

***FIRST  
REPORT ON THE IMPLEMENTATION  
IN SPAIN***

***DIRECTIVE 2001/77/EC ON THE  
PROMOTION OF ELECTRICITY PRODUCED  
FROM RENEWABLE ENERGY SOURCES***

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## 1. National target: setting

According to article 3(2) of the Directive, Spain should have adopted and published, not later than 27 October 2002, a report setting a national indicative target for future consumption of electricity produced from renewable energy sources (RES-E) in terms of a percentage of electricity consumption for the next ten years. The report should have also outlined the measures taken or planned at national level to achieve such a national target. To set this target Spain should have taken into account the reference value in the Annex of the Directive and it should have ensured that the target is compatible with the national commitments within the Kyoto Protocol.

According to the 16th transitory provision of the Spanish *Electricity Act 54/1997*, currently in force, "in order for RES to satisfy at least 12% of Spain's total energy demand by the year 2010, a plan shall be drawn up to promote renewable energies [...]". In fulfilment of such a mandate, the Spanish cabinet adopted on 30 December 1999 the *National RES Development Plan 2000-2010*. This Plan fixed for RES-E the target of reaching 29.4% of gross electricity production in 2010, just the reference value foreseen for Spain in the annex of the Directive. This *Plan* was later sent to the Spanish Parliament for informative purposes and published shortly after.

The *National RES Development Plan 2000-2010* included also specific targets for all renewable technologies in order to fulfil the global 29.4% goal (see chapter 2). This RES-E global target was even slightly increased to 30.6 % three years later within the *Spanish Electricity and Gas Infrastructures Plan 2002-2011*. This new Plan was adopted by the Spanish Cabinet in September 2002 and approved one month later by the Economy Committee of the House of Representatives. As long as this new Plan forecasted a higher demand of electricity by 2011 than that considered within the *National RES Development Plan*, the specific absolute targets for all renewable technologies were *de facto* updated. The *Spanish Electricity and Gas Infrastructures Plan 2002-2011* was also published shortly after its adoption.

If we consider both the *National RES Development Plan 2000-2010* and its revised version (the *Electricity and Gas infrastructures Plan 2002-2011*) as the "report" mentioned in the Directive, it can be concluded that **Spain has fulfilled successfully and in due time its obligation to adopt and publish a report setting a national indicative target for RES-E. This first "report" outlines a complete package of the measures taken and planned at national level to achieve the target.**

Moreover, the national RES-E target (30.6 % by 2011) is in accordance with the reference value set for Spain within the Annex of the Directive (29.4 % in 2010). Besides, this target is "consistent with the global indicative target of 12% of gross national energy consumption by 2010 and in particular with the 22.1% indicate share of electricity produced from renewable energy sources in total Community electricity consumption by 2010" [Art. 3(4) of the Directive].

However, the following remarks must be made regarding the Spanish fulfilment of the first obligation within the Directive:

- The Spanish Government informed the European Commission about the setting of the national RES-E target some months later than 27 October 2002. In a very brief (five pages) report sent to Brussels the Government explains the content of the major pieces of legislation and planning adopted at national level to achieve the national target, namely: the *Electricity Act 54/1997*, the *Royal Decree 2818/1998*, the *National RES Development Plan 2000-2010* and the *Electricity and Gas infrastructures Plan 2002-2011*.
- The Spanish Government should ensure that the RES-E target is really referred to the **gross national electricity consumption**. It is against the Directive to refer the renewable share to the gross national electricity production.<sup>1</sup>
- The Spanish Government should ensure that the electricity produced from **the non-biodegradable fraction of industrial and municipal waste** is not included in the RES-E share. According to article 2 of the Directive, this fraction should be excluded from the RES-E share.
- The RES-E target set by the Spanish Government is in principle compatible with the **national commitments within the Kyoto Protocol**. However, the RES-E share could even be higher than planned in order to compensate the huge rise of CO<sub>2</sub> emissions over the +15 % ceiling agreed by Spain in Kyoto.

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<sup>1</sup> In the calculation made in Spain the *gross national electricity consumption* equals to the gross national production minus the auxiliary consumption in power plants, minus pumping, minus electricity exports plus electricity imports.

## 2. National target: evaluation of progress

According to article 3(1) of the Directive, Spain should take “**appropriate steps to encourage greater consumption of electricity produced from renewable energy sources in conformity with the national target**”. These steps must be in proportion to the objective to be attained”.

According to article 3(4) of the Directive, the Commission shall assess, on the basis of the Member States’ reports, **to what extent Member States have made progress towards achieving their national targets**. The Commission shall publish its conclusions in a report not later than 27 October 2004. This report shall be accompanied, as appropriate, by proposals to the European Parliament and to the Council.

The point is therefore to assess if Spain is making enough progress, if at all, towards achieving its national target. **As long as the Spanish RES-E share has risen from 19.9 % in 1997, year of reference for the Directive, to 23.3 % in 2003, as the table below shows, it is crystal clear that a remarkable progress in the right direction has been made.**

| <i>Electricity</i>    | <i>1997</i> | <i>2000</i> | <i>2001</i> | <i>2002</i> | <i>2003<sup>2</sup></i> | <i>2011</i>          |
|-----------------------|-------------|-------------|-------------|-------------|-------------------------|----------------------|
| <b>Total consump.</b> | 187 TWh     | 206 TWh     | 227 TWh     | 233 TWh     | 236 TWh                 | 304 TWh <sup>3</sup> |
| <b>RES-E consump.</b> | 37 TWh      | 38 TWh      | 54 TWh      | 39 TWh      | 55 TWh                  | 93 TWh               |
| <b>RES-E share</b>    | 19.9 %      | 18.4 %      | 23.7 %      | 16.7 %      | 23.3 %                  | 30.6 %               |

**Table 1:** Evolution of RES-E share compared with the national targets (Ministry of Economy, REE, CNE and IDAE)

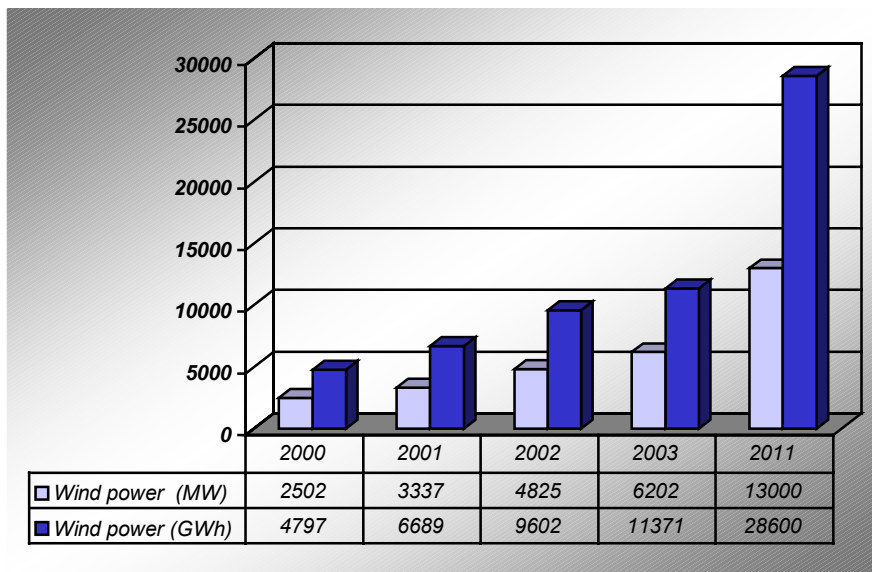
However, **the achievement of the 2011 target (30.6 %) seems unlikely under current trends unless additional policy measures are urgently put in place**. Actually, last year’s RES-E share was mainly reached, like in 2001, thanks to the high level of hydropower electricity production, which made alone 78% of the whole renewable share. The fact that the electricity demand is expected to rise almost 30% in this decade, after rising 50 % over the last decade, only compounds the problem.

<sup>2</sup> Provisional data.

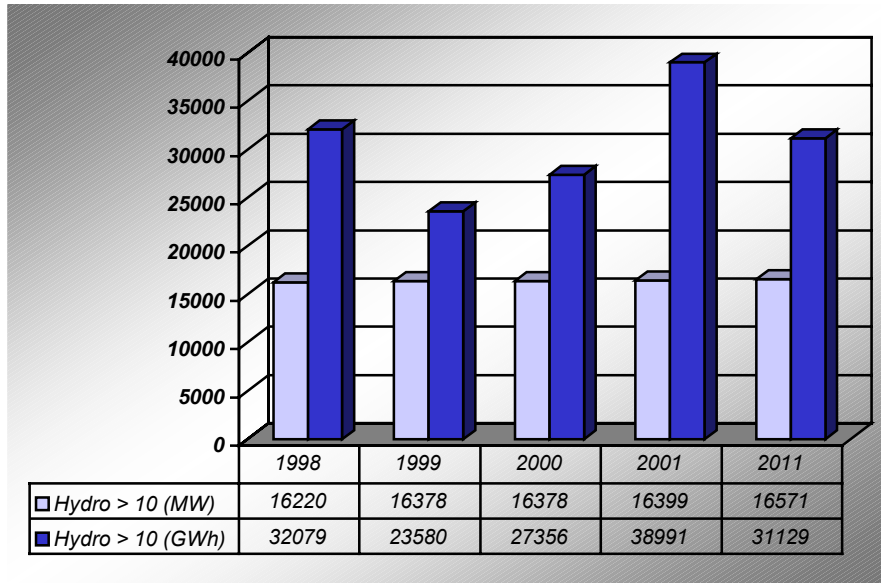
<sup>3</sup> This figure is the total electricity demand expected by 2011 in the central scenario within the *Electricity and Gas infrastructures Plan 2002-2011* as quoted in the brief report that the Spanish Government sent to the European Commission in 2003. Although this figure might have been reduced later in the *Spanish Strategy on Energy Savings and Efficiency 2004-2011*, adopted by the Spanish Cabinet on 23 November 2003, such a Strategy does not specify at all any new figure for the expected electricity consumption in 2011.

Unfortunately, we foresee that, under current trends, the share of Spanish consumption of electricity produced from renewable energy sources will hardly reach as much as 24%-25% of the electricity demand by the year 2010/2011, assuming an average hydraulic year. Although Spain has made a considerable effort so far, it still needs to take additional, "appropriate steps to encourage greater consumption of electricity produced from renewable energy sources in conformity with the national target."

Leaving aside the case of large hydropower, which target is almost the same as its current production, **wind energy is the only renewable technology that seems to be on the right track to achieve the 2011 goals.** The stable legal framework (feed-in scheme) in place for years in Spain, the right level of the wind premium and the ambitious regional development plans put in place by many Regional Governments have made possible a swift wind development in Spain. As the figure below shows, almost 4,000 MW have been installed over the last three years. However, reaching the 13,000 MW target by 2011 will be only possible with additional efforts including an increasing degree of economic support and the removal of grid and administrative barriers.

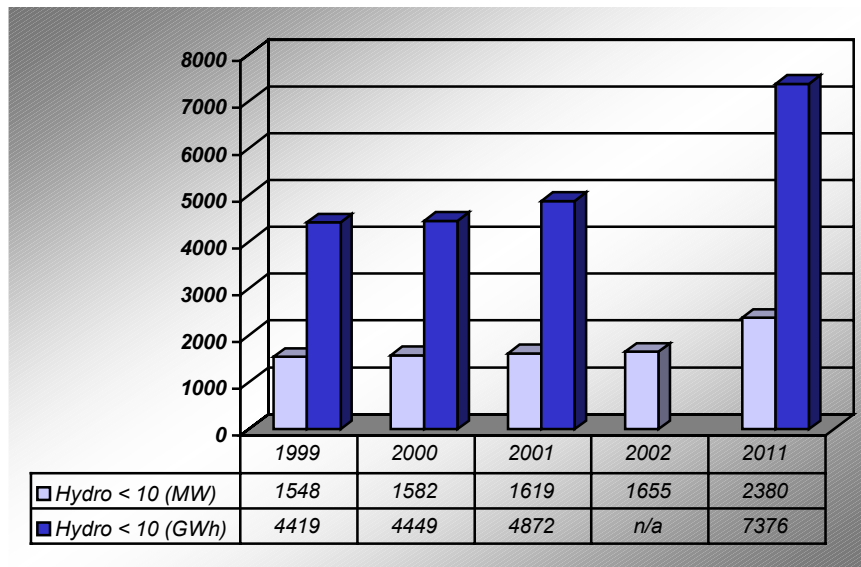


**Figure 1:** Evolution of wind power in Spain compared with its national targets (2011)



**Figure 2:** Evolution of large hydropower in Spain compared with its national targets (2011)

Unfortunately, the growth rate of the other renewable technologies is too slow to envisage the fulfilment of their capacity and production goals by 2011. **Small hydropower**, for instance, only added 107 new MW to the installed power in Spain over the last three years considered (see table below). This pace is insufficient to achieve its targets (2,380 MW). The small hydro power situation clearly points out how a good support system in terms of economic revenues is not sufficient to overcome the administrative and environmental barriers that prevent small hydro power from developing all its untapped potential.



**Figure 3:** Evolution of small hydropower in Spain compared with its national targets (2011)

The assessment is even worse as far as **biomass** is concerned. Although biomass is one of the cornerstones of the *RES Development Plan 2000-2010* and the *Electricity and Gas infrastructures Plan 2002-2011*, only 173 new MW have been installed over the last four years. Biomass installations are almost at a standstill due to the lack of profitability of projects under the current premium scheme. To reverse this situation APPA has asked the Government to increase biomass premium around 1.8 €/kWh, which would be enough to foster new investments, guarantee their profitability and deliver the ambitious capacity target required by 2011 (3,176 MW). Biomass development would also require a more integrated policy, which take into account the environmental and agricultural benefits of this renewable source.

**Bioelectricity is clearly the major outstanding challenge for reaching the national RES-E target. Even if wind power could make an additional effort reaching 15,000 MW by 2011 –2,000 MW over its current target– the global national RES-E target (30.6 %) would not be reached under current bioelectricity trends.**

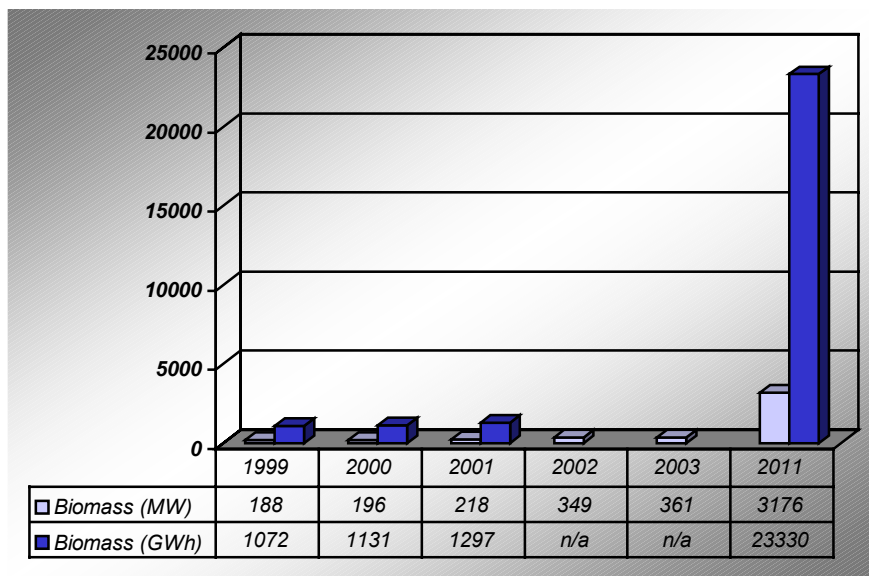
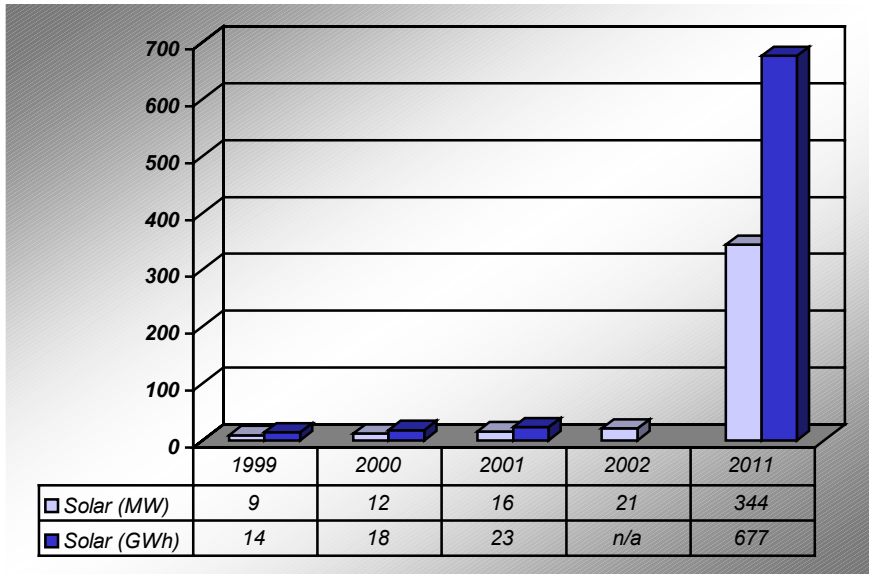


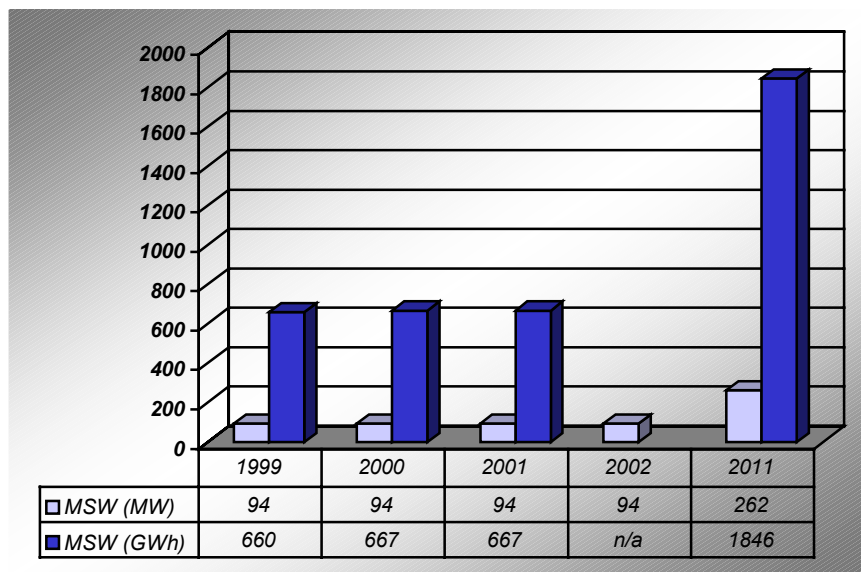
Figure 4: Evolution of biomass power in Spain compared with its national targets (2011)

**Solar PV & Thermoelectric** –with only 12 MW installed over the last four years considered, as shown below– needs also urgent measures to reach its goal by 2011. Among such measures, the current premiums should be increased enough to get a payback period of 10 years and a guarantee for at least 20 years.





**Figure 5:** Evolution of solar power in Spain compared with its national targets (2011)



**Figure 6:** Evolution of municipal solid waste power in Spain compared with its national targets (2011)

With regard to the electricity from municipal and industrial wastes, it should be stressed again the fact that the Spanish Government must ensure that the electricity produced from the non-biodegradable fraction of industrial and municipal waste is completely excluded from the RES-E share calculation.

According to article 3(3) of the Directive, Spain should have published, not later than 27 October 2003, a report including an **analysis of success in meeting the national indicative target** taking account in particular of climatic factors likely to affect the achievement of that target and which indicates to what extent the measures taken are consistent with national climate change commitment.

**The Spanish Government published during the year 2003 two official reports on energy policy that, among other issues, analyse the success in meeting the national RES-E targets.<sup>4</sup> Although any of these reports allude formally to the obligation within article 3(3), they could be regarded as the “report” required by the Directive.** Any of these reports indicate either to what extent the measures taken are consistent with the national climate change commitment.<sup>5</sup>

**However, the European Commission has not received so far any of those reports. The Spanish Government has sent the EU Executive a letter explaining the state of the transposition but this letter and its enclosed pieces of legislation does not analyse the success in meeting the national indicative targets, at all.**

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<sup>4</sup> The first report, published by IDAE, is entitled “*Eficiencia Energética y Energías Renovables*”. The second report, published by the Ministry of Economy, is entitled “*La energía en España 2002*”.

<sup>5</sup> As mentioned above, we think that the measures taken in Spain to promote the achievement of the RES-E targets are “consistent with national climate change commitment”, in the sense that they are not against that commitment. However, given the huge rise of CO<sub>2</sub> emissions over the +15% ceiling agreed by Spain in Kyoto, the Spanish Government should take radical measures to increase the current and planned RES-E share.

### 3. Administrative procedures

According to article 6(1) of the Directive, Member States or the competent bodies appointed by them should have **evaluated, not later than 27 October 2003, the existing legislative and regulatory framework with regard to authorisation or tendering procedures** which are applicable to RES-E plants, with a view to:

- Reducing the regulatory and non-regulatory barriers to the increase in the electricity production from renewable energy sources.
- Streamlining and expediting procedures at the appropriate administrative level.
- Ensuring that the rules are objective, transparent and non-discriminatory, and take fully into account the particularities of the various renewable energy source technologies.

According to article 6(2) of the Directive, **Member States should have published, not later than 27 October 2003, a report on that evaluation indicating, where appropriate, the actions taken.** The purpose of such a report would be to provide, where this is appropriate in the context of national legislation, an indication of the stage reached specifically in:

- Co-ordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations.
- Drawing up possible guidelines for the activities referred to in paragraph 1 and the feasibility of a fast-track planning procedure for RES-E producers.
- The designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations.

**The Spanish Government has not published any report evaluating the existing legislative and regulatory framework with regard to authorisation or tendering procedures applicable to RES-E plants.** In any case, **APPA considers that although Spain has taken remarkable steps in favour of the development of RES-E, the existing legislative and regulatory framework with regard to authorisation procedures applicable to RES-E plants in Spain, or rather, its practical application, could be improved to fulfil all the requirements of the Directive.** The main problems detected are as follow:

- Regional and local planning seems sometimes more interested in restricting the RES-E development than in encouraging it. The

environmental, social and economic benefits of RES-E are not often given a significant weight in the planning process.

- The authorisation procedures applicable to RES-E plants are still too lengthy and complex due to the fact that:
  - Authorisation procedures applicable to RES-E plants as electric installations often overlap those regarding water concessions (in small hydro plants), connection to the grid and environmental assessment leading to a real confusion of procedures.
  - Authorisation procedures for the assignment of the connection point to the distribution or transmission grid are a permanent source of confusion and conflict.
  - Co-ordination between different administrative authorities is not often working successfully as regards deadlines, reception and treatment of applications for authorisations.
  - Time limits for responses from the Administration are not often respected.
  - Developers have to undergo successive public consultations on the same project.
  - There are no real “fast track” procedures, especially for smaller projects.
  
- Although rules currently applicable to the authorisation procedures tend to be objective, transparent and non-discriminatory they are sometimes applied under economic and political constraints that flout the spirit and letter of the law.
  
- Rules are very similar for the various renewable energy technologies and thus do not take fully into account their particularities.
  
- The *Environmental Impact Assessment (EIA)* procedure only takes into account the negative impacts of RES-E projects but not the positive impacts.
  
- Dispersion of provincial regulatory frameworks with regard to authorisation procedures applicable to RES-E plants force developers to face greater transaction costs.

In order to overcome all those outstanding barriers, and streamline and expedite as much as possible the current procedures, APPA suggests the adoption of a package of new legislative and regulatory measures:

- ➔ Regional and local planning should be improved in order to ensure that they promote renewable energy in line with the national RES-E target.
  
- ➔ Regional and local planning should be better co-ordinated.

- Environmental, social and economic benefits of RES-E should be given an appropriate consideration in the planning process.
- RES-E developers should have a “single contact point” within the Administration to be responsible for the co-ordination of the whole authorisation procedures at the provincial and local levels. At the same time, there should be a precise co-ordination but a clear distinction between the industrial plant procedure, the grid connection procedure and the environmental & water assessment procedure.
- A “fast-track” planning and building procedure should be adopted, especially for small projects, enlargement of existing renewable plants and projects previously authorised within the Regional Planning.
- Time limits for responses from the Administration must be scrupulously respected. The “silent is consent” rule should be adopted when a formal response is lacking in due time.
- There should be only one single, unified and comprehensive public consultation during the whole authorisation procedure.
- The EIA should take into consideration compulsorily the benefits of RES-E projects and not only their negative impacts as usual.
- An independent “RES-E Ombudsperson’s Office” should be set up in each province with conciliation powers to mediate between promoters, grid owners, provincial and local authorities, local residents and NGO.
- It would be advisable to draw up framework guidelines regarding renewable planning and building procedures applicable in all Spanish provinces to streamline the current administrative dispersion.
- The authorisation procedures should be adapted to the particularities of each renewable energy source technology, especially in the case of bioelectricity, small hydro and solar PV plants.
- The authorisation procedures, including the environmental licence and the assignment of connection point to the grid, should be applied in a clearer and more objective, transparent way. The concrete criteria to be followed in all kind of authorisation or selection processes should be made public and be well known beforehand. Developers should be always informed about the rationale of any resolution, especially if it is a negative one. Resolutions should be motivated on objective and not discriminatory criteria preventing arbitrary decisions.

#### 4. Grid system issues

According to article 7(7) of the Directive, Member States should have considered in the report on administrative procedures referred to in article 6(2) that should have been published by 27 October 2003, **the measures taken to facilitate access to the grid system of electricity produced from renewable energy sources.** This report shall examine, *inter alia*, the feasibility of introducing two-way metering.

According to article 7 of the Directive, Member States should have implemented by 27 October 2003 the measures regarding the grid system issues as follow:

- To take the necessary measures to ensure that, without prejudice to the maintenance of the reliability and safety of the grid, Transmission System Operators (TSO) and Distribution System Operators (DSO) in their territory **guarantee the transmission and distribution of electricity produced from renewable energy sources.** MS may also provide for priority access to the grid system of RES-E electricity. When dispatching generating installations, TSO shall give priority to RES-E plants insofar as the operation of the national electricity permits.
- To put into place a legal framework or required TSO and DSO to set up and publish their standard rules relating **the bearing of costs of technical adaptations, such as grid connections and grid reinforcements, which are necessary in order to integrate new RES-E producers into the interconnected grid.** The rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of RES-E producers to the grid. These rules may provide for different types of connection. When appropriate, MS may require TSO and DSO to bear, in full or in part, such costs.
- To require TSO and DSO to provide **any new RES-E producer wishing to be connected with a comprehensive and detailed estimate of the costs associated with the connection.** MS may allow RES-E producers wishing to be connected to the grid to issue a call for tender for the connection work.
- To put into place a legal framework or required TSO and DSO to set up and publish their standard rules relating **the sharing of costs of system installations, such as grid connections and grid reinforcements, between all producers benefiting from them.** The sharing should be enforced by a mechanism based on objective, transparent and non-discriminatory criteria taking into account the benefits which initially and subsequently connected producers as well as TSO and DSO derive from the connections.
- To ensure that **the charging of transmission and distribution fees does not discriminate against RES-E,** in particular RES-E produced in peripheral regions, such as island regions and regions of low population

density. Where appropriate, MS should have put into place a legal framework or require TSO and DSO to ensure **that fees charged for the transmission and distribution of electricity from RES plants reflect realisable cost benefits resulting from the plant's connection to the network.** Such cost benefits could arise from the direct use of the low-voltage grid.

As long as the Spanish Government has not published yet the report referred to in article 6(2) evaluating the existing legislative and regulatory framework with regard to authorisation procedures applicable to RES-E plants, it is evident that **Spain has not fulfilled the obligation stipulated in article 7(7) to consider within such a report the measures taken to facilitate access to the grid system of electricity produced from renewable energy sources.**

Moreover, **the Spanish legislation has not been completely adapted to the new requirements regarding grid issues stipulated by the Directive.** Within the framework of the *Electricity Act 54/1997*, the general administrative, technical and economic regime for renewable installations was developed by the *Royal Decree 2818/1998*. However, this same Decree has kept in force through its Second Transitory Provision the *Ministerial Order of 5 September 1985* for a detailed regulation of the technical requirements applicable to the connection of renewable installations to the grid.

The same Spanish Government has admitted publicly that this *Ministerial Order of 5 September 1985* is outdated and against the grid requirements within the Directive. This fact has just been admitted again by the Spanish Government in an official letter sent to the European Commission regarding the transposition of the Directive. Actually, as such a letter also alludes, the Ministry of Economy has been working to draft a new regulation. However, it has not been adopted yet although the Ministry expects to pass it within six months.

Taking into account this context, the additional remarks can be made:

- When assessing the **access of electricity produced from renewable energy sources to the grid two different aspects should be distinguished:** the connection and the evacuation. The *Electricity Act 54/1997* enshrines clearly in article 30 that renewable electricity producers are entitled to connect their installations to the corresponding distribution and transmission network and incorporate all their power into the system. However, whereas the Spanish regulatory framework implicitly guarantee in principle that system operators give priority to generating installations using RES-E to incorporate their power to the grid, **this same priority is not always ensured for the connection of renewable plants to the grid.** On the contrary, conventional installations are often given *de facto* priority to connect to the grid. Therefore, **Spain should take the additional necessary measures to completely ensure priority of connection for RES-E installations.**

- **Even the priority given to generating installations using RES-E to incorporate their power into the system is sometimes forgotten by the grid operator due to its excessive concern on the maintenance of the security of the grid.** As the security of any grid is not a mathematical issue but one of appreciation, the Spanish grid operator tends to apply much more conservative requirements than those technically advisable. Moreover, the Spanish grid operator does not often supply developers with transparent and complete information regarding the available grid capacities. Both facts are clearly detrimental to the transmission and distribution of electricity produced from renewable energy sources. Therefore, **Spain should take the additional measures required to ensure that the grid is equitably and scrupulously operated to prevent any possible discrimination.** The general principle of non-existence in the Spanish electricity system of grid reserve capacity should not be applied to renewable producers since it would completely empty their right to incorporate its production to the grid, even in case of grid congestion.
  
- The *Royal Decree 2818/1998* put in place a legal framework relating the **bearing of costs of technical adaptations**, such as grid connections and grid reinforcements, which are necessary in order to integrate new RES-E producers into the interconnected grid. According to Article 20 of that *Royal Decree*, the costs of the facilities needed for the connection shall in general be defrayed by the owner of the renewable plant. Even the costs of any modification to the purchasing company's network shall be defrayed by the owner of the renewable generation facility unless they are not solely for its service, in which case they shall be defrayed by both parties by common consent, taking into account the use that each party is likely to make of the said modifications. As the issue is thus left to the private agreement of the parties **renewable developers when confronted with powerful utilities are sometimes forced *de facto* to bear the full costs of technical adaptations even though they are not solely for their service.** It is well known in Spain, for instance, that some wind energy developers are even building transmission lines. Therefore, **APPA calls for prompt action to improve the current legal framework in order to completely ensure that the bearing of costs of technical adaptations is based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of RES-E producers to the grid.**
  
- Although according to the Spanish legislation, new RES-E producers wishing to be connected to the grid are provided with an estimate of the costs associated with the connection, this estimate is not always comprehensive and detailed enough as required by the Directive. Moreover, **the economic amount estimated is sometimes exaggerated by the grid owners.** Although RES-E producers wishing to be connected to the grid are allowed to issue a call for tender for the connection work, this is not often feasible due to the technical barriers put in place by the grid owners. **APPA calls for prompt action to put into place a legal framework that fully guarantee that renewable**



**developers receive a detailed and comprehensive estimate and that they will not be forced *de facto* to pay exaggerated costs for the connection to the grid.**

- There is no legal framework in Spain relating the sharing of costs of system installations, such as grid connections and grid reinforcements, between all producers benefiting from them. In order to share the cost of new system installations, renewable developers usually sign private contracts among them. **The Spanish Government should therefore put in place as soon as possible a legal framework relating the sharing of costs of system installations enforced by a mechanism based on objective, transparent and non-discriminatory criteria.**
- Spain has not put into place yet any legal framework or required TSO and DSO to ensure **that fees charged for the transmission and distribution of electricity from RES plants reflect realisable cost benefits** resulting from the plant's connection to the network.

## **5. Guarantee of origin of electricity produced from renewable energy sources**

According to article 5 of the Directive, Member States should have ensured, not later than 27 October 2003, that the origin of electricity produced from renewable energy sources can be guaranteed as such within the meaning of the Directive according to objective, transparent and non-discriminatory criteria. MS should ensure that a guarantee of origin is issued to this effect in response to a request.

The MS may designate one or more competent bodies, independent of generation and distribution activities, to supervise the issue of such guarantees of origin.

A guarantee of origin shall specify the energy source from which the electricity was produced, specifying their dates and places of production, and in the case of hydroelectric installations, indicate the capacity. A guarantee of origin should also serve to enable RES-E producers to demonstrate that the electricity they sell is produced from renewable energy sources within the meaning of the Directive.

Such guarantees of origins should be mutually recognised by the MS exclusively as proof of the elements referred to above. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. In the event of refusal to recognise a guarantee of origin, the Commission may compel the refusing party to recognise it, particularly with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.

MS or the competent bodies shall put in place appropriate mechanisms to ensure that guarantees of origin are both accurate and reliable and they shall outline in the report referred to in Article 3(3) –on the analysis of success in meeting the national indicative targets– the measures taken to ensure the reliability of the guarantee system.

**Spain has not yet put in place a legal framework to ensure that the origin of electricity produced from renewable energy sources can be guaranteed. Guarantees of origin have not been laid down nor issued in Spain yet.** Moreover, the report referred to in Article 3(3) –on the analysis of success in meeting the national indicative targets– does not mention the issue of guarantees of origin at all. **Spain has therefore failed to implement the whole article 5 of the Directive as the same Spanish Government has just admitted in a letter sent to the European Commission. However, a working group within the Ministry of Economy has already drafted a Decree regulating guarantees of origin, among other issues, which the Government expects to pass within six months.**

## 6. Transposition

According to article 9 of the Directive, Member States should have brought into force the laws, regulations and administrative provisions to comply with the Directive not later than 27 October 2003. **Spain has already brought into force several laws, regulations and administrative provisions to comply with the obligations arising from the Directive. However, there are still some outstanding issues.** To sum up:

- **Spain has fulfilled successfully and in due time its obligation to adopt and publish a report setting a national indicative target for RES-E. This first report outlines a complete package of the measures taken and planned at national level to achieve the national RES-E target (30.6 % by 2011).** This target is in accordance with the reference value set for Spain within the Annex of the Directive (29.4 % in 2010). Besides, it is "consistent with the global indicative target of 12% of gross national energy consumption by 2010 and in particular with the 22.1% indicate share of electricity produced from renewable energy sources in total Community electricity consumption by 2010".
- **As long as the Spanish RES-E share has risen from 19.9 % in 1997, year of reference for the Directive, to 23.3 % in 2003, it is crystal clear that a remarkable progress in the right direction has been made. However, the achievement of the 2011 target (30.6 %) still seems unlikely under current trends unless additional policy measures are urgently put in place.** Actually, last year's RES-E share was mainly reached, like in 2001, thanks to the high level of hydropower electricity production, which made alone 78% of the whole renewable share. The fact that the electricity demand is expected to rise almost 30% in this decade, after rising 50 % over the last decade, only compounds the problem. **Unfortunately, we foresee that under current trends the share of Spanish consumption of electricity produced from renewable energy sources will hardly reach as much as 24%-25% of the electricity demand by the year 2010/2011, assuming an average hydraulic year.** Although Spain has made a considerable effort so far, it still needs to take additional, "appropriate steps to encourage greater consumption of electricity produced from renewable energy sources in conformity with the national target."
- Leaving aside the case of large hydropower, which target is almost the same as its current production, **wind energy is the only renewable technology that seems to be on the right track to achieve the 2011 goals.** The stable legal framework (feed-in scheme) in place for years in Spain, the right level of the wind premium and the ambitious regional development plans put in place by many Regional Governments have made possible a swift wind development in Spain. On the contrary, **bioelectricity is clearly the major outstanding challenge for reaching the national RES-E target.** Even if wind power could make an additional effort reaching 15,000 MW by 2011 -2,000 MW over its current target- the global national

RES-E target (30.6 %) would not be reached under current bioelectricity trends.

- **Spain has fulfilled in due time its obligation to publish the report including an analysis of success in meeting the national indicative target.** The Spanish Government published during the year 2003 two official reports on energy policy that, among other issues, analyse the success in meeting the national indicative target on electricity produced from renewable energy sources.<sup>6</sup> Although any of these reports allude formally to the article 3(3) obligation, they could be regarded as the “report” required by the Directive. However, the European Commission has not received so far any of those reports. The Spanish Government has only sent the EU Executive a general and brief letter explaining the state of play of the transposition.
- **The Spanish Government has not published any report evaluating the existing legislative and regulatory framework with regard to authorisation or tendering procedures applicable to RES-E plants.** In any case, APPA considers that although Spain has taken remarkable steps in favour of the development of RES-E, the existing legislative and regulatory framework with regard to authorisation procedures applicable to RES-E plants in Spain, or rather, its practical application, could be still improved to fulfil all the requirements of the Directive.
- As long as the Spanish Government has not published yet the report evaluating the existing legislative and regulatory framework with regard to authorisation procedures applicable to RES-E plants, it is evident that **Spain has also failed to fulfil the obligation stipulated in article 7(7) to consider within such a report the measures taken to facilitate access to the grid system of electricity produced from renewable energy sources. Furthermore, the Spanish legislation has not been completely adapted to the new requirements regarding grid issues stipulated within the Directive.** However, the Ministry of Economy has been working to draft a new regulation. It has not been adopted yet although the Ministry expects to pass it within six months.
- When assessing the **access of electricity produced from renewable energy sources to the grid two different aspects should be distinguished:** the connection and the evacuation. The *Electricity Act 54/1997* enshrines clearly in article 30 that renewable electricity producers are entitled to connect their installations to the corresponding distribution and transmission network and incorporate all their power into the system. However, whereas the Spanish regulatory framework implicitly guarantee in principle that system operators give priority to generating installations using RES-E to incorporate their power to the grid, **this same priority is not always ensured for the connection of renewable plants to the grid.** On the contrary, conventional installations are often given *de facto* priority to connect to the grid. Therefore, **Spain should take the necessary**

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<sup>6</sup> The first report, published by IDAE, is entitled “*Eficiencia Energética y Energías Renovables*”. The second report, published by the Ministry of Economy, is entitled “*La energía en España 2002*”.

**additional measures to completely ensure priority of connection for RES-E installations.**

- A working group within the Ministry of Economy has already drafted a Decree regulating guarantees of origin, among other issues, which the Government expects to pass within six months. **Spain has not yet put in place a legal framework to ensure that the origin of electricity produced from renewable energy sources can be guaranteed. Guarantees of origin have not been laid down nor issued in Spain yet.** Moreover, the report on the analysis of success in meeting the national indicative targets does not mention the issue of guarantees of origin at all. **Spain has therefore failed to implement in due time the whole article 5 of the Directive as the same Spanish Government has just admitted in a letter sent to the European Commission.**