

## 1. General Provisions

### PRESIDENCY

*SPANISH LAW 2/2007, of 27 March, for the promotion of renewable energies and energy saving and efficiency in Andalusia*

THE PRESIDENT OF THE REGIONAL GOVERNMENT OF ANDALUSIA INFORMS ALL THOSE WHO MAY SEE THE PRESENT DOCUMENT:

That the Parliament of Andalusia has approved and I, on behalf of the King and by the authority invested in me by the Constitution and the Statute of Autonomy, order the publication of the following:

LAW ON THE PROMOTION OF RENEWABLE ENERGIES AND ENERGY SAVING AND EFFICIENCY IN ANDALUSIA

### PREAMBLE

I

Energy, which is essential for life, also plays a key role in economic and social development. However, the rapid increase in the demand for energy has resulted in the over-exploitation of conventional sources of primary energy, i.e. fossil fuels, and the relegation of renewable energy sources, which were initially considered less powerful and accessible from a technical and economic viewpoint.

The energy consumption pattern has led to changes, sometimes undesirable, in the natural environment in some areas: climate change and other undesirable effects on the planet Earth are a direct or indirect consequence of the energy system that exists even today.

The alternative for achieving sustainable development (the balanced integration of economic, social and environmental development) requires the implementation of a new "energy paradigm" to serve as a basis for creating energy systems which promote energy saving and efficiency, as well as the gradual replacement of conventional energy sources by renewable ones.

In order to guarantee a certain standard of living for all citizens, energy saving should be given priority over energy consumption.

The use of local energy sources, efficient technologies and minimising energy consumption in transportation are all necessary measures.

Saving and improved efficiency within the system, an improved and more even distribution of final energy and, in any case, the gradual replacement of conventional energy sources (exhaustible and polluting) by renewable ones (inexhaustible or sources that may be recovered within such a short space of time that their consumption over time can be predicted and are much less polluting) are unavoidable elements of the process of changing the energy system, in particular, when there have been excellent technological developments in the collection of renewable energies, including hydrogen as an energy sector offering a high level of energy and environmental benefits.

Andalusia is rich in renewable energy sources. It is therefore an ideal area for transforming the energy model as approved by the European Union. This transformation consists of replacing conventional primary energy sources with renewable ones, at least initially, until the objective established in the 1997 White Paper on Renewable Energies issued by the European Commission, which states that by 2010, at least 12% of the total demand for primary energy in Europe shall be supplied using renewable energy sources, has been reached. In Andalusia this objective has been assumed by the Andalusian Government, who has increased the goal to 15% of the demand for primary energy in the Autonomous Community, as established in the Andalusian Energy Plan (PLEAN – *Plan Energético de Andalucía*) 2003-2006, adopted by Spanish Decree 86/2003, of 1 April. The Andalusian plan has been created within the framework of the Spanish state planning developed through the Spanish Renewable Energies Plan 2005/2010 and the Spanish Strategy for Energy Saving and Efficiency 2004-2012.

This Law facilitates the exploitation of the Andalusian natural resources by managing their more rational and adequate use, as established in article 45 of the Spanish Constitution and included in European, Spanish and Andalusian energy plans.

Research, technological development, innovation, manufacturing and training linked to the new energy models and systems may provide the means to strengthen Andalusia's own technology and transfer this to other countries, thus establishing permanent sources for creating value and wealth.

The Government of the Autonomous Community of Andalusia is working in this direction, by approving decrees and operational plans from the different Regional Ministries.

## II

As a fundamental principle for the promotion of renewable energies, this Law recognises the primacy of renewable energies over other sources, in compliance with the corresponding provisions established in Directive 2001/77/EC of the European Parliament and the Council, of 27 September 2001, on the promotion of electricity produced from renewable energy sources in the internal electricity market.

This Law also regulates the promotion of energy saving and efficiency, as part of the couple formed together with the aforementioned statement of primacy of the renewable energy. Energy education must be promoted as part of environmental education, from schools to awareness programmes, so that citizens and productive sectors respect and collaborate in achieving the general interests pursued in the present Law.

Article 13.14 of the Statute of Autonomy for Andalusia, adopted by Spanish Organic Law 6/1981, of 30 December, grants the Autonomous Community exclusive rights on installations for the production, distribution and transportation of energy, whenever these are contained within Andalusia and their exploitation does not affect other territories.

By the Agreement of 3 September 2002, the Governing Council approved the adoption of an autonomous strategy faced with climate change. One of the regulatory proposals included in this strategy is the drafting of a Bill on Energy Saving and Efficiency and the Promotion of Renewable Energies. Subsequently, by the Agreement of 27 January 2004, the Governing Council approved the Andalusian Strategy for

Sustainable Development: Agenda 21 in Andalusia, the guidelines of which include the promotion of renewable energies, the reduction of Andalusia's energy dependence, the promotion of energy saving, the establishment of instruments for energy improvements and the promotion of the construction of energy efficient homes.

Likewise, the Plenary Meeting of the Parliament of Andalusia, in a session held on 11 June 2003, approved the presentation of a Bill on the Promotion of Renewable Energies.

Within the framework of state legislation and the scope of competences for legislative development of the Autonomous Community of Andalusia, the present Law is also based on the powers regarding mining and energy and the protection of the environment granted by article 15.5 and 7 of the Statute of Autonomy for Andalusia.

## III

The Law includes five titles, three additional provisions, a temporary provision, a repealing provision and two closing provisions.

The Preliminary Title, under the heading Provisions and General Principles, describes the object, purpose and scope of the Law based on article 45 of the Constitution. It incorporates its commitment to plans established by the European Union and Spain to promote renewable energies, including the Andalusian Energy Plan (PLEAN), approved by Spanish Decree 86/2003, of 1 April. In anticipation of the specific measures included in the Law, the title highlights the general obligations for energy saving. The title also emphasises the provision of the Autonomous Community to accept competences transferred from the Spanish state so that they may exercise these autonomously, since this is more favourable to the common good. The statement of primacy of the renewable energy is particularly important and has significant consequences on powers and obligations. The Law therefore forms part of the various European initiatives to make the increased implementation of these energies possible in 2010.

Finally, the title also refers to incentive measures, which are crucial in ensuring that the Law is effective. It notes those incentives

and motivations which may be most efficient within the framework of taxation and financial legislation.

Title I outlines the principles and instruments for promoting renewable energies. It establishes the primacy of renewable energy and the criteria for determining the order of priority for the different energy sources. It then lists the different promotional measures according to the different types of renewable energy.

It establishes the obligation of the Regional Government of Andalusia to incorporate renewable energy into its buildings and installations.

As a means of incorporating renewable energy into regulations on land use planning, a Programme for the Promotion of Renewable Energies is being prepared, as well as, where appropriate, the corresponding territorial programmes, therefore establishing a specific urban planning procedure for implementing the production of energy using renewable sources.

Title II regulates energy saving and efficiency, beginning with the mandate issued to public authorities to establish the necessary legal instruments required to promote it. The title also introduces a series of measures with the aim of promoting energy saving and efficiency in general. The creation of an Energy Performance Certificate is innovative. The certificate will be obligatory over a certain level of energy consumption, which will subsequently be developed according to the sector to which it is applied.

Title III establishes alternatives for introducing principles for cooperation into the Public Administrations system, as well as dynamic decentralisation and social collaboration in the management of energy resources, thus making participation possible, taking into account public and private collaborating bodies. This title also aims to consolidate measures for coordinating and streamlining procedures.

And finally, Title IV deals with the standardisation and regulation of the State's *ius puniendi* application via the Autonomous Community's exercising of its sanctioning power.

## PRELIMINARY TITLE

### GENERAL PROVISIONS AND PRINCIPLES

Article 1. Object, purpose and scope of application

1. The object of the present Law is to encourage the use of renewable energies, promote energy saving and efficiency (from production to consumption), as well as to order the rational use of energy resources within the Autonomous Community of Andalusia, under the principle of collective solidarity regarding the use of energy.

2. Renewable energy planning includes its natural sources, collection areas, the technical instruments applied and the energy obtained.

3. The purpose of the present Law is to achieve a quality sustainable energy system.

4. The provisions of this Law are also aimed, within the framework of energy planning on the part of the Regional Government of Andalusia, at complying with the plans, programmes and regulations established by the European Union and Spain regarding energy saving and efficiency, the promotion of renewable energies and the reduction of greenhouse gases in Andalusia, in keeping with the commitments acquired by the Spanish State as a result of their adhesion to the Kyoto Protocol.

5. The Regional Government of Andalusia has the competence to prepare and approve plans and programmes for the application of this Law and the remaining current regulations.

Article 2. Definitions.

For the purpose of the provisions in the present Law and its regulations on development, the terms listed below will be understood as follows:

a) Energy saving: reduction in the consumption of primary energy in energy consumption centres via the implementation of technical or non-technical measures, while maintaining compliance with the established objectives at all times, and without any reduction in quality, productivity, physical security of persons and property and without causing a greater environmental impact than the original situation.

b) Biofuels: fuels from biological sources. Two large groups have been distinguished: biodiesel and bioalcohol.

c) Biogas: gas obtained from anaerobic digestion (decomposition in the absence of oxygen) of biodegradable materials which may be used for energy.

d) Biomass: group of renewable organic material of vegetable or animal origin or from natural or artificial transformation of this material.

e) Energy consumption centre: building or installation which consumes or produces energy.

f) Cogeneration: the simultaneous production of electrical and/or mechanical energy and useful thermal energy.

g) Energy consumption: equivalent quantity of primary energy actually or forecast to be consumed by a consumption centre.

h) Reference consumption: average equivalent quantity of primary energy consumed by a sector, activity or process.

i) Energy demand: theoretical quantity of energy required for a consumption centre to operate.

j) Energy efficiency: ability of a use, equipment, installation or process to carry out its operations with the least energy consumption possible.

k) Isolated sites: installations consuming electrical energy which are located in zones away from the electricity distribution network, zones that are difficult to access or on certain land specifically established by regulation.

l) Wave power: energy from the movement of water in the form of waves.

m) Wind power: exploitation of wind energy, mainly for electricity production.

n) Geothermal energy: energy from heat produced inside the Earth.

o) Water Power: exploitation of energy contained in a mass of water, whether this be due to its height or movement.

p) Tidal power: energy produced by the natural phenomenon of the rise and fall of sea levels caused by the gravitational pull of the moon or sun, which may be exploited to produce electricity.

q) Primary energy: energy which has not been subjected to any conversion process.

r) Primary energy equivalent: quantity of primary energy required to produce the final energy consumed by a certain use.

s) Renewable energy: energy from renewable primary energy sources.

t) Solar power: energy contained in solar radiation, which can be transformed into thermal, electrical, biological or chemical energy by using the correct devices.

u) Atmospheric thermal energy: energy contained in the atmosphere as a result of its thermal level, the exploitation of which is considered a form of renewable energy.

v) Renewable primary energy sources: sources which are inexhaustible or may be recovered within such a short period of time that their consumption may be predicted. For the purposes of this Law, the following have been identified as such sources: solar, wind, water, biomass, geothermal, tidal, wave power, and atmospheric thermal energy.

w) Biomass installation for electrical uses: that in which biomass exploitation is used to produce electrical energy as its final use. It may also be used for cogeneration processes, obtaining both heat and electricity simultaneously.

x) Biomass installation for thermal uses: that in which biomass exploitation is used to produce thermal energy for the purpose of producing hot water, hot air and steam, among others.

y) Photovoltaic solar installation: that in which solar power exploitation is based on the photovoltaic effect to directly produce electricity.

z) High-temperature thermal solar installation: that in which solar power exploitation is based on the photo-thermal effect and used to produce steam for generating of electricity and/or heat. Temperatures greater than 300°C are normally used for this technology.

aa) Low-temperature thermal solar installation: that in which solar power exploitation is based on the photo-thermal effect for heating a thermal fluid up to a temperature of approximately 90°C.

ab) Medium-temperature thermal solar installation: that in which solar power exploitation is based on the photo-thermal effect for heating a thermal fluid up to temperatures between 90 and 300°C, approximately.

ac) Energy efficiency of equipment, system or activity: ratio between demand for and energy consumption.

ad) Waste: any substance or object belonging to the categories outlined in the schedule of Spanish Law 10/1998, of 21 April, on Waste, the owner of which has got rid of it, or intends to or is obligated to get rid of it and which may be used to produce energy.

#### Article 3. General Principles.

The inspirational principles of the present Law are as follows:

a) The primacy of the production and use of renewable energy sources over other primary energy ones.

b) The promotion of more viable practices which make energy saving and efficiency possible, including the use of systems which guarantee efficient transformation of primary energy sources into final energy.

c) Collective solidarity in the use of energy.

d) The territorial unification of the energy system based on a distributed generation in such a way that minimises loss during transportation and energy distribution.

e) Cooperation between administrations, in cases that coincide with the competences of the State or where the latter has competence, to approve and manage installations on land and sea, which fall under the scope of this regulation.

#### Article 4. Primacy of renewable energy.

1. The present Law guarantees access to renewable energy sources, with the exceptions and conditions for compatibility of use established by regulation.

2. Renewable energy will be given primacy over conventional energy. This will be reflected in energy planning and will have an effect on urban planning in accordance with article 11 of the present Law.

3. With the aim of guaranteeing the use of renewable energy sources to obtain final energy, the exploitation of goods and rights necessary for its generation, transportation, distribution and exploitation, has been declared of public or social interest, for the purposes of expropriation and of imposition and exercise of easements.

#### Article 5. Obligations for energy saving and efficiency.

1. Citizens, institutions and public authorities must use energy rationally, by

using efficient systems and ensuring the maximum saving possible.

2. The Regional Government of Andalusia will approve the necessary regulations aimed at directing behavioural patterns and will establish mechanisms, such as training and information, for compliance with the obligations established in the previous paragraph.

#### Article 6. Collective solidarity.

1. The principle of collective solidarity, which represents the responsibility shared by citizens, institutions, productive sectors and public authorities, is recognised with respect to the use of energy in such a way that sustainable development is guaranteed.

2. With regards to energy resources, public authorities will encourage the combined use of energy, thus promoting real and effective social collaboration.

#### Article 7. Impact of plans and programmes.

1. Regulations which approve plans and programmes in implementation of this Law may establish recommendations and directives, as well as direct prescriptions.

2. For the purposes of this Law, directives are binding decisions in terms of the objectives to be achieved while the means of doing so may be discretionally selected, and recommendations are decisions for exemplary purposes.

#### Article 8. Incentive measures.

1. Economic, financial, taxation and fee incentives will be applicable.

2. The competent Regional Ministry in terms of energy may establish economic incentives for the promotion of renewable energies and energy saving and efficiency.

3. The competent Regional Ministry in terms of energy will call for proposals for awards relating to renewable energies and energy saving and efficiency, which may be aimed at organisations, social movements, industries, buildings, local authorities, publicity campaigns, educational programmes or scientific work, among others.

#### Article 9. Promotion of research, development and innovation and of training.

The Administration of the Regional Government of Andalusia will promote

activities in terms of scientific research, technological development and innovation in the interest of renewable energies and energy saving and efficiency, strengthening industrial development and collaboration among companies within the sector and agencies of the Andalusian knowledge system.

Similarly, the Administration of the Regional Government of Andalusia will encourage and promote training on renewable energies and energy saving and efficiency at all levels of the Andalusian education system and as part of professional training in the workplace.

## TITLE I

### RENEWABLE ENERGIES

Article 10. Priority and primacy of the renewable energy.

1. As confirmation of the general principle established in articles 3 and 4, the primacy of renewable energy is recognised in the access and connection to transportation and distribution networks. All useful energy from renewable energy sources offered to the corresponding electrical system subjects referred to in article 9.1 of Spanish Law 54/1997, of 27 November, on the Electricity Sector, must be acquired, preferentially, under the legally established economic conditions.

2. The order of relative priority for the different renewable energy sources, in cases where their exploitation coincides, will be determined based on objective criteria relating to the greatest energy efficiency, greater environmental protection and quantity of energy produced. These will be established by regulation.

Article 11. Renewable energy sources and urban planning.

1. In accordance with the energy planning of the Regional Government of Andalusia, the competent Regional Ministry in terms of energy will prepare a Programme for the Promotion of Renewable Energies, which will take into account the constraints regarding land, the environment, culture, urban planning and infrastructures established in other plans. The aforementioned promotional programme will be considered a plan which may impact land

use planning established in the provisions of section I of the schedule to Spanish Law 1/1994, of 11 January, on Land Use Planning in the Autonomous Community of Andalusia.

2. The Programme for the Promotion of Renewable Energies may be developed and established within the community via territorial renewable energy programmes for certain areas. These will also be considered as plans which may have an impact on land use planning. The territorial renewable energy programmes prepared will establish, if appropriate, areas that may be suitable for infrastructures for the generation and transformation of renewable energy, as well as channels required to evacuate the energy produced. These zones will be known as Preferential Areas for Renewable Energy Exploitation.

3. Land-use and urban planning will ensure, within the framework established in such plans, that this use will be given preference in spaces linked to renewable energy generation and transportation planned for those preferential areas contained in the territorial programmes outlined in the previous paragraph. However, land use planning may justifiably establish alternative locations for these spaces, ensuring that the general objectives of energy planning and coherence between them all are achieved.

Article 12. Implementation of actions for electrical energy production via renewable energy sources and urban planning procedures.

1. The construction or installation of infrastructures, services, resources or equipment for generation via renewable energy sources, including transportation and distribution, when under the competence of the Autonomous Community of Andalusia, whether they be by public or private development, will be considered of public interest actions, for the purposes of Chapter V from Title I of Spanish Law 7/2002, of 17 December, on Urban Planning in Andalusia.

2. In addition to the application for authorisation of the installation to be granted by the competent Regional Ministry in terms of energy and the sector documentation required, the developer of such projects must produce an annex describing the applicable urban planning decisions, an

analysis of compliance with these and a urban suitability report issued by the Town Council of the municipality where the development is planned.

As part of the authorisation procedure for the aforementioned actions, the competent Regional Ministry in terms of energy will require a report from the competent Regional Ministry in terms of urban planning on the land-use or urban planning suitability of the proposed action. If any of the reports indicated in the present paragraph states that the project does not comply with land-use or urban planning regulations, the competent Regional Ministry in terms of energy will issue a written ruling laying out the reasons for blocking the procedure and will file the actions.

3. For such actions, the unification of the proceedings for public information included in the procedures for municipal authorisation and of the different competent bodies involved will be established by regulation.

4. Under the framework of the corresponding energy planning in force, for actions regarding the construction or installation of infrastructures, services, resources or equipment for generation via renewable energy sources, including transportation and distribution, the provision of a security established in article 52.4 of Spanish Law 7/2002, of 17 December, will not be applicable. However, the ruling approving the project for the execution and dismantling to be issued by the competent Regional Ministry in terms of energy, shall include the guarantee amount required to restore the environmental and landscape conditions of the land and immediate surroundings, in compliance with article 52.6 of Spanish Law 7/2002, of 17 December.

5. For public interest actions relating to electrical energy generation and evacuation via renewable energy, with an installed capacity greater than 10 MW, the approval of the project for action or special plan, if applicable, established in paragraph 3 of article 42 of LOUA (Andalusian Law on Urban Planning) will be replaced by a favourable report by the competent Regional Ministry in terms of urban planning. For this purpose, prior to obtaining planning permission and after receiving the corresponding authorisations, the developer shall request the aforementioned report by submitting the corresponding documentation.

6. In the case of actions included in territorial renewable energy programmes, which have been developed at the same time via a Special Development Plan, the Final Design will be sufficient for its implementation, since, among other aspects, it will outline in sufficient detail the group of constructions, installations and modifications required by the action.

7. These actions will require the grant of the corresponding municipal planning permission, as well as the aforementioned authorisations required in accordance with the applicable regulations.

Article 13. Equipment and installations for obtaining useful energy from renewable energy sources.

It is the responsibility of the competent Regional Ministry in terms of energy to establish the technical specifications for the equipment and installations required for renewable energy collection and its transformation into useful energy.

Article 14. Renewable energy in public buildings and installations.

Public buildings and installations belonging to the Regional Government of Andalusia and its autonomous bodies shall incorporate solar installations, which may be supplemented or replaced by any other installation for renewable energy exploitation via cogeneration or the exploitation of waste heat. The requirements and exceptions will be determined by regulation, paying particular attention to the following situations:

Planned use of the building or installation

Planned energy consumption

Limitations to sun access due to external barriers

Limitations due to the prior configuration of the building or installation, or the applicable urban planning regulations

Restraints due to the building or installation being fixed to a listed building

Integration in terms of architecture, aesthetics and the landscape

Ratio between the cost of the measures to be taken and energy saving obtained

Article 15. Obligation to promote renewable energies.

Within the territorial scope of Andalusia, the public authorities will implement the

necessary instruments to encourage, promote and, if applicable, provide incentives for behaviour and action to promote renewable energies which demonstrate collective and social collaboration.

Article 16. Measures to promote solar power.

1. Public Administrations in Andalusia will adopt measures to promote solar installations.

2. Newly constructed buildings and extensions, modifications, reforms or improvements which alter the architectural structure of the building, as defined in article 2.2.b) of Spanish Law 38/1999, of 5 November, on Building Planning, shall incorporate thermal solar installations for hot water using gas as an auxiliary energy. The installations may be supplemented or replaced by any other installation for renewable energy exploitation, cogeneration or the exploitation of waste heat. The requirements and exceptions will be established by law.

3. Systems for collecting and transforming solar power via photovoltaic procedures shall be incorporated into such buildings and for those uses and constructed surfaces established by regulation, always taking into account the circumstances outlined in article 14.

Article 17. Measures for promoting and exploiting biomass.

1. The Administration of the Regional Government of Andalusia will regulate the exploitation of biomass energy and develop measures to promote its use.

2. The procedure for the recovery of agricultural, livestock, urban, industrial and forest waste will be established by regulation to guarantee energy exploitation from such waste and minimise emissions into the atmosphere and the risk of fire.

3. In order to increase the potential of biomass available in the Autonomous Community of Andalusia, the Administration of the Regional Government of this Community will prepare programmes to promote energy crops.

4. Farms participating in the aforementioned promotional programmes must meet a series of requirements which

will be established by regulation to guarantee their overall sustainability.

5. The owners of sites or installations with the potential to produce biogas must exploit this energy in accordance with the established regulations. The Administration of the Regional Government of Andalusia and the local authorities will promote the installation of systems to produce, collect and exploit biogas and will encourage, wherever viable, the treatment of waste using anaerobic digestion which allows the simultaneous production of biogas and compost.

Article 18. Measures for the promotion and use of biofuels.

1. The Administration of the Regional Government of Andalusia will develop a programme on biofuels to promote this energy source.

2. The programme will promote in particular the use of biofuels in agricultural machinery, fishing fleets and sea transport with regular operations within the Autonomous Community of Andalusia.

3. Public buses operating regular passenger services, within the competence of the Local Authorities or the Administration of the Regional Government of Andalusia, shall use biofuels.

The conditions of compliance with these measures will be established by regulation, taking into account the following factors, among others: territorial scope of action, potential consumption of biofuel, impact in large urban towns, fleet size, level of environmental protection in the area and ratio between the cost of adopting the measures and the energy saving obtained, as well as the reduction in net CO<sub>2</sub> emissions.

Article 19. Projects in isolated sites.

For projects requiring electrical energy in isolated sites where there is sufficient wind or water resources, the project developer shall be obliged to incorporate systems to exploit these primary energies, in compliance with the current environmental regulations and those to be established. The aforementioned installations may be developed in such a way that they combine other sources of renewable energy.

## TITLE II

## ENERGY SAVING AND EFFICIENCY

Article 20. Promotion of energy saving and efficiency.

1. The competent public authorities will establish the necessary legal instruments to encourage energy saving and efficiency.

2. Land-use and urban planning, within the framework of the provisions established by the aforementioned instruments, will contribute to reducing mobility requirements, promote the use of public transport, meet the needs of energy supply infrastructures and optimise the energy exploitation of buildings.

Compliance with the above measures will be justified in planning instruments.

3. The Administration of the Regional Government of Andalusia will establish by regulation a series of specific construction requirements as a measure for energy saving and efficiency in order to improve building quality, taking into consideration the climate conditions in each area within Andalusia.

Article 21. Programmes on energy saving and efficiency

The competent Public Administrations will approve programmes on energy saving and efficiency which include the measures required to reduce energy demands, as well as to increase energy efficiency, or actions to combine both. The preparation of such programmes will include a high level of social and institutional participation.

Article 22. Rationalisation of Energy Consumption.

1. The public authorities will promote and provide incentives for changes to behavioural patterns leading to reduced consumption, via research, informative, training, awareness and publicity activities, among others. For this purpose they may request the collaboration of the Public Administrations, natural or legal persons or social organisations.

2. In order to reduce energy consumption in the transport sector, Public Administrations will promote the adoption of sustainable mobility plans in urban agglomerations and in new urban developments.

Article 23. Increased energy efficiency.

1. In order to increase energy efficiency, the replacement of obsolete equipment and installations will be promoted, as well as the modification of processes, improvements in preventative maintenance and actions to control and monitor equipment, processes and installations, in addition to high energy-efficient systems based on cogeneration.

2. The Andalusian Public Administrations will develop actions for the promotion of and to provide incentives to replace equipment and installations with more efficient ones, energy audits, research, technological development and innovation leading to more efficient energy processes and preventative maintenance plans for equipment, processes and installations.

Article 24. Promotion of energy saving and efficiency in Andalusian Public Administrations.

The Andalusian Public Administrations shall implement energy saving and efficiency measures within their own installations and activities.

Article 25. Energy Performance Certificate.

1. The Energy Performance Certificate is a document supporting compliance with energy requirements for new energy consumption centres. The level of primary energy consumption will be established by regulation for each activity sector and the certificate will be required based on this consumption, while also considering other factors such as potential energy saving by applying better techniques available.

2. Every new energy consumption centre that must have an Energy Performance Certificate shall include the minimum provisions and requirements established by regulation in the technical specifications.

The project management team in charge of the construction or installation of an energy consumption centre will be responsible for ensuring that the project meets the energy requirements established in the specifications.

Tests and inspections may be carried out during the construction or installation phase to check compliance with the energy

provisions established in the technical specifications.

3. Those energy consumption centres which must have an Energy Performance Certificate shall have obtained the certificate before being granted the first occupancy licence or start-up.

4. Energy supplies to consumption centres which must but do not have an Energy Performance Certificate is prohibited. To ensure compliance with this obligation, energy supply companies must request the certificate before signing the corresponding contract. The energy supply cannot be contracted nor begun until the supplier has received a copy of the aforementioned document.

Article 26. Scope of the Energy Performance Certificate.

1. The following energy consumption centres must have an Energy Performance Certificate if they exceed the primary energy consumption level referred to in paragraph 1 of the previous article:

a) Buildings: All newly-constructed buildings, with the following exceptions:

Buildings for the use of which requires that they remain open, except those included under Installations.

Provisional constructions to be used over a period equal to or less than two years.

Isolated buildings with a total usable surface area less than 50 m<sup>2</sup>.

b) Installations: The following new installations:

Industrial installations outlined in article 3.1. of the Spanish Industry Act 21/1992, of 16 July.

Installations for the preparation, collection or exploitation of mining resources established in the Spanish Mining Act 22/1793, of 21 July.

The food, agricultural, livestock, forest and fishing industries.

The arms and explosives industries.

The pharmaceutical and other medical products industries.

Electricity generation installations outlined in article 1 of Spanish Law 54/1997, of 27 November, on the Electricity Sector.

Refinery installations for petroleum products and those used for the production, liquefaction, regasification and packaging of gaseous fuels.

Installations for street lighting and traffic lights, as well as those for water pumping and treatment

Any other installation established by regulation.

2. An Energy Performance Certificate will also be required for enlargements to energy consumption centres, when they result in an increase of more than 30% above the previous primary energy consumption level, with the exceptions included in the previous paragraph.

Listed buildings and monuments forming part of a protected area or of particular architectural or historical value are exempt from this obligation when compliance with such requirements could have a negative impact on its nature or appearance.

Article 27. Content and issuing of Energy Performance Certificates.

1. Technical decisions and the procedure for issuing, modifying and controlling Energy Performance Certificates, as well as any exceptions, will be controlled by regulation for each activity sector. The body responsible for issuing the certificate will be indicated in each case. This may be carried out by the competent body in terms of energy, the approved collaborating bodies in accordance with article 29 of this Law, or the control bodies accredited for the regulatory field of buildings and their thermal installations.

2. The Energy Performance Certificate shall at least contain the Energy Efficiency Index (EEI), which is the ratio between the actual or forecast consumption by an energy consumption centre and the reference consumption of such centre. The index can not exceed that established by regulation according to the type of building, installation or activity.

3. The owner of the energy consumption centre is responsible for modifying the Energy Performance Certificate in accordance with the conditions established by regulation.

## TITLE III

ADMINISTRATIVE ORGANISATION,  
PROCEDURE AND MECHANISMS FOR  
COLLABORATION

Article 28. Administrative cooperation and social collaboration.

1. The competent Regional Ministry in terms of energy shall promote the administrative collaboration and cooperation required for the implementation of this Law.

2. The Public Administrations will cooperate, within their respective scopes, in managing the competences granted by this Law, in compliance with the interests of the common good.

3. Activities involving materials, technology or services may be carried out by local bodies or institutions specialising in energy, as well as associations or social or cooperative organisations and natural or legal persons, in compliance with the regulations applicable in each case.

Article 29. Administrative control and approved collaborating bodies in terms of renewable energies, energy saving and efficiency.

1. The competent Regional Ministry in terms of energy may check compliance with renewable energies and energy saving and efficiency regulations at any time, either themselves or via approved collaborating bodies.

2. Approved collaborating bodies in terms of renewable energies, energy saving and efficiency will be public or private legal authorities, established for the purpose of checking compliance with the obligations established in the present Law, within their respective terms of authorisation.

3. Certifications or inspection and check reports carried out by approved collaborating bodies in terms of renewable energies and energy saving and efficiency will have probative value.

4. The requirements, operational regime and procedure for granting authorisations of the approved collaborating bodies in terms of renewable energies and energy saving and efficiency will be established by regulation.

Article 30. Administrative Procedure.

The competent Regional Ministry in terms of energy will be responsible for initiating, directing and resolving procedures relating to the present Law.

As a means of simplifying and streamlining the administrative procedure, information and communication technologies will be incorporated to facilitate processing via telematic and electronic means.

Instruments for coordination with other Public Administrations will also be established in order to achieve a unified service to citizens.

Article 31. Duration and resolution of special regime procedures.

1. Procedures for granting approval to special regime installations, included in article 2 of Spanish Royal Decree 436/2004, of 12 March, which establishes methodology for updating and systematising legal and economic systems corresponding to the special regime production of electrical energy, the aim of which is to approve action included in current plans or programmes that fall within the scope of the objectives established in the present Law, will have a maximum duration of three months. If, at the end of this period, the interested party has not received any written notification of the resolution, the party may assume that the application has been dismissed due to failure by the administration to reply.

2. When the aforementioned action is not included in current plans or programmes, authorisation procedures will take a maximum of six months. If at the end of this period, the interested party has not received any written notification of the resolution, the party may assume that the application has been dismissed due to failure by the administration to reply.

## TITLE IV

## VIOLATIONS AND PENALTIES

Article 32. Violations.

1. Actions or omissions which are attributable to natural or legal persons falling within their scope and are included in and penalised by virtue of the following articles without prejudice to public, criminal or any other type of liability which may be assumed, will be considered administrative violations as regards the content of the present Law.

2. The verification, charge and sentence of such violations will require prior investigation of the corresponding procedure.

Article 33. Very serious violations.

The following are considered very serious violations:

a) Non-compliance with regulations established in plans or programmes approved by virtue of the present Law, in cases where this has resulted in serious injury or damage to third parties or the common good.

b) Unjustified denial of access or connection to electricity distribution or transportation networks for renewable energy installations or highly efficient generation systems included under special regime electricity generation, which meet the regulatory requirements.

c) Modification of any of the specifications for consumption centres causing them to exceed the Energy Efficiency Index (EEI) established by regulation by more than 100%.

d) Start-up of energy consumption centres by their owners without having obtained the Energy Performance Certificate, which they are obligated to have.

e) The supply of any type of energy from energy suppliers to energy consumption centres which have not presented the Energy Performance Certificate prior to finalising the supply contract.

f) Actions or omissions representing an abuse of the process of the court in relation to renewable energy sources and measures for energy saving and efficiency, in cases where this has resulted in serious damage or injury to third parties or the common good.

g) Concealing or altering information required to prepare the Energy Performance Certificate, as well as refusal or continuous delays in giving such information, providing that there is no reasonable justification.

h) Refusal of the owners of energy consumption centres to allow access, when there is a legal or regulatory obligation to agree to such request for access.

Article 34. Serious violations.

The following are considered serious violations:

a) Non-compliance with the regulations established in the plans or programmes approved as part of the present Law, when

these have not resulted in serious damage or injury to third parties or the common good.

b) Hindering the access or connection to electricity transportation or distribution networks for renewable energy installations and highly efficient special regime generation systems, which meet the regulatory requirements.

c) Unauthorised actions carried out by approved collaborating bodies in terms of renewable energies and energy saving and efficiency.

d) Failure of approved collaborating bodies in terms of renewable energies and energy saving and efficiency to comply with the provisions of the present Law or those established by the competent Administration, in cases where this results in damage or injury to third parties or the common good.

e) Modifications to any of the specifications for consumption centres causing them to exceed the Energy Efficiency Index (EEI) established by regulation by more than 30%.

f) Actions or omissions representing an abuse of the process of the court in relation to renewable energy sources and measures for energy saving and efficiency, in cases where this does not result in damage or injury to third parties or the common good.

g) Delays in complying with the requirements of this Law, in cases where this results in damage or injury to third parties or the common good.

Article 35. Minor violations.

The following are minor violations:

a) Delays in complying with the requirements of the present Law, in cases where this does not result in damage or injury to third parties or the common good.

b) Modifications of any of the specifications for consumption centres causing them to exceed the Energy Efficiency Index (EEI) established by regulation by up to 30%.

c) Those violations of the provisions included in this Law or its corresponding regulations the compliance with which is compulsory which do not constitute serious or very serious violations in accordance with the foregoing.

Article 36. Penalties.

1. The violations outlined in the previous paragraphs will be subject to the following fines:

a) Very serious violations: fine from 60,001 euros to 300,000 euros.

b) Serious violations: fine from 6,001 euros to 60,000 euros.

c) Minor violations: fine from 300 euros to 6,000 euros.

2. In order to adjust the corresponding penalties, the danger to human health, integrity of the property and the environment incurred by the violation in question, the extent of damages or injury, intention, recurrence of more than one similar violation within one year when this has been declared by *res judicata* and, if applicable, the possible profit gained, shall be taking into account, provided that these circumstances were not considered to classify such violation.

3. When a significant profit has been made as a result of the violation, the fine may be increased in an amount up to double the profit gained.

4. If an approved collaborating body in terms of renewable energies and energy saving and efficiency were responsible for the violation, the corresponding penalty would be imposed by its maximum quantity.

#### Article 37. Joint and Several Liability.

When, on implementing this Law, two or more people are found liable for a violation and it is not possible to determine the extent of their involvement, they will be held jointly and severally liable for the purpose of the penalties to be imposed.

#### Article 38. Provisional measures and cautionary provisions.

1. Once the penalty procedure has been initiated, the competent body to resolve the issue may adopt any of the following provisional measures at any time, via a reasoned agreement, for the purpose of ensuring that the issue is resolved efficiently and correctly, and to avoid the impact of the violation and safeguard the common good:

a) Immediate cancellation of work or activity in question

b) Interruption of energy supply.

c) Suspension of authorisation as an approved collaborating body in terms of renewable energies and energy saving and efficiency.

d) Adoption of corrective or preventive measures.

e) Immobilisation or shutdown of equipment.

f) Suspension of the Energy Performance Certificate.

2. In emergencies and to protect the interests involved, the competent body to resolve the issue may adopt the aforementioned provisional measures before the penalty procedure is initiated. The measures must be confirmed, modified or removed in the agreement for procedure initiation, which shall be prepared within fifteen days following its adoption.

3. The penalty resolution may adopt the cautionary provisions required to guarantee its efficacy, as long as it is still not enforceable. The provisions may include, among others, the maintenance of the provisional measures which, if applicable, would have been adopted during the file processing.

#### Article 39. Consequences of the resolution.

Without prejudice to establishing any liabilities incurred and the subsequent imposing of penalties, the commission of any violation outlined in the present Law may imply, where appropriate, the following consequences, which will not be considered penalties:

a) Immediate cancellation of work or activity in question.

b) Adoption of the necessary corrective or preventative measures.

c) Cancellation of the Energy Performance Certificate.

d) Reparation of damage which may have been caused, including settlements of damages.

e) Temporary suspension during a maximum period of one year, or cancellation of authorisations granted within the energy field.

f) Refusal to grant public aid by the Administration of the Regional Government of Andalusia, for a maximum period equivalent to the severity of the violation committed.

g) Temporary suspension or cancellation of the authorisation as approved collaborating body in terms of renewable energies and energy saving and efficiency.

**Article 40. Compulsory enforcement.**

1. In cases where the liable person does not comply with the provisions of the corresponding resolution, prior injunction or, if applicable, reparation of the damage caused, within the established period of time, the competent body may penalise this failure by approving the imposition of consecutive coercive fines per period of time for up to 10% of the budget for the activity or, if applicable, an amount which does not exceed one third of the fine established for the type of violation committed.

2. Likewise, they may also proceed to subsidiary execution at the risk of the perpetrator and at his own expense, in accordance with article 98 of Spanish Law 30/1992, of 26 November, on the Legal System of Public Administrations and the General Administrative Procedure.

**Article 41. Penalty procedure.**

The procedure for imposing penalties will be adjusted to the principles established in articles 127 to 138 of Spanish Law 30/1992, of 26 November, on the Legal System of Public Administrations and General Administrative Procedure, as well as to the regulations established by the corresponding Autonomous Community, without prejudice to particular procedures be established by regulation for imposing the penalties outlined in the present Law.

**Article 42. Personnel acting as inspectors.**

1. The civil servants working for the Regional Government of Andalusia appointed to carry out the inspections and checks established in this Law and other energy regulations will be considered as law enforcement officers in the performance of their duties. They shall be provided with full cooperation required to be able to carry out the necessary inspections and checks.

2. The personnel acting as inspectors will have the following powers, among others:

a) Access to the installations or areas under inspection, on presenting the relevant identification and without any prior notice.

b) Request information and carry out the necessary examinations and controls to ensure compliance with the current

provisions and the status of authorisations, licences and permits.

c) Check that the required documentation is in place and up to date.

d) Request the support of the security bodies and forces in the performance of their duties.

**Article 43. Competence.**

The competent Regional Ministry in terms of energy is responsible for initiating, directing and resolving penalty procedures, as well as monitoring compliance with the provisions of this Law.

**Article 44. Prescription.**

1. The violations and penalties established in the present Law will lapse as follows: very serious violations within a period of three years, serious violations within two and minor violations within six months.

2. The prescription period for a violation will begin on the day on which such violation was committed.

3. The prescription period for penalties will begin on the day following the final resolution imposing the penalty.

**First Additional Provision. Declaration of Interest on the Part of the Autonomous Community with regards to energy installations and infrastructures.**

In order to guarantee a quality supply for the population, while ensuring adequate energy efficiency, the installations for ordinary and special regime generation and infrastructures for the transportation and distribution of energy may be declared of interest to the Autonomous Community, for the purposes established in Title IV of Spanish Law 1/1994, of 11 January, on Land Use Planning in the Autonomous Community of Andalusia.

**Second Additional Provision. Adaptation of sub-regional land use plans.**

When the content of the Plan for the Promotion of Renewable Energy or a territorial energy programme impacts the provisions established in sub-regional land use plans, during the drafting stage of the aforementioned programmes, the competent Regional Ministry in terms of energy will inform the competent Regional Ministry in terms of land use planning of those

decisions which may affect the sub-regional plans, so that they may be informed of the progress made in modifying or reviewing them.

In any case, the corresponding territorial energy programmes must be approved simultaneously with the land use plans in question, which will be processed in compliance with the procedure established in Spanish Law 1/1994, of 11 January.

Third additional provision. Modification of section 1 of the schedule to Spanish Law 1/1994, of 11 January, on Land Use Planning in the Autonomous Community of Andalusia.

1. The content of point 15 in section 1 of the schedule to Spanish Law 1/1994, of 11 January, has been modified as follows: "15. Planning of energy infrastructures."

2. The current content of the aforementioned is now contained in the new point 16.

Sole temporary provision. Adaptation period for incorporating renewable energy into public buildings and installations.

1. A period of ten years, starting from the entry into effect of the present Law, has been established to adapt buildings and installations belonging to the Regional Government of Andalusia, as provided in article 14. This deadline also applies to buildings under construction or those the permits of which have been requested before this Law came into effect.

2. Buildings and installations acquired after this Law comes into effect will have a period of seven years, starting from the date of acquisition, to adapt to the provisions of article 14.

3. The buildings and installations will be adapted according to the circumstances established in article 14, and may be replaced or compensated by energy saving measures during the corresponding energy audit.

Sole repealing provision.

Regulations of equal status or inferior to and which contradict or oppose the present Law are repealed.

First closing provision. Development.

1. The Governing Council is authorised to make the development provisions in this Law.

2. The Governing Council may update the amount of the fines established in article 36 of this Law, taking into account the variations in the Consumer Price Index.

Second closing provision. Entry into force.

The present Law will come into force three months following its publication in the Official Gazette of the Regional Government of Andalusia (BOJA).

Seville, 27 March 2007.

MANUEL CHAVES GONZÁLEZ  
President of the Regional Government of  
Andalusia