

Legal Status

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The advance of renewables in Spain during the COVID-19 pandemic



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Renewable energy continues to advance in Spain. The operator of the national electricity system, Red Eléctrica de España (REE), has reported that everything points to 2020 being a record breaking year for renewable generation; so far renewables have produced 15% more energy than in the same period in 2019. Wind power has made the largest contribution (32 TWh). In fact, there is already more wind power installed in Spain than any other technology, thus displacing the combined cycle plants which, until now, held the No. 1 position among renewable energies, followed by hydro (20 TWh) and solar photovoltaic (10 TWh), the latter having produced so far this year more energy than in the whole of 2019. Due to these increases, the contribution of renewables to the energy mix is currently 46%, while in the same period in 2019 it was 38%.

The projections show that renewables will continue to gain more importance and undergo further development. Thus, despite the difficulties generated by the Covid-19

crisis, so far this year, Spain has invested more than 4,000 million euros in solar energy.

State aid also continues. For example, the Community of Valencia has just approved Decree Law 14/2020, of August 7, which aims to promote the installation of 6,000 megawatts of photovoltaic solar energy and 4,000 megawatts of wind energy by 2030, which will multiply the capacity that the Community has installed today (364 megawatts of solar power and 1,255 of wind).

On a smaller scale, the national Government, through the Ministry of Ecological Transition, has just approved 316 million Euros in aid for renewable projects. Specifically, this is to support innovative projects that favour the integration of renewable energies in the electrical or thermal energy generation systems.

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As regards direct investments, companies in the oil sector (e.g. Repsol, Cepsa, Galp, Total and BP) are developing projects amounting to almost 8 GW in renewable energies, with an estimated investment of more than 18,000 million Euros.

Meanwhile, and according to the state agency CORES, the consumption of oil products has fallen during the first half of the year to 1991 levels, and 22% lower than in the same period of the previous year. This fall can largely be explained by the restrictions on mobility and the reduction in economic activity due to the Covid-19 crisis, but it has undoubtedly also been influenced by the development of renewable energies.

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INTELLECTUAL PROPERTY

The video game industry in Spain and its legal protection



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The video game industry had a worldwide turnover of 107,000 million euros in 2019, which represents a growth of 3% over the previous year. In recent years, numerous international developers and independent studios have been established in Barcelona so that the city is now consolidated as the home of the video game industry in Spain. There are currently 190 firms based in Catalonia, representing 52% of turnover in the video game industry throughout the country.

Although from a corporate point of view this industry continues to grow at a very fast pace, from a legal perspective, there is much work to be done. Currently, the regulatory framework of the video game industry is not fully developed or set up in favour of the protection of video games. This is due to the fact that the Royal Legislative Decree 1/1996, of April 12, 1996 approving the consolidated text of the Law on Intellectual Property which formalizes, clarifies and adjusts the legal provisions in force on the matter, does not provide a specific regulation in this area as it does not expressly regulate the video game

as a whole digital multimedia creation, but rather grants protection to each of its elements individually: software and other audiovisual elements such as sound, video image, graphic animation, text, and other elements also subject to legal protection.

In view of all this, the video game industry requires that the regulations be adapted to digital advances in order to avoid legal uncertainty affecting the various players in this important industry. As a result of digital technological advances, conflicts between the participants taking part in this industry are becoming more frequent. Rockstar Games, for example, was sued by Lindsay Lohan for having created a character based on her physical features and private life without having previously obtained any type of license, and the developer of the NBA 2K video game was sued by Solid Oak Sketches - a tattoo studio that designed and made the tattoos on Kobe Bryant - for reproducing the player's tattoos in the video game, thus infringing the tattooists' intellectual property rights.

“The Royal Legislative Decree 1/1996, of April 12, 1996 does not provide a specific regulation in this area as it does not regulate the video game as a whole digital multimedia creation”

In our opinion, although Article 2 of The Berne Convention offers a solid base as a starting point for the protection of video games through copyright, establishing that these are complex works in terms of authorship that may include a series of pieces protected by copyright, this growing industry requires an immediate update to cover the advances in the video game industry, which during the next years will maintain an important upward trend in Spain.

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LITIGATION

Lifting the corporate veil



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Jurisprudence has developed a concept called lifting the corporate veil in order to detect fraudulent actions that seek to avoid obligations, usually payment obligations, by creating a new company (in any format, that is, it can be a legal entity or self-employed person) that continues the business of a previous one, without formalizing or recognizing a legal succession.

Commercial law is based on the principle of freedom of enterprise and partners' non-liability, and thus it is legal to create different companies for different activities which are independent from each other and do not have to answer for the obligations of the others. However, it has been observed that actions are sometimes taken that exceed this freedom in the sense that a new company is created that is actually a successor to a previous company, but it is carried out with the intention of hiding this succession in order to avoid assuming the outstanding obligations of the first company.

The judicial action of lifting the veil seeks recognition that a new company is in fact the successor of a previous one, so that it must answer for the obligations of the latter. The action is usually filed by a creditor (or even an

employee) in an attempt to make the new company respond and pay what it owes.

It should be noted that this concept is not regulated by any law and has been created by the courts, but is unanimously recognized as valid and applicable, with abundant case law to support it.

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Jurisprudence requires proof of succession in order to lift the veil. The elements that are usually considered are the following:

- That the real domicile of the business activity is the same, regardless of whether it is the formal business address.
- Use of the same contact details: telephone number, e-mail.
- People coinciding in the administration body or management and/or relationship of kinship between those people.
- The same actual activity of both companies, regardless of the formal corporate purpose.
- The same clients and/or suppliers.

- Time factor (creation of the new company shortly before or just at the moment when the previous company ceases its activities).

It is worth noting that sometimes it is difficult to prove fraudulent company succession, precisely because it is the intention of the people who carry it out to hide the existence of such succession. In order to prove it, a wide variety of evidence can be used, ranging from documents such as e-mails, information from the Commercial Registry and contracts signed by representatives of both companies to detective reports and even witness statements from workers, customers or suppliers.

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