

TWO MONTHS REMAINING FOR ENERGY AUDIT DEADLINE

On 25 October 2012 the Energy Efficiency Directive 2012/27/UE was approved. The objective of the Directive is to update the legal framework of the Union in terms of energy efficiency. The European Union committed to pursue the overall objective of the energy efficiency target of saving 20% of the EU's primary energy consumption by 2020, and making further energy efficiency improvements after 2020.

Among other measures, the Directive establishes a common framework to promote energy efficiency within the Union and lays down specific actions to implement the conduction of regular and mandatory energy audits for large enterprises. Enterprises that meet either of the following criteria must carry out energy audits:

- Enterprises with more than 250 employees and which have an annual turnover in excess of EUR 50 million, and
- Enterprises with an annual balance sheet total in excess of EUR 43 million.

Following the Directive, the enterprises which meet the above mentioned requirements shall conduct a first energy audit **before 5th December 2015**. Once the first energy audit is carried out, enterprises shall conduct the next energy audit every four years. No further energy audits must be conducted if the enterprises lose any of the applicability requirements between the relevant intervals.

The EU encouraged Member States to implement the Directive in their national legal systems within the first months since the approval of the Directive. In Spain, the legal framework of energy audits is currently regulated under articles 80 to 86 of the Act 18/2014 ("*Ley 18/2014, de 15 de octubre, de aprobación de medidas urgentes para el crecimiento, la competitividad y la eficiencia*"). These articles only contain provisions that deal with the penalties imposed if energy audits are not properly conducted. Not conducting the energy audits within the legal term is considered as a very serious breach, which are fined with a minimum amount of six million Euro under the Act 18/2014. We should also remark that energy audits which are not carried out in accordance with legal criteria shall be considered as a serious penalty and are fined with a minimum amount of six hundred thousand Euro.

Despite of the high amounts of these fines , with only two months remaining until the end of the deadline to conduct the first audits, there are still no provisions that regulate the requirements applicable to such energy audits. Since February 2014 the Spanish Industry Ministry has been working on a Royal Decree which contains the proceedings and requirements of such energy audits. The project of this Royal Decree, which was completed in June 2015, awaits approval by the Spanish Council of Ministers, and it has not been disclosed if and when such approval will take place. This situation is of course a source of great uncertainty for all those enterprises that meet the above settled criteria.

In its present version, the draft of the Royal Decree provides enterprises with two different options :

- Carrying out an energy audit through an official energy auditor which holds the appropriate technical qualifications and is properly entered in a governmental register, or
- Implementing an Energy or Environmental Management System, certified by an independent entity in line with European and international regulations, provided that such the management system includes an energy audit carried out by a qualified auditor. Systems which are certified under “EN ISO 50001:2011”, for the Energy Management System, or “EN ISO 14001:2004” for Environmental Management are considered to be sufficient for these purposes.

By way of conclusion of the foregoing:

- Enterprises that meet the applicability criteria of the Directive have only two months, until 5 December 2015, to conduct their first energy audit or implement an environmental/energy management system;
- Currently, there is no legal framework regarding energy audit programs, causing great concern among the enterprises obliged to conduct them;
- Nevertheless, the Spanish Government has approved a legal framework for those who breach these obligations, with heavy penalties ;
- In the light of this situation, and particularly of the significant fines, it is advisable that enterprises take steps to carry out these energy audits –despite the lack of regulatory indications other than the project of Royal Decree before 5th December to show, at the very least, their will to comply with the European and national regulations.