The UK Committee on Climate Change: a model for Spain?
This report has been prepared by the Instituto Internacional de Derecho y Medio Ambiente (IIDMA).

IIDMA is a non-profit organization registered in Spain and founded in 1996 with the aim of contributing to environmental protection and sustainable development through the study, development, implementation and enforcement of Law from an international and multidisciplinary approach. Since 1998, IIDMA is accredited as observer to the United Nations Environment Programme Assembly. In 2001 it was declared of public interest by the Spanish Ministry of Home Affairs.

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Presentation of the report

This report focuses on the role of science to support political decisions to fight climate change, specifically through the establishment of science-based advisory bodies. Its purpose was to provide an in-depth analysis of the above at the time the government of Spain was working on a draft text for a Climate Change and Energy Transition Law. This happened in part at the same time the European Commission was working on its proposal for the so-called “European Climate Law”.

The report was finalized on February 2020 and launched in Madrid on 4 March 2020, the very same day when the European Commission presented its proposal for the “European Climate Law” in the form of a Regulation. Just a few days later the Covid-19 pandemic in Spain and in many other European Union countries forced an unprecedented lockdown. The pandemic and the lockdown have dramatically impacted our lives. We must learn the lessons of the times we are living in order to avoid and/or be well prepared to face emergencies in the future.

Climate Change is a well-recognized emergency as many parliaments and governments have declared worldwide. The pandemic has evidenced that political and policy decisions which are not based on science can take us to unexpected and risky situations which can destabilize our economic, social and institutional systems and therefore, our democracies. Until now, with a few exceptions, policy decisions to fight climate change have not followed science. Now, with the learnt lessons it is the time to change that path and set the necessary mechanisms to consider science - formal, natural, social and applied sciences - when facing the climate emergency. One of these mechanisms consists on the establishment of advisory science committees. There are already some experiences which started at the international level with the creation of the UN Intergovernmental Panel on Climate Change at the end of the 1980’s and later at the national level with the creation of the United Kingdom Committee on Climate Change by the 2008 Climate Change Act. Even now, not many countries count with a similar body.

At the end of May 2020, the Spanish Government submitted to the Spanish Parliament its Climate Change and Energy Transition Bill which included with scarce details a Committee on Climate Change and Energy Transition. The European Union is discussing now its future Climate Change Law. The European Commission did not include a body to ensure that decisions to fight climate change are in line to achieve carbon neutrality by 2050 to stop the warming trajectory of our Planet. The Instituto Internacional de Derecho y Medio Ambiente (IIDMA-International Institute for Law and the Environment) consider this must be a key element of the future EU Climate Change Law. With that purpose, we have translated into English the report we prepared in order to offer analysis and contribute that within the EU legislative process an EU Climate Change Committee is introduced.

Ana Barreira
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Executive summary

Science has been one of the key drivers for the adoption of policies and legislation in the field of environmental protection and the fight against climate change. A clear example is the United Nations Intergovernmental Panel on Climate Change, whose first assessment report led to the adoption of the United Nations Framework Convention on Climate Change. Taking action to address the climate and environmental emergency requires a science-based approach, which includes both natural and social sciences.

The 2008 United Kingdom Climate Change Act was a pioneering law to tackle climate change in an integrated manner, as no country had ever adopted a similar instrument before. That Act established an independent scientific advisory body, the “Committee on Climate Change”. Under the United Kingdom legal framework, it is a statutory body, meaning it is established by law. This Committee plays a key role in achieving the main goal of the Climate Change: reaching carbon neutrality by 2050. The role of the Committee on Climate Change has been crucial in making progress to meet this target.

Thanks to the Climate Change Act and the work of the Committee on Climate Change, there is clear progress on fighting climate change in the United Kingdom. The British Parliament has approved five carbon budgets and the country reached a 42% reduction in greenhouse gas emissions over the period 1990-2017. This Committee has been provided with sufficient budget to carry out its work.

The United Kingdom case has served as a model for other countries that have subsequently adopted their own climate change laws and have created bodies similar to the Committee on Climate Change. This is the case of the Swedish Climate Policy Council established by the Climate Change Law of 2017 and the French High Council on Climate established in November 2018 by President Macron.

On 21 January 2020, the Spanish Government declared the “climate emergency” and pledged to submit the draft Law on Climate Change and Energy Transition to Parliament within the first 100 days in office. Although in Spain there are already some advisory and coordination bodies tackling climate change such as the National Climate Council (Consejo Nacional del Clima), the Commission for Climate Change Policy Coordination (Comisión de Coordinación de Políticas de Cambio Climático) and the Interministerial Commission for Climate Change and Energy Transition (Comisión Interministerial para el Cambio Climático y Transición Energética), these bodies are not of a scientific nature and therefore decision-making is not science-based. None of them have the capacity to analyse the existing difficulties and progress needed in the fight against climate change in Spain. Neither can these bodies conduct studies and reports or impel the climate ambition required to be in line with the European Green Deal and the Paris Agreement commitments. Therefore, it is essential that the future Climate Change and Energy Transition Law create such a body in Spain. Although it is not easy to fit a body like this into the Spanish administrative model, it is an utmost priority to continue pursuing this idea. To this aim, we have analysed the different existing bodies in Spain.

We recommend the creation of a Committee on Climate Change and Energy Transition as a collegiate and advisory body for scientific advice on climate change matters, both concerning adaptation and mitigation. In the performance of its duties, this body must act independently from the Government, Public Administrations and any other public or private organization. The draft bill for a Climate Change and Energy Transition Law should create the Committee on Climate Change and Energy Transition, establishing at least, its legal nature, functions, its composition and the person(s) responsible for appointing its members. Furthermore, it should provide that the Committee shall be allocated with budget enough to carry out its functions and the Ministry to which it should be linked to for organisational and/or budgetary purposes. Likewise, the draft bill should establish the obligation for the Government to reason its position when it deviates from the recommendations issued by the Climate Change and Energy Transition Committee.

For this Committee on Climate Change and Energy Transition to start working as soon as possible, after the draft Climate Change and Energy Transition Law is submitted to Parliament, a Royal Decree should be immediately drafted to establish the Committee’s personnel, contractual, property and fiscal regimes as well as any others that facilitate its functioning. This body should be provided with its own budget to carry out its functions in an independent and professional manner, following examples such as the Social and Economic Council. The Committee’s functions must be closely linked to the objectives of the future Climate Change and Energy Transition Law.

Previously in Spain, several Climate Change and Energy Transition draft bills have already been prepared by the government and by parliamentary groups. Some of them included a body similar to the United Kingdom Committee on Climate Change.

The law bill submitted to Parliament by the Popular Group on 22 June 2018 included the creation of an Observatory on Climate Change and Energy Transition as a collegiate body “attached to the Ministry for the Ecological Transition”. This body was intended to undertake “the monitoring, advising, consulting, information and study of policies and measures related to climate change and energy transition”. Meanwhile,
the two draft bills on a Climate Change and Energy Transition Law submitted to Parliament by the Confederate Group Unidos Podemos-En Comú Podem-En Marea, bills which have already expired, provided for the creation of a Climate Change State Agency as an independent administrative authority aimed to provide technical support, coordinate, evaluate and supervise policies on climate change issues. During the twelfth Spanish legislature, the Government also prepared two draft versions of the Climate Change and Energy Transition Law and, after the general elections held in April 2019 a third version was drafted. The first draft law submitted on 14 November 2018, provided for the creation of a Government advisory body on climate change and energy transition matters called Committee on Climate Change and Energy Transition. However, the second version which the Council of Ministers took note of on 22 February 2019, did not include the creation of such a body. The third version of the draft law dated June 2019, included the Committee again. Finally, a fourth version from February 2020 maintains the creation of that body. However, the article regulating the Committee in the last two draft versions of the law is very brief compared to the first version, as it does not provide many details about that body.

The proposals for an climate change advisory body envisaged in the different Climate Change and Energy Transition draft bills had different nature and functioning. The committee foreseen in the bills submitted by the Confederate Group Unidos Podemos was the most detailed as it included the allocation of resources within the General State Budget to allow this Committee to carry out its work.

Due to the differences in the legal nature of the previously mentioned bodies, it is necessary to carry out an analysis of the existing institutions in Spain to determine which is the most recommended model to follow. For this purpose, the bodies analysed in this report are the Sustainable Development Council, the Economic and Social Council, the National Commission on Markets and Competition and the Independent Authority for Fiscal Responsibility.

Together with the recommendations, the analysis undertaken allows us to conclude that:

1. Although the creation of an advisory body as foreseen in the government’s bill for a Law on Climate Change and Energy Transition is appropriate, it requires further development. Its legal nature has to be the appropriate one so that the reports, studies and opinions it produces have enough strength. Furthermore, in case these are not binding on the Government, as it is the case of the current Economic and Social Council, it is crucial to establish the obligation for the Government to reason when it deviates from the Committee’s recommendations. This already occurs with the reports issued by the Independent Authority for Fiscal Responsibility. It should be highlighted that advisory bodies supports the Government’s work but is not required to report before the Spanish Parliament.

2. The working model of the Independent Authority for Fiscal Responsibility is interesting for a future Committee on Climate Change and Energy Transition, considering its duty to supervise budget stability. In fact, the overall objectives established in the General State Budget should be linked to Spain’s climate objectives. However, in light of the functions and organizational regime of an independent administrative authority under the Spanish legal system, we do not consider it to be the appropriate legal model for the future Committee on Climate Change and Energy Transition.

3. It is necessary to create a body allowing consistency between policies and actions taken by the State, the Autonomous Communities and the municipalities. We are aware that reaching an agreement between the Spanish Government, the governments of 17 Autonomous Communities and those from the two autonomous cities (Ceuta and Melilla) would be a difficult task to accomplish. However, it would be advisable to involve them somehow in the appointment and operation of the future Committee on Climate Change and Energy Transition. Without their participation it would not be possible to achieve some of the objectives set out in the future Climate Change and Energy Transition Law, the National Energy and Climate Plan and the Long-Term Strategy for Net-Zero Emissions.

4. The analysis carried out shows that the different types of existing bodies are superstructures with many members and, in some cases, with a tangled organisational structure. Therefore, it is advisable that the future Committee on Climate Change and Energy Transition is a dynamic body, without constraints, which allows for fluent decision-making.

Given that the role of this Committee on Climate Change and Energy Transition will be crucial to face the climate emergency in the next ten years, its independence and diversity must be guaranteed so that it is not left at the mercy of political uncertainties. Thus, all necessary mechanisms should be put in place to achieve this purpose.
Index

Acronyms..................................................................................................................................................7
Introduction...............................................................................................................................................9
1.- Climate change advisory bodies........................................................................................................10
  1.1. The UK Committee on Climate Change.........................................................................................10
    1.1.1. Legal nature............................................................................................................................10
    1.1.2. Functions................................................................................................................................10
    1.1.3. Composition.............................................................................................................................11
    1.1.4. Operating regime.....................................................................................................................12
  1.2. The Climate Policy Council of Sweden.........................................................................................13
  1.3. The French High Council on Climate...........................................................................................13
  1.4. Conclusions...................................................................................................................................14
2.- A Committee on Climate Change in Spain?......................................................................................15
  2.1. Existing bodies................................................................................................................................15
    2.1.1. The National Climate Council..................................................................................................15
    2.1.2. The Coordination Commission for Climate Change Policies....................................................18
    2.1.3. The Inter-ministerial Commission for Climate Change and Energy Transition........................19
  2.2. Bodies envisaged in the CCET law proposals and draft laws.......................................................20
    2.2.1. The Observatory on Climate Change and Energy Transition..................................................20
    2.2.2. The Climate Change State Agency............................................................................................20
    2.2.3. The Committee on Climate Change and Energy Transition....................................................22
3.- Models of interest in the Spanish context...........................................................................................23
  3.1. The Environmental Advisory Council.........................................................................................23
    3.1.1. Legal nature.............................................................................................................................23
  3.2. The Sustainable Development Council.......................................................................................25
    3.2.1. Legal nature.............................................................................................................................25
  3.3. The Economic and Social Council................................................................................................26
    3.3.1. Legal nature.............................................................................................................................26
  3.4. The National Commission on Markets and Competition............................................................29
    3.4.1. Legal nature.............................................................................................................................29
  3.5. The Independent Authority for Fiscal Responsibility.......................................................................32
    3.5.1. Legal nature.............................................................................................................................32
4.- Recommendations for a future Committee on Climate Change and Energy Transition..................35
References..................................................................................................................................................37
Acronyms

AA.CC  Autonomous Communities
AiReF  Autoridad Independiente de Responsabilidad Fiscal (Independent Authority for Fiscal Responsibility)
ASAJA  Asociación Agraria de Jóvenes Agricultores (Agricultural Association of Young Farmers)
ASC  Adaptation Sub-Committee
BEIS  Department for Business, Energy and Industrial Strategy
BOE  State Official Journal
CAMA  Consejo Asesor de Medio Ambiente (Environmental Advisory Council)
CCA  Climate Change Act
CCC  Committee on Climate Change
CCETC  Committee on Climate Change and Energy Transition
CCETL  Climate Change and Energy Transition Law
CICCTE  Comisión Interministerial para el Cambio Climático y la Transición Energética (Inter-ministerial Commission for Climate Change and Energy Transition)
CCPCC  Comisión de Coordinación de Políticas de Cambio Climático (Coordination Commission for Climate Change Policies)
CES  Consejo Económico y Social (Economic and Social Council)
CEPYME  Confederación Española de Pequeña y Mediana Empresa (Spanish Confederation of Small and Medium-Sized Enterprises)
CEOE  Confederación Española de Organizaciones Empresariales (Spanish Confederation of Business Organisations)
CDS  Consejo de Desarrollo Sostenible (Sustainable Development Council)
CNC  Consejo Nacional del Clima (National Climate Council)
CNMC  Comisión Nacional de los Mercados y la Competencia (National Commission on Markets and Competition)
COAG  Coordinadora de Organizaciones de Agricultores y Ganaderos (Farmers and Stockbreeders Umbrella Organization)
DEFRA  Department for Environment, Food and Rural Affairs
FNCP  Federación Nacional de Cofradías de Pescadores (National Federation of Fishermen Associations)
GHG  Greenhouse Gases
GTIA  Grupo de Trabajo sobre Impactos y Adaptación (Working Group on Impacts and Adaptation)
HCC  High Council on Climate
IDAIE  Instituto para la Diversificación y Ahorro de la Energía (Institute for Energy Savings and Diversification)
IPCC  Intergovernmental Panel on Climate Change
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>MITECO</td>
<td>Ministry for the Ecological Transition and the Demographic Challenge</td>
</tr>
<tr>
<td>NECP</td>
<td>National Energy and Climate Plan</td>
</tr>
<tr>
<td>OECC</td>
<td>Oficina Española de Cambio Climático (Spanish Office for Climate Change)</td>
</tr>
<tr>
<td>PNACC</td>
<td>National Plan on Adaptation to Climate Change</td>
</tr>
<tr>
<td>SDG</td>
<td>Sustainable Development Goals</td>
</tr>
<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
</tr>
<tr>
<td>UPA</td>
<td>Unión de Pequeños Agricultores y Ganaderos (Union of Small Farmers and Stockbreeders)</td>
</tr>
</tbody>
</table>
Introduction

Science has been one of the key drivers for the adoption of policies and legislation in the field of environmental protection and the fight against climate change. Scientific knowledge on the destructive power of the ozone layer by chlorofluorocarbons led to the adoption of the Vienna Convention for the Protection of the Ozone Layer in 1985. Likewise, the first assessment report issued by the Intergovernmental Panel on Climate Change (IPCC) promoted the negotiation and adoption of the United Nations Framework Convention on Climate Change (UNFCCC). Taking action to address the climate and environmental emergency requires a science-based approach, including both natural and social sciences.

The UK Climate Change Act of 2008 (CCA)1 was a pioneering law to tackle climate change in an integrated manner, as no other country had ever adopted a similar instrument before. This Act established an independent scientific advisory body, the “Committee on Climate Change” (CCC). Under United Kingdom legislation, it is a statutory body, meaning it is established by law. This Committee plays a key role in achieving the CCA’s main goal: reaching carbon neutrality by 2050. Previously, this target was set on 80% reduction of greenhouse gases (GHG) emissions by 2050 compared to 1990 levels. However, the report Net Zero The UK’s contribution to stopping global warming Committee on Climate Change5, led to an amendment of the CCA’s target which was approved on 27 June 20195. This amendment sets a GHG emissions reduction target of 100% by 20505.

The role of the CCC has been crucial in making progress to meet this target during the two first UK carbon budgets6, resulting in a GHG emissions reduction of 42% over the period 1990-20177, while the UK’s economy grew by 72%8.

The UK case has served as a model for other countries that have subsequently adopted their own climate change laws and have created bodies similar to the CCC, as it is the case of:

- The Mexican Council on Climate Change created by the 2012 General Law on Climate Change9.
- The Swedish Climate Policy Council10 created by the 2017 Climate Change Law11.
- The French High Council on Climate12 established in November 2018 by President Macron and created by Decree of 14 May 201913.

On 21 January 2020, the Spanish Government declared the climate emergency14. The measures proposed in the climate emergency declaration include the submission of the draft Climate Change and Energy Transition Law (CCETL) to Parliament within the first 100 days in office. It is important to note that the draft CCETL has had several versions. The first version of the draft CCETL, which was elaborated by the Ministry for the Ecological Transition (MITECO) on 14 November 2018, envisaged in article 30 the creation of a Climate Change and Energy Transition Committee (CCETC)15. This Committee would be responsible for providing “independent advice to Government and society as a whole on climate change and energy transition matters”. The third version of the draft CCETL of June 2019 and the fourth version of February 2020 also include the CCETC although in more general terms.

In view of the role played by the UK CCC, the aim of this report is to analyse how this committee works and assess whether it is necessary to establish a similar body in Spain to assist in the implementation of the future CCETL, the National Energy and Climate Plan (NECP) and the “Long-Term Decarbonization 2050 Strategy”. Furthermore, this report analyses how such a body could be designed in our country in light of the requirements of the Spanish legal system.

For this purpose, this report first evaluates the nature, composition and functioning of the UK CCC. In addition, the Swedish Climate Policy Council and the French High Council on Climate are briefly analysed. Secondly, it explores the functioning of some of the main Spanish advisory, coordination and participatory bodies in the field of climate change. These are the National Climate Council (Consejo Nacional del Clima), the Coordination Commission for Climate Change Policies (Comisión de Coordinación de Políticas de Cambio Climático) and the Interministerial Commission for Climate Change and Energy Transition (Comisión Interministerial para el Cambio Climático y Transición Energética). The report then provides an analysis of the bodies proposed in the different CCET draft bills. Afterwards, it briefly examines some similar advisory, participation and supervisory bodies existing in Spain related not only to climate change and the environment but to other fields, which may serve as a model for the CCETC. These bodies are the Environmental Advisory Council (Consejo Asesor de Medio Ambiente, CAMA), the Sustainable Development Council (Consejo de Desarrollo Sostenible, CDS), the Economic and Social Council (Consejo Económico y Social, CES), the National Commission on Markets and Competition (Comisión Nacional de las Mercados y la Competencia, CNMC) and the Independent Authority for Fiscal Responsibility (Autoridad Independiente de Responsabilidad Fiscal, AIREF). Finally, this report concludes with the recommendation to establish a CCETC in Spain and provides guidance on how this body could look like.
Climate change advisory bodies

This section analyses the UK CCC in detail since, as already mentioned, it is a global pioneer. It also provides a brief overview of the climate advisory bodies in Sweden and France.

1.1 The UK Committee on Climate Change

The CCC was established under the CCA\(^\text{16}\) with the aim to provide the UK institutions with an advisory body specialized on climate change. The main purposes of this Committee are to advise the UK Government and Devolved Administrations (Scotland, Wales and Northern Ireland) on GHG emissions targets and report to Parliament on progress made in reducing emissions as well as on adaptation to climate change.

1.1.1 Legal nature

As mentioned previously, the CCC is a “statutory body” meaning it is created by law. It is a non-departmental public executive body “sponsored” by the Department for Business, Energy and Industrial Strategy (BEIS) - which is equivalent to a Ministry - the Northern Ireland Executive, and the governments of Scotland and Wales. According to the CCA, the CCC is a corporate body\(^\text{17}\) with capacity to enter into contracts, acquire, hold and dispose of property, borrow money, accept gifts and invest money\(^\text{18}\). The CCC does not act as the servant nor the agent of the Crown\(^\text{19}\).

The CCC is also entitled by the CCA to “do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions”\(^\text{20}\). In particular, the CCC may gather information and carry out research and analysis or commission others to carry out such activities, as well as publish the results of its research\(^\text{21}\).

1.1.2 Functions

The main role of the CCC is to support the strategic goals of BEIS, the Department for Environment, Food and Rural Affairs (DEFRA) and the Devolved Administrations on climate change\(^\text{22}\), providing scientific advice.

The Committee provides advice to the Secretary of State\(^\text{23}\), about:

- Whether the 80% reduction in GHG emissions by 2050 is sufficient or not. As previously mentioned, this was the target until the CCA was amended as a result of the report issued by the CCC in May 2019, which recommended that the UK be carbon neutral by 2050, that is, a 100% emissions reduction target by that date. Since then, the Committee advises on whether such percentage should be amended.
- Carbon budgets, including the amount for the corresponding budgetary period, and how all sectors of the economy, both covered and not covered by the emission trading scheme, should contribute towards meeting the CCA target.
- Emissions resulting from commercial aviation and shipping.

It should be noted that the CCA strengthens the CCC’s scope of advice regarding the implementation of carbon budgets. In this regard, if the Secretary of State takes a decision deviating from the recommendation given by the CCC, it must publish the reasoning underlying such decision\(^\text{24}\).

Furthermore, the Committee must prepare an annual report for the Parliament and the devolved administrations providing its view on:\(^\text{25}\):

\begin{itemize}
  \item a) progress made towards meeting the carbon budgets and the 2050 target,
  \item b) further progress needed to meet both the budgets and the target, and
  \item c) whether those budgets and that target are likely to be met.
\end{itemize}
The CCC strategic plan for 2016-2019\textsuperscript{19} indicates that its main function is to provide independent advice for the establishment and achievement of carbon budgets, as well as concerning climate change adaptation\textsuperscript{27}. The strategic priorities for the referred budget period are, among others, the following:

- Monitoring progress on reducing emissions and achieving carbon budgets and reduction targets\textsuperscript{29}.
- Advising on the preparation of the UK Climate Change Risk Assessment – the CCA requires the Government to carry out this assessment every five years\textsuperscript{26,30} – and on progress towards the implementation of the National Adaptation Plan.
- Conducting independent analysis on key different aspects of climate change from a scientific, economic and policy perspective.
- Engaging with a wide range of organisations and individuals to share evidence and analysis.

It should be stressed that the Committee reports on the UK’s transition to a low-carbon economy and on the preparation required to face the increasing climate risks, providing an economic and business point of view as well as scientific one. For instance, in its Evidence Report to inform the Government’s second UK Climate Change Risk Assessment, the Committee analyses the climate change risk which the UK faces and the opportunities that may arise from climate change\textsuperscript{31}.

Furthermore, the CCA states that the Committee will be assisted by the Adaptation Sub-Committee (ASC)\textsuperscript{32} which provides advice, prepares reports on adaptation and provides any other assistance on request in connection with:

- The CCC’s function on advising national authorities in adaptation to climate change (sec. 38.1.(c) CCA),
- The advice that the CCC must provide to the Secretary of State for the preparation of UK climate change impact reports (sec. 57 CCA), and
- The CCC’s duty to report on progress towards implementing the objectives, proposals and policies set out in the programmes for adaptation to climate change (sec. 59, CCA).

Both national authorities and the Secretary of State may give the Committee guidance and directions in the exercise of its functions. However, these directions cannot extend to the content of their advice or reports\textsuperscript{33}.

The Committee must have regard to the desirability of involving the public in the exercise of its functions\textsuperscript{34}.

1.1.3 Composición

The members of the Committee are appointed by the national authorities which include the minister\textsuperscript{25} competent on energy, the Scottish and Welsh Governments and the Northern Ireland respective departments. All of them are jointly named by the CCA as “national authorities”. The Committee consists of\textsuperscript{36}:

- A person appointed by the national authorities to chair the Committee, and
- Between five and eight additional members appointed by the national authorities.

The national authorities must consult the chair before appointing new members\textsuperscript{37} and they can only remove a member when specific circumstances apply\textsuperscript{38}.

When appointing members, the national authorities must evaluate that the Committee, taken as a whole, has experience in or knowledge in the fields of\textsuperscript{29}:

- business competitiveness;
- climate change policies at national and international level and, especially, the social impacts of such policy;
- climate science and other branches of environmental science;
- differences in circumstances between England, Wales, Scotland and Northern Ireland and the capacity of national authorities to take action in relation to climate change;
- economic analysis and forecasting;
- emissions trading;
- energy production and supply;
- financial investment; and
- technology development and dissemination\textsuperscript{40}.

To be a member of the Committee it is necessary to pass an exhaustive interview before the Assessment Panel. Members are required to work up to 2 days per month and are entitled to remuneration\textsuperscript{41}.

Currently the CCC Chairman is Lord Deben, which was the UK Secretary of State for the Environment during the Government of John Major in 1993, and the Deputy Chair is Baroness Brown of Cambridge which is also the Chair of the ASC. The rest of members up to eight are recognized scientists and professionals in the fields previously mentioned\textsuperscript{42}. The Committee members have a duty to act impartially and objectively and avoid conflicts of interest.

The CCC is entitled to authorise other sub-committees to exercise any of its functions\textsuperscript{51}. As in the case of the ASC, members of sub-committees may include persons who are
not members of the CCC. The CCC appoints a person to be chief executive, under the approval of the national authorities. The chief executive is an employee of the CCC. He or she heads the staff of the CCC’s Secretariat integrated by around 30 people.

The chief executive is also the CCC and ASC’s accounting officer. Therefore, he/she is personally responsible for safeguarding the public funds for which he/she is in charge. In addition, the chief executive must ensure that the CCC and the ASC are run in accordance with the standards of probity established by the HM Treasury. Furthermore, the chief executive responsibilities to the CCC are the following:

- Advising on the discharge of the CCC and ASC’s responsibilities in accordance with the Committee on Climate Change Framework Document, in the founding legislation and in any other relevant instructions and guidance that may be issued;
- Advising on the CCC and the ASC’s performance in accordance with their aims and objectives;
- Ensuring that financial considerations are taken fully into account by the CCC and ASC in reaching and executing its decisions and that financial appraisal techniques are followed;
- Taking actions set out by the HM Treasury if the CCC or ASC’s members, or their chairs, are contemplating a course of action involving a transaction which the chief executive considers inappropriate, or could be irregular, does not represent prudence of economical administration, efficiency or effectiveness, questionable feasibility or is unethical.

The CCC and its chief executive are supported by the Auditor Committee in their respective responsibilities for control, governance and risk management.

1.1.4 Operating regime

The CCC regulates its own internal proceedings and those of their sub-committees, including quorum. The Committee must publish the minutes of its meetings.

The CCC and the ASC shall submit annually to the so-called “Sponsor Group” the Corporate Plan, including the CCC and ASC’s priorities foreseen for a period of three years. The issues to be addressed in the plan shall be agreed with the sponsor group and the national authorities. The Plan also shows how the CCC and the ASC contribute to the achievement of the goals of the national authorities. The first year of the Corporate Plan, Amplified as necessary, shall form the Business Plan. This Business Plan shall be updated to include key targets and milestones for the next year and shall be linked to budgeting information so that resources allocated to achieve specific objectives can be identified by the national authorities.

Each year, in light of decisions taken by the Sponsor Group on the draft Corporate Plan, DECC and Defra shall send annually a formal statement on the budgetary provision.

While the national authorities may establish the remuneration and benefits of CCC’s members, remuneration of employees shall be in accordance with the payment structure set by BEIS. The CCC is responsible for the recruitment, retention and motivation of the staff working on mitigation and adaptation.

The CCC, including its ASC, is funded from grants-of-supply provided by BEIS, DEFRA and devolved administrations, as well as from future incomes. Both grants and incomes are annually approved by Parliament. Funding coming from devolved administrations is approved by their respective Parliaments.

The CCC overall expense in 2018 fiscal year was £ 4,670,222.00, of which £ 3,286,886.00 went to the CCC and £ 1,383,336.00 to the ASC. Along with the expenses of the Committee’s members, the Sub-committee and the permanent staff, there was also a budget line for “other expenses” of £ 1,949,463.00 which were allocated to research (£ 1,363,442.00) and publications (£ 61,368.00), among others.
1.2 The Climate Policy Council of Sweden

The Swedish climate policy framework was approved in 2017 and is based on three pillars:

- The increased 2045 national climate targets together with their milestones.
- The Climate Change Law which provides an enhanced climate governance framework.
- The creation of a Climate Policy Council responsible for evaluating whether the Swedish government’s policy is compatible with long-term climate objectives.

The Climate Change Law sets out a long-term objective based on achieving climate-neutrality by 2045 and afterwards of negative emissions. Emissions generated within the Swedish territory should be reduced by, at least, 85%, in 2045 compared to 1990 levels. The remaining 15% may be covered by carbon storage or emissions reduction outside Sweden.

For emissions not covered by the Emissions Trading System the following emission reduction targets apply based on 1990 levels:

- 40% reduction by 2020
- 63% reduction by 2030
- 75% reduction by 2040
- At least, 70% reduction in emissions from domestic transport by 2030 compared to 2010 levels.

This Council is integrated by eight independent members with high expertise on climate change, climate policy, economy, social science and behavioural science. Its main functions are:

- Evaluating whether climate policies set out for different sectors contribute or counteract the climate targets.
- Reviewing, from a wide social perspective, the effects resulting from both existing and planned policies.
- Identifying sectors where additional action is required to achieve the climate targets.

In addition, this Committee has a duty to evaluate the analytical methods and models that serve as a basis for policy setting as well as to contribute to the climate policy debate.

In order to fulfil its tasks, each year the Council elaborates a progress report to be submitted to the Government, in which it evaluates the climate situation and emissions trends. This serves to check whether progress is being made on achieving targets as well as to inform society as a whole about climate action. Moreover, three months after the Government submits its action plan on climate policy in line with the Climate Change Law – which requires its elaboration every four years – the Council must submit to the Government a report in which it evaluates such action plan. Thus, the Climate Policy Council is a key player to ensure the achievement of climate targets and the responsibility of the Government towards those targets.

To fulfil its functions, the Council has a budget of 10 million Swedish Kroner (SEK). The Climate Policy Council is part of FORMAS, which is a governmental research council for sustainable development.

1.3 The French High Council on Climate

This Council was created by the French President in November 2018. However, it was formally established by presidential decree in May 2019. The High Council was not provided for in Law no 2015-992 of 17 August 2015 on Energy Transition and Green Growth which set France’s climate goals to contribute to the fight against climate change. However, that Law was amended by Law no 2019-1147 of 8 November 2019 on Energy and Climate which set out more ambitious targets and introduced some provisions relating to the High Council, among its reforms.

The main goal in the fight against climate change is to achieve carbon neutrality by 2050 following the emissions reduction trajectory provided in the five-year carbon budgets. By 2030 France GHGs emissions should be reduced by 40% based on 1990 levels.

The High Council on Climate (HCC) is an independent advisory body which provides recommendations on climate policy to the Prime Minister. This Council is hosted by France Stratégie, a public institution subject to the authority of the Prime Minister which gives support to the HCC on administrative, IT and communication matters. This Council is provided with its own budget and a secretariat which ensures the functioning and organization of its work. If necessary, it may request for the services from the competent administration on climate and may commission papers and studies from experts and non-governmental bodies. The 2020 Finance Law contains a budget line for this HCC as part of the budget allocated to the Prime Minister’s services in 2020. This budget line is included in the section for government’s work coordination, and allocates €685,584.00 to the HCC to cover the following programmes:
• “Conducting policies on ecology, sustainable development and sustainable mobility”: €228,528.00.
• “Education at Universities”: €114,264.00.
• “Economic and Fiscal Strategy”: €228,528.00.
• “Multidisciplinary scientific and technological research”: €114,264.00.

Moreover, the Council is provided with a budget line of €540,000.00 for its operation. Thus, the overall budget assigned to the HCC for the 2020 fiscal year amounts to €1,225,584.00²⁹.

The Council is integrated by twelve members selected according to their scientific, technical and economic knowledge and experience in the fields of climate and ecosystem sciences, reduction of GHG emissions as well as on adaptation and on resilience to face climate change³⁰. Members are appointed by presidential decree for a period of five years, subject to possible re-election for a same period and may receive remuneration established by the Prime Minister. They are also reimbursed for travel and accommodation expenses related to their work. The Council is responsible for elaborating and submitting an annual report concerning:

1. Compliance with GHG reduction trajectory in line with the five-year carbon budgets and the national low-carbon strategy³¹.

2. Implementation and effectiveness of policies and measures adopted by the State and territorial bodies in order to reduce emissions, develop carbon sinks, reduce the carbon footprint and develop adaptation to climate change, including budgetary and fiscal provisions.

3. The socioeconomic impact of different public policies, mainly on the creation of employment and the environment, including biodiversity.

In this report the HCC must take into account the commitments and actions taken by France compared with those of other countries. It must also include recommendations and advice to improve France’s action, the contribution of different economic sectors in relation to carbon budgets and the reduction of GHGs from international aviation and maritime transport. This report is submitted to the Prime Minister and presented before the Parliament and the Economic, Social and Environmental Council. Six months after the report’s submission, the Government must inform the Parliament and the Economic, Social and Environmental Council about the measures implemented and those planned in response to the recommendations and suggestions contained in that report³³.

Furthermore, the HCC prepares a recommendation or opinion on the National Low-Carbon Strategy and on carbon budgets, assessing the coherence of both instruments with national policies and France’s pledges at EU and international levels, in particular with the Paris Agreement and the carbon-neutrality target by 2050. This analysis also considers the socio-economic impacts of the transition on households and businesses, as well as sovereignty issues and environmental impacts.

Finally, either on his own initiative or at the request of the Government, the President of the National Assembly or the Senate, the HCC may elaborate a report on sectoral aspects concerning the financing of measures to implement the National Low-Carbon Strategy or climate policies.

1.4 Conclusions

The UK CCC is closely linked to the CCA that established it. During its ten years of life, the Committee’s work has been crucial in ensuring that the UK’s pathway in the fight against climate change was always directed towards the long-term GHG reduction target, regardless of the prevailing political situation. Thus, it has been essential in the progress the UK has made until now, including the crucial amendment concerning the net-zero emissions target.

Thanks to the CCA and the work undertaken by the CCC there is clear progress regarding climate change. The British Parliament has approved five carbon budgets and the country reduced 42% of its GHGs emissions by 2017. In addition, the CCC has served as an inspiration for other countries which have already adopted climate change laws and committees as it is the case of Sweden or France. This Committee is provided with enough budget for carrying out its work.

In its recent report Net Zero: The UK’s contribution to stopping global warming Committee on Climate Change the Committee recommended the UK to set and actively pursue an ambitious target of net-zero GHGs emissions by 2050. This amendment was rapidly incorporated into the CCA. Accordingly, we can conclude that the existence of this Committee has been, and still is, paramount to achieve climate change mitigation and adaptation objectives in that country.

At the same time, despite the recent creation of the Swedish Council for Climate Policy and the French HCC, their role is of utmost importance for monitoring the fulfilment of climate targets in both countries. However, to ensure the effectiveness of these bodies it is mandatory to put in place all the necessary mechanisms for their recommendations to be duly considered. This includes the obligation for Governments to reason when they take decisions deviating from those recommendations. In addition, it is crucial to ensure that these bodies are provided with enough budget to carry out their functions.
A Committee on Climate Change in Spain?

During the celebration of the COP 21 held in Paris in December 2015 the former Spanish President stated his commitment to impel a specific law on climate change\(^{26}\). After more than four years, despite the presentation by different political parties of three climate change and energy transition bills before the Spanish Parliament and the elaboration by the Government of three draft bills, that legal instrument has not been adopted yet. However, the climate emergency declaration made by the Government on 21 January 2020 includes the commitment to submit the draft CCETL to Parliament within the first 100 days in office\(^{23}\). On February 2020 a fourth version of a draft CCETL was elaborated for that purpose.

The climate change and energy transition bill submitted to the Parliament by the Popular Group on 22 June 2018\(^{46}\) included the creation of an **Observatory on Climate Change and Energy Transition** as a collegiate body “attached to the Ministry for the Ecological Transition”\(^{46}\). This body was in charge of “the monitoring, advising, consultation, information and study of policies and measures related to climate change and energy transition”\(^{46}\). Meanwhile, the two bills submitted by the Confederate Group Unidos Podemos-En Comú Podem-En Marea on 22 June 2018 and on 5 July 2019, bills which have already expired\(^{27}\), proposed the creation of a **Climate Change State Agency** as an independent administrative authority aimed to provide technical support, coordinate, evaluate and monitor policies to face climate change\(^{27}\). Finally, during the twelfth Spanish legislature\(^{46}\), the Government prepared two draft versions of the CCETL and, after the general elections held in April 2019 a third version was drafted. The first draft law, submitted on 14 November 2018, established the creation of a Government advisory body on climate change and energy transition called the **Committee on Climate Change and Energy Transition**\(^{25}\). However, the second version which the Council of Ministers took note of on 22 February 2019 did not include the creation of such a body. The third and fourth versions have included that Committee again\(^{27}\).

In view of the role undertaken by the UK CCC to achieve the CCA’s objectives and increase the country’s level of ambition, and considering that many of the draft bills incorporate the creation of a similar body in Spain, it is necessary to analyse how this body should look like to be in line with the Spanish legal system.

To this aim, this chapter first analyses the existing bodies in Spain having both advisory and policy development and monitoring functions in the field of climate change and energy transition. Secondly, it examines the bodies provided in the different draft bills for a CCETL.

### 2.1 Existing bodies

Before starting the analysis, it is necessary to stress that any body that is created by the Spanish administration, including an advisory and consultative body on climate change, must be in line with the provisions contained in Law 40/2015, of 1 October, on the Legal Regime of the Public Sector (“Law 40/2015”)\(^{27}\). Several formal requirements must be complied with based on the legal nature and functions to be carried out by such a body. Those requirements are analysed in the following sections.

#### 2.1.1 The National Climate Council

In 1992, when the UNFCCC was signed, the so-called National Climate Commission (**Comisión Nacional del Clima**) was created. This body was attached to, at that time, the Ministry for Public Works and Transport. Its aim was to collaborate in the elaboration of the National Climate Programme and advise the Government on climate change policy and response strategies. It was established by a Royal Decree which was published in the State Official Journal (BOE) on 5 June, the World Environment Day, when the Rio Conference was taking place.
The CNC is a collegiate inter-ministerial body attached to the MITECO through the State Secretariat for the Environment. It is the participatory body for all public administrations and organizations and entities representing social and environmental interests, in the elaboration and monitoring of climate change policies promoted by the State. Being a member of the CNC’s membership is not remunerated.

Collegiate bodies are those formally established and comprised of three or more people provided with administrative functions on decision, proposal, advice, monitoring or control, and which act within the General Administration of the State or in any of its public entities.

These type of bodies usually involve organizations representing social interests together with representatives of different Public Administrations. Both its establishment and operation rules must be published in the official journal. At the same time, the CNC is an advisory body.

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**Functions**

- **Provide information and promote the participation** of all actors involved at the time of elaborating and monitoring climate change policies and measures promoted by the State.
- **Acquire knowledge and make recommendations** in relation to climate change plans, programmes and measures.
- **Promote** the development of actions to gather, analyse, elaborate and disseminate information.
- **Be aware** of European Union (EU) policies and the state of international negotiations on climate change.
- **Any other function** assigned by a legal or regulatory provision within the scope of its competences.

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**Composition**

It is comprised of its chair, deputy-chair, a secretary and several members.

The Chair is held by the head of the Ministry in charge of environmental protection; currently, the Ministry for Ecological Transition and Demographic Challenge. The deputy-chair is held by the head of the State Secretariat for the Environment, which may replace the chair in case of absence or illness. The Secretariat is held by the head of the Directorate General of the Spanish Office for Climate Change (Oficina Española de Cambio Climático, OECC).

The members are:

- From the MITECO, the Deputy Secretary, the Technical General Secretary, and the Directors General for Water, Biodiversity, Forests and Desertification, Environmental Quality and Assessment, Coast and Sea; the President of the State Agency for Meteorology and the director of the Autonomous Body for National Parks.
- A representative from each of the 17 Autonomous Community and another for each of the Autonomous Cities of Ceuta and of Melilla, appointed by the competent regional body.
- Three representatives appointed by the association of local entities with greater representation at State level.
- Two representatives appointed by the businesses representative organizations with greater representation at State level.
- A representative appointed by the High Council of Chambers of Commerce.
- A member with broad experience on environmental matters, appointed by the Minister for Ecological Transition and Demographic Challenge.
The CNC operates as a plenary session which meets at least once a year. To reach an agreement, the favourable vote of half plus one of the Plenary members is required. The president has a casting vote in the event of a tie. The Plenary may agree on the creation, reform or extinction of working groups. The agreement to create a working group must specify its composition, objectives assigned and, where appropriate, when they have to be met. The number of working groups will be, maximum, of three per term.

The president is responsible for approving the calendar of meetings for the working groups.

The CNC differs from the Climate Citizenship Convention which has been recently created by the French President and organized by the Economic, Social and Environmental Council of France. This Convention is integrated by 150 citizens representing the diversity of the French society to speed up the fight against climate change. Its task is to define a range of measures to reduce GHG emissions in, at least, 40% by 2030 with a spirit of social justice. To this aim, members of the Convention shall provide information, discuss and assist to prepare draft laws on climate change matters. According to the climate emergency declaration of the Spanish Government, a similar body will be created in Spain within the first 100 days in office, that is, the Citizens’ Climate Change Assembly (Asamblea Ciudadana del Cambio Climático). Its composition shall consider the principle of equal gender representation and shall promote the participation of youth.
2.1.2 The Coordination Commission for Climate Change Policies

Law 1/2005, of 9 March, on the GHG emissions trading scheme created the Coordination Commission for Climate Change Policies (Comisión de Coordinación de Políticas de Cambio Climático, CCPCC). It was established as a coordination and collaboration body between the General Administration of the State and the Autonomous Communities (AA.CC) to implement the emissions trading scheme and comply with the international and European reporting obligations inherent to it.

According to that Law, a body as such was determinant due to the technical complexity of the permitting and emissions monitoring regime and to the need for collaboration to ensure consistency in its implementation throughout the whole territory in all sectors covered by the EU Emissions Trading Directive as well as in those not covered by that Directive. In addition, such collaboration was needed in order to comply with the existing international and European reporting obligations on policies and measures adopted to comply with achieving the climate change commitments.

Given its condition as a coordination and collaboration body between the General Administration of the State and the AA.CC, the CCPCC is a collegiate body without legal personality.

Its collaboration and coordination functions relate to the following areas:

a) Monitoring climate change and adaptation to its impacts.

b) Preventing and reducing GHG emissions.

c) Promoting carbon dioxide absorption by vegetation.

d) Establishing – bearing into account the criteria of the CNC-the general lines of action of the Spanish designated national authority and the criteria for the approval of mandatory reports on voluntary participation in the clean development mechanism projects and joint implementation under the Kyoto Protocol to the UNFCCC. This is affected by the end of the validity period of the Kyoto Protocol and the entry into force of the Paris Agreement.

e) Promoting programmes and actions to impel emissions reduction in sectors and activities not included within the scope of application of Law 1/2005.

f) Elaborating and approving technical guidelines and explanatory notes to harmonize the implementation of the emissions trading scheme.

g) Developing and establishing a national regime for domestic projects.

h) Other areas included in Law 1/2005, of 9 March, its implementing regulations and other regulations in force, especially Royal Decree 1494/2011, of 24 October, on the Carbon Fund for a Sustainable Economy.

The Commission is chaired by the Secretary of State for the Environment and integrated by the following members, which do not receive additional remuneration:

a) From the MITECO: The Secretary of State for the Environment, who holds the presidency, and the Director General of the OECC, who acts as the secretary of this Commission. Furthermore, a representative from the following bodies and ministries: Directorates General for Biodiversity, Forests and Desertification, Environmental Quality and Assessment, Energy Policy and Mining, the Institute for Energy Savings and Diversification (Instituto para la Diversificación y Ahorro de la Energía, IDAE), the Presidency of the Government, the Ministry for Agriculture, Fisheries and Food, the Ministry for Foreign Affairs, European Union and Cooperation, the Ministry for Science and Innovation, the Ministry for Social Rights and Agenda 2030, the Ministry for Transport, Mobility and Urban Agenda, the Ministry for Culture and Sport, the Ministry for Defence, the Ministry for Economic Affairs and Digital Transformation, the Ministry for Education and Professional Training, the Ministry for Finance, the Ministry for Industry, Trade and Tourism, the Ministry for Home Affairs, the Ministry of Justice, the Ministry for Territorial Policy and Public Service, the Ministry for the Presidency, Parliamentary Relations and Democratic Memory, the Ministry of Health, the Ministry for Consumer Affairs, the Ministry for Inclusion, Social Security and Migrations, the Ministry for Labour and Social Economy and the Ministry for Universities.

b) One member appointed by each Autonomous Community.

c) One member appointed by each of the Autonomous Cities of Ceuta and Melilla.

d) One member representing local entities, appointed by the association with greater representation at national level.

The General Administration of the State and the AA.CC cooperate and collaborate on climate change matters and provide each other with information on methodologies applicable to different sectors, technological developments and any other relevant information for the purposes of emission permitting, verification of emissions, individual allocation of allowances or projects under the clean development and joint implementation mechanisms of the Kyoto Protocol to the UNFCCC.

In 2007, the CCPCC agreed to create a Working Group on Impacts and Adaptation (Grupo de Trabajo sobre Impactos y Adaptación, GTIA) which is comprised of representatives of the General Administration of the State and the AA.CC. The GTIA’s overall aim was to coordinate and integrate the existing regional and national strategies and plans on adaptation to climate change in Spain.
The GTIA monitors and reports on progress achieved and on the results of projects and initiatives developed under the National Plan on Adaptation to Climate Change (Plan Nacional de Adaptación al Cambio Climático, PNACC) as well as on planning frameworks and activities in the field of adaptation developed by each Autonomous Community to strengthen coordination. Moreover, the GTIA meetings include a review of the international context (the state of negotiations under the UNFCCC, IPCC activities) and the european one. Generally, this group meets on an annual basis.

2.1.3 The Inter-ministerial Commission for Climate Change and Energy Transition

This Commission has its precedent in the Inter-ministerial Commission for Climate Change\([11]\). The Inter-ministerial Commission for Climate Change and Energy Transition (Comisión Interministerial para el Cambio Climático y la Transición Energética, CICCTE)\([13]\) was created with the aim to achieve the best management of public policies in this field, from a participatory and multidisciplinary perspective. It has been assigned a variety of functions related to the monitoring and elaboration of proposals which serve as a basis for decision-making on climate change and energy policies.

The CICCTE is an inter-ministerial collegiate body attached to the MITECO. It has coordination and reporting functions such as:

- **a)** Promoting and coordinating actions by competent bodies within the General Administration of the State to elaborate the draft bill for a CCETL.
- **b)** Promoting and coordinating actions by competent bodies within the General Administration of the State to elaborate the NECP.
- **c)** Promoting and coordinating actions by competent bodies within the General Administration of the State to elaborate the long-term strategy for the decarbonization of the economy by 2050.
- **d)** Promoting and coordinating actions for a just transition in communities and territories.
- **e)** Reporting to the Delegate Commission of the Government for Economic Affairs on those proposals that may have relevant economic impacts.

The Commission is chaired by the Minister for Ecological Transition and Demographic Challenge, and the deputy-chair is held by the Secretary of State for Economy and Business Support, which replaces the chair in case of absence, vacancy or illness.

The Secretary of the Commission is a civil servant attached to the MITECO and is appointed by the Director General of the OECC.

Its members having at least the rank of Director General, are appointed by the corresponding minister and represent each of the following ministerial departments: Ministry for Agriculture, Fisheries and Food, Ministry for Foreign Affairs, European Union and Cooperation, Ministry for Science and Innovation, Ministry of Social Rights and Agenda 2030, Ministry for Transport, Mobility and Urban Agenda, Ministry for Culture and Sport, Ministry for Defence, Ministry for Economic Affairs and Digital Transformation, Ministry for Education and Professional Training, Ministry of Finance, Ministry for Industry, Commerce and Tourism, Ministry for Home Affairs, Ministry of Justice, Ministry for Territorial Policy and Public Service, Ministry of Presidency, Parliamentary Relations and Democratic Memory, Ministry of Health, Ministry for Consumer Affairs, Ministry for Inclusion, Social Security and Migrations, Ministry for Labour and Social Economy and Ministry for Universities. Exceptionally, where justified by the subject matter, a ministerial department may designate more than one member. Furthermore, the Secretaries of State for the Environment and Energy are also members of the CICCTE. The body appointing the members must also designate their respective substitutes.

Representatives of other bodies, associations and organisations of employers and trade unions, as well as experts and representatives of civil society may be invited to participate in the meetings, where the CICCTE considers it appropriate for the performance of its functions. Depending on the matters subject to discussion, representatives of AA.CC and of the Autonomous Cities of Ceuta and Melilla may be also invited to participate if they have, at least, the rank of Director General.

The CICCTE’s operating regime is established in article 19 of Law 40/2015. According to the Sole Additional Provision of Royal Decree 958/2018, the constitution and functioning of the CICCTE shall be supported with the human and material resources already assigned to the MITECO, without increasing public expenditure nor entailing an increase in remuneration or allowances to be received.
Conclusions

After analysing the existing advisory, participatory and coordination bodies on climate change matters, the following conclusions may be drawn:

a) These are collegiate bodies with no budget allocation which are regulated in section 3 of Chapter II “On public administration bodies” within the Preliminary Title “General provisions, operational and functioning principles of the public sector” of Law 40/2015.

b) There is a high representation of administration officials in these bodies, or they are exclusively integrated by representatives of different administrations.

c) In some cases, they perform functions similar to some of the ones carried out by the UK CCC.

d) These bodies are not provided with a specific budget and members are not entitled to remuneration.

2.2 Bodies envisaged in the CCET law proposals and draft laws

The different bodies envisaged in the CCET law proposals and draft laws are analysed hereinafter.

2.2.1 The Observatory on Climate Change and Energy Transition

This body was included in Chapter IV of Title VII “Tools for monitoring policies and measures on fighting climate change and energy transition” of the Popular Group’s bill for the CCETL proposal. The main functions of this Observatory consisted on monitoring, advising, consultation, information and study of policies and measures on climate change and energy transition. Its composition and operation were not included in the proposal, as these were subject to future regulatory development. This bill for the CCETL only stressed the importance to ensure that this body would be comprised of leading experts on climate change and energy transition matters.

This Observatory was intended to be established as a collegiate body attached to the MITECO.

2.2.2 The Climate Change State Agency

Both bills for a CCETL submitted by the Confederal Group Unidos Podemos-En Comú Podem-En Marea developed this Agency in detail, establishing its legal nature, functions, organization and operation, including its organizational structure.

This Agency was foreseen as an independent state administrative authority. This type of authority is regulated in articles 109 and 110 of Law 40/2015. These authorities are attached to the General Administration of the State, hold separate legal personality and have “(...) full public and private capacity, acting in the development of their activity and the fulfilment of their purposes with organic and functional autonomy and full independence from the Government, Public Administrations and market agents. Thus, they are only subject to parliamentary and judicial control”.

The independence from the General Administration of the State must be established by law.

Furthermore, those bills stated that the Agency should act independently from any business or commercial interest. Thus, it was a body with the same nature as that of the National Commission on Markets and Competition, the Spanish Agency for Data Protection or the Nuclear Security Council. These are public state bodies classified as independent administrative authorities. Public bodies must be established by Law, which shall provide:

a) “The type of public body created, providing its general purposes as well as the Department to which it is dependent from, or it is linked to”.

b) Where applicable, the economic resources as well as the particularities of its personnel, contracting, property and fiscal regimes and any others that, due to its nature, require to be established by Law.”
Likewise, it is required that “the draft bill establishing the public body to be submitted to the Council of Ministers must be accompanied by a proposal for by-laws and an initial action plan (...s)" 28.

Furthermore, the two bills of the Confederate Group of Unidos Podemos – En Comú Podem – En Marea also provided that the referred Agency would have its own assets independent from those of the General Administration of the State. This means that, to fulfill its goals, this body would be provided with the goods and economic resources resulting from the annual allocations set in the General State Budget, the goods and rights constituting its assets, and the products and revenues thereof 29.

That bill provided that the Climate Change State Agency would have the following functions:

- Ensuring the consistent implementation of climate change legislation throughout the territory through collaboration with AA.CC competent authorities and the coordination between the General Administration of the State and judicial bodies 30.
- Engaging in regular and periodic collaboration with EU institutions and bodies, especially with the European Commission and with other Member States’ competent authorities and bodies, fostering coordination of actions as established in applicable law 31.
- Elaborating reports in relation to every proposal for Law, Royal Decree or Ministerial Order having an impact on climate 32.
- Monitoring and controlling the right functioning of electricity and hydrocarbon sectors and undertaking the functions provided in article 7 of Law 3/2013, of 4 June, regarding the creation of the CNMC 33.

The functions of the Agency would be developed through:

a) The Council of the Climate Change State Agency.

b) The President of the Climate Change State Agency.

The Council was the “decision-making body in relation to decision, advise, competition promotion, arbitration and resolution functions provided for in this Law. It is the competent organ to decide and rule on matters assigned to the Climate Change State Agency by this law and other legislation in force, as well as to undertake all the functions of the Agency that are not expressly attributed to any other body” 34. Members of the Council would be “appointed by the Government, by means of Royal Decree, upon proposal by a qualified majority of three fifths of the Parliament, subject to prior appearance, from amongst people of recognized prestige and professional competence in the scope of actions by the Agency” 35. Furthermore, the Council composition should be gender balanced. The Council could set up ad hoc commissions of experts where necessary and such experts would be provided with remuneration 36.

The Chair’s functions provided within the text of the bills consisted in 37:

a) Undertaking -in general terms- those duties assigned by Law 40/2015 to chairs of administrative collegiate bodies.

b) Convening the Council in plenary session on its own initiative or at the request of at least half of the counsellors, and to chair it.

c) Acting as the legal and institutional representative of the Agency and ensuring the adequate development of the Agency’s performance in accordance with the legal order.

d) Promoting the Agency’s performance and the fulfilment of its functions.

e) Acting as the head of the Agency’s staff in accordance with the duties assigned by the specific legislation.

f) Undertaking the corresponding duties related to recruitment procedures within the Agency.

g) As many functions as assigned by the Council.

Furthermore, the bills provided details on the management bodies of the Agency which consisted on four deputy-chairs for: energy transition, transport, new production model, and adaptation; as well as five secretariats for: emissions and hydrocarbons, electricity sector and energy efficiency, all of them attached to the deputy-chair for energy transition and the secretariat of R&D of the deputy-chair of new production model 38. Gender balance was required when appointing them.

The Climate Change State Agency was required to make its decisions, agreements and reports public after notifying them to concerned parties 39.

In view of these bills for CCETL, it can be concluded that they regulated in detail the nature, functioning, composition and legal regime of the Agency. This body was inspired in some elements, by the UK CCC. However, the functions assigned to that Agency significantly differ from the CCC’s functions and responsibilities, as it would undertake some duties currently held by the National Commission on Markets and Competition.
2.2.3 The Committee on Climate Change and Energy Transition

Following the UK model, the first version of a draft CCETL prepared by the Government during the twelfth Spanish legislature foresaw the CCETC as one of its main governance mechanisms to provide “independent advice to the Government and society as a whole on climate change and energy transition, as well as on the fulfilment of the objectives set by this Law and its correct implementation”125.

That Committee was envisaged as a Government advisory body126 on climate change and energy transition matters. At the same time, it was conceived to be “a public law entity with separate legal personality and full public and private capacity. Consequently, it would act with organic and functional autonomy and full independence in carrying out its activities and fulfilling its goals”127. For organizational and budgetary purposes, this Committee was intended to be attached to the MITECO without affecting its autonomy and functional independence, and it could receive support from the OECC of the MITECO128 to fulfil its goals129.

Regarding its composition, the draft bill provided that it would be comprised of a chair and eight members appointed amongst experts on climate change and energy transition with more than fifteen years of professional experience130. Members would be appointed for a period of five years by agreement of a three-fifths majority of the competent commission of the Parliament, upon proposal by the CNC. Members could be subject to possible re-election for an additional two years131.

One of its functions would be to elaborate an annual report on the progress concerning quantitative and time-based objectives on climate and energy transition matters established in the Law122. The report would include recommendations and proposals, it would be publicly available and should be submitted to the Government and the Parliament.

As indicated previously, the second draft version of the CCETL removed this Committee. The third draft version again foresees its creation, but it hardly establishes its regime, indicating it would remain subject to further regulatory development133. The fourth draft version dated February 2020 is identical to the third version.

In view of the content of the first draft version of the CCETL, it seems that the CCETC would be a public state body specifically designed as an advisory body. Among the different proposals analysed in this report, this proposal is the most similar to the UK CCC. However, the third and fourth draft versions of the CCETL brought little information with respect to the this committee. It is advisable to further develop this body in the text of the bill establishing, at least, its legal nature, functions, number of members and that it will count with sufficient budget to carry out its functions. Likewise, the draft CCETL should establish the obligation for the Government to reasons in the event it issues decisions deviating from the CCETC’s recommendations.

Conclusions

The climate change advisory bodies provided in the different bills and draft bills for a CCETL were of a different nature and conceived to perform different functions. The most detailed bill was the one submitted by the Confederate Group Unidas Podemos-En Comú Podem-En Marea which even provided for resources allocation within the General State Budget for the Committee to carry out its work.

In view of the differences in terms of the legal nature of the proposed bodies, it is necessary to carry out an analysis of the existing institutions in Spain to determine which is the most recommended model to follow.
Chapter 3

Models of interest in the Spanish context

In light of the models put forward in the different bills for a CCET law and in order to understand the possibilities to establish an advisory body on climate change aligned with the Spanish legal order, several bodies with different legal nature are analysed below.

3.1 The Environmental Advisory Council

The Environmental Advisory Council (Consejo Asesor de Medio Ambiente, CAMA) was created by Royal Decree 224/1994 as a body attached to the former Ministry for Public Works, Transport and Communications “with the aim to promote the participation of organizations representing social interests and leading experts on the elaboration and monitoring of environmental policy (...)”

Afterwards, due to reforms undertaken within the General Administration of the State and the need to provide this body with further flexibility in its operation, the CAMA’s composition and functions were adapted. Nowadays this body is regulated by Royal Decree 2355/2004 and Law 27/2006.

3.1.1 Legal nature

The CAMA is a collegiate body attached to the current MITECO for administrative purposes. Its operation regime is regulated through its Operating Regulation, approved by the Plenary of CAMA in its session held on 9 May 2005 and in Law 40/2015.

It is a consultative and participation body for the elaboration and monitoring of environmental policies and, therefore, it is also an advisory body.

Since it is a collegiate inter-ministerial body with capacity to propose or elaborate reports which are the basis for decision-making by other administrative bodies, the CAMA must be created by a Royal Decree. This body does not have a budget of its own.

Functions

- Conduct reports on the draft laws and regulation having an environmental impact and, especially, concerning those matters to be regulated through basic legislation.
- Provide advice on State plans and programmes having an environmental impact and which are proposed by the Minister.
- Issue reports and elaborate proposals on environmental matters at its own initiative or at the request of ministerial departments, Administrations of the AA.CC and of local government bodies to the Minister.
- Promote public-private coordination on environmental matters.
- Promote the collaboration with regional bodies similar to the CAMA.
- Propose the adoption of measures which:
  - impel the creation of green jobs.
  - promote citizen participation to solve environmental problems.
  - are aimed to provide information, guidance and raise social awareness on ecologic and environmental values.
  - improve the implementation of international environmental and sustainable development agreements.
The CAMA has to convene, every two years, a conference on sustainable development, as well as to prepare an annual report on the activities undertaken, to be submitted to the MITECO and published in the first half of the year. Despite these obligations, only one conference on sustainable development was held in 2007 and the CAMA annual reports have been published only until 2014.

**Composition**

The CAMA is chaired by the Minister and it is comprised of the following members:

- One member representing each of the non-governmental organization whose purpose is the protection of the environment and sustainable development. These are Greenpeace, WWF, Ecologistas en Acción, Friends of the Earth and SEO/Birdlife.
- One member representing each of the most representative trade unions i.e., Unión General de Trabajadores and Comisiones Obreras.
- Two members representing the most representative business organizations i.e., Spanish Confederation of Business Organisations (CEOE) and Spanish Confederation of Small and Medium Enterprises (CEPYME).
- Two members representing the consumer and user organizations, appointed by the Consumers and Users Council.
- Three members representing the most representative professional agriculture organizations at State level, i.e., Agricultural Association of Young Farmers (ASAIA), Farmers and Stockbreeders Coordinator Organization (COAG) and Union of Small Farmers and Stockbreeders (UPA).
- One member representing the National Federation of Fishermen’s Associations (FNCP).

All members and their substitutes are appointed for a period of two years, subject to possible re-election for the same period and are not entitled to remuneration. Members shall end their mandate upon proposal of the organization or entity that proposed their appointment.

Other stakeholders are entitled to participate in the CAMA plenary sessions and/or the working groups. However, they will not have voting capacity.

**Operating regime**

The Plenary is the body in charge of carrying out the above-mentioned functions. However, it may agree to set up working groups to assist in carrying out these functions.

The Plenary will meet at least once every four months in an ordinary session and may meet in an extraordinary session when the Chair decides so or when half plus one of its members requested it. Extraordinary sessions must be convened at least 72 hours in advance. The Operating Regulation also regulates the Plenary session quorum.

The matters for discussion will be those settled in the agenda. The Plenary can also issue written reports.

The MITECO provides human and material resources for the operation of the CAMA at its own expense. Thus, this body does not have a budget on its own.
3.2 The Sustainable Development Council

The Sustainable Development Council (Consejo de Desarrollo Sostenible, CDS) is part of the governance framework for the implementation of the Agenda 2030 in Spain. It was created in 2019 through the Order PCI/169/2019, of 22 February. Its aim is to promote the participation and engagement of civil society, businesses, trade unions, liberal professions and universities with the public administration to achieve the Sustainable Development Goals (SDGs).

3.2.1 Legal nature

The CDS is a collegiate body established with an “advisory, collaboration and participatory role for civil society to achieve the Sustainable Development Goals and the Agenda 2030.” As it is a collegiate body with a working group nature, it was established by a Ministerial Order issued by the Ministry of Presidency, Parliamentary Relations and Equity (Order PCI 169/2019) in accordance with article 22(3) of Law 40/2015. It was attached to the Spanish Office of the High Commissioner for the Agenda 2030, which disappeared after the last reorganization of ministerial departments. Nowadays, the CDS is attached to the Ministry for Social Rights and Agenda 2030.

The order creating the CDS provided that the constitution and operation of this body should not entail an increase of public spending and would therefore, be covered by ordinary budget allocations. Thus, this body does not have a budget on its own.

### Functions

- Advise the Minister of Social Rights and Agenda 2030 on the preparation and implementation of plans and strategies required to comply with the Agenda 2030.
- Produce documents and analysis on matters related to implementation to achieve the SDGs targets.
- Contribute to the public dissemination and communication of Agenda 2030.
- Promote dialogue amongst all social, economic and cultural stakeholders to help achieving the SDGs.

Once the purpose for which the CDS was created is achieved, this body will cease in the performance of its duties and will expire.

### Composition

The CDS is comprised of the Minister of Social Rights and Agenda 2030, 48 representatives of civil society and 2 representatives of the inter-territorial cooperation body created, where appropriate, for the implementation of Agenda 2030. At the time of elaboration of this report, it is unknown who will integrate the CDS.

The CDS’s composition is gender balanced and all its members are appointed by the Minister of Social Rights and Agenda 2030, upon proposal by the corresponding organizations or institutions.

Order PCI 169/2019 establishes in detail who the 50 members will be:

- 11 members from the business sector and trade unions.
- 3 members from the university and research centres.
- 14 members from the main platforms and citizen networks of the third sector.
- 10 members from organizations representing social interests appointed through state advisory boards.
- 3 members from the social economy sector and foundations.
- 5 independent experts within the field of sustainable development and Agenda 2030 upon proposal by the Minister of Social Rights and Agenda 2030, subject to prior consultation with the Plenary of the CDS.
• 2 members belonging to the inter-territorial cooperation body established for the implementation of the Agenda 2030.

The CDS is chaired by the Minister of Social Rights and Agenda 2030. The deputy-chair will be held by a member representing the group of platforms and citizen networks of the third sector appointed by the Plenary from among its members.

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Operating regime

The CDS may act in Plenary and in Permanent Commission.

The **Plenary** is integrated by the chair, the deputy-chair and the 50 members previously mentioned. It meets twice a year on an ordinary basis. It may also meet on an extraordinary basis at the request of half of its members or of the Chair, depending on the urgency or relevance of the issues to be addressed.

The **Permanent Commission** will meet twice a year. Its main purpose is preparing and coordinating works for the plenary sessions. It is comprised of one person representing the Ministry for Social Rights and Agenda 2030, who will chair the Commission, and by 15 members appointed by the different stakeholders of the Council in line with the distribution set out in Order PCI/169/2019.

The creation and operation of the CDS will be covered by ordinary budget allocations and will not entail an increase of personnel costs at the service of the General State Administration.

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3.3 The Economic and Social Council

The Economic and Social Council (**Consejo Económico y Social**, CES) was created by Law 21/1991, of 17 June, on the Social and Economic Council (Law 21/1991) as a Government advisory body on socioeconomic and employment issues. Advice is provided in relation to the Government’s regulatory activity.

The **CES Organizational and Internal Functioning Rules** provides its working methodology.

In Spain there are also economic and social councils at regional level, which are independent from the CES.

3.3.1 Legal nature

It is a public law entity with separate legal personality being attached to the Ministry for Labour and Social Economy. It has full operational and organic capacity and independence to fulfil its goals. It is legally classified as a public law State entity.

To achieve its purposes this body counts with a budget provided by the General State Budget. The 2018 General State Budget which is the budget still operational at the time of writing this report, allocated an overall € 8,040,410.00 to the CES.
Functions

- **Issuing opinions**, of a mandatory nature, on:
  - Draft State laws and draft Legislative Royal Decrees regulating socioeconomic and employment matters;
  - Draft Royal Decrees considered by the Government to be of special relevance for the above-mentioned matters;
  - Draft Laws or draft administrative provisions affecting the CES’s organization, powers or functioning;
  - The dismissal of the President and the Secretary-General of the Council and on any other matter which, according to the Law, shall be consulted with the Council.

- **Issuing opinions** at the request of the Government or of its members. These do not binding the Government.

- **Conducting studies and reports**, at the request of the Government or its members or on its own motion, on the following issues: Economy and Taxation; Labour Relations, Employment and Social Security; Social Affairs; Agriculture and Fisheries; Education and Culture; Health and Consumption; Environment; Transport and Communications; Industry and Energy; Housing; Regional Development; European single market and development cooperation.

- **Regulating its own organizational and operational system**.

- Elaborating and submitting to the Government, within the first five months of each year, a **report on its reflection about the Spain’s socioeconomic and employment situation**.

Composition

The CES is comprised of 61 members:

- The Chair.
- Twenty counsellors appointed by the most representative trade union organizations, based on their representativeness (First Group).
- Twenty counsellors proposed by the most representative business organizations, based on their representativeness (Second Group).
- Three counsellors proposed by professional agriculture organizations (Third Group).
- Three counsellors proposed by the fishery products organisations operating in the maritime fishing sector (Third Group).
- Four counsellors proposed by the Consumers and Users Council (Third Group).
- Four counsellors representing the social economy sector, proposed by associations of cooperatives and labour companies (Third Group).
- Six experts appointed by the Government and proposed jointly by the Ministers for Labour and Social Economy, for Inclusion, Social Security and Migrations and of Economic Affairs and Digital Transformation.

The members are appointed for four years, and may be renewed for equal periods of time. When performing their functions, they act with full autonomy and independence.

The CES’s bodies are:

- The Plenary.
- The Standing Committee.
- The Working Committees.
- The Chair.
- The Deputy-chairs.
- The Secretary-General.
- CES’s personnel.
The CES has to be provided with the staff necessary for the correct performance of its duties. In particular, technical, administrative and documentation staff. The staff is linked to the CES through an employment relationship. The staff recruitment process, with the exception of the managerial staff, shall be made on the basis of a public notice in accordance with systems based on the principles of merit and ability.

Operating regime

The operating regime of the different bodies integrating the CES is regulated in the CES Organizational and Internal Functioning Regulation and in Law 21/1991.

The CES is provided with economic resources allocated through the General State Budget. Every year this body elaborates a draft budget proposal which is submitted to the Ministry of Labour, Migrations and Social Security. Based on this proposal, that Ministry will elaborate a formal draft budget to be sent to the Ministry of Finance. After approval by the Council of the National Securities Market Commission, this draft will be sent to the Ministry of Finance to be submitted to the Government.

Illustration 1 - CES structure (Source: CES)
3.4 The National Commission on Markets and Competition

The National Commission on Markets and Competition (Comisión Nacional de los Mercados y la Competencia, CNMC) was created in 2013 by Law 3/2013, of 4 June, on the National Commission on Markets and Competition (Law 3/2013)\textsuperscript{133}. It is the result of the merge of six bodies:

- The National Commission on Competition,
- The National Commission on Energy,
- The Commission on the Telecommunications Market,
- The National Commission on the Postal Sector,
- The State Council on Audio-visual Media, and
- The Committee on Railway and Airport Regulation.

The reason for merging these regulatory bodies was to ensure higher legal security and prevent unnecessary duplication of functions, procedures, methodologies and knowledge.

The CNMC’s main objective is to ensure, defend and promote the proper functioning, transparency and existence of an effective competition in all above-mentioned markets, in the interest of consumers and businesses. It performs its duties throughout the Spanish territory.

3.4.1 Legal nature

The CNMC is an independent administrative authority in accordance with Law 40/2015. It is attached to the Ministry for Economic Affairs and Digital Transformation. However, it acts independently from the Government, Public Administrations, market players and from any commercial or business interest. It is subject to judicial and parliamentary control. The later is carried out through the annual appearance of the CNMC’s President before the corresponding Commission of the Parliament, where it presents its lines of action as well as the plans and priorities for the future. Every three years, the President shall make an appearance to discuss the implementation of the action plan and the result obtained by the CNMC.

Furthermore, it is subject to Law 15/2007, of 3 July, on Defence of Competition\textsuperscript{135}, and to legislation concerning the markets and sectors subject to its supervision.

In order to fulfil its purpose, the CNMC is provided with the following goods and economic resources\textsuperscript{156}:

- a) Annual allocations established in the General State Budget. The General State Budget corresponding to the 2018 fiscal year allocated an overall € 38,100,867.
- b) The goods and rights conforming its assets, as well as the products and revenues thereof.
- c) Any other that may be assigned to it.

The CNMC operates in accordance with Law 3/2013, Royal Decree 657/2013\textsuperscript{134} and its Internal Functioning Rules.

Functions

- **Supervision and inspection of all markets and economic sectors.**
  - Law 3/2013 sets out specific functions to be carried out by the CNMC concerning electronic communications and audio-visual communications markets, the electricity sector and natural gas, the railway sector, the postal market and airport charges.

- **Implementation of Spanish and EU legislation on competition.**
  - In order to ensure the consistent implementation of legislation on competition through all the territory, the CNMC must coordinate with the AA.CC competent bodies; cooperate with the General Administration of the State and with the judiciary.
  - The CNMC must also cooperate on a regular basis with EU institutions and bodies and with other Member States competent authorities and bodies, to promote the coordination of their actions.

- **Promote and prepare studies and research** on competition, and general reports on economic sectors.

- **Act as an advisory body on issues related to the maintenance of effective competition and the proper functioning of markets and economic sectors.** Particularly, it may be consulted by Legislative Chambers, the Government, ministerial departments, the AA.CC, Local Corporations, Professional Associations, Chambers of Commerce, Business and Consumers and Users Organizations.
• *Dispute resolution* between economic operators filed before it according to Law 3/2013. The issues covered by the dispute resolution mechanism are on electronic communications, electricity and gas, airport charges, the postal market, audio-visual communications and the railway market. Rulings by the CNMC are binding on the parties involved, although may be subject to appeal in some cases.

• *Adopt provisions for the development and enforcement of regulatory tools* in sectors subject to its supervision, where expressly entitled to do so. These provisions take the form of circulars which are binding on the parties concerned. The CNMC may also carry out *periodic information requests* through informative circulars and *issue communications* clarifying the principles guiding its action.

• Undertake other functions specially assigned by Law or Royal Decree.

The CNMC is provided with inspection powers to carry out its duties and may exercise sanctioning powers within its field of action.

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**Composition**

The CNMC has:

• Two governing entities: The Council and the Chair.
• The Deputy-chair.
• Four offices:
  - Competition.
  - Telecommunications and Audio-visual sector.
  - Energy.
  - Transport and the postal sector.
• The Secretary-General, the Department for the Promotion of Competition and the Department for Internal Control, which are directly dependent on the Chair. The first two also have three sub-directorates each.
• A legal advisory unit and a deputy secretary of the Council directly dependent on the Secretary of the Council.
• Other staff at the service of the CNMC.

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**Operating regime**

The Internal Functioning Rules, which are approved by the Council, provide the operating rules of the Council and the CNMC internal operating procedures, among others.

**The Council**

The Council acts in Plenary sessions or in chambers.

On one hand, the *Plenary* is integrated by all members of the Council and is deemed to be validly constituted with the assistance of the Chair— or alternatively, of his/her substitute – the secretary, who is responsible of taking minutes which are not public, and by five members of the Council.

On the other hand, the *Council* is made up of two chambers, one related to competition matters and other to regulatory supervision. Each chamber is integrated by five members of the Council. The first one is chaired by the Chair and the second chamber by the Deputy-chair.

**Internal operating procedures**

The CNMC has an Executive Board which aims to ensure the maintenance of good order and governance of the Commission. The Board provides advice to the Chair and the Deputy-Chair on direction, coordination, evaluation and supervision of the CNMC different units, notwithstanding the Council’s functions.
Chair
José María Marín Quemada

Secretary-General
Amelia Lobato Martínez

Sub-directorate for Human Resources and Economic and Asset Management
Reyes Feito Castellano

Sub-directorate for Information Technology Systems and Telecommunications
Andrés Arprnó López

(*) Sub-directorate for Statistics and Documentary Resources
Luis M. Padial Muñoz

Department for the Promotion of Competition
Joaquín López Vallés

Sub-directorate for Studies and Reports
Maria Lora Tobías Peña

Sub-directorate for Public Aid and Reports on Draft Legislation
Juan Manuel Contreras Delgado de Cos

Sub-directorate for Economic Analysis
Maria Vidalles Picazo

Department for Internal Control
Carlos Balsima García-Serrano

Telecommunications and Audiovisual Sector Directorate
Alejandra de la Fuente y Gandín

Sub-directorate for Electronic Communications Regulation
Virginia Rodríguez Serrano

Sub-directorate for Electronic Communications Market Analysis
Juan Diego Otero Martín

Technical Sub-directorate for Electronic Communications
Daniel Ollé Oriol

Sub-directorate for Audiovisual
José Ángel García Cabrera

Energy Directorate
Fernando Hernández Jiménez-Casquet

Sub-directorate for Electricity
Santiago Muñoz Gómez

Sub-directorate for Natural Gas
Rocio Prieto González

Sub-directorate for Economic and Financial Regulation and Regulated Prices
Ismael Bohillo Santoyo

Sub-directorate for Energy Derivative Markets
Esther Espejo Brugué

Transport and Postal Directorate
José Jaime Bernezó Smúñiel

Sub-directorate for Airport Tariffs
Paola Gil Martín

Sub-directorate for the Railway Sector
Iván Santos Estrella

Sub-directorate for the Postal Sector
Teresa Sánchez Armadas

Sub-directorate for Markets Analysis
Olga Valero San Pablo

Council

Chair
José María Marín Quemada

Deputy-chair
Maria Fernández Pérez

Counselors
Mariano Bacigalupo Saggese
Josep Maria Guinart Solà
Clotilde de la Higuera González
María Ortiz Aguilar
Maria Pilar Caneda Arrillaga
Benigno Valdés Díaz
Bernardo Lorenzo Almendros
Xabier Ormaetxea Garai

Secretary of the Council
Joaquín Hortala i Vaillé

Deputy Secretary of the Council
Miguel Sánchez Blanco

Legal Department

(*)Although it is organically dependent on the Secretary-General, its functioning is dependent on the Department for the Promotion of Competition

Illustration 2 - CNMC structure (Source: CNMC)
3.5 The Independent Authority for Fiscal Responsibility

The Independent Authority for Fiscal Responsibility (Autoridad Independiente de Responsabilidad Fiscal, AIREF) was created in 2013 by Organic Law 6/2013. Its activity is regulated by Royal Decree 215/2014 and Organic Law 2/2012. However, the chance to create an independent fiscal authority started with the amendment in 2011 of article 135 of the Spanish Constitution. This amendment was undertaken to ensure the principle of budget stability and the financial sustainability in Spain. This aim promoted the creation of an independent fiscal control body.

3.5.1 Legal nature

Although the AIREF is a public law entity with separate legal personality and full public and private capacity, this body should nowadays be classified as an independent administrative authority according to the classification of the state institutional public sector. According to its Internal Functioning Rules, this body acts independently from the Government, Public Administrations and any other public or private entity. However, it is attached to the Ministry of Finance for organizational and budgetary purposes.

The AIREF has the following goods and economic resources to fulfil its purpose:

a) Annual allocations established in the General State Budget.

b) The goods and rights conforming its assets, as well as the products and revenues thereof.

c) Any other that may be assigned to it.

Functions

The AIREF is aimed to guarantee compliance with the budget stability principle by Public Administrations throughout the Spanish territory. The situation of balance or surplus is deemed to be achieved when Public Administrations do not fall into a structural deficit.

To this aim, the AIREF issues reports, opinions and studies based on the economic-financial information held by different Public Administrations. Access to this information is provided through the Ministry of Finance, although additional information may be requested directly to the corresponding Public Administrations.

- The reports - provided by Chapter II of Organic Law 6/2013 and Royal Decree 215/2014 - may be issued ex officio by the AIREF itself or at the request of a Public Administration. The recommendations of these reports are binding for the recipient, unless he/she provides reasons for deviating from the recommendations beforehand and includes such report into the corresponding file. Reports are publicly available and, in any case, can be subject to appeal.

- The opinions are prepared on AIREF’s own motion and their content is based on Organic Law 6/2013. Opinions are not binding for the recipient and are also public.

- The AIREF may also conduct studies commissioned by the Government, the Financial Fiscal Policy Council or the National Commission on Local Administration. It may also elaborate studies commissioned by the AA.CC or local entities, provided that it does not impact any other Administration and it relates to matters falling under the competences of the AIREF. Before elaborating a study, the AIREF prepares a quotation and a timeline that is sent to the concerned party. The AIREF only delivers those studies upon payment. These studies are not publicly available unless the authority in question authorizes its publication on the AIREF website.
Composition

The AIReF is integrated by:
- The Advisory Board.
- The Chair.
- The President’s Cabinet.
- Three Divisions:
  - Economic Analysis Division.
    - Area of macroeconomic forecasts.
    - Area of public debt.
  - Budget Analysis Division.
    - Area of State and Social Security.
    - Area of Autonomous Communities and Local Entities.
  - Legal Affairs Division.
    - Management area.
- The Executive Committee.
- Other staff at the service of AIReF.

Operating regime

The operation regime of AIReF and, particularly, the operation of the Executive Committee is regulated through AIReF’s Internal Functioning Rules. At the same time, the Advisory Board has its own rules.

The Chair of AIReF is the representative of this body. However, he/she is supported by the Executive Committee and the Advisory Board in the performance of his/her functions.

Transparency and accountability are the main principles of AIReF’s activity. Regarding accountability, AIReF is subject to regular external evaluation every three years in the terms established in the corresponding Strategic Plan.

In order to fulfil its duties, the AIReF is provided with its own capital which is independent from the General State Administration. This body is mainly financed from the supervisory, analysis, advice and monitoring of fiscal policy fees received for the provision of its services to Public Administrations, the income from conducting studies, the allocations annually established in the General State Budget, and the products and revenues resulting from its assets.
Independent Authority for Fiscal Responsibility (AIReF)

Chair

Executive Committee

President’s Cabinet

Economic Analysis Division

Area of macroeconomic forecasts

Legal Affairs Division

Area of public debt

Management Area

Budget Analysis Division

Area of State and Social Security

Area of Autonomous Communities and Local Entities

Illustration 3 - AIReF structure (Source: AIReF)
Chapter 4

Recommendations for a future Committee on Climate Change and Energy Transition

We are facing a climate emergency and the adoption and implementation of ambitious science-based measures is paramount to address it. As already mentioned, the UK CCC has been essential to progress in the fight against climate change in that country. Such is the case that some countries have already established a similar body.

The analysis undertaken in this report shows that in Spain there are already some advisory, cooperation and participatory bodies on climate change matters such as the CNC, CCPC and CICCTE. However, none of them have the capacity to analyse the existing difficulties and progress needed in the fight against climate change in Spain. Neither can these bodies elaborate studies and reports or impel the climate ambition required to be in line with the European Green Deal and the Paris Agreement commitments. Therefore, it is necessary to create a scientific advisory body with duties similar to the UK CCC.

Although it is not easy to fit a body like the CCC into our administrative model, it is key to continue pursuing this idea. The analysis of the different existing bodies in Spain allows us to conclude that:

- The creation of a collegiate body as suggested by the Popular Group’s climate change and energy transition law proposal would not achieve a breakthrough. There are already bodies with similar functions such as the CNC, CICCTE, CCPC, CAMA and CDS where there is a high representation from the Administration.

- Although the creation of an advisory body as foreseen in the draft CCETL is appropriate, it requires further development. This body must be provided with an adequate legal nature so that the reports, studies and opinions it issues have enough strength. In the event that these are not binding on the Government, as it is the case of the current CES, it is crucial to establish the obligation for the Government to reason when it deviates from the Committee’s recommendations. This, already occurs with the reports issued by the AIRE. In the UK if the Secretary of State deviates from the CCC’s recommendations, he/she has a duty to state the reasons for such a decision. It is important to stress that the existing advisory bodies in Spain support the Government’s work but are not required to report before the Spanish Parliament. However, in the case of the CCC, it advises both the UK government and devolved administrations and reports annually to Parliament.

- The working model of the AIRE is interesting for a future CCETC considering its duty to supervise budget stability. In fact, the overall objectives established in the General State Budget should be linked to Spain’s climate objectives. However, in light of the functions and organizational regime of an independent administrative authority under the Spanish legal system, this is not the legal model to follow for the future CCETC. Therefore, the model of a Climate Change State Agency proposed by the Confederate Group Unidos Podemos-En Comú Podem-En Marea is not fit for the purpose of the CCETC.

- It is necessary to create a body that allows to achieve consistency between policies and actions taken by the State, AA,CC and the municipalities. A coordinated approach between the three levels of government is paramount in the fight against climate change. In the UK CCC, the so-called national authorities (devolved or decentralised administrations) also play an important role, including their participation in the appointment of CCC’s members. We are aware that reaching an agreement between the State government, the governments of 17 AA,CC and those from the two autonomous cities (Ceuta and Melilla) would be a difficult task to accomplish. However, it would be advisable to involve them somehow in the appointment and operation of the future CCETC. Without their participation it would not be possible to achieve some of the objectives set out in the future CCETL, the NEC and the Long-Term Strategy for Net-Zero Emissions.

- If the CCETC is created, it would be advisable to avoid overlaps with other existing bodies.

- Finally, the analysis undertaken shows that the different types of existing bodies are superstructures with many members and, in some cases, with a tangled organisational structure. Therefore, it is advisable that the future CCETC is a dynamic body, without constraints, which allows fluent decision-making.

Based on the above, we recommend the creation of a CCETC as a collegiate and advisory body for scientific advice on climate change matters, both concerning adaptation and mitigation.
In the performance of its duties this body must act independently from the Government, Public Administrations and any other public or private organization. The bill for a CCETL should create the CCETC establishing, at least, its legal nature, functions, number of members and the person(s) responsible for appointing them. Furthermore, it should provide that the Committee will have sufficient budget allocation to carry out its functions and the Ministry to which it should be linked to for organisational and/or budgetary purposes. Likewise, the bill should state the obligation for the Government to reason when it deviates from the recommendations issued by the CCETC. For this CCETC to start working as soon as possible, after the Bill on Climate Change and Energy Transition is submitted, a Royal Decree should be drafted establishing the particularities of the Committee’s personnel, contractual, property and fiscal regimes as well as any others that facilitate its functioning. This body should be provided with its own budget to carry out its functions in an independent and professional manner following examples such as the CES. The Committee’s members should be entitled to remuneration for their work as they will be professionals on climate change matters from different fields, both scientific and social.

The Committee’s functions must be closely linked to the objectives of the future CCETL. Among these functions, we recommend including the following:

- Providing advice on whether the emission reduction target set out in the CCETL is sufficient or not.
- Elaborating an annual report to submit before Parliament concerning:
  - Steps and measures taken to comply with the 2030 targets established in the NECP and the law itself and whether they contribute to achieving climate neutrality by 2050 as provided in the climate emergency declaration.
  - Progress in the pathway towards long-term decarbonization to achieve climate neutrality by 2050, at the latest, which will be developed by the Government in line with the climate emergency declaration.
- Analysing the consistency between the General State Budgets’ overall objectives and those set out in the CCETL, the NECP and the Long-Term Strategy for Net-Zero Emissions.
- Conducting reports, opinions and studies - which must be publicly available - on the progress made by the State, AA.CC and municipalities to comply with the CCETL, the NECP and the Long-Term Strategy for Net-Zero Emissions.
- Monitoring progress in the implementation of the 30 measures foreseen in the climate emergency declaration.
- Providing advice on adaptation to climate change.
- Asesorar en materia de adaptación al cambio climático.
- Conducting climate risk assessments of new legislative proposals.
- Engaging with organizations, institutions and individuals.
- Providing advice on the transition to a low-carbon economy.

Given that the role of this CCETC will be crucial to face the climate emergency in the next ten years, its independence and diversity must be guaranteed so that it is not left at the mercy of political uncertainties. Thus, all necessary mechanisms should be put in place to achieve this purpose.
References

2 Section 1, CCA.
3 In view of the specific circumstances of Scotland and Wales, this report recommended Scotland to set that target for 2045, while for Wales the target should be set at 95% by 2050. To this aim, the report called for the introduction of new policies as it is not possible to achieve these goals with the existing ones. As said, this led to an amendment of the CCA. This CCC report was published on 2 May 2019. Available at: https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf.
6 The carbon budget consists of establishing a maximum amount of carbon allowed in five year periods. The first carbon budget comprised the period 2008-2012. This budget together with the ones covering the period 2013-2017 and 2018-2022 had to be approved before 1st June 2009. See Section 4, CCA.
10 Information available online at: https://www.klimatpolitiskaradet.se/summary-in-english/
11 Information available online at: http://www.swedishepa.se/Environmental-objectives-and-cooperation/Swedish-environmental-work/Work-areas/Climate/Climate-Act-and-Climate-policy-framework/
12 Information available online at: https://www.hautconseilclimat.fr/
14 Agreement of the Council of Ministers declaring the climate emergency. Available online at: https://www.miteco.gob.es/es/prensa/declaracionemerenciaclimatica_tcm30-506551.pdf
15 The Council of Ministers took note of the draft CCETL in its meeting held on 22 February 2019. However, this second version of the draft law does not include the creation of such an advisory body. See online at: https://www.miteco.gob.es/es/cambio-climatico/participacion-publica/1ante proyectoeyccyte_tcm30-487336.pdf
16 Part 2, sections 32 to 43 and Schedule 1, CCA.
17 Section 32.1, Ibid: There shall be a body corporate to be known as the Committee on Climate Change or, in Welsh, as y Pwylgor ar Newid Hinsawdd (referred to in this Part as “the Committee”).
18 Section 39.2, Ibid.
19 Para 27 of Schedule 1, Ibid.
20 Section 39.1, Ibid
21 Section 39, Ibid.
23 Sections 33 to 35, CCA. In the UK, a Secretary of State is a Minister in the Council of Ministers in charge of a government department or ministry. In Spain this figure is called a Minister. UK ministers correspond to our secretaries of state.
24 Section 9.4, Ibid.
25 Section 36, Ibid. Likewise, in the second year after the end of a budgetary period the Committee’s report must set out the manner in which the budget for the period was or was not met, and action taken during the period to reduce GHG emissions.
27 The Committee has an Adaptation Sub-Committee. Paragraph 16 of Schedule I, CCA.
28 As stated, the CCC elaborates annual reports on progress.
29 Section 56 (3), CCA.
Section 57, Ibid.
32 This Committee is sponsored by DEFRA and national authorities.
33 Section 41 (powers to give guidance) and 42 (powers to give directions), CCA.
34 Section 39.4, Ibid.
35 In the UK, the Secretary of State is equal to a minister in Spain and vice versa.
36 Schedule 1, para 1, CCA.
37 Schedule 1, para 1.2., Ibid
38 Schedule 1, para 5, Ibid: The national authorities may remove a member—
(a) who has been absent from meetings of the Committee without its permission for a period of 6 months or more,
(b) who has become bankrupt or has made an arrangement with creditors,
(c) whose estate has been sequestrated in Scotland or who, under Scots law, has made a composition or arrangement with, or granted a trust deed for, creditors, or
(d) who in the opinion of the national authorities is otherwise unable or unfit to carry out the duties of that member.
39 See the list of members of the CCC in its website: https://www.theccc.org.uk/about/committee-on-climate-change/
40 Para 1.3., Schedule 1, CCA.
41 For further information see: https://publicappointments.cabinetoffice.gov.uk/appointment/members-5/
42 For further information see: https://www.theccc.org.uk/about/committee-on-climate-change/
43 Para 20 Schedule 1, CCA.
44 Para 15 Schedule 1, Ibid.
45 The current Chief Executive is Chris Stark. Para. 11 Schedule 1, Ibid.
The chief executive has also the following responsibilities for accounting to Parliament:
— Signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Secretary of State of Energy and Climate Change or Ministers in the Devolved Administrations, if given;
— Signing a Statement of Accounting Officer’s responsibilities, for inclusion in the annual report and accounts;
— Signing a Statement on Internal Control regarding the system of internal control, for inclusion in the annual report and accounts;
— Ensuring that effective procedures for handling complaints about the CCC and ASC are established and made widely known within the CCC and ASC;
— Acting in accordance with the terms of the document entitled Managing Public Money, and other instructions and guidance issued by DECC, DEFRA, the Treasury and the Cabinet Office and by the other national authorities;
— Giving evidence, normally with DECC’s and/or Defra Accounting Officer when summoned before the Public Accounts Committee on the CCC’s stewardship of public funds.
48 Para 22 to 24, Schedule 1 CCA.
49 Paras. 17 and 19, Schedule 1, Ibid.
50 The “sponsor group” is constituted by representatives at senior level of BEIS, DEFRA, local communities and governments, HM Treasury, Department for Transport, Business Innovation and Skills, the devolved administrations, the CCC and the ASC. The group is chaired by the BEIS.
51 Section 22.1, Committee on Climate Change Framework Document.
52 Section 22.2, Ibid.
53 Section 23.1, Ibid.
54 As well as in the case of long-term targets, part of the objectives for 2030 and 2040 may be achieved through carbon capture and mitigation outside Sweden, based on a maximum of 8% for 2030 and 2% for 2040.
55 Information provided by the Council following a consultation made by IIDMA. The estimated budget in euros is 940,000.00 See: https://www.formas.se/download/18.2227a0ae1689511f5682d4f6/1549956109803/Regleringsbrev%20milj%C3%B6energi%202019.pdf (only in Swedish), under the heading FINANSIERING, subsidy 2:1 (10.102 miles SEK).
56 Decree n° 2019-439 of 14 May 2019 regarding the High Council for Climate.
France Stratégie is the general commissioner for Strategy and Foresight attached to the Prime Minister. Its objective is to contribute in determining France’s key orientations for setting medium- and long-term economic, social, cultural and environmental development objectives, as well as in preparing the necessary reforms.


Currently, its members are: Valérie Masson-Delmotte (paleo-climatologist), Katheline Schubert (economist), Céline Guivarch (economist), Jean-François Soussana (Scientific Director of the National Institute for Agricultural Research-INRA), Corinne Le Quéré (climatologist), Laurence Tubiana (Chief Executive Officer of European Climate Foundation and former Climate Change Ambassador for Paris COP21 negotiations), Alain Grandjean (economist), Michel Colombier (Co-Founder of the Institute for Sustainable Development and International Relations - IDRI), Marion Guillou (Chair of Agreenium), Jean-Marc Jancovici (climatologist), Benoît Leguet (General Director of I4CE) y Marion Guillou (IFRI, CIAT and Biodiversity).

The National Low-Carbon Strategy details actions required for reaching a low-carbon economy and covers both energy and non-energy sectors. It is established under Law on Energy Transition and Green Growth and must be approved by Decree (Décret n° 2015-1491 du 18 novembre 2015 relatif aux budgets carbone nationaux et à la stratégie nationale bas-carbone).

In its report from June 2019, the HCC highlighted the inadequacy of the current policies, since France exceeded its 2015-2018 carbon budget in around 62 MtCO2e. In a response given on 10 January 2020, the Government confirms the need for consistency between all public policies to reduce GHGs. However, the Government lists the policies implemented and those that will be implemented without explaining how these policies will allow achieving carbon neutrality by 2050. In fact, although the HCC recommended the Government to cut the carbon budget for 2019-2023, on 21 January 2020 the public consultation of the new National Low-Carbon Strategy was launched. This last version increased the 2019-2023 carbon budget to 422MtCO2e compared to the 398MtCO2e foreseen in 2015.


This draft law would have to be submitted to Parliament before 24 April 2020.


Art. 47, Popular Group’s CCET law proposal.

Art. 48, Ibid.


Art. 112, CCET law proposal submitted by this Group.

This took place within the period from 19.07.2018 to 5.03.2019.


Art. 30, draft CCETL of June 2019, and art. 34 of draft CCETL of February 2020.

BOE (State Official Journal) num. 236, of 02.10.2016.

BOE num.167, of 10.07.2014.

Art. 1.2, Royal Decree 415/2014.

Art. 7, Law 40/2015.

CNC members and their substitutes are appointed by a Ministerial Order issued by the Ministry for the Ecological Transition and Demographic Challenge. For each member of the CNC a substitute may be appointed. The term of office shall be three years and may be renewed for additional three-year periods. CNC membership is not entitled to remuneration.

For further information see: https://www.conventioncitoyennepourleclimat.fr/

BOE num.59, of 10.03.2005.


Royal Decree 958/2018, of 27 July, regarding the creation and regulation of the Inter-departmental Commission for Climate Change and Energy Transition (BOE num. 182, of 28.07.2018).
Art. 49, Confederate Group’s CCETL Proposal.

State independent administrative authorities are “public law entities attached to the General Administration of the State with separate legal personality which hold external regulatory and monitoring functions over economic sectors or specific activities, as they require independence or special autonomy from the General Administration of the State in the performance of their functions, which shall be established by law” (Art. 109.1, Law 40/2015).

Art. 113, Confederate Group’s CCETL proposal.

Art. 114.1., ibid.

This body was created under Law 3/2013, of 4 June, establishing the National Commission on Markets and Competition (BOE num. 134, of 05.06.2013). The next section of this report provides a detailed analysis of this body.

https://www.aepd.es/es.

https://www.csn.es/home.

These are bodies “dependent or linked to the General State Administration, either directly or through another public entity, those created for carrying out administrative activities concerning the promotion, performance or management of public services or the production of public goods eligible for compensation; activities of economic nature designated to Public Administrations; as well as the monitoring or regulation of economic sectors, and whose characteristics justify its organization in a functional devolved or independent system”, Art. 88, Law 40/2015.

Art. 91, ibid.

Art. 92, ibid.

Ibid.

Article 132, Confederate Group’s CCETL proposal.

Art. 115.1, ibid.

Art. 115.2, ibid.

Art. 116.2, ibid.

Art. 117, ibid. Article 7 of Law 3/2013 regulating the functions on monitoring and control within the electricity and natural gas sector assigned to the National Commission on Markets and Competition.

Art. 123, ibid.

Art. 121, ibid.

Art. 128, ibid.

Art. 122.1., ibid.

Art. 127.1, ibid.

Art. 135, ibid.

Art. 30.1, first draft version of the CCETL.

Art. 7 of Law 40/2015 states: “The advisory Administration shall be organized through specific bodies and provided with organic and functional autonomy with respect to the active Administration, or through the services of the latter which provide legal assistance. In which case, these services shall not be subject to a hierarchy, either organic or functional, nor receive guidelines, directions or any type of indication from the bodies which have worked on the provisions or prepared the acts subject to consultation, being required to act collectively to comply with said guarantees”.

Art. 30.2., ibid. Neither the Committee’s chair, its members nor the rest of the staff shall request or accept guidelines from any public or private entity and shall act independently from any business or commercial interest.

Art. 30.4, ibid.

Art. 30.3., ibid.

Art. 30.5, ibid.

Art. 30.6, ibid.

Art. 30.7, ibid.

Its art. 30 provides: “1. The Climate Change and Energy Transition Committee is created as the body responsible for evaluating and providing recommendations on energy and climate change policies and measures, including legislation. To this aim, it shall elaborate an annual report to be submitted before the Parliament and be subject to debate thereof with the participation of the Government. 2. Its composition, organization and functioning shall be established by regulation.”

Royal Decree 224/1994, of 14 February, which creates the Environmental Advisory Council (BOE num. 58 of 09.03.1994).

Art. 1, ibid.

Royal Decree 2355/2004, of 23 December, regulating the structure and functions of the Environmental Advisory Body (BOE num. 12, of 14.01.2005).

Law 27/2006, of 18 July, regulating the rights on access to information, public participation and access to justice in environmental matters (BOE num. 171, of 19.07.2006).

Art. 6.3, Royal Decree 2355/2004 and Art. 3, Operating Regulation of the Environmental Advisory Body. Available online (in Spanish) at:
119 Preliminary Title, Chapter II, Section 3, Law 40/2015.
121 Order PCI 169/2019, of 22 February, creating the Sustainable Development Council (BOE num. 47, of 23.02.2019).
122 Section 1, Order PCI/169/2019.
123 Royal Decree 139/2020, of 28 January, creating the basic organic structure of ministerial departments (BOE num. 25, of 29.01.2020).
124 BOE num. 145, of 18.06.1991.
125 Available at: http://www.ces.es/en/funcionamiento.
126 Art. 6 d), Law 21/1991.
127 Art. 4, CES Internal Functioning Rules.
128 Art. 2.6, Law 21/1991.
129 Art. 5, Ibid.
130 Art. 47, CES Internal Functioning.
132 Art. 10, Ibid.
133 BOE num. 134, of 05.05.2013.
134 Royal Decree 657/2013, of 30 August, approving the Organic Statute of the National Commission on Markets and Competition (BOE num. 209, of 31.08.2013).
135 BOE num. 159, of 04.07.2007.
139 Organic Law 2/2012, of 27 April, on Budget Stability and Financial Sustainability (BOE num. 103, of 30.04.2012).
141 Title II.- Organization and Functioning of the Public Institutional Sector, Law 40/2015.
145 According to article 14 of its Internal Functioning Rules, the AlReF must publish in its website the minutes of the Executive Committee’s meeting, the Resolutions issued by the President of AlReF which have an impact on third parties, the remuneration received by the members of the Executive Committee and any other expenses incurred by the institution exceeding €1,000.00. Furthermore, any natural and legal person has a right to have access to public information held by AlReF in accordance with Law 19/2013 of 9 December, on transparency, access to public information and good governance.
146 Second Additional Provision, Organic Law 6/2013. The taxpayers are the State, Autonomous Communities, Cities with Statute of Autonomy, local corporations and the Social Security System.