mention that most of the 17 Autonomous Communities also counts with specific legislation on SEA procedures.

2.2. Which domestic legislative, regulatory or administrative provision required the preparation of the plan/program?

In addition to the internationally agreed commitments by Spain to combat climate change, mainly the Kyoto Protocol, the PER 2011-2020 more than being a response to a national provision it complies with Article 4 of Directive 2009/28/EC. This article required each Member State to adopt a national renewable energy action plan setting national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020. Article 78 of Law 2/2011 of 4 March, on Sustainable Economy transposes part of the so-called EU energy package into Spanish Law specifically the 20% contribution of energy from energy sources and the 20% of energy efficiency. To this end its paragraph 78 provides that the Government shall approve national plans of energy efficiency and saving and of renewable energy.

2.3. Does the national regulation on SEA demand taking climate change aspects into consideration in environmental assessments?

According to article 1 of Law 9/2006 its object is “promoting sustainable development, achieving a high level of protection for the environment and contributing to the integration of environmental considerations into the preparation and adoption of plans and programs through an environmental assessment of those plans and programs that may have significant effects on the environment”.

⁸ BOE núm. 102, of 29.04.2006.

The first stage of the SEA procedure is the preparation of an environmental report (informe de sostenibilidad ambiental- report of environmental sustainability) to be prepared by the developer (Art. 8). This report shall include the information listed in Annex I of this Law. This Annex includes among the information the likely significant effects on the environment including aspects such as the climatic factors.

3. The plan/program

3.1. Do the main objectives of the plan/program concern climate change? If yes, in which context is climate change referred?

The main objectives of the plan concern climate change given that as its text provides the use of renewable energy represents a fundamental pillar of the package the EU proposed to reduce GHGs emissions and to comply with the Kyoto Protocol and other international commitments.

As mentioned before, the Renewable Energy Plan 2011-2020 complies with the obligation provided by Art. 4 of Directive 2009/28/EC which was transposed by article 78 of Law 2/2011. Thus, the aim of the plan is to achieve by 2020 the renewable energy account for at least 20% of total energy consumption, and to attain a minimal contribution of 10% of renewable energy sources in transport.

Furthermore, Spanish legislation has adopted a stringent target on efficiency and renewable energies superior to the reduction target imposed by the European Union Directive, having a 20.8% share of national consumption by 2020. This measure was adopted on December, 21, 2010, supported by the majority of the parliamentary groups, within the Committee of Industry, Research and Energy of the Spanish Parliament.

The compliance of targets laid out in REP 2011-2020 constitutes in itself a climate change adaptation measure. According to article 78 of Sustainable Economy Law, the Plan focuses on reducing the participation of primary energies, which are potentially higher at emissions of CO₂, in accordance with the aim of reducing GHG emission of by Spain.

To this regard, the REP 2011-2020 includes among its purposes obtaining a greater contribution of renewable sources in the national energy consumption, and the development of new renewable technological areas, with the aim of mitigating the harmful effects on economic sectors caused by the climate fluctuations.

3.2. Does the plan/program have likely harmful impacts on the environment, especially on climate?

The implementation of Renewable Energy Plan 2011-2020 does not have adverse effects in climate change but it may have environmental impacts depending on the energy-sector.

The assessment of the environmental impacts of the Energy Plan is based on each energy sector, and the development of actions in each technology, such as procurement of assets, construction and decommissioning of installations, and finally the use and the exploitation of resources. The environmental impacts of the different energy-sectors where analysed in the environmental report.

Impacts	Types of Renewable energies
biodiversity	Biofuels, biomass, hydropower and marine energy,
water	Biofuels, biomass, hydropower, marine,solar and geothermal energy
forest	Biofuels, biomass, hydropower, municipal and industrial waste and sludge EDAR (sludge of waste water treatment)
soil	Biofuels, biomass and hydropower
marine ecosystems	Hydropower, marine wind power and marine energy
agriculture	Biofuels, biomass and hydropower energy

From a climate perspective, the use of renewable energies instead of fossil fuels presents significant improvements to the environment, by the reduction of the environmental impacts in the energy cycle. The promotion of these types of energies; such as wind solar, photovoltaic, thermoelectric, and hydroelectric energy can help to decrease climate change effects.

The energy sector is responsible for the generation of 80% of greenhouse emissions; therefore the introduction of renewable energies in that sector will help to avoid CO2 emissions. In this regard, according to the environmental report and the REP⁹ itself its implementation would contribute to cutting over 65.619 tons CO2 equivalent which would be between 2.500 tonnes/Ktep up to 4.507 tonnes/ktep of solar photovoltaic technology. The total of emissions avoided in 2020 is estimated to be 37.288.337 tonnes/year. In other words, if properly implemented the REP will provide a reduction of more than 167Mt emissions accumulated along the period of 2011-2020, which means a distribution of the 70% in electricity generation, 12% in production of heat/cold, and the 18% in transport sector.

According to the environmental report there are mainly two potential negative effects of the REP 2011-2020 on agriculture and fisheries sectors. The agriculture sector can be affected directly by the use of biomass technology for electricity production and biomass for thermal uses. In relation to the fisheries sector, the location of installations for the production of offshore wind energy and other sea energies could have harmful effects on habitats and ecosystems which are essential to fisheries.

⁹ Page 653

4. Description of the SEA

4.1. Procedure

4.1.1. Preparer of the assessment

According to article 18 of Law 9/2006, the SEA procedure carried out at the State level was initiated on April 20, 2010, (the starting document) by the substantive competent body, the State Secretary for Energy responsible to inform environmental body, in this case the Ministry of Agriculture, Food and Environment (MAFE). When the procedure started that Ministry still was the Ministry for the Environment, Rural and Marine Affairs (MERMA). The State Secretary for Energy informed the Under Secretary General for Environmental Assessment of MERMA.

The starting document¹⁰ issued by the substantive competent body established the objectives and the scope of renewable energies planning from 2011 to 2020, an analysis of the plan's development, and its potential effects on the environment.

Afterwards, the communication to the MERMA included an assessment of the following aspects: aims of the planning; scope and content of the plan, its proposals and alternatives; foreseen development of the plan or programme; foreseen environmental impacts and foreseen effects on the territory, on sector-specific planning and on land planning.

The environmental body then:

1. Identified public administrations concerned and interested public to be consulted.
2. Prepared a reference document with strategic environmental criteria and environmental indicators of environmental objectives and determined the content the environmental report should have.
3. Defined the methodologies for public participation and the deadlines for information and consultation.

¹⁰ http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/participacion-publica/32010_p_006_documento_inicio_tcm7-111310.pdf

The 30th of November, 2010, after the initial document review and public consultations, the environmental body of the SEA, the General Directorate of Environmental Quality and Assessment from the MERMA, adopted by resolution the Reference Document which set out the strategic environmental criteria, content and scope of the Environmental Sustainability Report, to carry out in next phases by the substantive competent body, the Ministry of Industry, Tourism and Trade.

4.1.2. 4.1.2. Authorities involved

There are two kinds of competent authorities in SEA in Spain. The so-called substantive competent body, which is that body of the public administration at the state, autonomic or local level holding the competence to integrate and control the environmental aspects at the context of the assessment of the plan as well as to prepare the plan. It is responsible for adopting the Environmental Report of the SEA. The environmental body, which is the body of the state or autonomic public administration, is competent to assess the scope of the plan and its effects on the environment.

In the Renewable Energy Plan 2011-2020, the substantive competent body is the Secretary of State for Energy from the Ministry of Industry, Tourism and Trade. The environmental body is the General Directorate of Environmental Quality and Assessment from the MERMA.

4.1.3. Short description of procedure of public consultation

Since the SEA procedure was initiated on April, 2010, the preliminary consultation of the initial document took place on 30 May 2010, where 105 administrations were requested for consultation during a period of 30 days.

Afterwards, the preliminary version of the Renewable Energy Plan 2011-2020, including the Sustainable Environmental Report, were submitted for public consultation on 30 July 2011 during a period of 45 days. During this procedure many interested parties, like national and autonomous communities administrations, sent their comments and opinions to the environmental body. These were: 10 state ministerial departments, 36 autonomous communities departments, an environmental NGOs (Greenpeace), a provincial body, a social organization and a citizen's grassroots group.

4.1.4. Short description of transboundary consultation

We have no information on whether there was a transboundary consultation.

4.2. Content

4.2.1. Does the assessment of the current state of the environment concern climatic factors?

The assessment carried out by the environmental body includes concerns on climatic factors as an environmental element necessary to be taken into account for the establishment of facilities aimed at energy production. The Environmental Sustainability Report mentions the climate variability of the Iberian Peninsula, with erratic rainfall among the East-South (dryness area) until to the semi-desert climate located in Almería-Murcia, and the North-West Regions where the level of precipitations is high. Other determinant aspects are the altitude influencing on precipitations, and the existence of a large coastal fringe (4.600 km) providing special climatic features caused by the proximity to the sea.

The development of the plan will take into consideration the climatic conditions along the Spanish territory; therefore it must take into account the Sub-Tropical climate of the Canary Islands, and the Mediterranean Oceanic Climate of the Balearic Islands¹¹.

4.2.2. Does the assessment evaluate the likely impacts of the plan/program on climate?

The assessment of the REP, in theory, observes the climatic conditions and the natural heritage at the moment of setting up in each territory the different elements and installations of each energetic sector.

The Environmental Sustainability Report analyzes the impacts climate change may have in the energy sector. But as mentioned before, the REP reflects the favourable impacts on climate change to reduce it.

¹¹ Pag. 41 Environmental Sustainability Report, point 3.1. Environmental Elements and Territorial Zones to be considered in the REP.

4.2.3. Had the Preparer received opinions - from authorities, from the public or neighboring countries - adverting priority of climate change?

Some public administrations, at state and regional level, and NGO's have participated along the public consultation procedure¹², sending comments to the substantive competent body, adverting about the priority of climate change at the implementation and development of the REP 2011-2020.

Only four public entities have mentioned expressly their concern on carrying out climate change adaptation measures. Firstly, the Spanish State Secretariat of Climate Change noted that it was important to take into consideration the Special Report on Renewable Energy Sources and Climate Change Mitigation (SRREN) as well as the objectives contained at the Spain's National Plan for Adaptation to Climate Change¹³ which concerns the need to evaluate the different climate regional scenarios when producing energy from renewable sources. In addition, it claims further attention of the REP to climate adaptation measures, rather than mitigation measures for achieving an effective reduction of GHG and other pollutants.

Likewise, Extremadura Autonomous Community requests the implementation at the regional level of the objectives of the international strategy to combat climate change. It also suggests that the REP 2011-2020 takes into consideration the Climate Change Strategy for Extremadura 2009-2012).

Finally, the Autonomous Communities of Madrid and La Rioja advised to take into consideration the environmental criteria included at the different plans and strategies to combat climate change and for the sustainable development of the energy sector in Europe.

The NGO Greenpeace¹⁴, although have not made express reference to climate change, probably because, it is was considered in the procedure. However, it denounces the lack of commitment by the Spanish Government to comply with the renewable energy target commitment as initially the draft plan included an initial target of 22,7% and was decreased to 20,8%. Furthermore, the participation of renewable energies in the electricity consumption was reduced from 42,7% to 38,1%.

¹² Summary of the public consultation procedure available at Annex II of the Sustainable Environment Report

¹³ Plan Nacional de Adaptación al Cambio Climático, available at http://ec.europa.eu/clima/policies/adaptation/docs/pna_v3_en.pdf

¹⁴ Comments submitted by Greenpeace available at http://www.greenpeace.org/espana/Global/espana/report/cambio_climatico/2011_2012_Alegaciones%20PER%202011_2012_GP.pdf

4.2.4. Were these comments or recommendations meaningfully taken into account?

In spite of having called and send information requests to the MAFE and to the Ministry of Industry, they have not provide us a copy of the Memoria Ambiental which is the final document of the SEA procedure where this information is contained. In fact, this document is not available in the web sites of both Ministries. Therefore, it is a case of non-compliance with Article 7 on dissemination of environmental information of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

5. Current status

5.1. of the plan/program

The Renewable Energy Plan 2011-2020 was approved by resolution of the Council of Ministers on November 11, 2011. Although it is available in websites it was not publish in the Spanish Official Journal.

However, the Spanish Government has adopted on 27 January 2012 Royal Decree 1/2012, which implies the provisional suspension of the procedures on pre-assignment of the retribution for renewable energies, and the suspension of economic incentives for establishing new energy production plants based on renewable energy sources, waste and cogeneration. According to the Government, this measure does not compromise the security of energy supply and the fulfillment of the targets set out on Directive 2009/28/EC on the promotion of the use of energy from renewable sources. However, this is not correct and in fact it put in danger the achievement of the targets contained in that Directive and the implementation of the REP 2011-2020.

5.2. of the SEA procedure

After the adoption of the Renewable Energy Plan on November 2011, starts the monitoring and control stage of the SEA according to the Sustainable Environmental Report. The Ministry of Industry, Tourism and Trade through IDAE has established a monitoring program consisting of an annual report which will assess the environmental effects caused by the application of the PER, trying to identify those unforeseen adverse effects and setting up the corrective actions needed. The first monitoring Report of the REP 2011-2020 is to be published in the first semester of the year 2013.

6. Conclusions

The climatic factors and climate change aspects were taken properly into consideration in the analysed SEA. However, we were not able to do an in-depth assessment on whether the comments submitted by the public concerned were taken into consideration as we had no access to the Memoria Ambiental. The lack of dissemination of this report in websites or an indication of where to obtain information shows a problem of compliance with the access to environmental information legislation. In addition, we must conclude that the lack of publication in the BOE of the REP 2011-2020 makes it weaker.

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