

# A just Transition for Coal. An analysis from the perspective of the European Union, with a particular attention to the case of Spain

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## ABSTRACT

In the European Union, power production by means of coal has been phased out in the context of the efforts to decarbonize the economy and become carbon neutral by 2050. This trend has a big impact not only in regions where coal is produced, but also in those regions where coal-fired power plants are located. It is not always the case that coal-fired plants are located where the coal is extracted, sometimes they are located in the nearby of harbours where imported coal could arrive. In our view, both can be designated as “coal regions”. Phasing out coal has an impact on the economy of those regions, in general, and on jobs, in particular. In this paper, we analyse the various instruments designed by both the European Union and Spain to compensate the damaged experienced by coal regions. These compensations are considered to be part of the so called fair (or just) energy transition.

In Section 1 we briefly explain the former legal framework for aids to the coal sector in the European Union. In Section 2 we analyse the recently created Just Transition Fund, and in Section 3 we examine the Spanish coal sector as well as the recent 2021 Spanish Act on Climate Change and Energy Transition, in particular its provisions about the fair (or just) transition which has a particular focus in the future of those regions where coal-fired power stations were located. We explain how the Spanish policy has shifted in this area. In Section 4 we briefly summarize the foreseeable conclusions of our research.

**Keywords:** Energy Transition, Coal Regions, Just Transition Fund, 2021 Spanish Climate Change and Energy Transition, Energy Transition Agreements.

Selection and peer-review under responsibility of the scientific committee of the 13<sup>th</sup> Int. Conf. on Applied Energy (ICAE2021).

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## NOMENCLATURE

BOE	Spanish State Official Bulletin
ESA	Electricity Sector Act
EU	European Union
GHG	Green House Gas
JTF	Just Transition Fund
JTM	Just Transition Mechanism
OJ	Official Journal of the European Union

## 1. THE LEGAL FRAMEWORK FOR STATE AIDS TO COAL IN THE EUROPEAN UNION

The Treaty establishing the European Coal and Steel Community was signed in 1951, entered into force in 1952, and expired in 2002. It had specific provisions on State aids from Member States, which were considered to be incompatible with the Community, subject to exceptions. After its expiry, the general provisions of State Aids of the Treaty establishing the European Economic Community applied, which were incorporated into the existing Treaty on the Functioning of the European Union. The EU has adopted in past years specific legal norms about aids to the coal industry. These are the three main ones: a) Decision of the European Commission No 3632 of 28 December 1993, no longer in force since the 23 July, 2020.[1] It was substituted by b) Council Regulation (EC) no 1407/2002 of 23 July 2002 on State aid to the coal industry [2], no longer in force since the 31 December, 2010; current aids to coal are subject to c) Decision No 787/EU, of the Council, of 10 December 2010.[3]

## 2. THE 2021 JUST TRANSITION FUND. NOVELTIES

In recent years, the European Union has become the leader of the ecological transition and the fight against climate change to the point that the decarbonization of

the European economy has become one of its main objectives, this is translated into two concrete goals: the reduction of greenhouse gas emissions (GHG) by 50-55 % by 2030 and to achieve climate neutrality by 2050. These targets are not paper tiger, they have not fallen into grandiloquent texts without legal backing but have been positivized in the celebrated European Green Deal.

It is clear that the environmental objectives to be met by the Union are well-defined in both form and substance; however, a precise definition does not make them easy to implement. GHG reduction and climate neutrality require the total transformation of all EU countries, with special emphasis on the social and economic transformation of regions that used to rely on fossil fuels and carbon-intensive industries. It is precisely at this point that the Just Transition Fund (JTF) comes into action, which is the first pillar of the Just Transition Mechanism (JTM), the other two pillars of the JTM being the just transition scheme under InvestEU and the public sector loan facility. The latter two pillars have a wider scope of application than the JTF and are accessible to regions outside the 'just transition' zones, provided that these projects are beneficial to 'just transition territories'.

As regards the first pillar, finally, Regulation (Eu) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund was recently approved[4]. This Regulation defines in its Article 1 as its main purpose: establishing the JTF that has goal of providing support to the people, economies and environment of territories which face serious socio-economic challenges deriving from the transition process towards the Union's 2030 targets for energy and climate. Specifically, the JTF will support a total of eleven types of activities which can be regrouped into three categories: projects aimed at economic revitalization, social support and land restoration. Thus, this fund will mitigate the externalities intrinsic to the climate transition, supporting the territories that suffer from it in a particularly pernicious way because they have historically been involved in polluting energy production. This fund is unequivocally based on the Just Transition concept, namely a fair, inclusive and supportive transition that leaves no one behind.

In terms of budget, the Fund will be endowed with €17.5 billion (in 2018 prices; €19.3 billion in current prices). Of this amount, only €7.5 billion is configured as

fresh money that will come out of the EU's 2021-2027 budget, the remaining €10 billion corresponding to the European Recovery Instrument. This is one of the weaknesses of the JTF, the scope of action is too broad to be covered by the aforementioned budget, only the social support category alone would require an amount at least equal to the fresh money set aside for the three categories together.

In short, for the ecological transition to be just, it is necessary to compensate the affected regions and the best instrument is the already approved JTF, but in any case, this mechanism must reevaluate its priorities and budget to be as effective and efficient as possible.

### **3. THE JUST TRANSITION IN THE SPANISH COAL SECTOR**

#### *2.1 The strong presence of the Government in the Spanish coal industry*

In the Spanish coal sector, there is a strong presence of the State, which, through SEPI (*Sociedad Estatal de Participaciones Industriales*), has 100 per cent of the shares of *Hunosa*, the biggest company within the coal sector, although within the association of coal producers (*Carbunion*) there are other coal producing companies.

#### *2.2 The decline of coal production in past years*

Coal production declined progressively in past twenty five years, as is the number of employees in this industry, since, due to geological factors and to the low quality of coal, costs are high—even higher than the cost of imported coal, including transport. In fact, the use of imported coal is greater than the use of national coal, and the maintenance of subsidized domestic production responded both to social needs and to the need to promote indigenous sources of energy, rather than to an economic rationale. Coal production was maintained in specific areas of the country for social reasons, in order to avoid unemployment.

#### *2.3 The production of electricity by means of national and imported coal. The promotion of national coal*

Coal was for many decades been the primary energy source for electricity production. Once Spain became a member of the EU it had to reduce State aid to coal production and drastically decrease the amount of

compensation for the consumption of national coal. This led to distress within the sector and as a result of social pressure the 1997 ESA allowed for the preferential use of national coal. Its Article 25 entitled the government to establish procedures compatible with the free market for generation, to achieve the operation of those units of electricity generation using national primary energy, up to a limit of 15 per cent of the total amount of primary energy needed for producing the demanded electricity (considered over annual periods).

The 1997 ESA asked the government to adopt the necessary measures to avoid altering market price, to balance the decision to give a preferential treatment to national energy sources. The 2013 ESA also states that the government may establish the necessary incentives to ensure that owners of energy producing installations consume national coal at rates fixed every year by the Ministry for Industry. Those incentives may include a premium for those generation groups which have consumed national coal, equivalent to the quantity actually consumed.

The reduction of emissions of CO<sub>2</sub> and of the rest of the gases of greenhouse effect is considered to be crucial in the fight against climate change. In contrast to this policy, Spain promoted the use of national coal, which endangered even further the deficient fulfilment of the reduction of emissions goals, as pursued by the EU. Public support to consumption of national coal in coal-fired plants has been given by means of Royal Decree No 134 of 12 February 2010, by which preference must be given to electricity produced by a number of producing units using national coal.[5]

#### *2.4 Financial help to coal regions*

After the expiration of the European Coal and Steel Community Treaty in 2002, and in accordance with the requirements laid down by the European Regulation of the Council, No 1407 of 23 June 2002, a number of Royal Decree and Ministerial Orders were issued dealing with State aids to both coal production and the restructuring of mining districts, which are administered by the Institute for the Restructuring and Alternative Development of Mining Districts, a public entity of the Ministry for Industry. After the expiry of the 1998–2005 Coal Mining Plan, and of the 2006–12 National Strategic Coal Reserve Plan (together with a New Integral and Sustainable Development Model for the Mining

Districts), the last Coal Mining Plan was signed in October 2013 for the period 2013–18. The plan seeks to guide the coal mining planning process, bearing in mind social and regional issues such as the need to maintain a certain level of local coal production, the guarantee of access to coal reserves, and the promotion of alternative employment through support for business projects (for example, Ministerial Order no IET/594 of 10 April 2014. [6]

Current aids to coal regions are regulated by Royal Decree-law no 25/2018, of 21 December 21, of urgent measures for a just transition of coal mining and the sustainable development of the mining regions (BOE no 308, of 22 December 2018). Coal aid has been considered to comply with EU requirements.

#### *2.5 The closure of coal-fired plants in recent past years and under the 2021 Climate Change and Energy Transition Act*

Spain is developing a process of closing of coal-fired power plants. It started in 2010, and it aims to close all of them by 2022. On the 1 December 2011, there were twenty one coal-fired power plants in Spain. Seven were closed on the 30 June 2020. Today, there are six remaining infrastructures of that kind. Four -with a total capacity of 3,092 megawatts and around 800 employees- have requested permits from the Government to close the facilities. The other two that have not yet requested closure also have a very difficult future. The two biggest ones (*Carboneras* and *As Pontes*) were due to be closed by the 30 June 2021, but there have been some delays, based on security concerns of the Spanish TSO.

The Spanish Parliament recently passed Act no 7, of the 20 May 2021, on Climate Change and Energy Transition[7]. It is an Act to monitor the decarbonization of the Spanish economy, to establish the legal framework under which energy transition must take place and to introduce justice criteria in the development of the transition. The Act limits the new projects of exploration and exploitation of hydrocarbons and radioactive minerals and puts an end to coal production in the Spanish territory.

With the assent of the European Commission, the Spanish Government approved the Closure Plan of the Kingdom of Spain for Non-Competitive Coal Mining (European Decision 2010/787/EU). The new Act states

that the granting of exploitation authorizations, permits, concessions, extensions or assignments of the coal resources of the production units registered in said Plan, will be subject to the return of the aid granted under the aforementioned community Decision, and corresponding to the entire period covered by the closure plan. The amount due and the interest accrued prior to any possible authorization by the competent authority must be reimbursed. The Institute for Just Transition will ensure compliance with the provisions of this article, in cooperation with the Autonomous Communities in whose territorial scope the closed mining operations are located.

The Act contains measures to guarantee a just transition. For that purpose, the Government must design a Strategy for the Just Transition. Within the framework of the Just Transition Strategy, just transition agreements will be signed in order to promote economic activity and its modernization, as well as the employability of vulnerable workers and groups at risk of exclusion in the transition to a low-carbon economy, in particular, in cases of closure or conversion of facilities. Although it is not expressly mentioned, it is clear that the just transition agreements are the optimal instrument to address transition in coal regions. These agreements must compulsorily include a number of provisions. For example, it must contain tax measures, financing measures, support for R + D + i, digitalization, entrepreneurship, employment, social protection and training activities to encourage adaptation of workers, subject to compliance with the objectives established in agreement. The Act as a whole and when addressing the issue of former coal regions lacks the necessary ambition and does not guarantee that robust industries replace the former ones. The Government is bound to go into the details.

#### **4. CONCLUSION. BETTER LEGITIMACY FOR COAL AIDS**

With this paper, we want to analyze the instruments designed to help coal regions after the closure of coal-fired power plants, at both EU and Spanish levels. We aim to do so from a critical perspective. We find that the instruments are ambitious, but will not be enough to deal with the problems the sector will be facing.

There is a gap between those instruments at both EU and Spanish levels, since they are somehow based on the assumption that there was a robust industry (electricity

intensive) around the coal-fired plants, but that it is not always the case. That means those instruments should be adapted to a disparate number of situations. The Just Transition Fund is a truly effective instrument, but we want to underline a number of limits it has. On the other hand, the idea of helping the economy of coal regions is quite an old one in the EU. It is rooted in the need of keeping ineffective coal production. National aid schemes had to be approved by the European Commission, since they were seen, in principle, as schemes against competition law. In other words, aid was an exception to the ordinary functioning of competitive markets. However, the new instruments (of a financial nature or of some other nature) must be analyzed and examined at the light of a common European policy, that of decarbonization. The goal differs and so the legal analysis of the new funds (at European and national levels) must be done in accordance with new criteria. The conclusion is new since the scope and the aim of new aids is also new. Whereas former aids were designed to maintain coal in the scene, current aids are directed to phase out coal of the energy system and to compensate the coal regions, which suffer the consequences of this policy. The legality of the aid must be based on different grounds. This kind of aids enjoy a better legitimacy from the perspective of decarbonization, as a key EU policy.

#### **ACKNOWLEDGEMENT**

This work has the financial support of the Centre for Research of the Social Economy and the Enterprise (CIDES) of the University of Almería

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- [6] BOE no 91 of 15 April 2014
- [7] Boletín Oficial del Estado no 121, of 21 May 2021.