

# 1. General Provisions

## PRESIDENCY

*LAW 4/2003 of 23 September, creation of the Andalusian Energy Agency*

THE PRESIDENT OF THE REGIONAL GOVERNMENT OF ANDALUSIA STATES THAT:

The Parliament of Andalusia has adopted and I, on behalf of the King and by the authority vested in me by the Constitution and the Statute of Autonomy, enact and order the publication of the following

«LAW REGARDING THE CREATION OF THE ANDALUSIAN ENERGY AGENCY

### BACKGROUND

Article 40.1 of the Constitution lays down that government authorities shall promote conditions favourable to social and economic progress and to a more equitable distribution of income among regions as well as among private citizens, within the context of economic stability. Likewise, article 45 of the Constitution recognizes the right to enjoy an environment suitable for individual development, as well as the duty to preserve said environment, and stipulates that it is the responsibility of public authorities to ensure the rational use of all natural resources, in order to protect and improve the quality of life, and to defend and restore the environment, with the indispensable contribution of citizens' solidarity.

For its part, the Statute of Autonomy for Andalusia, in article 12.3.3, establishes that the Autonomous Community shall exercise its powers in keeping with the enumerated basic objectives, amongst them, the exploitation and increase of Andalusia's economic resources, including agriculture, livestock, mining, fishing, industry, tourism, the promotion of public and private investment in Andalusia, along with the equitable redistribution of income and wealth.

In accordance with article 13.14 of the Statute of Autonomy, the Autonomous Community of Andalusia has exclusive competence with regard to installations dedicated to production, distribution and transport of energy when this transport remains within Andalusia, and its exploitation does not affect other territories; legislative development and execution, as set forth in article 15.1.5 with respect to the energy regime, and article 15.1.7, with respect to the environment, in the context of general regulation by the Government, likewise correspond to the Autonomous Community of Andalusia.

Article 68 of the Statute of Autonomy for Andalusia provides that the Autonomous Community can establish public companies for the execution of duties falling within its competence.

Within this regulatory framework, it is known that energy is an indispensable resource for all types of human activities, both in the areas of production and services as well as in the recreational and residential areas.

On the other hand, fossil-based primary energy sources are located in specific geographical areas outside our economically integrated area, which gives rise to a dependence which lies outside the decision making scope of our corresponding political-economic authorities.

These factors make the energy sector both strategic and vulnerable; fundamental for the region's economic development, and inhabitants' quality of life, which are in turn inextricably linked to the quality and preservation of the region's environment.

In Andalusia, the energy sector problems affecting surrounding regions and countries are even more serious, given that, on average, primary energy supplies are crude oil-based to a greater degree than in other areas, and our fossil fuel resources are scarce.

Andalusia is endowed with sufficient natural resources (sun, wind, biomass, etc.) to allow for adequate exploitation of renewable energy, which should progressively come to replace traditional fossil fuel-based energy sources.

The increased use of these new energies is one of the pillars of European Union energy policy, whose objective is to increase the proportionate use of these new energy sources to 12% of the total primary energy supply by the year 2010.

The Andalusian Energy Plan for 2003-2006 establishes as an objective that 15% of the total energy required by Andalusia in 2010 should come from renewable energy sources; thus, new management methods become necessary.

Currently, and in anticipation of a future in which the scarcity and cost of fossil fuels constitutes a serious problem, a rational and efficient use of energy should constitute another basic pillar of any energy policy.

In this sense, our Autonomous Community still maintains an important margin for improving energy efficiency, particularly in the consumption phase, but also in the production phase.

These basic characteristics of the Andalusian energy system involve the mobilization of resources with an eye towards correcting this situation, in anticipation of a more viable energy future buttressed by sustainable development policy.

In addition, the diversification of primary energy sources which comprise our Autonomous Community's energy supply should constitute an energy policy priority in order to ensure a supply of energy at reasonable prices.

In order to fulfil these objectives, an institutional commitment involving government entities which agree to coordinate their efforts for the fulfilment of said objectives is necessary. Likewise, transversality is essential for the fulfilment of these energy objectives.

In light of the above, it is deemed that entities with competence in energy matters should have an instrument at their disposal which formulates energy policy proposals, and which applies and develops the directives coming from government entities for formulating these proposals, all of this in the context of a global and coherent vision within a sector as strategic as is the energy sector, accompanied by a degree of management responsiveness suitable for the requirements of the moment.

The administrative reform which is addressed here responds precisely to the objectives of the European program, SAVE II, which provides incentives for the

creation of local and regional agencies in order to promote the use of available energy resources.

In order to fulfil the fundamental objective of optimizing Andalusia's energy supply, both in economic and environmental terms, the Andalusian Energy Agency is created under section 6.1.b) of Law 5/1983, considered as a public law entity, with its own legal personality and patrimony, and attached to the competent Regional Ministry for energy.

By means of the resources with which it is provided, and in the performance of the duties assigned to the agency by the present Law, the Andalusian Energy Agency's ultimate goal is the planning and structuring of the energy offer, both in terms of quantity and quality, in such a way that it can satisfy the needs of citizens while maintaining environmental integrity and avoiding negative ecological impacts. Likewise, suitable mechanisms for ensuring cooperation with public authorities, as well as with other public entities, whether at the European Union, national or regional level, are put into place.

#### Article 1. Creation and constitution

1. A public law entity of the type set forth in section 6.1.b) of Law 5/1983, of 19 June, envisaged in the Ley General de la Hacienda Pública (Spanish General Law of Public Finance) of the Autonomous Community of Andalusia, attached to the competent Regional Ministry for energy, is created, with the name Agencia Andaluza de la Energía (Andalusian Energy Agency) in order to optimize the energy supply of the Autonomous Community of Andalusia in environmental and economic terms.

2. The entity shall be effectively established at the moment in which its Articles of Association enter into effect; these will be approved by the Governing Council and will contain, amongst other provisions, specifications regarding its governing, participatory and monitoring bodies, the powers and duties entrusted thereto, the patrimony which will be allocated to said Agency for the fulfilment of its objectives, its economic resources, its regime with respect to human resources, patrimony and recruitment, the budgetary, economic-financial, intervention, financial control and accounting regimes.

#### Article 2. Personality and legal status

1. The Agency will be an independent legal entity, with full legal capacity, and with the capacity to act to fulfil its objectives. It shall maintain its own patrimony.

2. With regard to its structure and functioning, the Andalusian Energy Agency is subject to the present Law, its Articles of Association and the rules issued in its development.

Likewise, the Agency will be subject to the Ley General de la Hacienda Pública (Spanish General Law of Public Finance) of the Autonomous Community of Andalusia, the Patrimony Law of the Autonomous Community of Andalusia and other regulations generally applicable to public law entities of the Regional Government of Andalusia.

Agency personnel shall be governed by labour law, patrimonial relations by private law, and the hiring regime shall be in accordance with the provisions of the legislation with regard to Public Administration Contracts.

#### Article 3. Duties and initiatives

1. The Andalusian Energy Agency, in the framework of the present law, shall promote the optimization, in economic and environmental terms, of energy use and supplies in the Autonomous Community.

2. The duties of the Agency shall consist of the following:

- a) Improve the quality of the Autonomous Community's energy services
- b) Collaborate in the expansion and development of energy infrastructures with regard to generation, transport and distribution.
- c) Achieve maximum efficiency with regard to energy applications.
- d) Increase the degree to which energy is supplied from internal sources within the Autonomous Community through the diversification of sources.
- e) Promote the application of technological innovation, and promote R&D in the energy sector of the Autonomous Community.
- f) Encourage the use of renewable energies.
- g) Contribute to the development of less contaminating energies, as well as limit emissions of polluting effluents into the atmosphere.
- h) Promote and stimulate energy saving and the rational use of energy, with particular attention to the avoidance of energy loss in residences as well as in public and private installations.
- i) Increase cogeneration
- j) Collaborate with public and private institutions in the implementation of activities which improve the energy system.
- k) Contribute to the decrease in contamination and in environmental impacts caused by the current energy system.
- l) Promote energy efficiency in transport in the Autonomous Community.
- m) Encourage and collaborate in the development of more energy efficient appliances.
- n) Promote and contribute to the adequate education of the public with regard to energy use and consumption.
- o) Contribute to the balanced, regional expansion of energy production and supplies, particularly with regard to the promotion of electrification in isolated rural areas.
- p) Propose the actions deemed necessary to the corresponding departmental entity which has competence with regard to energy matters.
- q) Manage the subsidy lines which the competent Regional Ministry for energy entrusts to the Agency, in accordance with the provisions of section 106 of Law 5/1983, of 19 July, the Spanish General Law of Public Finance of the Autonomous Community of Andalusia.
- r) Grant subsidies which are charged to the budget in accordance with the provisions of section 104 of the aforementioned Law 5/1983.
- s) Draw up an annual report regarding the fulfilment of Energy Plan objectives.
- t) Provide incentives for and promote the use of renewable energies amongst Local Businesses.

3. In addition to the general intervention mechanisms which the Agency may use, and the measures for encouraging change which it deems appropriate, it will adopt the following initiatives, amongst others, for the fulfilment of its statutory objectives.

a) Encourage and bring about the practice of energy audits in the public and private sectors.

b) Encourage energy efficiency in the design and construction of dwellings and other buildings, increasing energy certifications for new and existing constructions.

c) Encourage concrete actions involving renewable energy installations.

d) Create and execute plans and programs entrusted to the Agency by Public Authorities and private entities.

e) Encourage work in cooperation with those entities which support energy research.

f) Encourage the organization of training courses and recycling at all educational and professional levels.

g) Draw up temporarily, sectorial and general reports.

h) Carry out awareness raising and information campaigns aimed at business people, workers, and citizens in general.

i) Promote investments in energies which are environmentally compatible and renewable, as well as in energy saving measures.

j) Carry out systematic studies on energy consumption and on the invoicing of immovable properties destined for offices or services of the Regional Government of Andalusia, and analyse economical and technically advantageous offers from different suppliers.

k) Encourage the participation of Andalusian companies and institutions in national and international energy programs.

l) Execute the control and inspection actions of energy installations involved in production, transport, delivery, marketing and consumption, which are entrusted to the Agency.

m) Increase the use of energy efficient transport systems.

n) Promote energy efficiency and savings in all cases which involve the use of energy, such as:

- Water supplies for irrigation and for municipal areas
- Handling and production of wastes.

o) Any other activity related to the previous activities, as well as others which may be assigned to the Agency.

#### Article 4. Patrimony and economic resources

1. The Andalusian Energy Agency's patrimony consists of all of the goods and rights attached thereto pursuant to the present Law, those goods and rights which will be attached thereto in the future, and those whose ownership may correspond to said Agency in accordance with its purchase deed and the public property deed.

2. In order to perform its duties, the Agency shall be able to draw on the following economic resources:

a) The budget which is annually assigned thereto in accordance with the Autonomous Community Budgetary Law.

b) The subsidies or budget allotments which, charged to the budget of any other public or private entity, could correspond to said Agency.

c) The product of its credit operations.

d) Income from patrimony, or income from the rendering of services in the performance of its duty.

e) Any other public or private income which could correspond to the Agency in accordance with current legislation.

#### Article 5. Powers

In order to fulfil its objectives, the Andalusian Energy Agency may do the following:

a) Request subsidies and guarantees from the Regional Government of Andalusia and other public entities and institutions.

b) Perform all types of acts of administration and of disposal, as well as financial operations.

c) Arrange loans with public or private financial entities, issue bonds or other similar instruments, within the annual limits established in this regard pursuant to the Budgetary Law of the Autonomous Community of Andalusia and section 70.4 of the Spanish General Law of Public Finance of the Autonomous Community of Andalusia.

d) Enter into agreements with other Public Authorities as well as companies and institutions, both public and private.

#### Article 6. Governing and management bodies

1. The governing and management bodies of the Andalusian Energy Agency consist of the Governing Board, the President and the Director General.

The Governing Board is the entity's highest body and engages in senior level management, governs the Agency and establishes the directives for actions of said Agency in accordance with the proposals put forth by the Regional Government of Andalusia. It will have the composition established by the Articles of Association.

2. The members of the Governing Board and its President shall be appointed by the Governing Council of the Regional Government of Andalusia, upon the proposal of the individual occupying the competent Regional Ministry for energy. The Director General shall be appointed by the President of the Agency.

3. The duties of the Governing Board are as follows:

a) Ensure that all of the Agency's actions are in compliance with legal requirements.

b) Approve the exploitation budget and capital drafts which the Agency must draw up annually, in accordance with the provisions of section 57.3 of Law 5/1983, of 19 July, the Spanish General Law of Public Finance of the Autonomous Community of Andalusia, to be presented before the competent Regional Ministry for energy, with subsequent presentation before the Regional Ministry of Economy and Finance in accordance with the provisions of section 60 of the aforementioned Law.

c) Other duties which correspond to the Agency pursuant to the present Law and the Articles of Association of the Andalusian Energy Agency.

4. The duties of the President of the Agency shall be as follows:

a) Function as the highest official representative of the Agency.

b) Ensure fulfilment of the Governing Board's agreements.

c) Preside over and direct the deliberations of the Governing Board.

d) Any other duties entrusted to him in accordance with the present Law and with the Agency's Articles of Association.

5. The duties of the Agency's Director-General shall be as follows:

- a) Represent the Agency in matters pertaining to its ordinary management.
- b) Adopt the resolutions necessary for the fulfilment of the Governing Board's agreements.
- c) Carry out the effective management and coordination of all of the entity's departments.
- d) Any other duties assigned to the Director-General pursuant to the present Law and the Agency's Articles of Association.

#### Article 7. Legal and Administrative Regime

1. An appeal for review of the resolutions handed down by the Director-General of the Andalusian Energy Agency can be filed before the President, and an appeal for review of the resolutions handed down by the Governing Board and by the President can, as warranted, be filed before the competent departmental body which has competence with regard to energy matters.

2. The Andalusian Energy Agency shall be subject to the common procedural rules regarding competence and jurisdiction applicable to private-law parties, without prejudice to the Agency's acting in the exercise of its discretionary power, in which case Law 30/1992, of 26 November, Legal Regime of the Public Administrations and with regard to Common Administrative Procedure shall be applicable.

#### Article 8. Budget, economic-financial and accounting regimen

1. The Andalusian Energy Agency's budget, economic-financial, accounting and intervention regime shall be the regime established in accordance with Law 5/1983, of 19 July, the Spanish General Law of Public Finance of the Autonomous Community of Andalusia, and in accordance with other regulations applicable thereto.

2. The Andalusian Energy Agency shall annually draw up an action, investments and funding schedule for the following financial year, in accordance with the provisions of sections 57 and 59 of the aforementioned Law 5/1983 and the development rules. The schedule will be based on multiannual forecasts drawn up by the entity in accordance with economic plans and the strategy which, if warranted, is set for the entity by the competent Regional Ministry for energy.

3. An exploitation as well as a capital budget will be drawn up. They will list the entire set of corresponding annual resources and funding available.

#### Article 9. Control of efficiency and finance

1. The Andalusian Energy Agency will be subject to efficiency control, which will be performed by the competent Regional Ministry for energy, without prejudice to the provisions in this regard set forth in section 58.2 of Law 5/1983, of 19 July, the Spanish General Law of Public Finance of the Autonomous Community of Andalusia.

2. Financial control shall be carried out in accordance with the provisions of the aforementioned

Law 5/1983 and in accordance with any additional applicable regulations, and shall be performed by the General Comptroller Office of the Regional Government of Andalusia.

The Andalusian Energy Agency shall be subject to permanent financial control, in accordance with the provisions of section 85.4 of the aforementioned Law 5/1983, under the terms established by Decree 9/1999, of 19 January, with regard to the budget, financial, control and accounting regimen for companies of the Regional Government of Andalusia.

3. The Andalusian Energy Agency will be obliged to deliver its accounts in accordance with the provisions of Title VI of the aforementioned Law 5/1983.

#### Article 10. Personnel regime

1. Agency personnel shall be subject to labour Law, and their hiring shall be performed in accordance with the principles of equality, merit and ability, by means of announcements.

2. The Agency may contract senior management personnel in accordance with applicable regulations.

3. The remuneration scheme for Agency personnel and its modifications shall require a prior report from the Regional Ministries of Economy and Public Finance, and of Justice and Public Administration.

4. Civil servants who work for the different Public Administrations can be incorporated into the Andalusian Energy Agency while remaining in their original entities on voluntary extended leave of absence, as set forth in section 29, number 3, paragraph a) of Spanish Law 30/1984, of 2 August, Measures for the Reform of the Civil Service, and the time in which they served in these administrations shall be recognized for purposes of the remuneration which corresponds to them based on seniority.

#### First additional provision. Advisory Board

The Articles of Association establish an Advisory Board for the Andalusian Energy Agency, on which at least the most representative organizations from the union, corporate, professional, environmental, consumer, neighbourhood association and academic worlds shall be present, and which, without prejudice to the competence and duties established in the Articles of Association, shall serve as a channel for effective citizen and corporate participation, and as a source of information and as a forum for consultation and advising with regard to energy matters. The Government Administration and Local Governments will also be represented.

Second additional provision. Initial endowment and assignment of SODEAN, Sociedad para el Desarrollo Energético de Andalucía, S.A. (Society for the Energy Development of Andalusia) shares.

Initially, the following capital assets are assigned to the Agency, without prejudice to the provisions of section 4 of the current Law:

- a) An initial endowment of 1,800,000 euros.
- b) The shares held by the Sociedad para la Promoción y Reconversión Económica de Andalucía, S.A. (Company for the Development and Economic Reconversion of Andalusia), known as SOPREA, S.A., within SODEAN, Sociedad para el Desarrollo Energético de Andalucía, S.A. (Society for the Energy Development of Andalusia). Once the shares have been transferred, when the Agency's Articles of Association enter into effect, the

Andalusian Energy Agency shall proceed with their liquidation and cancellation, acquiring the patrimony that result from said liquidation.

Sole temporary provision. SODEAN personnel.

Personnel who render services to SODEAN when it is liquidated shall be incorporated into the Andalusian Energy Agency, which will subrogate to the rights and obligations derived from the work contracts entered into by SODEAN, and will recognize the length of time in which services were rendered for purposes of remuneration corresponding to seniority.

Sole repealing provision. Regulatory repeal

All rules and regulation of equal or lower rank which oppose or contradict the present Law are hereby repealed.

First final provision. Regulatory development  
The Governing Council of the Regional Government of Andalusia is authorized to issue the regulations required for the development of the present Law, particularly with regard to the approval of its Statutory Provisions.

Second final provision. Coming into effect

The current Law will take effect on the day after its publication in the Official Gazette of the Regional Government of Andalusia.»

Seville, 23 September, 2003

MANUEL CHAVES GONZALEZ  
President of the Regional Government of Andalusia