

Act 24/2005, of 18th November, on reforms to boost productivity.

H.R.H. King Juan Carlos I

Let it be known to all those who read and understand this document that it has been enacted by Parliament and I duly ratify the Act set out below.

PREAMBLE

I

The chief objective of the economic policy applied by the Government is to enhance citizens' welfare. Achieving this goal entails fostering a model of balanced, sustained and sustainable growth, based on increased productivity and employment, in order to attend to collective needs and foster greater social cohesion, while facilitating responses to the challenges ensuing from the increasingly greater economic integration of the European and world markets.

Even though the model of economic growth followed in recent years has contributed to bring Spain's per capita income levels closer to those of the most advanced countries of the European Union, it does have shortcomings that must be essential tackled and corrected. On the one hand, it has been underpinned by factors, such as the favourable rate of exchange at which Spain joined the single currency, or the significant drop in interest rates, whose positive effects are becoming more moderate. On the other, there is a structural weakness to this model that has increased in recent years: the scant contribution made by productivity to growth. On account of this weakness, over the last few years the average level of productivity of the Spanish economy has moved away from the levels reported by our most advanced neighbouring countries, instead of converging with them.

This gap with respect to the levels of productivity of the most advanced countries represents a serious threat for the long-term and immediate future of the Spanish economy. In the long run, productivity is the main driving force behind economic growth and boosting it is essential to guarantee the future sustainability of the welfare state, especially in the context of the demographic ageing that our society is facing. Most immediately, in the context of the ongoing opening up and integration of the Spanish economy in the European and international markets, a higher level of productivity is essential in order to absorb the higher production costs and avoid becoming less competitive, which would check growth.

Consequently, reforms must be put in place to ensure a higher level of productivity in the economy. The aim is to contribute to put the Spanish economy in a position to start correcting the shortcomings of its pace of growth, as a means of guaranteeing its sustainability.

To this end, this Act introduces reforms to boost and stimulate the level of productivity, as part of a broader set of reforms, divided into different courses of action that cover different fields and will be carried out in different time frames, all designed to boost the Spanish economy and raise its level of productivity.

II

This Act regulates a series of matters, the essential contents of which are the reforms to liberalize goods and services markets that seek to boost effective competition in order to raise the level of productivity and, in so doing, contribute to correct the aforementioned shortcomings in the economic growth model.

The Act also includes measures of an administrative nature, including the authority to attest documents, that seek to improve the way that the Administration operates in its relations with the general public.

III

Title I includes a series of reforms for the products and services markets that will foster more effective competition in different sectors of the Spanish economy.

Chapter one regulates further reforms to the energy markets, by adopting measures to encourage market players to perform more efficiently and further the orderly liberalization of the sector, which constitutes a strategic input and therefore must result in productivity gains for the entire economy.

By way of a horizontal measure, the Government is authorised to bring up to date the remuneration system of the National Energy Commission. This measure will make it possible to adapt the Commission's revenues to its properly justified financial needs.

With respect to the Electricity Sector, in order to foster compliance with the Plan for the Promotion of Renewable Energy in Spain 2000-2010, the Act enforces measures designed to encourage the development of biomass by permitting the combustion of this raw material in ordinary system facilities. Furthermore, and on an exceptional basis, biomass will be allowed to exceed the general limits imposed by the Electricity Sector 54/1997, of 27th November, for the production of electricity under the special system.

Furthermore, to reinforce the stability and consistency of this system, a new corporate public entity must be incorporated in order to replace the existing Empresa Nacional de Residuos Radiactivos, S.A. This entity must have sufficient resources to allocate the Fund for the Financing of the activities of the General Radioactive Waste Plan.

In the Hydrocarbons Sector, the Act adopts additional measures to improve the conditions under which fuel is sold to agricultural cooperatives.

The Act also adopts a series of additional measures to improve the operation of the gaseous hydrocarbons market. In this respect, it revises the planning and specifies that this is obligatory, and does not exclusively entail planning minimum levels; and it authorises the National Energy Commission (CNE) to handle gas payments.

Last of all, the Act introduces reforms to enhance the regulatory framework of the nuclear-based electricity production. In this respect, it is clarified that the Instructions issued by the Spanish Nuclear Safety Council are binding; certain articles of the Nuclear Power Act 25/1964, of 29th April, are reworded; and a market mechanism is furnished for assessing the value of the sites of the nuclear plants placed in moratorium.

Chapter Two reforms the regulation of the tobacco market distribution system, in order to facilitate effective competition that leads to higher level of productivity compatible with the measures necessary to prevent and control smoking and with the requirements ensuing from our international commitments in this field and, in particular, with those assumed in the World Health Organization's Framework Agreement on Tobacco Control, ratified by Spain in January 2005. On the one hand, the Act lifts unnecessary restrictions that hinder business initiative on the wholesale distribution market. For example, it does away with the obligation to have one's own warehouses and an exclusive freight address. On the other, reforms are adopted to boost efficiency and productivity in the operation of the retail distribution network, with respect to the limitations imposed by current legislation upon the sale, consumption and advertising of tobacco products. For example, tobacconist's shops will now be allowed to transport tobacco to their second channel customers; some of the second channel supply restrictions are relaxed and, additionally, the owners of existing tobacconist's shops will now be able to convey the shops to people who are not their relatives. Moreover, the term of any concessions awarded after this Act is enforced, and of any that are conveyed, is hereby reduced to 25 years.

Chapter three enforces measures to further deregulate the funeral services industry, and any firms that have already been licensed by any Town or City Council are now authorised to operate anywhere throughout the country, thus fostering competition by providing incentives to increase their productivity.

Chapter four addresses the initiative to modernize mature tourist resorts, in response to the need for a profound overhaul of one of our most valuable supply assets, and one that is showing clear signs of maturity. This initiative is designed to support local authorities and the private tourist industry in overhauling these resorts, so that they can be marketed properly with a view to offering of a high-quality and increasingly competitive tourist market.

IV

Title II introduces reforms to improve the running of the Administration.

Chapter one sets out a series of improvements to the administrative procedures that affect citizens and businesses alike. By way of example, the Act establishes formulas to make the unquestionable advantages of speed and simplicity to be gained by using the registered name of Limited Liability Company - New Firm, compatible with the subsequent use, where applicable, of other registered names that are more appealing for the firms' business activities. Furthermore, in an additional provision, any changes in the registered name of these types of firms that take place within three months of their incorporation or from the enforcement of this Act are exempted from the payment of Notary's and Registrar's fees. This will serve to avoid costs that could limit the boosting effects sought in regulating these firms.

Chapter two, which addresses the authority to attest documents, or our system of preventive legal certainty, introduces different reforms designed essentially to bring the system in line with the requirements of a modern economy, placing special emphasis on its flexibility and the effective use of information technology, electronic and telematic techniques.

By way of example, the Act introduces reforms to the method used to calculate the deadlines for registering deeds and certificates of title at Land, Mercantile and Personal Property Registries, in order to boost and speed up the legal, civil and business procedures involved when legal transactions and proceedings are being registered. In that respect, in order to ensure that such deadlines are met, parties are now required to furnish enough information to allow the Administration to verify whether the deadlines have been met.

Moreover, it is essential to adopt the reforms necessary to permit documents to be submitted to the Land, Mercantile and Personal Property Registries by telematic means, because this is now possible with the current state of technology. This reform, which has been demanded by economic operators, is logical and necessary, in order to comply with the requirements of the Information Society. Therefore the Act removes any type of obstacle that might exist. Also worth a special mention is the possibility that formal public information can be obtained telematically, allowing citizens to request such public information in a real and effective way, making it easier and faster for them to consult the contents of the Registries. It should also be added that, as an administrative efficiency measure, civil servants, public employees and judicial authorities will be able to access the contents of the Registry's Books without the involvement of the Registrar, whenever they need to do so in exercising their public duties, which is an appropriate corollary of the presumption of interest in consulting the Books that is attributed to such civil servants, public employees and judicial authorities.

Furthermore, the Act includes two different yet closely connected types of reforms of the system of preventive legal certainty, which will serve to make it more efficient. On the one hand, improvements are made to the system for appealing against classifications, because experience to date has shown that the applicable regulations are not always appropriate. Among other issues, the Act clarifies and states that a Registrar cannot appeal against a hierarchical superior's decision to reverse the Registrar's classification; for the same reason, the Act maintains and clarifies that all registrars are bound by the decisions of the Directorate General for Registries and Notaries when ruling on appeals against classifications. These measures will serve immediately to speed up the appeal system, thereby making the administration more efficient and raising the country's level of productivity.

On the other, the Act improves and modifies the registry and notarial disciplinary regime, because a disciplinary system that responds to actual needs is required in order to enhance the quality of the system. From this perspective, experience to date has shown the system to be inefficient, and this must be corrected, because notaries and registrars are civil servants who are hierarchically subordinate to the Ministry of Justice through the Directorate General for Registries and Notaries (article 307 of the Notarial Regulations, approved by the Decree of 2nd June 1944, and article 274 of the Mortgage Act, the revised text of which was approved by the Decree of 8th February 1946), and this situation must be stressed in order to clarify certain matters with regard to their disciplinary regime. It must be added that improving this regime is directly linked to administrative efficiency.

Lastly, the Act introduces other reforms, firstly to clarify the registrar's responsibility in issuing simple search information sheets and, secondly, to clarify the procedure for registering the notary's judgement regarding the validity of the document or of the party's powers.

Furthermore, in appropriate additional provisions, commissioners for oaths are ordered to inform of the tariff applicable and the Act regulates the transfer of tax information by computer or telematic means in any administrative proceedings in which it is necessary to obtain information from the Spanish Inland Revenue. These measures will contribute, respectively, to make notarization matters more transparent and cut down the administrative workload and costs both for Administration itself and for citizens and companies.

Finally, chapter three introduces improvements to the administrative procedures by excluding the subsidy-related activities of Provincial Councils from the scope of application of the General Subsidy Act. It thereby avoids unnecessary formalities that afford no added value and generate high transaction costs, because the types of cooperation that exist between Provincial Councils and local councils are of a different nature, and aim to guarantee that all citizens are entitled to access public services on an equal footing, while at the same time it is obligatory and irrenunciabile.

V

The reforms adopted in this Act which, as pointed out earlier, form part of a broader set, have been designed to directly boost and raise the level of economic productivity. At the same time, these reforms seek to generate confidence and send a clear signal to economic agents and markets alike that Spanish economic policy is decidedly committed to raising the level of productivity which, together with budget stability and the fostering of transparency, constitutes one of the linchpins of the efforts being made to achieve the objective of improving citizens' welfare.

TITLE I. PRODUCT AND SERVICE MARKETS.

Chapter I. ENERGY MARKETS.

SECTION I. HORIZONTAL MEASURES.

Article 1. Amendment of the Hydrocarbon Act 34/1998, dated 7th October.

A point six is added to section 2 of the twelfth additional provision of the Hydrocarbon Act 34/1998, of 7th October, worded as follows:

Six. The rates of tax that are referred to in points 1.e, 2.f and 3.e of section 2 of this provision will be reviewed by the Government every four years, adapting them to the financial requirements that are justified by the National Energy Commission, according to the provisions of the eleventh additional provision of this Act.

The first review will be for the year 2006.

SECTION II. ELECTRICITY SECTOR.

Article 2. Amendment of Royal Decree-law 6/2000, dated 23rd June, on urgent measures to intensify competition in goods and services markets, and the Electricity Sector Act (Law 54/1997).

One. Section four of article 19 of Royal Decree-law 6/2000, dated 23rd June, on urgent measures to intensify competition in goods and services markets, is hereby amended and reworded as follows:

Four. High voltage electricity supply tariffs will disappear on 1st January 2010.

Two. The Eleventh Transitory Provision of the Electricity Sector Act 54/1997, of 27th November, is hereby amended and reworded as follows:

Eleventh Transitory Provision. Special remunerative arrangements for distributors.

Until 1st January 2010, distributors who operations date back prior to 1st January 1997, and who are not covered by Royal Decree 1538/1987, dated 11th December, on the determination of the tariff for the companies managing the electricity service, may apply any tariff arrangements the Government approves for these distributors and which shall ensure them an adequate economic remuneration.

Notwithstanding the above, when the Government approves a modification to the economic arrangements governing the distribution activities established in Royal Decree 2819/1998, dated 23rd December, regulating electricity transmission and distribution activities, that considers the characteristics of these distributors, they must apply such arrangements when it enters into force and under no circumstances before 1st January 2007.

Pursuant to the provisions of section 9.3 of this Act, the distributors referred to in this transitory provision will be entitled to purchase energy as qualified customers. Such purchases shall entail the definitive waiver of that amount in the tariff arrangements set out under the previous paragraph.

These distributors must, in any case, purchase the electric power as qualified agents for that part of their consumption exceeding the consumption recorded in the 1997 financial year, increased by the percentage of their vegetative growth as determined by regulations.

Article 3. Promotion of co-combustion.

A new paragraph is hereby added to section 5 of article 30 of the Electricity Sector Act 54/1997, of 27th November, worded as follows:

Furthermore, the Government may determine the right to the receipt of a premium supplementing the remuneration arrangements of any facilities producing electricity of thermal origin under the ordinary system when, in addition to using the fuel for which they were authorised, they also use biomass as a secondary fuel. To that end, any energy supplies that are used and the extra costs incurred in their use will be taken into account. The ruling that stipulates the amount of the premium will also stipulate the terms and conditions of use of the biomass.

Article 4. Promotion of biomass.

The last paragraph of letter b of section four of article 30 of the Electricity Sector Act 54/1997, of 27th November is hereby amended and reworded as follows:

Exceptionally, the Government may authorize larger premiums than those set out in the previous paragraph for facilities that use solar energy or biomass as their primary energy source.

For the purposes of this Act, neither urban solid waste or hazardous waste shall not be construed as biomass.

Article 5. Promotion of biofuels.

Within a maximum of three months of the passing of this Act, the Government will draw up a plan of urgent measures in order to achieve the objective of Directive 2003/30/EC, on the promotion of the use of biofuels, set for 2010 (5.75% of the market share).

Article 6. Consumer protection measures.

In the Royal Decree that adapted the electricity sector regulations to the provisions of Royal Decree Law 5/2005, of 11th March, on urgent measures for boosting productivity and improving public contracting levels; and pursuant to the provisions of paragraph 6 of the article 3 of Directive 2003/54/EC concerning Common Rules for the Internal Market in electricity, according to which electricity bills must specify the sources of electricity, the Government will be responsible for ensuring that all the companies issue bills in the same format, that the bills systematically include the same type of information, including information to make it easier to understand the environmental impacts associated to each source, that limits the percentages from unknown sources and that guarantees that the information is precise and accurate.

Article 7. Nature of access tariffs.

A new paragraph is hereby added to section 3 of article 18 of the Electricity Sector Act 54/1997, of 27th November, worded as follows:

3. Transmission and distribution tolls will be approved by the Government in the manner stipulated in regulations.

Transportation and distribution companies must notify the Ministry of Industry, Tourism and Commerce of the rates they apply.

Article 8. Creation of the corporate public entity "ENRESA de gestión de residuos radiactivos".

1. An Additional Provision Six b is hereby added to the Electricity Sector Act 54/1997, of 27th November, worded as follows:

ADDITIONAL PROVISION SIX B. Creation of the corporate public entity "ENRESA de gestión de residuos radiactivos".

1. The management of radioactive waste, including spent fuel and the dismantlement and closure of nuclear and radioactive facilities, is an essential public service that is reserved, pursuant to article 128.2 of the Spanish Constitution, to the State. This service will be managed directly by the corporate public entity "ENRESA de gestión de residuos radiactivos", in accordance with the General Radioactive Waste Plan approved by the Government.

2. The corporate public entity "ENRESA de gestión de residuos radiactivos" is hereby incorporated as a public agency, as described in Article 43.1.b of Act 6/1997, dated 14th April, on the Organisation and Functioning of the Central State Administration. The entity will be subordinate to the Ministry of Industry, Tourism and Commerce, through the Secretariat General for Energy.

3. The corporate public entity ENRESA has its own legal personality, full capacity to act and its own assets and will be governed by the provisions set forth in this additional provision, in its own articles of incorporation, in the aforementioned Act 6/1997, of 14th April, and in the other applicable regulations.

4. The corporate public entity ENRESA will manage, administer and dispose of the assets and rights that form its net worth, and will be entitled to own, administer, purchase and sell the share certificates that represent the share capital of the undertakings in which it invests or may invest in the future.

In order to achieve its stated purpose, the corporate public entity may engage in any form of administration and disposal acts set forth in civil and mercantile legislation. Moreover, it may engage in any business or industrial transactions that are related to such stated purpose, in accordance with the resolutions of its administrative bodies. It will even be able to act through its investee companies.

5. The corporate purpose of the corporate public entity ENRESA will be to provide the public service involving the management of radioactive waste, including spent fuel and the dismantlement and closure of nuclear and radioactive facilities, the drafting of proposals for the General Radioactive Waste Plan, carrying out the provisions of the Plan and the management of the Fund for the Financing of the activities of the General Radioactive Waste Plan, all in accordance with the terms of the Plan.

In order to achieve its purpose, inter alia it will perform the following duties:

- a. Process and condition radioactive waste.*
- b. Look for sites, design, build and operate facilities for the temporary and final storage of radioactive waste.*
- c. Establish systems for the collection, transfer and transportation of radioactive waste.*
- d. Adopt radioactive waste transportation safety and security measures, in accordance with the provisions of the specific regulations governing the transportation of hazardous goods and the instructions issued by competent bodies and authorities.*

- e. *Supervise the operations involved in the dismantlement and closure of nuclear and radioactive facilities.*
- f. *Act, in the event of nuclear or radiological emergencies, in support of the national civil protection system and the security services, in the manner and circumstances required by the competent bodies and authorities.*
- g. *Definitively and safely condition the steriles originated in the mining and manufacture of uranium concentrates, in the manner and circumstances required by the competent bodies and authorities, taking into account any applicable plans and indications issued by the operator.*
- h. *Establish systems to guarantee the safe and secure long-term management of its radioactive waste storage facilities.*
- i. *Establish the research and development plans necessary to carry out its duties.*
- j. *Carry out any technical, economic and financial studies necessary to take into account the deferred costs arising out of its duties so as to establish its financial needs.*
- k. *Any other activity required to carry out the aforementioned duties.*

6. *The corporate public entity ENRESA will be construed as the operator of its radioactive waste management facilities for the purposes set forth in the legislation applicable to nuclear and radioactive facilities. Moreover, the entity will act as the operator in any other activities in which it engages and in which its status is construed as such.*

7. *The radioactive waste management services that the corporate public entity ENRESA provides to the operators of nuclear and radioactive facilities will conform to the technical specifications set forth in the pertinent contracts in force, based on the standard-form contracts approved at the proper time by the Ministry of Industry and Energy, or any that are approved in the future by the Ministry of Industry, Tourism and Commerce.*

8. *The financial management of the Fund for the Financing of the activities of the General Radioactive Waste Plan will be governed by the principles of security, profitability and liquidity. The corporate public entity ENRESA may entrust such management to a third party, following a favourable report from the Fund Monitoring and Control Committee, after being authorized by the Government and in accordance with any conditions that are specified.*

9. *The Fund Monitoring and Control Committee will be responsible for the supervision and control of the temporary investments associated to the financial management of the Fund. This Committee, which will report to the Ministry of Industry, Tourism and Commerce, through the Secretariat General for Energy, will be chaired by the Secretary General for Energy, and the other members will be the State Financial Controller, the Director General of the Treasury and Financial Policy and the Director General of Energy Policy and Mines, with the Deputy Director General of Nuclear Power acting as Secretary. The Government may change the members of the Committee by Royal Decree. The Committee's duties are as follows:*

- a. *To draw up criteria regarding the nature of the assets of the Fund.*
- b. *Monitor the financial investments, ensuring that the principles set forth in paragraph 8 above are applied.*
- c. *Issue reports every six months, describing the state of the Fund and the investments made in its financial management, as well as the Committee's opinion*

and any comments or remarks that it deems appropriate. This report will be delivered to the Ministers for the Economy, for Industry, Tourism and Commerce and to the corresponding Parliamentary Committee.

10. The Government will be responsible for establishing the policy regarding radioactive waste management and the dismantlement and closure of nuclear and radioactive facilities, by approving the General Radioactive Waste Plan, which the Ministry of Industry, Tourism and Commerce will submit to it after requesting the opinions of the Autonomous Communities with land planning and environmental powers, and about which it will subsequently report to Parliament.

11. The corporate public entity ENRESA will submit to the Ministry of Industry, Tourism and Commerce a proposed revised version of the General Radioactive Waste Plan every four years and, in any event, whenever required to do so by the Ministry, that will comprise:

- a. The necessary courses of action and the technical solutions that are going to be implemented during the time frame of the Plan with a view to ensuring the efficient management of radioactive waste and spent fuel, the dismantlement and closure of nuclear and, where applicable, radioactive facilities.*
- b. The economic and financial projections and requirements necessary to carry out the activities stipulated in the previous paragraph.*

12. Any contracts entered into by the corporate public entity ENRESA will remain subject to the provisions set forth in this respect in the legislation governing Public Administration contracts.

13. The rules and regulations governing the assets of the corporate public entity ENRESA will be as established in the provisions of the Public Agency Assets Act 33/2003, of 3rd November, in accordance with article 56 of Act 6/1997, dated 14th April, on the Organisation and Functioning of the Central State Administration.

14. The budgetary, economic, financial, accounting and financial control arrangements of the corporate public entity ENRESA will be as set forth in the Budget Act 47/2003, of 26th November, in accordance with the provisions of section 58 of Act 6/1997, of 14th April.

15. The corporate public entity ENRESA will hire its personnel in accordance with labour law and the provisions set forth in article 55 of Act 6/1997, of 14th April.

16. The financial resources of the corporate public entity ENRESA may be obtained from any of the sources listed in section 2 of article 65 of Act 6/1997, of 14th April. Such resources include the Fund for the Financing of the activities of the General Radioactive Waste Plan that exists on the date that the corporate public entity ENRESA is actually incorporated and the revenues referred to in section 1 of the Sixth Additional Provision of this Act, including the fees regulated in the next section.

17. For the purposes of the provisions of the previous section, the financial resources of the corporate public entity ENRESA will include, inter alia, the following fees for the provisions of its services, the proceeds of which will be allocated to the Fund for the Financing of the activities of the General Radioactive Waste Plan:

- *One. Fee for the provision of radioactive waste management services referred to in section 3 of the Sixth Additional Provision*

- a. *Taxable event:*

The taxable event of the fee is the provision of the services relating to the activities referred to in the section 3 mentioned in the previous paragraph, in other words, the management of radioactive waste and spent fuel generated in nuclear power plants and their dismantlement and closure, that are attributable to the operation of such plants prior to 1st April 2005, as well as the management of radioactive waste from research activities that have been directly related with the generation of nucleoelectric energy and the dismantlement and closure operations that must be carried out as a consequence of the mining and production of uranium concentrates prior to 4th July 1984.

- b. *Taxable portion:*

The taxable portion of the fee is formed by the total revenues obtained by applying the electricity tariffs and access charges referred to in articles 17 and 18 of this Act.

- c. *Accrual of the fee:*

The fee will accrue on the last day of each calendar month throughout the operation of the power plants.

- d. *Taxpayers:*

The fee will be payable, in their capacity as taxpayers, by the undertakings that operate and own the nuclear power plants.

Any undertakings that engage in the transmission and distribution activities in the terms set forth in this Act will be liable to pay the tax instead of the taxpayer, and bound to comply with the material and formal obligations relating to the fee.

- e. *Tax rates and fee:*

In the case of the electricity tariffs referred to in article 17 of this Act, the rate by which the taxable portion will be multiplied in order to determine the tax liability payable is 0.173%.

In the case of the tolls referred to in article 18 of this Act, the rate by which the taxable portion will be multiplied in order to determine the tax liability payable is 0.508%.

- f. *Management regulations:*

The fee payable on the revenues for the previous month but one must be paid by the substitute taxpayer before the tenth day of each month or, where applicable, the immediately next business day.

- *The forms used to declare and settle the amounts payable, and the means for paying in such amounts, will be approved in a Ministerial Order.*
- *Agreements may be reached with the entities, institutions and organizations that represent the parties obliged to pay the fees, in order to simplify compliance with the formal and material obligations and commitments ensuing therefrom, as well as the settlement and collection procedures.*
- *This fee will form part of the electricity tariff and access charge structure established in this Act and the provisions developing it.*
- *Two. Fee for the provision of radioactive waste management services referred to in section 4 of the sixth additional provision*
 - a. *Taxable event:*

The taxable event of the fee is the provision of the services relating to the activities referred to in the section 4 mentioned in the previous paragraph, in other words, the management of radioactive waste and spent fuel generated in nuclear power plants and their dismantlement and closure, that are attributable to the operation of such plants after 31st March 2005.

- b. *Taxable portion:*

The taxable portion of the fee is formed by the gross nucleoelectric energy generated by each power plant in each calendar month, measured in gross kilowatts per hour (Kwh) and rounded down to the nearest whole number.

- c. *Accrual of the fee:*

The fee will accrue on the last day of each calendar month throughout the operation of the power plants.

In the event of early cessation of operation at the owner's request, the fee will become payable when such cessation occurs, according to applicable legislation.

- d. *Taxpayers:*

The fee will be payable by the undertakings that operate and own the nuclear power plants. If a plant is owned by several parties, all the owners will be jointly responsible for paying the fee.

- e. *Calculation of the fee:*

The tax liability payable throughout the operation of the facility will be the result of multiplying the taxable portion by the fixed unit tariff and the corrector coefficient that is indicated below, such that the fee payable will be the result of applying the following formula:

$$C = B.i. \times T \times C_c$$

In which:

- C = Fee payable.
- $B.i.$ = Taxable portion in Kwh.
- T = Fixed unit tariff: 0.188 eurocents/Kwh.
- C_c = Corrector coefficient applicable according to the following scale:

| Capacity of the nuclear power plant (Mwe) | PWR | BWR |
|---|------|------|
| 1- 300 | 1.15 | 1.28 |
| 301- 600 | 1.06 | 1.17 |
| 601- 900 | 1.02 | 1.12 |
| 901-1,200 | 0.99 | 1.09 |

- PWR = Pressurized Water Reactors
- BWR = Boiling Water Reactors

f. Management regulations:

The taxpayer will pay the fee by completing and filing the appropriate form within three calendar months of the amount becoming due.

- *The forms used to declare and settle the amounts payable, and the means for paying in such amounts, will be approved in a Ministerial Order.*
- *In the event that the operation of a fuel element manufacturing facility ceases at the owner's request earlier than forecast in the General Waste Plan, the owner must pay any financing deficit that exists at the time of the cessation to the corporate public entity ENRESA during the three years following the date of such cessation, making equal annual payments for the amount determined by the Ministry of Industry, Tourism and Commerce on the basis of the economic study conducted by such entity.*
- *Agreements may be reached with the entities, institutions and organizations that represent the parties obliged to pay the fees, in order to simplify compliance with the formal and material obligations and commitments ensuing therefrom, as well as the settlement and collection procedures.*
- *Three. Fee for the provision of the services for the management of the radioactive waste generated by the manufacture of fuel elements, including the dismantlement of the facilities used to manufacture them.*
 - a. *Taxable event:*

The taxable event of the fee is the provision of the services for the management of the radioactive waste generated by the manufacture of fuel

elements, including the dismantlement of the facilities used to manufacture them.

b. Taxable portion:

The taxable portion of the fee is formed by the quantity of nuclear fuel manufactured each calendar year, measured in metric tons (Tm) and expressed to two decimal places, rounding the others down to the second nearest decimal.

c. Accrual of the fee:

The fee will accrue on the last day of each calendar year during which fuel elements have been manufactured.

d. Taxpayers:

The fee will be payable by the owners of fuel element manufacturing facilities.

e. Tax rates and fee:

The tax payable will be the result of multiplying the taxable portion by the tax rate of €1,539.21/Tm.

f. Management regulations:

The taxpayer will pay the fee by completing and filing the appropriate form within three calendar months of the amount becoming due.

- The forms used to declare and settle the amounts payable, and the means for paying in such amounts, will be approved in a Ministerial Order.*
- In the event that the operation of a fuel element manufacturing facility ceases at the owner's request earlier than forecast in the General Waste Plan, the owner must pay any financing deficit that exists at the time of the cessation to the corporate public entity ENRESA during the three years following the date of such cessation, making equal annual payments for the amount determined by the Ministry of Industry, Tourism and Commerce on the basis of the economic study conducted by such entity.*
- Four. Fee for the provision of management services with respect to radioactive waste generated in other facilities.*

a. Taxable event:

The taxable event of the fee is the provision of the services for the management of the radioactive waste generated in any other facilities not included in the taxable event of the fees set forth in the previous points.

b. Taxable portion:

The taxable portion of the fee is formed by the quantity or unit of waste delivered for management, measured in the pertinent applicable unit from among those listed in letter e et seq. in accordance with the nature of the waste and expressed to two decimal places, rounding the others down to the second nearest decimal.

c. *Accrual of the fee:*

The fee will become payable when the corporate public entity ENRESA removes the waste from the facilities.

d. *Taxpayers:*

The fee will be payable by the owners of the facilities.

e. *Tax rates and fee:*

The tax payable will be the result of multiplying the taxable portion by the following tax rates for each type of wastes.

| Type of waste | Description | Tax rate (€/unit) |
|---------------|--|-------------------|
| | <i>Solid</i> | |
| S01 | Compactable solid waste (25 litre bags) | 93.80 |
| S02 | Non-compactable waste (25 litre bags) | 93.80 |
| S03 | Animal carcasses. Biological waste (25 litre bags) | 242.47 |
| S04 | Hypodermic needles in rigid containers (25 litre bags) | 93.80 |
| | Special solids: | |
| S05 | S051: Waste containing Ir-192 as the active component (25 litre bags) | 93.80 |
| | S052: Uranium or Thorium Salts (25 litre bags) | 175.35 |
| | <i>Mixed</i> | |
| M01 | Mixed waste formed by organic liquids and vials (25 litre containers) | 201.93 |
| M02 | Plates and similar with liquids or gels (25 litre bags) | 93.80 |
| | <i>Liquids</i> | |
| L01 | Organic liquid waste (25 litre containers) | 205.54 |
| L02 | Aqueous liquid waste (25 litre containers) | 174.81 |
| | <i>Sources</i> | |
| | Encapsulated sources whose activity does not exceed the limits established by the ADR for Type A packages and the package formed by the source with its original container or with the item of equipment in which it is installed does not exceed 20 litres: | |
| F01 | F011: F01 sources with half-period elements less than or equal to that of | 277.66 |

| | | |
|-----|---|--------|
| | Co-60 | |
| | F012: F01 sources with half-period elements between that of Co-60 and that of SC-137, the latter inclusive | 277.66 |
| | F013: F01 sources with half-period elements less than or equal to that of Co-137 | 277.66 |
| | Encapsulated sources whose activity does not exceed the limits established by the ADR for Type A packages and the package formed by the source with its original container or with the item of equipment in which it is installed exceeds 20 litres and is less than or equal to 80 litres: | |
| F02 | F021: F02 sources with half-period elements less than or equal to that of Co-60 | 515.66 |
| | F022: F02 sources with half-period elements between that of Co-60 and that of SC-137, the latter inclusive | 515.66 |
| | F023: F02 sources with half-period elements less than or equal to that of Co-137 | 515.66 |

f. Management regulations:

The corporate public entity ENRESA will be responsible for the management and settlement of the fee. The forms used to declare and settle the amounts payable, and the means for paying in such amounts, will be approved in a Ministerial Order.

- *The amounts of the fees payable will be subject to Value Added Tax at the rate applicable to the provision of the taxable services, in the terms set forth in current legislation.*
- *The rates of tax and other tax elements used to calculate the amount of the aforementioned fees may be revised each year by the Government in a Royal Decree based on an up-to-date economic and financial report on the cost of the corresponding activities referred to in the General Radioactive Waste Plan.*

18. The Ministry of Industry, Tourism and Commerce will exercise the compulsory purchase powers that are necessary to achieve the goals of the corporate public entity ENRESA which will be construed as the beneficiary for such purposes. The facilities necessary to achieve such goals are hereby declared public utilities for compulsory purchase purposes.

19. The tax system and tariff reductions applicable to the incorporation of the corporate public entity ENRESA are as follows:

- 1. The arrangements set forth in chapter VIII of Title VII of the Revised Text of the Corporate Tax Act, approved by Legislative Royal Decree 4/2004, of 5th March, will be applied to the transaction in which all the assets, rights and obligations of the Empresa Nacional de Residuos Radiactivos, S.A. are transferred to the corporate public entity ENRESA, and the tax rights and obligations of the former will also be transferred to the latter.*

2. *No tariffs or fees will be charged by the commissioners for oaths and Property and Mercantile Registrars involved in the transaction.*

20. *The corporate public entity ENRESA will take over the existing rights and obligations of the company Empresa Nacional de Residuos Radiactivos, S.A. The Council of Ministers will resolve to authorise the dissolution and liquidation of the aforementioned company and the transfer of its assets to the corporate public entity ENRESA, after the shareholders' rights have been liquidated. In particular, all the employees of the Empresa Nacional de Residuos Radiactivos, S.A., will be transferred to the corporate public entity ENRESA, business succession being construed to exist between the two entities for the purposes of the provisions of article 44 of the Revised Text of the Workers' Statute, approved by Legislative Royal Decree 1/1995, of 24th March. Furthermore, all the tangible and intangible assets of the Empresa Nacional de Residuos Radiactivos, S.A. will become the assets of the corporate public entity ENRESA.*

21. *Until the corporate public entity ENRESA is actually incorporated, this taking place via the entry into force of its articles of incorporation, which will be approved by Royal Decree, the Empresa Nacional de Residuos Radiactivos, S.A., will continue engaging in the activities set forth in Royal Decree 1349/2003, of 31st October, regulating the activities of Empresa Nacional de Residuos Radiactivos, S.A. (ENRESA), and its financing.*

22. *The Government is hereby authorised to issue any regulations and adopt any measures that are required to apply the contents of this provision.*

2. Section 1 of the Sixth Additional Provision of the Electricity Sector Act 54/1997, of 27th November, (Fund for the Financing of the activities of the General Radioactive Waste Plan) is hereby amended and reworded as follows:

1. *The amounts collected as the fees regulated in the Sixth Additional Provision enfore, as well as any other form of financing of the costs of the work involved in the management of the radioactive waste and the spent fuel, and the dismantlement and closure of facilities, including any financial returns that they generate, will be allocated to a provision that will be deemed tax deductible for Corporate Income Tax purposes.*

The amounts allocated to the aforementioned provision may only be invested in expenses, works, projects and investments derived from courses of action stipulated in the General Radioactive Waste Plan approved by the Government.

3. Paragraph 5 of the Sixth Additional Provision of the Electricity Sector Act 54/1997, of 27th November, regarding the billing of the owners of nuclear power plants, is hereby annulled.

SECTION III. LIQUID HYDROCARBONS

Article 9. Authorisation of agricultural cooperatives to sell petroleum products.

One. The fifteenth additional provision of the Hydrocarbon Act 34/1998, of 7th October, is hereby amended and reworded as follows:

FIFTEENTH ADDITIONAL PROVISION. Cooperatives.

Cooperatives shall only be allowed to perform the petroleum product retail distribution activities stipulated in article 43 of this Act with non-member third parties by incorporating a company with its own legal personality and which will be subject to general tax regulations. Agricultural cooperatives will not be obliged to meet this requirement.

In order to start carrying out the petroleum product retail distribution activities referred to in the previous paragraph, all cooperatives, including agricultural cooperatives, must be equipped with facilities that conform to any technical, safety, security, metrological, metrotechnical and environmental instructions, town-planning regulations, consumer and user protection regulations, or any others applicable to vehicle supply facilities and to the supply to permanent facilities for consumption in the plant itself, pursuant to article 43 of this Act.

Two. Section 4 of article 93 of the Cooperatives Act 27/1999, dated 16th November, is hereby amended to read as follows:

4. Agricultural cooperatives will be entitled to conduct transactions with non-member third parties up to a maximum of 50% of the total of the transactions conducted with members, for each type of activity carried out by such agricultural cooperatives. This limitation will not apply to agricultural cooperatives with respect to the retail distribution of petroleum products to third parties who are not members of the cooperatives.

Three. Paragraph two, letter a, section 2 of article 9 of the Cooperatives Tax System Act 20/1990, of 19th December, is hereby amended to read as follows:

Nevertheless, agricultural cooperatives will be entitled to engage in the retail distribution of petroleum products to non-member third parties without losing their specially protected status.

Four. Section 10 of article 13 of the Cooperatives Act 20/1990, dated 19th November, is hereby amended to read as follows:

10. Cooperative transactions conducted with non-member third parties, outside the cases allowed by law, and breach of the regulations governing the keeping of separate accounting records for such transactions and the allocation to the Compulsory Reserve Fund of the proceeds obtained in conducting such transactions.

No cooperative of any kind whatsoever will be entitled to carry out a volume of transactions with non-member third parties that exceeds 50% of the cooperative's total transactions, without losing its tax protected cooperative status. This limitation will not apply to agricultural cooperatives with respect to the retail distribution of petroleum products to third parties who are not members of the cooperatives.

For the purposes of the application of the limit stipulated in the previous paragraph, the revenues obtained by the credit sections of cooperatives formed by credit unions, investments in government securities and in equities issued by public companies will be construed as proceeds from transactions with members.

SECTION IV. GASEOUS HYDROCARBONS

Article 10. Limitation of the compulsory excess capacity.

Section 1 of article 4 of the Hydrocarbon Act 34/1998, of 7th October, is hereby amended and reworded as follows:

1. Planning with regard to hydrocarbons shall be for guideline purposes except when involving basic natural gas network facilities, the determination of the total liquefied natural gas regassification capacity needed to supply the gas system, storage facilities for strategic reserves of hydrocarbons and the determination of general criteria for setting up facilities to supply retail petroleum products. In these latter cases, planning shall be mandatory in nature to guarantee the supply of hydrocarbons.

Article 11. Amendment of articles 82 and 83 of the Hydrocarbon Act 34/1998, dated 7th October.

1. A new letter is hereby added to article 82, worded as follows:

d. Measurement of the supplies of their customers.

2. Letter h of section 1 of article 83 is hereby amended to read as follows:

h. Keep an operational system in order to ensure permanent service and deal with any emergency incidents that may arise in the distribution networks and in the reception facilities belonging connected to consumers.

3. Letters a, f, g and h of section 2 of article 83 are hereby deleted.

Article 12. Amendment of articles 93 and 94 of the Hydrocarbon Act 34/1998, dated 7th October.

1. Article 93 of the Hydrocarbon Act 34/1998, of 7th October, is hereby amended and reworded as follows:

By means of a Ministerial Order following a Resolution adopted by the Government Committee for Economic Affairs, the necessary provisions shall be issued to establish the sale tariffs for natural gas, manufactured gas and piped liquefied petroleum gases for final consumers as well as the transfer costs for natural gas and liquefied petroleum gases for the distributors of fuel gases through pipelines. The Order shall set concrete values for those tariffs and prices or a system to determine and automatically update them. The sale tariffs for users shall be maximum and shall be the same ones for the whole country without prejudice to their specialities.

2. Section 1 of article 94 of the Hydrocarbon Act 34/1998, of 7th October, is hereby amended and reworded as follows:

1. Through a Ministerial Order, following a resolution adopted by the Government Committee for Economic Affairs, the necessary provisions shall be issued to establish the

rates and fees for the basic services for third party access. The Order shall set the concrete values for those rates or a system to determine and automatically adjust them.

3. Section 4 of article 94 of the Hydrocarbon Act 34/1998, of 7th October, is hereby deleted.

4. Section 5 of Article 94 of the Hydrocarbon Act 34/1998, of 7th October, is renumbered as section 4.

Article 13. Authorisation of the National Energy Commission to handle gas payments.

Point 3 of section three of the Eleventh Additional Provision of the Hydrocarbon Act 34/1998, of 7th October, is hereby amended and reworded as follows:

3. In relation to the gas industry, and in addition to the functions stipulated in paragraph 1 above, the Commission shall also be responsible for the following functions:

- *Make the settlements corresponding to the earnings obtained through tariffs and access charges regarding the use of the basic network, secondary transportation and distribution facilities referred to in article 96 and notify the interested parties and the Directorate General of Energy Policy and Mining of such settlements.*
- *Solve any disputes that may be submitted to it with regard to the technical management of the natural gas system.*

SECTION VII. NUCLEAR POWER.

Article 14. Sale of the sites of the nuclear plants in moratorium.

The last paragraph of section 3 of the seventh additional provision of the Electricity Sector Act 54/1997, of 27th November, is hereby amended as follows:

Likewise, in order to calculate the amount of compensation pending payment, the Ministry of Industry, Tourism and Commerce shall take into account the disposal value of the land or sites of the facilities. For these purposes, the Ministry may resolve to organise a public call for tenders or auction in which the land or site will be awarded to the highest bidder, in accordance with the terms and conditions of the auction or call for tenders, which must be approved by the Ministry.

Should the owners be interested in starting to exploit the land or sites of the facilities, they will be entitled to match the highest bid, in which case the auction or call for tenders will be rendered null and void, and the divestment will take place when the exploitation commences.

Article 15. Authorization procedures applicable to the different phases of the lifetime of nuclear and radioactive facilities.

http://noticias.juridicas.com/base_datos/Admin/l25-1964.html -
a28http://noticias.juridicas.com/base_datos/Admin/l25-1964.html - a29Articles 28, 29 and 30 of the Nuclear Power Act 25/1964, of 29th April, are reworded as follows:

Article 28.

Nuclear and radioactive facilities will be subject to a system of authorizations issued by the Ministry of Industry, Tourism and Commerce, after receiving a mandatory report from the Nuclear Safety Council and after requesting the opinions of the Autonomous Communities with land planning and environmental powers, which will be regulated in specific Regulations.

The Regulations will include the authorisations applicable to each phase of the lifetime of such facilities, including site selection, construction, commissioning and operation, and their dismantlement and closure, as appropriate.

Artículo 29.

The Nuclear Safety Council will be responsible for supervising nuclear and radioactive facilities during each phase of their lifetime, in order to ensure compliance with the authorisations mentioned in the previous article.

Artículo 30.

The transfer of authorizations for nuclear or radioactive facilities must be authorised by the Ministry of Industry, Tourism and Commerce, after requesting the opinions of the Autonomous Communities with land planning and environmental powers, and after receiving a report from the Nuclear Safety Council.

Article 16. Amendment of the Nuclear Power Act 25/1964, of 29th April.

Chapter XIII of the Nuclear Power Act 25/1964, of 29th April is hereby amended to regulate non-nuclear proliferation nuclear and physical protection matters, and reworded as follows:

CHAPTER XIII. NON-NUCLEAR PROLIFERATION AND PHYSICAL PROTECTION OF NUCLEAR MATERIAL.

Artículo 84. Obligations regarding nuclear issues and physical protection of nuclear materials.

All individuals and bodies corporate must comply with the obligations derived from the commitments entered into by the Spanish State or from Spanish legislation regarding non-nuclear proliferation and physical protection of nuclear material and, in particular, to perform any activities involved in the monitoring, control and safekeeping of nuclear materials, to permit any necessary inspections and checks in places or facilities and to inform the competent authorities.

Article 17. Binding nature of the instructions of the Spanish Nuclear Safety Council.

A new third paragraph is hereby added to article 2.a of the Spanish Nuclear Safety Council Act 15/1980, of 22nd April, worded as follows:

Any Instructions that the Nuclear Safety Council issues with regard to such matters and regarding the parties involved in them will be deemed binding once they have been notified or, where applicable, published in the "Official State Gazette".