



Proposals from the Fide Working Group: Draft Climate Change and Energy Transition Law

Madrid, January 24th, 2019

This document contains the first proposals of the FIDE Working Group on the Draft Climate Change and Energy Transition Law. Its members are detailed at the end of the document.

1. INTRODUCTION.

On November 14th, 2018, the draft Climate Change and Energy Transition Law (hereinafter, "dCC&ETL") was informally disseminated by the Ministry of Ecological Transition.

The dCC&ETL is developed as a government response to the need to take action to combat climate change that involves not only governments, but also the private sector and the rest of society.

This initiative had already been started in the previous legislature, during which a public consultation was carried out prior to the drafting of the text of the dCC&ETL.

On 25 June 2018, the Working Group Climate Change and Energy Transition ("**WGCC&ET**") was set up in FIDE with the fundamental objective of actively collaborating in the debate of one of the legislative initiatives that currently arouses the greatest interest.

Following various debate sessions at FIDE, the main reflections on this legislative initiative are included in this document. All of the above, without prejudice to the fact that allegations may be formulated by the WGCC&ET during the formal public consultation process during the approval process of the Climate Change and Energy Transition Law (hereinafter, the "**CC&ETL**").

The conclusions contained in the document are not a faithful reflection of the opinions of each of the members on each and every one of the points discussed. In fact, within the working group there are discrepancies on certain issues, which reveals the complexity of the subject and the plurality of integrated opinions.

2. STRUCTURE OF THE DOCUMENT.

For better understanding, the structure of this document is briefly outlined.

General comments on the dCC&ETL are included in section 3. This section reflects the key considerations reached by the WGCC&ET regarding the content of the dCC&ETL and its timeliness.

These general observations must necessarily be supplemented by the more specific considerations contained in section 4, which follows the order of the titles and articles contained in the CC&TEL, although it does not constitute an exhaustive analysis of each of the precepts.

The analysis contained in this section 4 begins with the approach to the issue to which it refers. It then includes a comment or criticism on the regulation contained in the

dCC&ETL and concludes with a proposal for improvement, without including alternative wording as it exceeds the remit of the WGCCyET.

3. GENERAL OBSERVATIONS

1. The approval of a CC&ETL implies an unavoidable commitment that does not admit delays. The WGCC&ET expressly supports the approval of a stable regulatory framework that allows Spain to comply with the objectives assumed in the Paris Agreement of 2015 and in the Agenda 2030 for Sustainable Development of the United Nations at the same time as promoting economic development and contributing to the competitiveness of the Spanish economy.
2. The WGCC&ET considers that the **time is right** for the enactment of the CC&ETL, which is an opportunity for Spain to convey an image of a country committed to the fight against climate change.

The dCC&TEL is considered a starting point for establishing a predictable and stable legal framework that allows Spain to take benefit from the economic advantages derived from moving towards a decarbonised economy, although within the WGCC&ET there are discrepancies regarding the way in which these objectives should be achieved, particularly in relation to the weight of the different technological alternatives in meeting emission reduction objectives.

Our country is still in a recovery phase after the crisis. We believe that a sustainable economic recovery cannot turn its back on international agreements, particularly the Paris Agreement whose economic implications are particularly relevant. The majority opinion of the WGCC&ET is that we are at **the moment of creating a stable framework** that offers clear signals to take advantage of the industrial and employment opportunities that will be generated in all sectors, in an environment characterized by a global transition. However, some members of the WGCC&ET understand that it would be more prudent to wait for the transposition of Community Directives and, in any case, they call for a more progressive and pragmatic transition, with approaches far from voluntarism, in order to guarantee its success.

3. The fight against climate change and the energy transition is **an opportunity that Spain should not miss**. It is necessary to transform the model in which the economic growth of greenhouse gas emissions is decoupled, although it is essential to ensure that this transition takes place without placing Spain at a disadvantage with respect to other countries in its environment. Those who manage to make this transition properly will obtain benefits, not only environmental ones.

Although the dCC&TEL poses challenges for our country that we must evaluate and mitigate, the majority opinion of the WGCC&ET is that, in global terms, the balance between risks and opportunities is positive.

The approval of the CC&ETL should accelerate the transition towards a safer and more affordable energy supply, improve air quality and citizens' health, reduce energy dependence and associated risks, improve the trade balance due to lower imports and recirculation of said resources in the national economy, and generate new opportunities for employment and industrial development among other issues, all contributing to the improvement of competitiveness, progress and welfare of citizens. Not in vain, the International Labor Organization estimates the creation of 24 million new jobs globally in 2030, due to the transition to a green economy aligned with the objectives of the Paris Agreement.

4. Spain is called to occupy a **leading position** within the current socio-political framework in the fight against climate change. The CC&ETL can be a clear signal of this role that Spain wants to play. This role and leadership of Spain in the EU and in the international framework is justified, among many other reasons, by the greater vulnerability of Spain to the effects of climate change.

Spain is initially well positioned to undertake the change of energy model: it has natural resources (sun, wind, water, biomass ...), technology and leading companies in productive sectors such as energy, energy efficiency, mobility, building or renewable energies.

5. In the WGCC&ET there are **different opinions regarding the degree of ambition** of the CC&ETL. Faced with the majority opinion of those who consider it insufficient, especially considering the IPCC's projections regarding the 1.5°C threshold at the end of the century (which would require a negative net balance of emissions in 2050), the minority position warns that the level of ambition incorporated in the dCC&TEL would imply an extra effort for Spain in comparison with the EU Member States that will limit themselves to sticking to the commitments acquired at European and international level, so that any objectives that exceed or advance such commitments must be submitted to a cost / benefit analysis that takes into account environmental, economic and social factors.

In any case, and despite the reluctance generated by any process of transformation, a change of model must be encouraged. To do this, predetermined medium and long-term objectives aligned with those required by the EU must be included.

6. The WGCC&ET has revealed a disparity of criteria regarding **technological neutrality**. Thus, and faced by those who think that the CC&ETL should determine the applicable technologies, other members defend the need to be flexible in the way of reaching the established objectives, given the uncertainty regarding the technologies that can be used in the future, without prohibiting any, as it could not only unnecessarily increase the cost of the objectives, but also put them at risk.

From the WGCC&ET it is considered that, in any case, a stable legal framework is necessary to avoid generating uncertainties and that it is undeniable that an unprecedented technological revolution is under way in the field of clean energy, batteries, digitalization, etc., which brings about decarbonization scenarios that only ten years ago were very complex and expensive to deal with.

The CC&ETL must be accompanied by a life cycle analysis of the sectors and products that are affected by its enactment, to ensure that the transition expected in it is realistic.

Likewise, the different public administrations should assign more resources to the estimation of the GHGs actually emitted in diffuse sectors. There is a perception that the quality of the data handled in areas such as agriculture or the change of land uses are not reliable enough to address an efficient transition plan in these sectors; without reliable data, the establishment of realistic objectives and management are complicated.

7. **Consensus and participation** are essential for the proper application of the CC&ETL. The profound changes resulting from its enactment require a broad participatory process in which the various administrations, the affected sectors, and civil society can actively contribute, with greater certainty regarding the process and approval deadlines of the CC&ETL.

A sufficient political and social consensus that transcends the electoral periods is necessary. The fight against climate change is a global trend and requires a calm, rigorous debate supported by the extensive scientific evidence available, beyond purely ideological considerations.

The economic transition requires a stable and long-term framework that allows the progressive and efficient transformation of our economy towards a sustainable and low carbon model. **Messages that generate legal uncertainty should be avoided** and instead promote an orderly process of transformation that avoids reluctance.

8. The WGCC&ET considers a **greater commitment from the public sector** in the fight against climate change necessary. The measures contained in the CC&ETL affect the private sector in a decisive way and do not have the same degree of forcefulness with respect to public policies.

The set of public administrations constitutes the main client in economic volume for very relevant sectors of the Spanish economy. For this reason, the public purchase should have a driving role in this transition, contributing to the economic success of low emission products, projects, infrastructures, and services.

9. An **in-depth reform of environmental taxation** is essential. Although the DCC&ETL indicates what the objectives of this taxation should be, it is necessary to translate such objectives into a true fiscal reform.

Price signals are critical to activate, settle and accelerate the process of decarbonization of the economy. In this sense, it will be necessary to lay the foundations of a tax reform that fully applies the "polluter pays" (and "decontaminate, deduct" principle), thus promoting climate action efficiently (at minimum cost) and contributing, through the collection, to finance the fulfillment of the objectives of climate change and energy transition. The reform of taxation, which must adapt to the regulatory framework of the

European Union, should not put Spain in a worse competitive situation and should not encourage offshoring.

This reform requires political consensus and, therefore, is not exempt from difficulties, especially at the present time, but it is an indispensable instrument for the mobilization of resources in the fight against climate change.

10. From a **normative technique** point of view, the DCC&ETL suffers from **lack of uniformity**. Alternates programmatic content with excessive reference to its regulatory development. This circumstance is justified, probably due to the heterogeneous content of the provision and the different origins of its authors, but it should be avoided leaving in the CC&ETL only those aspects that require its consecration in a provision with legal rank. The CC&ETL must respect the principles of good regulation and must be accompanied by the corresponding memory of normative impact analysis. It is also considered that the heterodox process of gestation of the CC&ETL, which has been subject to successive advances, leaks and cross statements, not without controversy, has interfered with the desirable development of a formal procedure formally submitted to a broad public consultation.

The CC&ETL must ensure that principles of Union law (such as the free movement of goods) and the competences attributed to the different public administrations and, especially, the autonomous ones are respected.

4. PARTICULAR OBSERVATIONS.

PRELIMINARY TITLE. GENERAL DISPOSITION

11. Although the **object of the Law** is written in a way that could be considered inaccurate, its scope is justified by the general nature of the provision and the heterogeneity of the issues it regulates. The convenience of introducing definitions of relevant terms for a better understanding of CC&ETL (such as the concept of "just transition" or "sustainable cost") should be assessed.
12. The presentation of the **guiding principles** contained in article 2 of the DCC&ETL begins with a reference to the principles recognized in national, community and international law. The following is a list of principles, some of them (such as the "polluter pays" principle) that are expressly recognized in national, community and international law.

It is considered necessary to reorder the listed principles, grouping the environmental, economic and social principles, so that some kind of logic can be seen in their enumeration. It is also advisable to introduce express references to the circular economy throughout the CC&ETL.

I. OBJECTIVES AND PLANIFICATION OF THE ENERGY TRANSITION.

13. Achieving 70% of renewable electricity generation in 2030 is consistent with a final energy consumption penetration of 35%, but also extraordinarily ambitious. Given that the large hydraulic can barely grow, this goal represents duplicating all remaining renewable generation, it can be assumed that above all through intermittent (ie, non-manageable) technologies, being the most competitive today in terms of standardized cost of the energy.

Therefore, in addition to setting objectives and compliance paths in terms of generation and final demand, the DCC&ETL **should establish comparable references for the development of electrical energy storage** (which the preliminary draft only mentions in relation to non-mainland networks), both large scale as distributed (in this last case the electric vehicle also plays an important role), and backup technologies, renewable or not. The latter will provide comparatively little energy, but they are decisive for integrating non-manageable renewable energy and guaranteeing security of supply.

II. RENEWABLE ENERGY.

14. The reference made by the DCC&ETL to the promotion of the development of new renewable facilities through competitive concurrence procedures seems to refer to the assignment of some type of regulated remuneration. Notwithstanding, the fact that an economic support mechanism could be considered relevant in the future if the wholesale market price were significantly depressed, the result of the auctions carried out in 2016 and 2017, as well as the number and scale of projects in course that do not aspire to perceive such specific retribution, suggests that **the determining factor for the aforementioned impulse is no longer the survival of a prized economic regime**, which would, in any case, be incompatible with the existing specific retribution. The following are considered more relevant for the achievement of the objectives: i) **Access and connection** to the transport and distribution networks, since the capacity is scarce in the nodes with abundant resources and viable from the point of view of the environmental impact; and ii) **The stability of revenues from the wholesale electricity market**, whose marginal price was originally designed when a majority of facilities either had high variable costs (conventional thermal) or were easily managed (regulation hydraulics). This paradigm is now altered by a preponderance of the flowing (non-manageable) generation with high fixed costs and low variable costs.

According to the above, the DCC&ETL should stand out as the main levers for the development of an important contingent of additional renewable power in the next decade, and beyond the possible establishment of economic aid through incentives or exemptions: i) The availability of sufficient capacity in the networks, together with a reinforced transparency in the procedures for their allocation (moreover, the aforementioned future concurrence procedures could be oriented preferably to the attainment of access, rather than to that of some type of subsidy), and ii) The evolution of the wholesale market to better adapt to a generation *mix* where infra-marginal variable cost technologies prevail, whether flowing or non-adjustable, so that sufficiently stable

price signals can be provided to maintain the attractiveness of large recoverable investments only in the long term.

In parallel and in a complementary way to the adaptation of the wholesale market, certain aspects of the sectoral electricity regulation could be revised to promote long-term power purchase and sale instruments, in time horizons that provide certainty to producers and investors, while at the same time serve to contain upward tensions in prices. In this sense, throughout the entire DCC&ETL, the importance of reconciling its objectives with the maintenance of moderate energy costs that make it possible to combine environmental and economic sustainability and sustain the competitiveness of the national productive fabric is absent.

15. Closely related to the above, the DCC&ETL suffers from a lack of specificity when it refers to the primacy of electricity generation from renewable sources. Given that the text is later clear when establishing its priority in the access and connection to the network, this primacy could be understood as a dispatch priority.

This circumstance must be clarified. **Raising an unconditional dispatch priority is inadvisable without first evaluating the maintenance of article 26.2 of Law 24/2013, of December 26, of the Electricity Sector ("LSE")**, which expressly includes the dispatch priority with equality of economic conditions. On the other hand, in a European context of wholesale market coupling, forcing the dispatch priority independently of the bid price would complicate the matching algorithms to the point of making certain cross-border transactions practically unviable.

III. ENERGY NETWORKS.

16. It is surprising that an extensive article is devoted to the details of a figure whose scope seems to be limited, such as closed electricity distribution networks, and on the other hand there is **no reference to cogeneration as an efficiency tool, nor to self-consumption in internal networks, nor to distributed generation installations** connected to non-closed distribution networks, which are expected to be the vast majority in number of those whose production is generally accessible to all consumers.

The DCC&ETL should **give the distribution networks an importance comparable to that given to the transmission network** because, although large-scale centralized generation facilities with injection into the backbone network are in the early years the main bet to make rapid progress in the objectives set, are not the only one, and it can be expected that in the longer term distributed generation becomes a greater protagonist, especially in areas of high population density where the development of networks is particularly slow and costly, and the accumulated losses for the transfer of energy from the level of transport are high.

On the other hand, it is surprising that reference is made to the «*degree of compliance with the planning of the electricity and gas transmission networks*», and, **the article**

dealing with the planning of the transmission network is confined to electricity and ignores gas, which is referred to almost exclusively in connection with the promotion of the injection of renewable gases into the natural gas network.

The influence of climate change on the planning and management of these transport infrastructures does not seem to be expressly taken into consideration either (it is mentioned later, apparently in relation to mobility) nor is reference made to the review of their environmental impact due to the increasing fragility of the ecosystems they cross as a result of this climate change.

17. **Effective control must be exercised over the degree of progress of investment plans in the distribution networks**, analogous to that contemplated with the transmission network, for which it would be relevant to adapt or refer to Chapter IV ('Investment Plans') of Royal Decree-Law 1048/2013, of 26 December, relating to remuneration for the distribution activity, which is parallel to Chapter IV, of the same name, of Royal Decree-Law 1047/2013 of the same date, which deals with remuneration for the transport activity.
18. **It is debatable whether the transposition of Article 38 of the forthcoming Directive on the internal market in electricity**, which will replace the current Directive 2009/72/EC, **should be brought forward as part of this DCC&ETL**. Indeed, closed distribution networks do not have to incorporate renewable generation facilities and, if they do so, their treatment for the purposes of the guiding principles pursued here would presumably not differ from that given to generation embedded in non-closed distribution networks. It therefore seems inappropriate to address as part of the articles, and with the degree of detail inherent in a regulation, an element that is not directly related to the object of the Law.
19. The article dedicated to extra-peninsular networks hardly adds anything to what has already been foreseen and developed in articles 4 and 10 of the Electric Sector Law, as well as 4 of Royal Decree-Law 738/2015, of 31 July. **The opportunity afforded by the approval of a regulation with the rank of law could be used to better define the nature of the electrical energy storage activity**. Different jurisdictions have developed different visions regarding the consideration of electrical energy storage. In particular, Regulation (EU) 2017/2195 of the 23 November 2017 Commission ("OJEU" of 28 November), which establishes a directive on the electricity balance, grants storage the status of **provider of balancing services**, on an equal footing with electricity generation and demand facilities¹. These suppliers will be responsible for offering certain standard products to the corresponding balancing energy market. An unambiguous definition would avoid ambiguities and clarify their legal fit. As storage requirements grow as the penetration rate of unmanageable renewable generation increases, having a clear definition from the point of view of separation of activities becomes more necessary than ever. In addition, just as some reference to distributed generation is missing, it is worth mentioning **distributed**

¹ In particular, the Regulation provides that 'Conditions for suppliers of balancing services [...] shall allow owners of demand facilities, third parties and owners of power generation facilities, from both conventional and renewable sources, as well as owners of energy storage units, to become suppliers of balancing services; [...]'.

storage, in connection with the development of electric mobility, which entails the massive deployment of batteries, and **so-called smart grids**.

On the other hand, the regulations in force give special importance to large-scale storage in non-mainland systems, to the extent that, exceptionally, article 5 of Law 17/2013, of 29th October, attributes ownership of the hydraulic pumping installations located in said systems to the System Operator, while its economic and administrative regime is developed in Title VII of the aforementioned Royal Decree-Law 738/2015, of 31st July.

IV. ENERGY AND FUEL TRANSITION.

20. The text of the DCC&ETL expressly and without exception prohibits the entry into force of any new subsidies linked to the consumption of fossil fuels. It should be considered to qualify such a categorical and immediate legal assertion in favour of a cost-benefit analysis that evaluates, in a restrictive manner and limited in time, the expected utility of granting each incentive, individually analysed, in terms of effectiveness and efficiency to achieve, if not the decarbonization of the economy in the short term, at least a neutrality in the balance of greenhouse gas emissions, without prejudging the merits of both alternatives, not mutually exclusive.

The objectives pursued will require the implementation of multiple mechanisms to achieve them; among others, and at least in an intermediate phase (of transition, which the Law bears in its name) **very probably the substitution of some fossil fuels for others whose use emits less greenhouse gases** (this could be the case of heavy transport, industrial vehicles, ships, aviation...), **or their use in very highly efficient plants**, that allow the joint use of heat and electricity or even tri-generation, in locations where until now each of these functions is developed by different systems, with a lower overall energy efficiency, as well as the possible use of carbon capture and storage techniques. Without the participation of these latter facilities, it would be difficult to meet the demanding EU commitments on energy efficiency. It should not be ruled out a priori to encourage these advances, even as a means of achieving the ultimate goal of an emission-neutral society. Electrification of the economy is perhaps the most powerful tool for accelerating the transition, but it is not the only one.

21. On the other hand, **the initiative to promote a system of certification of origin that allows the injection of renewable gases into the conventional natural gas network is applauded**. In contrast to the guarantees of origin of electricity, which have been in use for more than a decade and are of rapidly growing economic importance, the use of biogas, biomethane, hydrogen and other renewable gases is markedly lower than in other surrounding countries, and practically limited to electricity generation and sustainable mobility. **Injection into the grid for joint use with fossil gas** (to date there is only one experience of this type in Spain) **would allow the indistinct use by all consumers** of gas in domestic or industrial installations, with no other limit than the available production of a fuel of national renewable origin and easily storable and transportable.

V. MOBILITY AND BUILDING.

22. **Decarbonisation of the mobility of persons is indeed critical** to achieving the committed objectives, but it will probably not be enough; progress is also needed in the **freight transport** sector. The transport sector as a whole is responsible for about 80Mt CO₂_{eq}, of which road freight transport accounts for 22Mt_{eq} (almost 30% of the total).

The current version of the document makes only one reference to freight transport, in Articles 15.4 and 15.5, regarding the possible adoption of the Eurovignette in road transport and the monitoring of emissions from heavy duty vehicles.

A more detailed treatment of the sector is proposed, focusing on a progressive modal shift from transport to electrified rail, so that between 15 and 20% of the total goods transported can be reached by 2030, from the current 4-5%. The future Law should provide for the activation of investments in infrastructure (e.g. changes in the layout of the conventional rail network, relocation of logistics centres, etc.), opening up the possibility of a stable framework of public-private partnerships to accelerate the necessary investments.

23. With regard to **road transport**, there is a consensus, in the current state of technology, regarding the role of certain fossil fuels during the energy transition, particularly natural gas. It is a mature technology, economically viable, in fact, in our country heavy trucks of both LNG and CNG are commercialized, although certainly the refuelling infrastructure is still scarce and should be substantially improved.
24. Regarding **the distribution of goods in an urban or peri-urban environment** ("last mile"), the text should anticipate the progressive electrification of light transport vehicles through (a) economic incentives, (b) forecasts in municipal mobility plans, as well as anticipate future distribution models for shared light vehicles, based on existing technology platforms. At present, electric goods vehicles are commercialized in Spain for the transport of loads between 600 and 1,000 kg, which can satisfy a good part of the needs of goods transport in an urban environment.
25. Regarding **light vehicles for personal mobility**, at this point it is noted that the majority view of the WGCC&ET is that, in the current state of technology, electrification is a preferred way to reduce emissions and that it is therefore appropriate for the DCC&ETL to propose measures to accelerate the electrification of the fleet. Even so, in our opinion there is a lack of clearer references to encourage the use of electric vehicles, with the exception of the obligation to install chargers (Article 16), which is discussed below. Finally, we consider it necessary to mention more explicitly the link between a renewable energy mix and an electrified vehicle fleet, as a way to achieve the necessary decarbonisation in the mobility sector.

We also note that some members of the WGCC&ET believe that internal combustion technologies should not be banned, as they would discriminate scenarios where fossil fuels and biofuels could play a relevant role in the energy transition process.

26. Although we fully agree on the need to provide the interurban road network with a sufficient loading infrastructure, as regards the installation of loading points at petrol

stations (Article 16) we consider it more appropriate to promote this through voluntary financing mechanisms and economic incentives (including fiscal measures) rather than through a purely coercive and sanctioning policy. In fact, some members of the WGCC&ET clearly reject the obligation to install electricity recharging points at petrol stations and warn of the negative impact of these measures on the maintenance of jobs linked to oil operators.

There is scope, in our opinion, for the establishment of **voluntary agreements** with certain sectors (including, of course, oil operators, but not exclusively), which have been successful in other environmental policies and which could speed up the development of a sufficiently meshed freight infrastructure on a national scale. Thus, the development of a common infrastructure in existing horizontally owned buildings and in the tertiary sector, in relation to Article 17 below, could also be accelerated by means of voluntary agreements that incorporate efficient economic incentives for the massive installation of standardised, publicly accessible loading points.

27. Beyond technological solutions and alternatives, it is proposed that the DCC&ETL emphasize the **rationalization of mobility**, making it more efficient. Many displacements, particularly in urban and peri-urban environments, could be avoided by promoting other policies. Thus, the current text rightly introduces the mobility variable into urban planning (Art. 15.3), but it should also encourage the incorporation of this variable into employment policy (e.g. promotion of teleworking and flexible working hours). In the same way, proposals could also be taken up, such as the incorporation of personal mobility plans both in companies and in the public sector, given that commuting to work is the main daily need for mobility in an urban environment.

Finally, from the point of view of legal technique, the level of detail of Article 16 is surprising, in comparison with other sections of the DCC&ETL, which is perhaps more typical of a regulatory development than of a document with the status of a Law.

28. **The decarbonization of the building sector**, responsible for almost 30% of emissions in our country, up to the levels required by both emission reduction targets and European regulations (EED², EPBD³, buildings with almost zero emissions ...) will require between 250,000 and 400,000 homes rehabilitated per year⁴.

Article 17.2, on the other hand, sets the target of 100,000 homes rehabilitated with energy efficiency criteria between 2021 and 2030. In the opinion of the experts, this figure is clearly insufficient.

² Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU, and repealing Directives 2004/8/EC and 2006/32/EC.

³ Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency.

⁴ Rehabilitation Working Group (2014). Strategy for rehabilitation. Keys to transforming the rehabilitation sector in Spain.

It is proposed to align the content of Article 17 with existing reports and models, including the "Long-Term Strategy for Energy Renovation in the Building Sector in Spain" prepared in 2014 by the Ministry of Development in compliance with Article 4 of the EED.

In addition, it is proposed to activate the programme of renovation of public buildings, in line with the transposition of Article 5 of the EED, also promoting the exemplary role of the Administration.

Finally, it is proposed to arbitrate measures so that whatever the actions in the envelope of a building, during the administrative process the variable of "energy efficiency" is effectively contemplated as a criterion for granting the required licences or authorisations.

29. **Energy audits** (Article 17.2 a) can become one of the levers for massively activating energy rehabilitation of buildings. However, to date, and although the existing European standards, partially transposed into our legal system, have been applied, the low quality of these audits and competition based exclusively on price have abrogated any positive effect on the activation of the retrofitting sector.

Furthermore, when it comes to **energy measures in buildings**, we think that it is not only a question of reducing demand but also of increasing the efficiency of installations. For example, the use of modern heat pumps, which prevent the burning of fossil fuels and can divide by 5 the energy consumption in heating, or condensing boilers, and very close to reaching the theoretical maximum of 100% efficiency.

The current text promotes the implementation of **energy audits in a "cost-efficient" manner**. However, it does not mention the opportunity to fully implement the new EPBD.

It is proposed to cite explicitly the promotion of energy certification in line with the criteria of the aforementioned Directive, improving the transparency and quality of energy performance certificates by revising and updating the current regulations, promoting the uniform establishment and application of all the necessary calculation parameters, and avoiding competition between actors solely on the basis of price.

In addition, the **activation of a programme of energy audits of public sector buildings** would serve as an accelerator of the process, putting the Public Administration in an exemplary position, in line with other sections of the draft text.

Caution should also be taken to ensure that audits do not cover illegal situations.

Finally, and consistent with the content of Article 16 of the DCC&ETL, it is proposed to establish mechanisms to facilitate the installation of EV recharging points in residential buildings, taking advantage, where appropriate, of refurbishment works, by means of economic incentives complementary to those already existing for energy efficiency.

30. **Funding** (Article 17.2(b)) has become one of the main barriers to massively activating energy rehabilitation of buildings. According to the experts, there is a lack of appropriate instruments to facilitate accessible financing, at a reduced cost, in a system of transparency and public-private partnerships. According to the experts, the current application of Article 7 of the Energy Efficiency Directive, in particular **with regard to the**

design and implementation of the National Energy Efficiency Fund (IDAE), could be improved to generate more resources and attract private capital to the sector.

The text of the preliminary draft refers exclusively to "aid programmes and financing mechanisms", which is understood to be of public origin. It is proposed that the text explicitly promote the development of public-private financing vehicles, beyond public subsidies, as has been done in other surrounding countries⁵, through a thorough review of the existing model transposing Article 7 of the EED.

In this context and given that the majority of those who are called to finance these actions are the owners of the home or building, greater emphasis is proposed on measures to raise awareness and educate consumers and citizens, beyond the appropriate price signals that necessarily have to be oriented with this DCC&ETL.

VI. ADAPTATION MEASURES TO THE EFFECTS OF CLIMATE CHANGE AND JUST TRANSITION.

31. It seems important in Article 18 (Adaptation to Climate Change) to **introduce an independent element of evaluation** on the real impact of the PNACC and its work programmes and sectorial plans, as there are few concrete adaptation actions or debate on their need. We therefore propose that the independent Committee specifically address in its annual reports an analysis of progress on adaptation, both in terms of knowledge, identification of priorities and measures, actions taken, indicators of progress, budget sufficiency and degree of self-assessment by the responsible administrations.

For example, **the Committee (Article 30) should have a clearer role** in Article 19 (Reports on climate risks and adaptation). The preferred option would be to entrust the Committee with the preparation of the reports in this article, starting in 2020 and updating with a minimum periodicity of 5 years, with the obligation of the Government to respond in a reasoned manner and to demonstrate, together with autonomous communities and municipalities of more than 100,000 inhabitants, how the Committee's reports will be taken into account in planning and decision-making within the framework of this law and the corresponding autonomous and municipal regulations.

On the other hand, it is not clear what **coordination mechanisms** are proposed to align priorities and adaptation actions at **state, regional and municipal levels**. Some specific mechanism seems advisable given, for example, the complex problem in an issue such as water, where the positions and demands between neighbouring autonomies are difficult to reconcile. An adaptation framework should recognise these issues and indicate the appropriate mechanisms.

32. In general, the description in Articles 20-24 of **risks to specific sectors and their incorporation into associated planning** seems incomplete, in the sense that it does not address some major risks of material and personal injury, or to human health in general, such as for rail, road, maritime and air traffic; energy, road and industrial safety and other commercial and productive sectors; in situations of emergency or progressive change,

⁵ KfW-Research (2011). Impact on public budgets of KfW promotional programmes in the field of energy-efficient building and rehabilitation.

associated with numerous extreme events and episodes caused by climate change and its consequences. The absence of consideration of the demographic and social implications of people displaced from other countries seeking refuge in Spain due to the impacts of climate change, or the implications for industrial or economic strategy, is particularly striking.

In addition, in these and in the other articles of this Title, there is a lack of greater specificity in terms of implementation deadlines and review periods of the measures proposed, in order to give them greater credibility and introduce a greater commitment on the part of the Administration. Reference could also be made to already developed or very advanced elements, such as, for example, the State Strategy for Green Infrastructure⁶.

In some cases, according to scientific studies, the expected impacts in Spain are permanent and irreversible damage that would even correspond to the definition of '**loss and damage**' in the Paris Agreement. The law should make it clear how this issue is to be addressed (**Paris Agreement, Article 8**) within Spanish territory.

33. In consideration of climate change in hydrological planning and management (Article 20):

It is proposed to include under item 1, among the risks arising from climate change: (i) Risks arising from altered hydrological regimes, changes in nutrient and sediment dynamics and hydromorphology and from increased water temperatures in rivers, wetlands and coastal water bodies; and (ii) Risks associated with changes in the intensity and distribution of precipitation and runoff, due to their impact on land use and urban planning, together with energy and irrigation planning.

It is also proposed to include in point 2(a) the impact of irrigation water demand on the status of water bodies and vulnerability to climate change and adaptive capacity, and in point 2(b) the criteria for adaptation and increased resilience to climate change for the identification, assessment and selection of measures, as well as the need to maintain ecosystems in good and functional condition, including nature-based solutions. The validity of the measures promoted to date in relation to improvements in water use efficiency should also be analysed, introducing the necessary modifications to ensure their contribution to the good status of water bodies and the increase in their capacity to adapt.

In addition, point 2.e) could be modified to anticipate the foreseeable impacts of climate change by identifying and analysing the level of exposure and vulnerability of socio-economic activities and ecosystems, and by including in hydrological plans measures to reduce such exposure and vulnerability, such as adaptation of the existing irrigated area as well as agricultural consumption, especially from decanting and transfers. The analysis provided for in this section will take special account of extreme climatic phenomena, the probability of their occurrence, their intensity and impact.

2.f) and 2.g) could be added on cost recovery as a tool to compensate for the damage done to water bodies, which implies an increase in vulnerability to climate change, and the compatibility of renewable energies with the good condition of water bodies.

⁶ Estrategia Estatal de Infraestructura Verde y de la Conectividad y Restauración Ecológicas (https://www.miteco.gob.es/es/biodiversidad/temas/ecosistemas-y-conectividad/conectividad-fragmentacion-de-habitats-y-restauracion/Infr_verde.aspx).

34. In Article 21(1)(a), the promotion of coastal unemployment and the protection of marine ecosystems should also be added as a strategy to increase their resilience to the effects of climate change. On the other hand, the second paragraph of the same article would need a more precise definition of the term 'adapt', since the guidelines of the Climate Change Strategy for the coast are not clear.
35. In Article 22 on the consideration of climate change in the planning and management of transport infrastructure, it is proposed to add an item (d) on the planning and implementation of infrastructure, which shall be done in such a way that it does not alter the natural functioning of ecosystems or reduce their resilience to climate change.
36. With regard to the protection of biodiversity and its habitats from climate change (Article 23), what is included in this Article does not ensure the protection of biodiversity or the sinking function of natural ecosystems. Furthermore, the text as it stands could lead to contradictions in interpretation with chapter I of Law 42/2007, of 13 December, which requires continuous updating and an annual report. The CC&ETL must take advantage of and establish synergies with the actions of the General State Administration itself, such as the State Strategy for Green Infrastructure, Connectivity and Ecological Restoration.
37. **Natural drains:** it is proposed to include the obligation of the public authorities (respecting autonomous competences) to conserve, restore and promote natural drains, in relation to the development of the Spanish Forest Plan to which the Draft refers below, as well as to manage and guarantee their carbon absorption and retention functions, always in accordance with current conservation regulations.
38. In Article 24 on land use, land use change, forestry policy and rural development, **the absence of the agricultural sector** is striking, despite its key role as a source of emissions (especially intensive agriculture and livestock) and it is not clear how the law will succeed in reducing emissions from this sector, as well as maximising the contribution of agricultural soils and pastures to CO₂ fixation. The previous government initiated the development of an 'agriculture, climate and environment' strategy, which offers a possible starting point. In this Title, the current text refers to a greater concreteness of measures and actions in future legislative developments in the corresponding sectoral laws or their regulations. We estimate that it would need greater concretion, establishing that the Government will incorporate, in the measures proposed in the Spanish Forest Plan a map of soil vulnerability and measures to facilitate its preservation, as well as the correct evaluation and promotion of forest management practices for resilience to climate change, conservation of traditional land uses and forest management, which contribute to its sustainability and recognition of the role of native forests in climate change strategies.

It is therefore proposed to add a point to Article 24 indicating that adaptive forest management to climate change scenarios will be promoted, reducing the risk of large forest fires and promoting ecological restoration and connectivity of forests. In areas of high fire risk and urban-forest interface areas, preventive forest management should prioritise the reduction of biomass, generating a fragmentation of the landscape that avoids fuel continuity.

An Article 24 (bis) on agricultural and rural development policy is also proposed, indicating that food policies (production, processing, distribution and consumption of food), due to

their horizontal nature and impact on the achievement of the objectives, must allow the transition to sustainable food systems that are resilient to climate change.

39. It is appreciated that the law includes a section on **just transition** and especially that vulnerability analyses will be carried out, that there will be funding for employment and training activities, that timetables for their achievement will be included with measurable targets and that it will be included that the gender perspective will be taken into account in the implementation and development of the Just Transition strategy. However, the section on Just Transition should be extended to all people affected in a region by the transition to a 100% Renewable system (the DCC&ETL focuses mainly on workers affected by the abandonment of fossil fuels, which leaves out people affected by the nuclear shutdown and mostly unemployed women who have not found employment today in regions with a unique industry that because it is polluting and generates climate change will be affected by the shutdowns). It is also essential to include that employment alternatives will focus on sustainable jobs, low in emissions and that put the environment and people at the centre, and that the term applies not only to the transition needs associated with reducing emissions, but also to the impacts of climate change on vulnerable sectors and territories. It would also be advisable to mention the necessary awareness and education of the consumer and citizen who, in many cases, will be the one to finance the rehabilitation or energy efficiency measures.

VII. MOBILIZATION OF RESOURCES FOR THE FIGHT AGAINST CLIMATE CHANGE AND ENERGY TRANSITION.

40. Price signals are critical for activating, settling and accelerating the process of decarbonization of the economy. In this sense, **taxation that promotes climate action efficiently** (at minimum cost) and contributes, through tax collection, to financing the achievement of climate change and energy transition objectives is a fundamental tool in this process. An environmental tax reform should ensure that environmental costs are internalised in all sectors of the economy (Article 26).

The current text makes a generic statement highlighting the role of taxation in the energy transition, which we consider to be very positive, but would require a more in-depth approach to the criteria that a **new tax scheme should satisfy in order to meet the expected objectives**. In fact, it is surprising how little weight the financing chapter has in the CC&ETL with respect to other chapters.

It is proposed that the text lays the foundations for a **future reform of the fiscal framework that fully applies the "polluter pays" principle (and "decontaminates, deducts")**. This reform should incorporate a sufficient price of CO₂ to activate the energy transition, as well as the internalisation of environmental externalities in the prices of energy, products and services, eliminating the current distortions that do not facilitate the taking of adequate decisions by consumers, companies, etc.

41. The financial sector is undergoing a transformation geared towards considering the long-term risks (and opportunities) associated with climate change and the current energy model. The results of the TaskForce on Climate-related Financial Disclosures (TCFD) are aimed at accelerating the transformation of this sector and making it a relevant lever for climate action on a global scale (Article 29.2).

The current text proposes **measures for the information and transparency of listed companies and credit institutions**, through the reporting of climate financial risks, as well as those associated with the transition process, which **we value in a very positive way**.

In order to establish the transformation of the financial sector in our country, aligned with the international financial markets, **we propose an alignment of the reporting mechanisms with the TCFD principles mentioned above**. Among others, the introduction of a consistent system of metrics (including the carbon intensity of the investment portfolios) and decarbonization objectives, supported by a solvent strategy aligned with the business, and protected by a governance that contributes to the implementation of these criteria.

The incentive role of public administrations is fundamental; not only through their procurement policies, as has been highlighted in other sections of this document, but particularly through their financing formulas. The current DCC&ETL could in fact establish mechanisms to encourage sustainable public financing, promoting and prioritising mechanisms such as green bond issues (already initiated in some Autonomous Communities) to the detriment of conventional issues, provided that similar price conditions exist.

VIII. GOVERNANCE.

42. Governance is a term that has evolved from restrictive approaches linked to strictly public decision-making, to approaches such as the current ones, the result of social, economic and cultural transformations, based on more open and participatory dynamics, in which the different administrative levels of the public sphere, together with increasingly broad sectors of civil society, are involved in decision-making, to a greater or lesser extent.

In the case of the so-called "climate governance" we are in an assumption that, due to its nature and effects, may well fit into the latter approach; an approach that requires strengthening the traditional and loyal cooperation and coordination of administrations, together with multiple other horizontal actors in society (business organisations and associations, trade unions, non-governmental organisations, academics, etc.) for the best design, definition and implementation of policies and measures to meet the objectives of the CC&ETL.

In this context, it would be useful to reflect on whether the current institutional framework of climate governance in Spain, still partly based on a top-down vertical approach, is the most suitable for achieving the proposed ambition and whether the management centres and collegiate bodies of a different nature, created in a different context from the current one, can respond efficiently to these new demands and demands. This is because one of the greatest challenges of the transition will be to materialise the message of the sum of efforts in a common objective, reinforcing opportunities and minimising risks, listening and counting on everyone to respond to the social, environmental, territorial and economic singularities that allow sectoral policies to be reorientated in a just balance and in an orderly manner.

The governance of climate change requires an institutional or administrative structure that responds to other aspects that shape and condition it, and **that have to do with better and more scientific information at the service of decision-making; information that is accessible and understandable at the service of society, political decision-makers and public managers.** With the definition of new financing mechanisms that allow for the implementation of measures directed by the regulator, with the establishment of budgets oriented towards climate action and also with **new and necessary public-private alliances** to promote a new ecosystem of innovation and investment as an engine for change.

Finally, we must not forget that the distribution of competences means that, to a large extent, **regional and local administrations are the protagonists** in "landing" the strategic framework for action, for the transition to a low-carbon economy, and this should be adequately reflected in any newly created body or governance model.

We think it is right that the CC&ETL devotes a chapter to Governance, since, although it is not expressly mentioned, it is an essential element for the proper development and fulfilment of the purposes referred to in its explanatory statement:

. Place the fight against climate change and energy transition at the centre of political action, as the key vector of the economy and society to build the future.

. Ensure the coordination of sectoral policies to ensure their coherence and synergies

. Ensure social and territorial cohesion in order to promote a just and supportive transition of the economy

. Ensure citizen participation, better scientific understanding and coordination between administrations and social and economic entities.

However, the text of **the CC&ETL, in its Title VIII dedicated to Governance, lacks an adequate and proportional development** since it only dedicates, in purity, two articles of scarce content.

43. Article 30 creates a **Climate Change and Energy Transition Committee**, as a new "*public law entity with its own legal personality and organic and functional independence*", although it is attached to the Ministry for Ecological Transition with support from the Climate Change Office.

The creation of a "committee of experts" as a support body for the Government seems to us to be a wise proposal, although **its fit, as the proposal is written, does not seem to be the most appropriate and operational** from the legal-administrative perspective. It is not clear whether it is intended to create a genuine independent administrative authority or a collegiate advisory body to the Government and the General State Administration composed of independent experts. The attribution of legal personality to the Committee seems to suggest the former, but the type and entity of the competences attributed to it and the configuration of a governing body of the Administration itself (the Climate Change Office) as an administrative support structure go in the direction of an advisory body.

The fact that this new body must rely on the Office's human and budgetary resources, which are already scarce for the competences it has been attributed, does not seem to be the most effective way of achieving its objectives.

In any case, it is clear from the wording that we are not talking about an independent authority with executive capacity on climate change and energy transition, but a committee made up of a multidisciplinary group of experts with certain similarities to the United Kingdom's climate change committee.

Its role in the CC&ETL seems to be limited to a mere guiding and follow-up work, which would be periodically materialised in an annual report or memory, where progress and deviations in the fulfilment of the objectives of the CC&ETL would be identified.

Consequently, it seems that its **role** is more focused on making proposals of a more corrective and less **preventive nature**, the latter being an aspect that it would be interesting to consider. The article, although it alludes to some formal aspects referring to their number, duration of mandate and appointment, together with the requirement of gender parity, **does not contain any reference to the specific disciplines in which they should be experts; a complex aspect and no less important due to its transversality.**

Finally, there is nothing in the article on the **current institutional architecture on climate change and energy** and whether it, as it stands, responds to the new demands of *climate governance*. Once the phase of construction of an institutional narrative regarding climate change is over, we are now immersed as a consequence of the international commitments assumed, in an unprecedented challenge of transformation of our country. **We believe that it would be an appropriate moment** to clarify, orient and reconfigure the functions and competences of the existing collegiate bodies, executive centres, autonomous bodies and research centres at the different levels of the administration, **defining a new framework of functional governance, sufficiently clear, that allows for a subsequent specific normative development.**

In any case, if the Climate Change and Energy Transition Committee is finally configured as a truly independent administrative authority, it will be essential to clearly **delineate the respective roles and competencies of this Committee and the independent energy sector regulatory body (currently the National Commission on Markets and Competition)**. This seems particularly necessary if, as would be desirable, the Climate Change and Energy Transition Committee is given a genuine prior mandatory consultative role in relation to any legislative initiative that has a significant impact on climate policy.

44. Article 31 of the CC&ETL, referring to the obligation for regional governments and municipalities of more than 100,000 inhabitants to have *energy and climate plans*, **gives no more detail than the deadline for complying with this obligation, so it the integration and coordination with the national energy and climate plan and with the necessary implementation measures for adaptation in the regional and local scenario is not clear.**

Governance must guarantee collective progress, "without leaving anyone behind", and contribute to a better understanding of the risks and opportunities of the transformation of the economic model, adequately integrating climate policy into the rest of sectoral policies and at all levels of Public Administration.

To this end, **we propose a reconsideration of the proposed wording in order to provide the Committee with greater functional and material autonomy.**

In a complementary manner, **we consider it necessary to clarify, even with the limitations of a law, the operational structure and the role attributed to each of the actors** (executive centers, advisory councils, coordination commissions, advisory councils, research centers, autonomous organizations, etc.) that make up the current institutional and administrative architecture for better governance.

ANNEX

I. FIDE: www.fidefundacion.es

Fide is a legal-economic think-tank, an operational centre of knowledge in a practical form, made possible thanks to the active participation of all sectors of civil society that have something to say about it: from top management of companies to law firms, from university chairs to courts of justice, from all bodies of administration to professionals from different fields related to the world of law and business. All of them have a place, and a special place, in Fide.

Fide has set up a series of [working groups](#) whose purpose is to carry out a **continuous and profound reflection** on some of the major issues that we have considered that, due to their **urgency, need for reform or capacity for improvement**, deserve to be the object of special reflection by a group of experts. Some have already published their first conclusions, have made concrete normative proposals or have advanced an initial analysis of the situation. Others will do so throughout the year. But there is no doubt that in each group we have an **essential point of reference**. The composition of each group, with **professionals with extensive experience and in-depth knowledge** of each subject, allows us to tackle all those issues that we collectively believe merit reflection. In other cases, **the debate itself reveals the complexity and distance of the positions** and, therefore, the value of the **work is reflected in specific summaries on the issues addressed**. In any case, any professional involved in the evolution, development, application or improvement of regulation and especially of economic regulation must be familiar with these works and contribute to their development, knowledge and dissemination.

The members of these working groups are **members of Fide** and regular attendees to Fide sessions and forums, which are closely linked to the issues addressed in the respective areas of analysis.

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