

## Colombia's Attempt to Lead Renewable Energy Law in LATAM

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For various years now, Colombia has been placing particular attention to renewable energy. With still much potential in the continued development of non-renewables, the need to find an appropriate and stable energy mix that can ensure its commitments to sustainable development and climate change have triggered increasing attention to its energy transition. Quite recently, on July 10, 2021, Law 2099 was formally sanctioned (the "Energy Transition Law" or "Law 2099"). This law is now being seen as an example to follow by other countries in LATAM, advancing the energy transition, ensuring dynamic energy markets and opening the door for new energy technologies.

Colombia has based its energy transition on four specific pillars: (i) renewable energies and new energy sources, (ii) sustainable mobility, (iii) mining diversification and (iv) energy security. The country is seeing an important influx of investment in solar and wind projects. The expectation is that by 2022, the renewable energy participation in the energy matrix will exceed 12% with 2.400 megawatts. Specific tax and customs benefits are targeting investor concerns on the rate of return of many of the proposed projects. Structured auctions attempt to ensure a growing yet responsible entry level playing field for new renewable projects. Improvement of transmission lines and increased focalized municipal projects attempt to mitigate operational limitations.

Law 2099 objectives are based on the utilization, development and promotion of unconventional sources of energy as a key component of economic reactivation and strengthening electric and gas utilities. Law 2099 modified Law 1715 of 2014 which was Colombia's initial base regulation for energy transition. In other words, the new Law 2099 continued to build upon the existing renewable energy legal structure to advance the transformation which Colombia is seeking. This particular approach may prove to be a premier in the way the region advances much needed energy reforms. Of particular interest regarding the influence the Energy Transition Law will have in LATAM, are specific elements embedded in the regulation.

The first element that merits particular attention is the emphasis placed on renewable energies as a matter of public and social interest. By declaring the promotion and stimulus for the production, use, storage, administration, operation and maintenance of unconventional sources of energy a matter of public and social interest, these activities are granted a broader specter of legal rights which grant preference over other industries, projects or ventures. This preference includes priority in land zoning, urban development, environmental planning, economic promotion, and extend the right to expropriate (with indemnification) when in fact these projects require access to land and need to advance.

A second aspect of the rules is the recognition of renewable energy projects as strategic projects of national interest - the so called "PINES". This in turn results in government agencies having to prioritize their development in terms of permits and authorizations, as well as oversight.

In addition to the prioritization of renewable energies in the aforementioned context, and as a matter of particular importance and third among the critical elements, the Energy Transition Law implements funding mechanisms for projects associated with unconventional energy sources. The funding of these projects is tied to the elimination of processes and procedures which may have limited effective access to tax benefits both at the income tax level and valued added tax level, and

extends economic incentives to the reduction of customs duties for equipment and assets required to develop additional renewable energy projects.

Last but not least in line, the fourth element in the Energy Transition Law are the doors it opens to support new alternative energy sources, including in particular geothermal and green and blue hydrogen, alongside carbon capture usage and storage (CCUS) technology developments. The need to develop and strengthen institutional capacity for the energy transition, the importance of training and educating technologically to allow for a strong human resource base, and the importance of promoting investigation and science for reconversion of mining and oil and gas projects are all addressed. The manner in which implementation is proposed would also appear novel. New technologies will be allowed to proactively undertake pilot tests and programs from which the government can advance in further regulatory definition and practical implementation.

Where Colombia stands then, is at the forefront of the development of a "law of renewable energy" based on strong principals and a broad set of measures that may drive change and positive advances for the next decades. As other countries emulate this approach, there may be an interesting opportunity for LATAM to lead the change. However, even if well-structured and well-intended there are important concerns that need to be considered if the Energy Transition Law is to be successful. In particular, (i) the urge to overregulate before technologies have had a chance to develop; (ii) environmental and social impacts tied to renewable energy sources; (iii) biased opposition grounded on the same principles that non-renewable energy sources have faced, such as the precautionary principle; (iv) material difficulties in developing sites for renewable energy sources, including prior public consultation and community "not in my back yard" considerations, as well as delays in environmental licenses and permits; (v) anticipated and unexpected elimination of tax and customs benefits that affect project economics; and (vi) periodic changes in regulations which translate into a lack of legal security and stability. All of these are issues that need to be cautiously and carefully attended to.

Colombia has indicated that its objective is regional in nature in implementing renewable energy sources. This joint effort includes Honduras, Guatemala, Haiti, the Dominican Republic, Chile, Ecuador, Costa Rica, Peru and Paraguay. The target is that 70% of all consumed energy in LATAM come from renewable sources of energy by 2030.

Commitments to sustainable development throughout LATAM must be met. These all require significant efforts in ensuring the appropriate balance between existing energy sources and future energy options. Colombia has pledged itself in this effort. If it is to lead, it must be able to effectively materialize the expectations of the Energy Transition Law. Ultimately, this will be the evidence required to attest that energy reforms are not political sophisms void of content in detriment of present and future generations. It may be that Colombia has set the stage for renewable energy law.