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## **NEWGOV**

### **New Modes of Governance**

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**PH.D Thesis:**  
**“Wind energy: legal-economic regime and permitting regime of generation installations” by Dr. Masao Javier López Sako**  
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<b>PU</b>	Public	X
<b>PP</b>	Restricted to other programme participants (including the Commission Services)	
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<b>CO</b>	Confidential, only for members of the consortium (including the Commission Services)	

## Summary

This Ph.D Thesis was conducted by Dr. Masao Javier López Sako, Lecturer of Administrative Law at the University of Granada. Thesis' director was Prof. Estanislao Arana, member of the European Public Service Project, whereas Prof. Asunción Torres, also a member of the European Public Service Project, was member of the jury.

Title of the thesis is “Wind energy: legal-economic regime and permitting regime of generation installations”. It focuses on a specific public service obligation imposed to member states by Community directives, namely environmental protection, and in particular, the use of renewable energies.

This thesis is going to be published by the prestigious publisher Thomson-Aranzadi under the title: “Regulation and authorisation of wind firms”.

The thesis was defended on March 31, 2008, and got the highest qualification (“sobresaliente cum laude”) by unanimity among members of the Jury. Members of the Jury were Prof. Fernando López Ramón, Prof. José Esteve Pardo, Prof. Blanca Lozano Cutanda, Prof. Francisco Borja López-Jurado Escribano, and Prof. María Asunción Torres López.

## I. Overview

The thesis, which presents a wide analysis of the legal-administrative regime of power generation facilities using wind energy, motivated by the great expansion they have experienced in recent years, has had a basic idea as a guideline: the necessity of a change in the energy model that our society must undergo. We have to switch from a present situation of extensive use of fossil energy sources to another in which renewable energy sources end up fully substituting the former, preferably before their inexorable depletion, for if we come to that point the problem of the planet's global warming would be irreversible. There still are scientists that question the existence of a real environmental problem, but the truth is that fighting the problem has become a legal fact that cannot be overlooked.

But, why focusing on wind energy? Simply because among renewable energy sources that are accepted and developed as such nowadays wind energy is undergoing the greatest development and contributing the most to the power generation mix in many countries. As a logical result, there appear problems and disputes to which the legal system tries to find solutions. In Spain, wind energy has become one of the pillars of the energy system, producing 10% of all the electric power consumed in 2007. And at a global level, installed wind capacity has increased ten-fold in just a decade (1997-2006). Therefore, we are not talking anymore about a possibility or alternative that needs to be proved, but about a reality that deserves being supported. And that support depends on two fundamental aspects, which constitute the main objects of the research: the public support that wind energy still needs (although less and less) in order to ensure a reasonable compensation for the greater costs that its implementation involves compared to conventional energy sources, and the mandatory reduction (due to the application of the "renewable electricity" Directive, 2001/77/CE) of regulatory and administrative barriers. Both aspects have been duly remarked and addressed by the European Commission.

Present national regulation, both of the electric sector globally considered and of the so called special regime of generation that tries to favour the implementation of renewable energy sources, is strongly determined by EU legislation, which has slowly but progressively evolved towards the achievement of the internal market for electricity and towards a growing support for renewable energy sources, the two aspects being strongly related, contributing to security of supply, the latter, and to a faster and easier development and integration of the same, the former. It is important to bear in mind that this process in both issues has not concluded yet. Public support to electricity generated from renewable energy sources is still necessary, in general, because they are not competitive in present market situation regarding the costs/profits that it takes into consideration. But it is fully justified because "they constitute a key element of a sustainable future". The establishment of binding objectives by the EU will surely strengthen the importance of support schemes.

Spain maintains, after the regulatory change introduced by the Royal Decree 661/2007, the premium system that has yielded and is yielding such good results, here and in many other countries. The private sector has been relatively pleased by the final changes introduced in the economic regime, although the discretionary character of the possibility that the Royal Decree establishes of revising the tariffs in 2010 and every four years thereafter has been criticized. The decisional discretion is not really such, but it must be accepted that the criteria that the norm establishes offer a wide margin to Administration. In any case, it can be affirmed that regulatory uncertainties are not positive, and the way the changes have been carried out by the Royal Decree is a good example, "betraying" its predecessor, Royal Decree 436/2004, to whom we owe our country's leadership in the promotion of electricity from renewable sources.

Nevertheless, success doesn't depend solely on choosing the "right" support scheme, as the USA system evidences, but many other factors determine it, such as the level of remuneration that the system establishes, the continuity of it, the existence of a prepared private sector from the industrial, technological and financial points of view, the suppression of administrative barriers, an adequate planning and development of grid infrastructures, a favourable awareness from citizens and, above all, local public administrations, etc. Therefore, a firm political will in general is required to address all these factors in order to favour the implementation of renewable energy sources. That political will already exists in general terms, but we still encounter counter-tendencies inside public administrations, frequently due to uncoordinated action or even discrepancies between different bodies, or between different administrative levels.

A clear example of this lack of coordination may be encountered in the sphere of public planning, a function that plays a very important role in the implementation of renewable energy sources. As we know, energy planning in the part of electric generation is only indicative, although a valuable guideline for the private sector, especially if the public investments envisaged in the planning schemes to complement those expected from the private sector are effectively carried out. But there exists a lack of coherence between the State's and the Regions' wind power plans, with respect to the excess in the latter's forecast, almost doubling the former's. However positive it may appear from the point of view of the promotion of renewable energy, this is not necessarily so, because the installation of any new power generation capacity depends on the possibility of its connection to the grid, which in turn depends on the State's binding planning. Therefore, any Regions' planning that exceeds the State's provisions (these done in accordance with the electric grid planning) will be giving biased signals to promoters and will not possibly have an effective development. Hence, the Act 17/2007, that revises the Electric System Act, had to establish that permitting of power generation installations "shall not be allowed if their owners have not previously been granted authorisation for grid connection".

But, in short, the aim of all the above said (support schemes, planning...) is to contribute to compliance with Directive 2001/77/CE. This Directive, of which the EWEA (European Wind Energy Association) has said that "it constitutes the world's most significant piece of legislation for renewable electricity, and is the key factor explaining the success of renewable energies, including wind, worldwide", and also that "thanks to the RES-E directive, Europe has become world leader in renewable energy technology", establishes a series of specific obligations for Member States, all aimed at promoting a greater contribution of renewable energy sources to electric generation in the internal market, some of which Spain has only recently complied with. This circumstance, together with the newly proposed European legislation with binding objectives, should ensure the accomplishment of the particular objectives stated for our country. Although it would be convenient to suppress some unjustified limitations in the sphere of the special regime, as the 50 MW limit in order to apply for that regime, the closed and fixed character of the list of applicable energy sources and technologies, or the independent nature of the proceedings to opt for the condition of installation in the special regime. The convenience of a more comprehensive regulation in a higher level (Parliamentary Act, instead of Government Decree) is also stressed, a regulation that may give a greater legal security and a guarantee of stability to the remuneration system, as it is the case in Germany and has been claimed in our country for a long time.