



PROPOSAL FOR AN ORDER ESTABLISHING THE REGULATORY BASIS FOR THE GRANTING, ON A COMPETITIVE BASIS, OF AID FOR INVESTMENT IN ELECTRICITY GENERATION FACILITIES USING RENEWABLE ENERGY SOURCES, WHICH MAY BE CO-FINANCED BY COMMUNITY FUNDS.

I

Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources amends and recasts the changes made to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

Article 3 states that Member States shall jointly ensure that the share of energy from renewable sources is at least 32 % of the EU's gross final consumption of energy in 2030.

In addition, Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the governance of the Energy and Climate Action Union requires all Member States to draw up an Integrated National Energy and Climate Plan 2021-2030 (PNIEC).

The Spanish PNIEC includes among its energy objectives the achievement of a 42% share of renewable energies in final energy use by 2030, where electricity production from renewable energy sources should represent 74% of electricity generation, leading to a significant reduction in the level of CO₂ emissions and favouring the transition to a low-carbon economy.

To achieve their energy objectives, the Member States of the European Union may use support mechanisms, duly justified in accordance with European regulations.

Furthermore, although the activity of electricity production from renewable energy sources generates income from the sale of energy on the market, this income is not sufficient for certain technologies and in certain locations to recover their investment costs and therefore public support is necessary.



For the reasons described above, and in order to ensure the implementation of the installations for the generation of electricity from renewable energy sources in the national territory, these bases are established for the granting of aid for investment in the installations provided for in this Order.

II

In compliance with the provisions of Article 17.1 of Law 38/2003, of 17 November, this ministerial order establishes the regulatory bases for aid for electricity generation facilities using renewable energy sources throughout Spain, which may be co-financed with Community ERDF funds.

This aid will take the form of a grant, using the ordinary procedure for the award of grants on a competitive basis, as set out in Article 22.1 of the aforementioned Law.

The aid programme governed by these bases is in line with the specifications set out in the European Commission's communication (2014/C 200/01) on the guidelines on State aid for environmental protection and energy (2014-2020), and in particular Chapter 3 thereof, concerning the assessment of compatibility in accordance with Article 107(3)(c) of the Treaty and with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

By virtue of compliance with the conditions of the aforementioned Regulation, the aid regulated in these bases is exempt from prior notification to the European Commission, but the calls for applications made under the bases must be notified for registration with the European Commission.

For its part, the General State Administration, through the Directorate General for European Funds of the then Ministry of Finance and Public Function, prepared the Operational Programme for Sustainable Growth for the period 2014-2020 (POCS), approved by Commission Decision C (2015) 5220 of 22 July 2015, and which has been incorporated into the Spanish Multiregional Operational Programme (POPE). The MAGP currently allocates a total of approximately EUR 1 983 million of ERDF aid to the Transition Axis to a Low Carbon Economy.

The MAGP includes as an investment priority the promotion of the production and distribution of energy from renewable sources within the



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Transition to a Low Carbon Economy. For this reason, part of the allocation for this axis for the period 2014-2020 will be used for calls aimed at increasing the participation of renewable electrical energy throughout the country.

Since the type of actions to which these bases are addressed are eligible for co-financing with the ERDF Community funds, it is considered appropriate to establish the additional conditions required to enable the installations covered by the aid programme to be co-financed with these funds.

This is why the management and control mechanisms included in the MAGP and the regulations applicable to the ERDF Community Funds are fully applied. In particular, the management and control mechanisms set out in Regulation (EU) 1303/2013 of the Parliament and of the Council of 17 December 2013 laying down common provisions on the European Structural and Investment Funds (IEE Funds) and Regulation (EU) 1301/2013 of the Parliament and of the Council of 17 December 2013 on the European Regional Development Fund will be fully applicable to them.

Article 5 of Regulation (EU) No 1301/2013 of the Parliament and of the Council of 17 December 2013 sets out investment priorities to support the transition to a low-carbon economy in all sectors. Thus, the calls that are made and regulated by these bases will actively contribute to environmental sustainability by reducing the level of CO₂ emissions, as well as to social cohesion and improving the quality of life of citizens.

Under the terms of the appointment agreement of the Directorate-General for European Funds of the then Ministry of Finance and the Civil Service, dated 10 May 2017, and accepted by the Institute for Energy Diversification and Saving (IDAE) on 16 May 2017, the IDAE has been appointed as the Intermediate Body for the POCS, incorporated in the MAGP, for initiatives co-financed by the ERDF, in accordance with Article 123 of Regulation (EC) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and with the Description of Systems and Procedures of the Managing Authority.

In this way, when the actions to be supported are eligible for co-financing under the MAGP, the IDAE will act as the ERDF Intermediate Body.



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Where ERDF co-financing is provided for regional programmes, the ERDF Intermediate Body shall be designated for this purpose.

The ERDF Intermediate Body will be responsible for certifying to the ERDF the projects to be co-financed, determining the eligible expenditure of the projects. The Intermediate Body shall also be responsible for examining the justifications for expenditure submitted by the beneficiaries and for carrying out the necessary verifications (including on-the-spot checks) to enable the ERDF Managing Authority to certify such expenditure.

III

Among other objectives, this aid must promote the development of innovative projects throughout the national territory that meet the new requirements of the European Directives for the integration of renewable energies into the electricity grid. In this sense, the development of projects is not only based on the promotion of a specific renewable technology, but also on the adaptation of the different technologies to each other and to innovative demand management systems, such as renewable energy communities and the collective financing of projects, micro-patronage, at a structural and social level. In addition, in view of the new challenges derived from an Energy Transition linked to a Fair Transition, it is necessary to evaluate at a national level all those locations where special emphasis should be placed in order to avoid social and economic imbalances due to the change in the energy model.

The actions planned are part of the policies to promote the use of energy from renewable sources to which the Spanish State is obliged under Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources which requires Member States to adopt binding targets for the diversification of primary energy sources, the reduction of energy dependence and the reduction of CO₂ emissions, thus giving the actions covered by this Order a supra-autonomous approach which makes it necessary to establish common bases for the management of the aid, in accordance with the objectives set out in the PNIEC.

IV

The regulatory framework for this aid is in line with the consolidated constitutional case law on aid and subsidies that began to be articulated with the Constitutional Court's Ruling 13/1992, of 6



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February, and which has recently been outlined in judgments 9/2017 of 19 January and 62 and 64/2018 of 7 June.

In compliance with this case law, this ministerial order establishes a model for the granting of aid based on cooperation and collaboration mechanisms that are inherent to the structure of the State of the Autonomous Communities as articulated in the Spanish Constitution, and was reported at the Energy Sector Conference held on 17 February 2020, including the exceptional possibility of a centralised management call by the Institute for Energy Diversification and Saving (IDAE), with a favourable outcome from the Autonomous Communities and cities of Ceuta and Melilla.

Therefore, this order contemplates various options for managing the concession, which may be carried out in a decentralised manner by the competent body appointed by the Autonomous Communities or in a centralised manner by the IDAE.

In cases where management is assumed by one of the Autonomous Communities concerned, the territorial distribution of the credit will be determined prior to the corresponding calls for applications, in accordance with the objective distribution parameters determined in accordance with the provisions of Article 86 of the General Budgetary Law 47/2003 of 26 November.

In any case, the requirements set out in this order must be met in order for the calls to be co-financed by ERDF Community funds.

The proposed ministerial order is in line with the principles of good regulation established in Article 129 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, and in particular with the principles of necessity and efficiency, justified by the need to facilitate compliance with the energy objectives established in the National Integrated Energy and Climate Plan 2021-2030 (PNIEC). It is considered appropriate to set up electricity generation facilities using renewable energy sources that contribute to the diversification of primary energy sources, to the reduction of energy dependence and CO₂ emissions, favouring the transition to a low-carbon economy.

It also complies with the principle of proportionality, insofar as the regulation contains the actions that are essential for the purpose in question, establishing the regulatory bases that make it possible to articulate the granting of aid provided for in the regulations in force. In accordance with the principle of



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legal security, the rule is consistent with the rest of the national and international legal system.

The principle of transparency is also complied with, since all the participation and hearing processes established by the regulations have been followed in the preparation of the standard, and the public participation process has been carried out by publishing the project on the department's website.

Finally, with regard to the principle of efficiency, the least possible burden is imposed on citizens.

The order is issued under the exclusive jurisdiction of the State as provided for in Article 149.1.13 and 25 of the Constitution, in matters of the bases and coordination of the general planning of economic activity and bases of the mining and energy regime, and is approved in accordance with the provisions of Law 38/2003, of 17 November, and Royal Decree 887/2006, of 21 July, which approves the Regulations of Law 38/2003, of 17 November, on General Subsidies.

In its processing, in compliance with the provisions of article 17.1 of the aforementioned Law 38/2003, of 17 November, the order has been informed by the State Attorney's Office and by the Delegated Intervention in the Ministry for Ecological Transition and the Demographic Challenge.

By agreement of XXXXXXXX of 2020, the Government's Delegate Commission for Economic Affairs has authorized the Fourth Vice President of the Government and Minister for Ecological Transition and the Demographic Challenge to issue this order

By virtue of this, with the prior approval of the Minister for Territorial Policy and the Civil Service,

DISPOSED

CHAPTER I

General Provisions

Article 1. Purpose.

The purpose of this Order is to establish the regulatory bases for the granting, on a competitive basis, of aid



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for investment projects in electrical energy generation facilities using renewable energy sources in the national territory.

Article 2. *Legal regime*

1. In accordance with the provisions of the twenty-sixth additional provision of Law 38/2003, of 17 November, on General Subsidies, the legal system, specific applicable regulations, requirements and obligations of the beneficiaries and the concession procedure will be that established in these bases, in Law 38/2003, of 17 November, and in Royal Decree 887/2006, of 21 July, which approves the Regulations of Law 38/2003, of 17 November, on General Subsidies.

2. This aid is subject, in all cases, to the fulfilment, execution and implementation of the objectives, activities and conditions established by these bases and by the corresponding calls for proposals.

3. In addition, Regulation (EU) No 1303/2013 of the Parliament and of the Council of 17 December 2013 laying down common provisions and general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Maritime Fund and the European Fisheries Fund and Regulation (EU) No 1301/2013 of the Parliament and of the Council shall also apply, of 17 December 2013 on the European Regional Development Fund, the Guidelines for State aid in the fields of environmental protection and energy 2014-2020 and Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

4. In all matters not provided for in this order or in the respective announcements, the provisions of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations, Law 40/2015 of 1 October on the Legal System of the Public Sector and Law 47/2003 will apply, of 26 November, General Budgetary Law, in the Regulations for the partial implementation of Law 11/2007 of 22 June, approved by Royal Decree 1671/2009 of 6 November, in Law 24/2013 of 26 December on the Electricity Sector and its implementing regulations and in other applicable provisions.

Article 3. *Geographical scope.*

The geographical scope of the projects eligible for aid under these bases is any part of the national territory.



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Article 4. *Temporal scope.*

The temporary scope of this order will be until December 31, 2021.

Article 5. *Types of actions to be supported.*

1. Investment projects in electrical energy generation facilities using renewable energy sources may be eligible for aid, and may include investment actions that improve management and optimize production, allowing the use of self-consumption and the incorporation of energy into local markets.

These actions may include the modification of existing installations for the generation of electrical energy with renewable energy sources, in which case the corresponding call will define the requirements that the modified installation must comply with. In any case, the modification of existing installations that are entitled to receive the specific remuneration scheme or any other scheme related to renewable energy at the date of submission of the application may not be supported.

In any event, the planned aid must comply with the specifications set out in the guidelines on State aid for environmental protection and energy 2014-2020 and with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

2. Without prejudice to any further restrictions which may be laid down in the calls for proposals, investment projects whose date of commencement of implementation is prior to the date of registration of the application for aid, so as to ensure that the aid has an incentive effect, shall not be eligible for aid.

For this purpose, the earliest of the following two dates shall be considered as the starting date for the implementation of the investment project: the date of the contract for the execution of the work or the date of the first firm commitment to order equipment or other commitment that makes the investment irreversible.

Preparatory work for obtaining permits and carrying out preliminary feasibility studies, including exploratory ground surveys for geothermal projects, shall not influence the determination of the starting date for the implementation of the investment project.



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Article 6. Beneficiaries.

1. Beneficiaries may be natural or legal persons, public or private, who are going to carry out the action that is the object of the aid, including the consortia provided for in Law 40/2015 of 1 October on the legal system for the public sector, property associations, owners' associations, groups of owners' associations, other groups and management bodies that may carry out the action that is the object of the aid.

2. If the applicant is a group, the provisions of Article 11.3 of Law 38/2003 of 17 November must be complied with, as well as the requirements established in the corresponding calls for applications.

The groups, with the exception of owners' associations and groups of owners' associations, must be registered for business tax with a CNAE linked to the purpose of the project for which aid is requested and must have valid statutes in accordance with any of the forms permitted by the applicable legislation.

The groups defined in the previous paragraph must have a representative and manager for the application, justification of the eligible costs and collection of the aid. This is without prejudice to the fact that, in accordance with the decision to grant the aid, the manager must allocate the aid among the members, with regard to the rights and obligations corresponding to each one and in accordance with the regulations applicable to them.

3. The beneficiaries must comply with the requirements established in these bases, in the corresponding call and in Law 24/2013, of 26 December, on the Electricity Sector in relation to electricity producers, the Low Voltage Regulations or, where applicable, the regulations applicable to them.

4. They will not be able to obtain the status of beneficiary:

- a) Those applicants in whom some of the circumstances prohibiting access to said condition concur, as set out in Article 13 of Law 38/2003, of 17 November.
- b) Applicants who are subject to an outstanding recovery order following a previous European Commission decision declaring aid to the beneficiary illegal and incompatible with the common market.
- c) Applicants which may be regarded as firms in difficulty within the meaning of the Community guidelines on State aid



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for the rescue and restructuring of non-financial firms in difficulty (2014/C 249/01).

Article 7. *Essential obligations of beneficiaries.*

1. The beneficiaries must comply with the obligations set out in Article 14 of Law 38/2003 of 17 November 2003 and those contained in these bases, those determined in each call for applications, those set out in the resolution granting the aid and the specific instructions which, in application and compliance with these bases and each call for applications, are communicated by the competent body in respect of implementation, monitoring, payment of the aid, information and publicity, justification and control of expenditure.
2. The beneficiaries must be up to date with their tax and social security obligations, in accordance with Articles 18 and 19 of Royal Decree 887/2006 of 21 July.
3. Beneficiaries shall be obliged to notify the competent body immediately, including during the processing of the application, of any change in the conditions originally notified with the documentation accompanying the application. Failure to notify these changes may be sufficient grounds for revoking the aid in accordance with Articles 35 and 36.
4. The following are also considered to be essential obligations of the beneficiary entities, depending on their particular characteristics
 - a) Maintain a separate accounting system for all transactions relating to the actions covered by the aid, with at least an appropriate accounting code that allows these transactions to be clearly identified. They must also keep accounting books, registers and other documents in accordance with the legislation applicable to the beneficiary, as well as invoices and other supporting documents relating to expenditure of equivalent probative value and the corresponding proofs of payment. This set of documents constitutes the supporting document for the grant awarded and ensures that it is properly reflected in the beneficiaries' accounts.
 - b) Take into account the following in recruitment processes concerning eligible costs
 1. In accordance with the provisions of Article 31.3 of Law 38/2003, of 17 November, at least three offers from different suppliers must be available prior to contracting the commitment for the execution of the installation, unless due to their special characteristics



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there is not a sufficient number of entities on the market to carry out, provide or supply the contracted service. By virtue of Article 83.2 of Royal Decree 887/2006, of 21 July, if the tenders are not submitted or the award is made to one that is not the most favourable economically, without adequate justification, the awarding body may request an expert valuation of the goods or services, with the costs incurred being borne by the beneficiary. In that case, the grant shall be calculated by reference to the lower of the two values: that declared by the beneficiary or that resulting from the valuation.

2. The specifications, notices, contracts and other documents supporting the procurement of the works, goods or services to be provided must state the possibility of co-financing or participation by the ERDF.
 3. No discriminatory or competition-distorting evaluation criteria may be included in the evaluation of bids, and minimum requirements may be established that must be met by bidders if they cannot be used to evaluate bids favourably in relation to each other.
 4. Documentation of the procurement process, including justification of the selection of the most economically advantageous tender and communications with bidders, must be available.
 5. The works, services or provision of the contracted service must be demonstrable and must be verified and accepted prior to certification of payment, in accordance with the conditions established in the contract.
- c) For all actions, whether or not they are co-financed with Community ERDF funds, they must prove to the competent body that the activity has been carried out, also facilitating the verifications aimed at guaranteeing the correct implementation of the project or action that is the object of the aid, providing to this effect any documentation that may be required, as well as the values of the indicators that may be required to report the results of the project within the framework of the ERDF Operational Programme of application.
- d) Submit to any other verification and financial control actions that may be carried out by the Directorate General for European Funds of the Ministry of Finance, the General Intervention of the State Administration, the Court of Auditors, the control bodies of the European Commission or other competent control bodies, both national and European Union, in accordance with the provisions of the regulations applicable to the management of aid co-financed with European Union funds, in their respective fields of competence, providing any information required.



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- e) To comply with the dissemination and publicity requirements established in these bases and in particular in Article 37, in accordance with the provisions of Article 18.4 of Law 38/2003, of 17 November, and with the information, communication and visibility duties that correspond to the beneficiary in accordance with the provisions of Article 115 of Regulation (EU) No. 1303/2013, of the European Parliament and of the Council, of 17 December 2013.
- f) Accept their inclusion in a public list of operations, to be published electronically or by other means as foreseen in Annex XII "Acceptance and communication of support from the Funds" of Article 115 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.
- g) Keep the original documents, supporting the action taken and the application of the funds received, as long as they can be subject to verification and control actions. The availability of documents shall be in accordance with Article 140 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.
- h) Respect the rules on national aid that may be established by the Directorate-General for European Funds of the Ministry of Finance, within the scope of its powers.

5. Beneficiaries must meet the objective, carry out the action, carry out the activity or adopt the behaviour that justifies the granting of the aid in the form and within the time limits laid down in these rules and in the corresponding call for applications.

6. Beneficiaries shall submit to the ERDF Intermediate Body information on the economic planning or financial path envisaged, resulting from the implementation of the actions to be supported, and on their expected results, which shall be quantified on the basis of the productivity indicators provided for in the ERDF Operational Programme for implementation.

In the case of the Spanish Multi-Regional Operational Programme (MOPE) these are as follows

Code	Indicator	Unit of measure
C030	Additional energy production capacity renewable electricity	MW
C034	Reduction of GHG emissions	tCO2 eq/year



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7. Beneficiaries must provide the competent body with the necessary ex-post documentation with the minimum content set out in Article 29, Justification of project implementation.

8. The beneficiaries must ensure the durability of the operations in accordance with Article 71.1 of Regulation (EU) No 1303/2013 of the Parliament and of the Council of 17 December 2013, by maintaining the ownership or title of the subsidized facilities in their possession for (5) five years after the final payment to the beneficiary, as well as the use of these facilities for the generation of electricity from renewable energy sources.

9. The ERDF Intermediate Body shall pass on to the beneficiaries any instructions it receives from the ERDF Managing or Certifying Authority, and the beneficiary shall be required to comply with such instructions.

10. Failure to comply with any of the obligations set out in the preceding paragraphs may result in the loss of the right to payment or in the repayment of the aid granted, depending on the procedural stage of the case.

CHAPTER II

Characteristics of aid

Article 8. *Methods of granting aid and grant scheme*

1. The aid to be granted shall take the form of a non-repayable grant which the granting body may advance to the beneficiary in order to facilitate the financing of the projects. The advance shall take the form of a payment by the granting body, after a guarantee has been deposited, of an advance on the aid granted, under the terms laid down in Article 15.

2. The concession scheme will be that of competitive tendering, in accordance with Article 22.1 of Law 38/2003, of 17 November, and in accordance with the evaluation and selection criteria established in these bases and in the corresponding call for tenders.

3. Each call, depending on the geographical area concerned, will determine whether the management of the grants is centralised or decentralised. In the event of centralised management, the IDAE will be responsible for the management of the grants. In the case of management



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In the case of decentralised aid, management of the aid will be the responsibility of the competent body designated by the relevant Autonomous Community.

4. The aid granted will be subject to the requirements and limits laid down in Commission Regulation (EU) No 651/2014 of 17 June 2014.

The competitive tendering procedure, for the purposes of applying Article 41(10) of Commission Regulation (EU) No 651/2014 of 17 June 2014, is established as a non-discriminatory tendering procedure, which ensures the participation of a sufficient number of undertakings and the granting of aid is based on the tender submitted by the applicant for the aid, in which administrative, economic and technical requirements are assessed.

5. Each call, depending on the geographical area concerned, will determine whether assistance will be co-financed by the European Regional Development Fund (ERDF), and therefore the management and control mechanisms included in the operational programmes and instruments applicable to these funds will apply.

In cases where co-financing from the ERDF Community Funds is not possible, the conditions and obligations laid down by the ERDF programme as set out in these guidelines shall apply on a subsidiary basis.

Article 9. *Financing.*

1. The budget, financing, and allocation of amounts according to territorial distribution, as well as by technological groups, will be those established in each of the calls.

2. In calls for centralised management with ERDF co-financing, the criterion of territorial distribution of expenditure will take account of the budgetary programming of ERDF funds. In the decentralised calls, whose funds come from the General State Budget, the territorial distribution will be carried out beforehand, in accordance with the criteria of decentralised management provided for in Article 86 of Law 47/2003, of 26 November, on the General Budget.

3. The Autonomous Communities or Cities may make decentralized calls at the expense of their own budgets.



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Article 10. *Incompatibility of aid*

The aid regulated in this order is incompatible with other aid granted for the same purpose, from any public administration or public or private entity, whether national, from the European Union or from other international bodies, with the exceptions that may be established in the corresponding calls for proposals, provided that the notification thresholds and maximum aid intensities established in Commission Regulation (EU) No 651/2014 of 17 June 2014 are respected.

Article 11. *Eligible expenditure.*

1. Expenditure meeting the requirements of Article 31 of Law 38/2003 of 17 November 2003 and Article 83 of Royal Decree 887/2006 of 21 July 2006 will be considered eligible.

2. In order to be considered eligible, costs must meet the following requirements:

- a) Comply with the applicable local, regional, national and Community regulations and, in particular, those related to the ERDF Operational Programme to be implemented for the 2014-2020 programming period, whether or not they are co-financed by ERDF Community Funds.
- b) Be unambiguously related to the activity that is the object of the aid, necessary for its execution and carried out within the period established in Article 17 of this order.
- c) Where deferred payment methods are used, only those amounts actually debited through a financial institution before the end of the above-mentioned period shall be eligible.
- d) There must be documentary proof and be verifiable.

3. The following items of expenditure shall not be considered eligible

- a) The Value Added Tax or, if applicable, the Canary Islands General Indirect Tax (IGIC) paid.
- b) Own expenses, whether personnel, operating or general costs.
- c) The preparation and cost of visas for technical projects, environmental impact studies, resource studies (except for exploratory drilling, for geothermal projects), and health and safety plans.
- d) Any other promotional expenses incurred by the applicant to develop the project.



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- e) Administrative authorizations, licenses, permits, cost of guarantees and/or bonds, fines, fees or taxes.
- f) Any expenses associated with management, hiring, consultations or administrative procedures, even if they are necessary to obtain permits or licenses.
- g) Cost of acquisition or lease of land used for both the investment project and the disposal infrastructure.
- h) Insurance taken out by the applicant.
- i) Surveillance and security during the execution of the work until the start-up date.
- j) Adaptations, remodelling or execution of other electrical lines different from the exclusive ones to make the evacuation of energy viable. Therefore, only the lines necessary to connect the generation facility, or the systems for integrating renewable energies into the grid, with the connection point of the aforementioned facilities and the transmission or distribution line are considered eligible, as established in Royal Decree 1110/2007, of 24 August, which approves the unified regulation of measurement points in the electrical system.
- k) Adaptation of accesses on public roads and existing paths to the installation.
- l) Financial costs.

4. The costs of managing the application for aid will be considered eligible costs, meaning those which the applicant could pay to a company or professional to carry out the administrative and documentary management of its application before the granting body, with the limits, if any, established in the corresponding calls for applications. Likewise, the costs of managing the justification of the implementation of the project will be considered as eligible costs, understanding as such, those costs that the beneficiary could pay to companies or professionals for carrying out the technical, administrative and documentary management of the justification before the awarding body of the implementation of the actions that make up the project, including the cost derived from the preparation of the auditor's report mentioned in Article 29 of these regulatory bases, with the limits that, if applicable, are established in the corresponding calls. The preparation and payment of this report may be made during the period granted for the presentation of the supporting documentation.

5. Each call for proposals may include detailed instructions or guidance on the concepts that may be taken into account in determining the eligible costs.



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Article 12. *Minimum and maximum eligible budgets for investment projects.*

1. For the purposes of the aid governed by this Order, the eligible budget of an investment project is understood to be the total amount of the eligible expenditure making up that project, as provided for in Article 11 and in the forecasts set out in the relevant call for proposals.
2. The minimum and maximum eligible budgets per investment project for which aid is requested may be established in the corresponding call for proposals.
3. The maximum eligible budget per investment project for which aid is requested will in any case be less than EUR 50 million.

Article 13. *Aid limits in the granting resolution.*

1. The maximum amount of unitary aid that can be granted to each investment project according to its technological group will be established in the corresponding call for proposals.
2. The amount of unitary aid requested for each investment project must be less than or equal to the maximum amount mentioned in the previous paragraph.
3. The decision to grant the aid shall specify the amount of unit aid granted, which shall in any case be equal to or less than the amount of unit aid applied for.
4. The decision to grant the aid shall specify the amount of total aid granted, expressed in euros, which may not exceed the limit of EUR 15 million per undertaking per project, pursuant to Article 4(1)(s) and (2) of Commission Regulation (EU) No 651/2014 of 17 June 2014.

Article 14. *Value of the maximum and minimum power to be installed for each location or by technological group of the project.*

The calls made under these rules may establish a value of maximum and minimum power to be installed to which aid may be granted for each location or technological group of the project.

Article 15. *Advance payment*

1. The awarding body may establish in each call for applications the allocation of advances to the beneficiaries of the aid who request them.



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2. The advance shall be considered as a payment on account of the aid provided for in Article 8 and shall correspond to a maximum of 80% of the total amount of aid granted in the decision provided for in Article 27.
3. The advance must be used exclusively to cover the costs of the subsidised project.
4. The advance shall be paid taking into account the associated guarantees regulated in accordance with Article 32.
5. In the event of non-compliance attributable to the beneficiary which reduces the amount of aid laid down in the final certification in Article 31 in relation to the advance paid, the advance shall be partly or wholly reimbursed in accordance with Articles 35 and 36. The granting authority shall notify the beneficiary of the amounts to be repaid from the advance received.

Article 16. *Amount of aid.*

1. The amount of unitary support granted for the projects selected shall be established on the basis of the application submitted by the beneficiary, the limits set out in Article 13 and the procedure described in Articles 24, 25, 26 and 27.
2. The amount of total aid granted for the projects selected shall be calculated by multiplying the value of the amount of unitary aid granted by the nominal power of the electricity generation equipment of the installation, which is the subject of the aid, according to the data included in the electronic questionnaire described in Article 24 of these bases. The total amount of aid granted may never exceed the value of the total amount of aid requested by the beneficiary.

Article 17. *Period of time for completion of the proceedings*

1. The subsidised actions must be carried out within the deadlines indicated in the corresponding call for applications and may not start under any circumstances before the date on which the beneficiary's application for the aid is registered in accordance with Article 5(2) of these rules.
2. The facilities must be fully completed by
30 June 2023, unless a more restrictive deadline is set in the relevant call.
3. For the purposes of the aid regulated in these bases, a plant is considered to be fully completed when the following conditions are met:



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- a) That it has all the elements, equipment, systems and infrastructure that are the object of the aid.
- b) That it has obtained definitive registration in the administrative register of electricity production facilities, when this registration is mandatory.

When the aforementioned registration is not mandatory, the completion of the project must be justified by presenting the certificate of electrical installations, the operating permit or any other documentation required by the Autonomous Community or City.

- c) That it has begun to discharge electrical energy, in the case of installations intended for that purpose. Accreditation of the commencement of the dumping of electrical energy must be made by means of a certificate issued by the person in charge of reading, expressly indicating the measurements and the dates of reading. To this end, in accordance with the provisions of article 46.a) of Royal Decree 413/2014, of June 6th, the person in charge of the reading must carry out a reading within a maximum period of 15 days from the notification by the owner of the installation of the start of the dumping in tests.

The corresponding call may establish any other documentation necessary to comply with this section.

4. The date of completion of the action shall be considered to be that reflected in the documentary justification, as set out in Article 29.2 a).

Article 18. *Maximum period of time for justifying the performance of the actions.*

The calls established under these rules must include maximum time limits for the justification of eligible expenditure, which must in any case be completed before 30 September 2023.

CHAPTER III

Procedure

Article 19. *Call for aid and initiation of the procedure.*

1. The aid regulated in these bases will be articulated through the calls for applications approved by the competent bodies in accordance with Article 10 of Law 38/2003, of 17 November, on General Subsidies.



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2. The calls will detail, at least, the minimum content provided for in Article 23 of Law 38/2003 of 17 November. They will be published in the National Subsidy Database (BDNS), on the website of the granting body and an extract from them in the corresponding official journal as established in section b) of Article 17.3 of Law 38/2003, of 17 November.

3. In each call and depending on the autonomous community or autonomous city it affects, areas of special protection by just transition may be included and delimited, as well as those technological groups that are best suited in that area of action, with an initial allocation of the available budget.

Article 20. *Bodies competent to convene, instruct and decide on the procedure for granting concessions and body responsible for monitoring*

1. In the case of calls for tender managed by the General State Administration, the IDAE will be responsible for calling for, instructing and deciding on the aid regulated in this order. The Directorate-General of the Institute for Energy Diversification and Saving (IDAE) will be responsible for examining and organising the file, and the IDAE's Management Board will be responsible for deciding whether to grant aid.

In the case of calls managed by the Autonomous Administration, the bodies that this administration designates for the instruction and resolution of the procedure will be competent in accordance with its applicable regulations.

2. The call will determine the investigative body responsible for the instruction of the concession procedures, which may be assisted by specialized departments or areas for the management and notification tasks to the interested parties. Likewise, specific computer platforms may be used for management, which will be accessible through the Electronic Headquarters of the awarding body.

3. In the case of calls for applications managed by the General State Administration, an assessment committee composed of a member of the assessment committee will be competent to evaluate the aid, under the terms of Article 22.1 of Law 38/2003 of 17 November, without prejudice to any cooperation mechanisms established by a cooperation agreement with the Autonomous Communities:

a) The IDAE's Director of Renewable Energy, who will act as chairman.



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- b) A representative of the IDAE's technical departments, depending on the subject of the aid, who will act as secretary with voting rights.
- c) A representative of the IDAE's General Secretariat
- d) A representative of the Cabinet of the Secretary of State for Energy
- e) A representative of the Directorate-General for Energy Policy and Mines.
- f) There may be representatives of the Autonomous Communities or Cities included in the scope of the call, when they voluntarily accept it or when an agreement so provides and in relation to the evaluation of projects in their territorial area.

In cases of absence or illness and, in general, when there is a justified reason, any of the full members of the Assessment Committee may be replaced by alternates.

The Assessment Committee may require the assistance of specialized technical staff as it deems appropriate depending on the projects to be assessed.

4. In the case of calls managed by the Autonomous Administration, the call will designate the composition of the Assessment Committee, as well as its general rules of operation.

Article 21. *Electronic processing.*

1. In accordance with Articles 14.3 and 41.1 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, electronic processing will be compulsory at all stages of the procedure, so that applications, communications and other required documentation relating to projects applying for these grants will be submitted electronically.
2. The interested parties, duly identified, may consult the procedures that are notified to them and submit any additional documentation that may be required by the acting body.
3. The publication of the proposals for provisional and final resolutions, as well as the resolutions of concession and their possible subsequent amendments, will take place at the electronic headquarters of the granting body, with the effects of the notification being made in accordance with Article 45.1.b of Law 39/2015, of 1 October.
4. In cases where a refund procedure takes place, notifications relating to that procedure shall be made under the



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notification by electronic appearance, under the terms set out in Article 43 of Law 39/2015 of 1 October

Article 22. *Deadline for submission of applications.*

1. The deadline for submission of applications and the corresponding documentation may not be less than 20 days or more than 3 months. The closing dates for the submission of applications shall be indicated in the call for applications.
2. Applications submitted after the deadline will be inadmissible.

Article 23. *Representation.*

1. Intervention through a representative of the applicant or beneficiary entities of the grants requires accreditation of the necessary representation for each action, under the terms established in Article 5 of Law 39/2015 of 1 October.
2. The signatory of the application for aid must prove that at the time of submission of the application he has the legal representation of the beneficiary entity. If this is not the case, the interested party will be required to correct it within a period of ten days, indicating that, if they do not do so, their request will be deemed to have been withdrawn, in accordance with the provisions of Article 68 of Law 39/2015 of 1 October.
3. The investigating body may, at any time, request the signatories of the various documents to be presented to accredit their representation. The lack of sufficient representation shall result in the document in question being deemed not to have been submitted, with the resulting effects on the continuation of the procedure.

Article 24. *Formalisation and submission of applications.*

1. The applications to obtain the aid will be addressed to the granting body, and will be available for completion and presentation in the Aid Portal housed in its electronic headquarters, where the necessary electronic means of support will be available.
2. The application consists of the following elements:
 - a) Electronic questionnaire, through which the applicants will provide all the necessary data to formalize the request for assistance. Among others, these will be included:
 - Amount of unit aid requested in EUR/MW



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- Power, in MW, as defined in Article 3 of Royal Decree 413/2014, of 6 June, even when these are installations within the scope of RD 244/2019, of 5 April.
 - Amount of total aid requested, in euro, which will correspond to the product of the amount of unit aid requested for the power.
- b) Application Form, generated from the electronic media specified in the corresponding call, after covering all the obligatory fields of the form, and which will be signed electronically by the applicant.
 - c) Project report, which must comply with the minimum content, if any, established in the corresponding call.
 - d) Environmental Impact Statement (EIS) or environmental figure applicable to you or, if applicable, document certifying your exemption.
 - e) When available, administrative documentation of the project, which has been submitted and approved by the relevant administration, such as administrative authorisation, approval of the implementation project, building permit or equivalent document, etc.
 - f) In the case of modification of an existing installation, the definitive operating permit for the existing installation.
 - g) Valid accreditation of the power of representation of the signatory of the application, as indicated in Article 23 and in accordance with the documentation required in the corresponding call. Documentation of the constitution of the applicant entity and updated statutes with proof of the corresponding registration.
 - h) Tax Identification Document of the beneficiary according to the documentation required in the corresponding call.
 - i) Responsible statements attesting to compliance with the necessary requirements established for acquiring the status of beneficiary, in accordance with the provisions of Articles 6 and 7:

None of the circumstances prohibiting access to the status of beneficiary, set out in Article 13 of Law 38/2003 of 17 November, are present.

Not be subject to an outstanding recovery order following a previous decision of the European Commission declaring aid to the beneficiary illegal and incompatible with the common market.

Not to have any pending obligations to reimburse subsidies or aid, or if applicable, to comply with the terms established in Article 21 of Royal Decree 887/2006, of 21 July.



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Not to have received any other aid for the same action or purpose as that requested in the context of the corresponding call for aid.

The company is not in difficulty, as required by the Community guidelines on State aid for rescuing and restructuring non-financial firms in difficulty (2014/C 249/01).

Not to have started the implementation of the investment project before the date of registration of the application for aid as set out in Article 5(2) of these guidelines.

- j) Acceptance of the terms and conditions and of the call.
- k) Certificates accrediting compliance with tax and social security obligations in accordance with Articles 18 and 19 of Royal Decree 887/2006 of 21 July.
- l) Other elements to be defined in the call for proposals.

3. As established in Article 21, the documentation required in the previous point shall be submitted exclusively by electronic means.

4. As these are competitive concession procedures and, as such, initiated ex officio, voluntary improvements to the application will not be accepted. However, the investigating body may request clarification of aspects of the application that do not involve reformulation or improvement of the application.

5. After the deadline for the submission of applications, the investigating body will proceed to check the documentation submitted. If the application does not meet the above-mentioned requirements, the examining body shall request the interested party to remedy it within a maximum period of 10 days, which may not be extended, and shall indicate that if he does not do so, his application shall be deemed to have been withdrawn, in accordance with the provisions of Article 68 of Law 39/2015 of 1 October.

Article 25. *Evaluation and selection of applications*

1. The evaluation and selection of applications will be carried out on a competitive basis on the basis of the documentation provided by the applicant at the application stage.

2. The Evaluation Commission, in a first pre-evaluation phase, will verify that the conditions imposed to acquire the status of grant beneficiary have been met and that the project is in line with the objectives of the call.

The reason for not going beyond this first phase will be notified to the interested parties, giving them 10 days to make their arguments.

3. The Assessment Committee, through the investigating body, may request and obtain any information it deems necessary for the identification, knowledge and verification of the data provided by the applicant, as well as reports as appropriate, in order to assess the impact of the projects in relation to energy and land-use planning.

4. Once the pre-evaluation phase has been completed, applications will be evaluated according to the following assessment criteria:

Criterion	Relative weighting
Economic criterion	Between 50% and 100%.
Just Transition Zone	Between 0% and 30%.
Administrative Feasibility	Between 0% and 30%.
Positive externalities	Between 0% and 30%.

The corresponding calls will specify the relative weighting of each assessment criterion and its maximum score, respecting the intervals indicated in the table above.

In applying the criteria, the following will be taken into consideration:

- a) To assess the economic criterion, the unit aid requested in euros/MW, and the maximum and minimum unit aid requested in each technological group and Autonomous Community or City will be taken into account, according to the following formula:

$$P = \frac{(A_{max} - A_{min}) \times P_{max}}{A_{max}}$$

Where,

P = Points assigned with three decimals.

Pmax = Maximum score assigned to the economic criterion.

Amax = Maximum unit aid requested, in euros/MW, without decimals, for the technology group, in the Community or Autonomous City of the application.

Amin = Minimum unit aid requested, in euros/MW, without decimals, for the technological group, in the Community or Autonomous City of the application.



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A = Help requested, in Euro/MW, without decimals.

- b) The calls may include Just Transition Zones, to try to maximize the employment opportunities of the transition to a low carbon development model.
- c) The evaluation of the criterion "Administrative feasibility" will be carried out according to the highest administrative development of the project, which will facilitate its implementation within the deadlines set in this call and will allow to fulfil the requirements of the Spanish Multiregional Operational Programme for the implementation of the ERDF Community Funds.
- d) To assess positive externalities, calls may select certain positive externalities from those detailed below by defining their assessment.
 - Innovative character.
 - Renewable energy community projects and other projects with citizen participation mechanisms or local energy communities.
 - Type of project and its application, favouring those that integrate different sources of renewable energy, those that group together different types of consumers or other developments that are considered a priority in order to optimise demand management and the integration of renewable energies into the energy system.
 - Social nature of the project.

5. For the selection of applications, an order of priority, from highest to lowest score, will be established first for each technological group and territorial area with a budget allocated in the call.

For equal scores, priority will be given to the application with the lowest unit amount of aid requested. The call may lay down additional tie-breaking criteria.

Grants will be awarded to applications in order of priority until the budget established for each technology group in each territorial area has been exhausted.

Once this process has been completed, both the applications that have not been awarded aid due to lack of funds and the unallocated budget will constitute a single set for each territorial area, and the award of aid in this set will be made in order of score.



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Motion for provisional and final resolution.

1. The investigating body shall, in the light of the file and the report of the Assessment Committee, draw up a duly reasoned proposal for a provisional decision, which shall be notified to the parties concerned in accordance with Article 21. The content of the proposal for a provisional decision shall include at least the following information:

- a) The list of applications for which aid is proposed to be granted, including
 - The NIF of the beneficiary or beneficiaries.
 - Location where the performance will take place.
 - Technology group to which the application has been assigned
 - Power of the installation receiving the aid included in the application, as defined in Article 3 of Royal Decree 413/2014 of 6 June, even if the installations are covered by RD 244/2019 of 5 April, expressed in MW.
 - Amount of unit aid granted, expressed in EUR/MW
 - Amount of total aid granted, expressed in EUR
 - Term of minimum unitary contribution to be paid by the beneficiary (Am), in EUR/MW, to be applied for the payment of the aid according to Article 30
 - Total score obtained and score by criterion.
- b) The list of applications for which aid is not proposed to be granted, including the reasons why they do not benefit and the score obtained.

2. In accordance with Article 24(4) of Law 38/2003 of 17 November 2003, the proposal for a provisional ruling will be notified to the interested parties by publication on the website of the granting body.

Within ten days from the day following the publication on the website of the granting body of the proposal for a provisional ruling, the applicant entities may make such submissions to the granting body as they deem appropriate.

3. Once the allegations have been examined, and in accordance with Article 24.4 of the General Subsidy Law, the investigating body will formulate the proposal for a final decision, which will be notified to the interested parties through publication on the website of the awarding body, so that within 10 days from the date of notification, the proposed beneficiaries will communicate their acceptance, on the understanding that their request will lapse if there is no response within this period.



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4. In accordance with Article 24.6 of Law 38/2003, of 17 November, the proposals for provisional and definitive resolutions do not create any rights in favour of the proposed beneficiary, until the resolution of the concession has been notified to it.

Article 27. Resolution.

1. The granting body will resolve the procedure, adopting the resolution in accordance with the provisions of Article 25 of Law 38/2003 of 17 November.

2. The decision shall be notified to the interested parties by publication on the website of the granting authority. It shall include, at least

a) The list of applications for which aid is granted, with at least the following information:

The NIF of the beneficiary or beneficiaries.

Location where the performance will take place.

Technology group to which the application has been assigned

Power of the installation receiving the aid, as defined in Article 3 of Royal Decree 413/2014 of 6 June, even if the installations are covered by RD 244/2019 of 5 April, expressed in MW.

Amount of unit aid granted, expressed in EUR/MW

Amount of the total aid granted, expressed in euro, which may be paid to the beneficiary as an advance as set out in Article 15

Maximum eligible unit budget in EUR/MW, to be established in the relevant call.

Term of minimum unitary contribution to be paid by the beneficiary (Am), in euros/MW, which will be established in the corresponding call.

Score obtained.

Maximum time limit for completion of the action.

b) The list of applications for which the aid is not granted, including the reasons why they are not beneficiaries and, where appropriate, the score obtained.

3. The maximum period for the resolution of the procedure and its notification is six months from the publication of the extract of the notice in the corresponding "Official Gazette", unless the notice postpones its effects to a later date, as established in Article 25 of Law 38/2003 of 17 November. If, after this period has elapsed, the competent body for deciding not to



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had notified that decision, the persons concerned shall be entitled to expect that the application will be rejected.

4. Against the resolution, which will put an end to the administrative procedure in accordance with the provisions of Article 114 of Law 39/2015, of 1 October, an optional appeal for reversal may be lodged under the terms and within the time limits provided for in Articles 123 and 124 of the aforementioned law, or an administrative appeal may be lodged with the contentious-administrative jurisdiction.

5. The beneficiaries of the aid will be included in the list of beneficiaries published in accordance with Article 115(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

6. The aid granted will be published in the National Grants Database in accordance with Article 20 of Law 38/2003 of 17 November 2003.

Article 28. *Modification of the concession resolution.*

1. Projects with granted aid must be implemented in the time and form approved in the granting resolution. However, where specific circumstances arise which, exceptionally, objectively alter the technical or economic conditions taken into account for the grant of the aid, an application may be made to the same body which issued the decision to grant the aid to amend the decision. Any changes to the project will be required simultaneously:

- a) That the change does not affect the objectives pursued with the aid, its fundamental aspects, the determination of the beneficiary, nor does it prejudice the rights of third parties. For this purpose, the change shall not be considered to affect the determination of the beneficiary when it is due to operations of merger, absorption or division of the initially beneficiary company, in accordance with the regulations in force.
- b) That the modifications are due to supervening and exceptional causes, which could not be foreseen at the time of the request.
- c) That it does not lead to an increase in the subsidy granted.
- d) That the request for modification is made at least three months before the end of the project execution period, and is expressly accepted by the holder of the body that issued the concession resolution.

2. The request for amendment, which shall be made in accordance with the provisions of Article 21 of this order, shall be accompanied by a report setting out the reasons for the changes and justifying the inability to comply



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the conditions imposed in the concession decision, and compliance with the requirements set out in paragraph 1 above.

3. The body responsible for resolving requests for modification will be the owner of the body that issued the concession decision.
4. The maximum period of resolution will be three months.

CHAPTER IV

Justification and payment of aid

Article 29. *Justification of project implementation.*

1. Justification by the beneficiaries of the performance of the actions that make up the project must be provided to the investigative body within a maximum period of three months from the date on which the maximum period for completion of the action established in the concession resolution or its possible extension expires.
2. The documentary justification will be carried out through the computer application that will be available at the Electronic Headquarters of the granting organ, by means of a written document addressed to the instructing organ, together with which the following documentation will be provided in general:
 - a) Documentary justification of the technical implementation of the actions, through the provision of a technical report. This report will justify compliance with the conditions imposed on the favourable granting of the aid and the compliance of the actions with these conditions, as well as the results obtained. This technical report will be drawn up and signed by a competent qualified technician who will be the author of the project or the person responsible for directing the execution of the actions. In addition, the report will expressly include the date of completion of the actions, which will be considered as such for the purposes of Article 17.4.
 - b) A copy of the certificate issued by the person in charge of reading certifying the start of the discharge of electrical energy, when this certificate is required, or specific documentation requested in the corresponding call when this certificate is not applicable.



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- c) Definitive registration of the installation in the administrative register of electricity production installations, when this registration is mandatory.
- d) Permission from the beneficiary to the investigating body for access to electricity production data (for five years from the start of operation) of the project, so that it can be verified that the installation is still in operation.
- e) Certified list and copy of the orders and/or contracts related to the actions carried out. In the case of "turnkey" supplies, the contract signed between the beneficiary and the contractor must specifically state the scope and the contractual amount sufficiently broken down to enable the investment associated with the items eligible and not eligible for aid to be determined, when these are included in the scope of the supply.
- f) A certified list and copies of invoices and corresponding bank receipts for the eligible expenditure incurred and corresponding to the budget and contracts submitted.

Invoices must be detailed and include, with sufficient identification, the items and amounts corresponding to the actions to be supported. The concepts that appear in the invoices must correspond to those that appear in the budget presented in the application for aid within the descriptive report, and which will have served to carry out the evaluation of the applications, as well as to formulate the corresponding resolutions.

In addition, the proofs of payment must be clearly identifiable and related to the invoices provided. The awarding body will not admit as justification of the actions carried out, invoices or payments that do not respond to these requirements.

As a general rule, the payment or expenditure concerned shall be deemed to have been made when it is actually paid before the end of the period of justification defined in paragraph 1 of this Article. If the form of payment is a bank transfer, it shall be justified by means of a copy of the receipt of the charge for the transfer. The concept of the transfer shall include the invoice number or, failing that, the concept paid. In all receipts of payment provided, the beneficiary must appear as the issuer of the payment. If the issuer of the payment does not appear on the receipt, proof from the bank containing information on the issuer of the payment, the recipient of the payment, the date and the amount shall be provided.



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- g) For those projects with an investment amount equal to or greater than one million euros, a supporting account must be submitted with an auditor's report that meets the conditions set forth in Article 74 of the Regulation of Law 38/2003 of 17 November, General Subsidies Act, approved by Royal Decree 887/2006 of 21 July, and with the scope and conditions of the review of the supporting account that will be determined by the granting body. The submission of this supporting account and auditor's report exempts the submission of the documentation provided for in sections e) and f) above.
- h) Proof that the beneficiary or beneficiaries hold the account number(s) from which the invoice payments have been made and, where appropriate, the receipt of aid.
- i) Compliance with tax and social security obligations, in accordance with Article 22 of Royal Decree 887/2006 of 21 July.
- j) A responsible declaration that no other aid has been received for the same purpose where applicable.
- k) Photographic report of the main equipment and facilities that are the object of the aid, identifying equipment and/or facilities, as well as their nameplates, and where the advertising poster of the action is shown. Information and link to the beneficiary's website, if available, where the beneficiary informs the public of the support obtained from the ERDF Community Funds, providing a brief description of the operation, in a manner proportionate to the level of support provided, with its objectives and results, and highlighting the financial support of the European Union.
- l) Supporting documentation on the process of contracting the actions by the beneficiary.
- m) Responsible declaration and supporting documentation that proves the existence of separate or differentiated accounting for all transactions.
- n) A responsible statement attesting to the legality of the procurement process for the actions, as well as compliance with national and Community rules on equal opportunities and non-discrimination requirements applicable to this type of action, in particular those relating to the accessibility of the buildings or infrastructure concerned, compliance with national and Community environmental standards, and development



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sustainable, and that effective and proportionate anti-fraud measures have been implemented in the management of the supported project.

ñ) In the case of participation in local electricity market projects, documentation proving participation in such projects. This documentation shall consist of a contract of association for innovation in which it participates directly or through an aggregator, or equivalent documentation justifying such participation. If the project has not been carried out for reasons beyond the control of the beneficiary, this shall be duly justified.

3. In the case of regional management, the awarding body may establish in the call the supporting documentation it deems appropriate for the proper verification of the actions subsidized.

4. In any case, if the activity has been carried out and the time limit to justify it has expired, only a part of the costs incurred has been paid, so that the right to receive the corresponding aid is lost, the principle of proportionality will be applied.

5. Notwithstanding the above, the investigating body may draw up additional accreditation and justification instructions for cases where the complexity of the action or the high amount of aid so requires.

6. Failure by the beneficiaries of the aid to provide justification in time, as provided for in the preceding paragraphs, shall result in the loss of the right to receive the aid and, where appropriate, in the repayment of the advance by the beneficiaries, as provided for in Articles 35 and 36.

7. The investigative body may require the beneficiary to provide any additional supporting documentation to verify the suitability of the action carried out for which the aid was granted. The beneficiary is obliged to provide such documentation within a maximum period of fifteen days from receipt of the communication from the investigative body.

8. The granting authority may carry out on-the-spot checks on individual operations to ensure that the expenditure has been properly certified and the beneficiary shall be required to provide such checks.

9. The investigating body may either appoint the personnel it deems appropriate or use the services of specialised independent companies to monitor, control and verify the approved actions, not only in the final phase of verification but also at intermediate moments, when the purposes for which the aid is granted can be verified.



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10. The granting authority or any national or Community audit body may ask the beneficiary at any time during the period laid down in Article 140 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and for at least five years after the expiry of the period for substantiation laid down in Article 29(1) to produce any of the original documents used to grant assistance or to justify the performance of the action (including invoices and supporting documents).

If the beneficiary does not provide the original documents requested within 30 days of the day following the request, this shall be considered a failure to comply with the obligation to justify the use made of the aid granted. This shall entail loss of entitlement to the aid and, where appropriate, repayment of the advance under the terms laid down in Articles 35 and 36.

Article 30. *Amount of unit aid to be certified.*

1. For the purposes of Article 31(3), the amount of the unit aid to be certified shall be calculated as follows

$$= \left(\frac{\text{Pj}}{\text{PotR}} - \text{Am} \right) \times \text{Pj}$$

Where:

Pj: Eligible budget justified by the applicant of the aid, in euro.

PotR: Actual installed power, in MW. The value of PotR, in the case of production facilities, will be that which appears in the administrative registration of the facility, as defined in Article 3 of Royal Decree 413/2014, of 6 June. When it cannot be obtained through this registration, it will be calculated through the data included in the Certificate of Electrical Installations, in the Operating Permit or in the Execution Project.

The Pj/PotR value, measured in Euro/MW, may not exceed the maximum eligible unit budget established for the installation. This limit will be defined in each call for each of the technologies that can participate in the competitive competition.

Am: Term of minimum unitary contribution to be paid by the beneficiary, in euros/MW, to be established in the corresponding call.



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The amount of the unit aid calculated in accordance with the above expression may not exceed the amount of the unit aid granted, as set out in the decision to grant the aid. If the unit amount of the aid calculated is greater than that laid down in the decision granting the aid, the latter shall be used to calculate the total aid to be certified.

If a negative value is obtained by applying the above formula, the aid is considered to be zero.

2. The amount of the total aid to be certified shall be calculated as follows

Where:

Pot: The minimum value between the actual installed power and the power of the installation as stated in the concession resolution.

3. The total amount of aid to be certified may not exceed the total amount of aid granted as stated in the decision to grant the aid.

Article 31. *Provisional certification, payment of aid and final certification*

1. Once the verification and checking of the justification described in Article 29 has been carried out, the body responsible for monitoring the aid will issue a provisional certificate attesting to the degree of compliance with the obligations laid down in the resolution granting the aid, with any amendments to that resolution that may have been approved. That provisional certification shall be notified to the beneficiary.

2. The interim certification shall include at least the following information:

NIF of the beneficiary or
beneficiaries. Location of the
action.

Technology group to which the application has been assigned

Power, established in the resolution granting the aid.

Amount of total aid granted as set out in the decision granting the aid.

Actual installed power of the installation, as defined in article 3 of Royal Decree 413/2014, of 6th June, even if the installations are within the scope of RD 244/2019, of 5th April.

Justified eligible budget, limited by the maximum unit eligible budget multiplied by the actual installed capacity of the installation.



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Amount of the total aid to be certified according to the justification made and as established in the previous article

Total amount of the advance paid to the beneficiary as set out in Article 15, and amount of aid still to be paid to the beneficiary.

3. Once the provisional certification has been made, the aid will be paid.
4. In the event that the assistance is co-financed by ERDF Community funds, the ERDF Intermediate Body shall make the corresponding request for reimbursement of the ERDF co-financing to the Managing Authority of the Operational Programme concerned.

Once this ERDF reimbursement request is accepted by the Managing Authority, the provisional certification shall automatically become final and shall be notified to the person concerned.

If the aid is not co-financed by the ERDF Community funds, the provisional certification shall be deemed to be final.

5. If the request for ERDF reimbursement is not accepted, or if the value requested is reduced, the body responsible for monitoring the aid will assess the reasons for non-acceptance, bearing in mind that if these are attributable to the beneficiary, this will result in the loss of the right to recovery and, where appropriate, the reimbursement of the advance for the corresponding amount in accordance with the provisions of Articles 35 and 36 of these rules. Following this assessment, it shall issue the final certificate indicating the final amount of the aid granted, as well as the amount to be repaid and the time limit for repayment, which may not in any event exceed three months from the date of notification of the final certificate.

6. The final certification shall indicate the final amount of aid granted.

7. The final certification shall include at least the following information:

Beneficiary's NIF.

Location of the performance.

Technology group to which the application has been assigned

Power established in the resolution granting the aid.

Actual installed power, as defined in article 3 of Royal Decree 413/2014, of 6 June, even when these are installations within the scope of RD 244/2019, of 5 April.

Justified eligible budget, which will in any case be less than the maximum unit eligible budget multiplied by the power of the installation.



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Final amount of aid granted.

Amount of aid in the form of co-financing with Community funds (ERDF)

If applicable, the amount to be returned in the event of partial or total refund, due to non-compliance, and the deadline for return.

Article 32. *Guarantees relating to the advance.*

1. The payment of the advance will be subject to a guarantee in accordance with Articles 42 et seq. of Royal Decree 887/2006 of 21 July.
2. Prior to the payment of the advance, under the terms established in the corresponding call, the receipt of the General Deposit Fund or equivalent, in the case of regional management of the aid, will be required to prove that the guarantee has been deposited in favour of the granting body.
3. The description of the guaranteed obligation shall include the text set out in the relevant call.
4. When the guarantee is provided to the Caja General de Depósitos, it will be provided by any of the methods established in the Regulations of the Caja General de Depósitos (Royal Decree 161/1997 of 7 February, approving the Regulations of the Caja General de Depósitos and the Order of 7 January 2000 implementing Royal Decree 161/1997 of 7 February approving the Regulations of the Caja General de Depósitos) and with the requirements established for it.
5. The period of validity of the guarantee will be at least for the maximum period of completion of the installations plus a period of eighteen months which may be modified by the call itself.
6. The amount to be guaranteed shall be equal to the amount of the advance plus interest calculated at the legal interest rate, for the duration of the guarantee.
7. Once the beneficiary of the aid has demonstrated that the installation has been fully completed within the time limit and the final certification has been issued in accordance with Article 31, the granting body will automatically request the cancellation of the corresponding guarantee.
8. If the amount of aid covered by the provisional certification is less than the advance paid and, after a procedure for its reimbursement, if the beneficiary does not make the corresponding reimbursement, the associated security shall be seized.



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9. In the event of other infringements referred to in Articles 35 and 36 and, after a procedure for reimbursement, if the collateral taker fails to reimburse, a request shall be made for the seizure of the corresponding collateral.

10. When the guarantee is provided to the Caja General de Depósitos, the seizure will be made in accordance with the applicable regulations for the processing and execution of guarantees set out in Royal Decree 887/2006 of 21 July, which approves the Regulations of the General Subsidies Act 38/2003 of 17 November, and Royal Decree 161/1997 of 7 February, which approves the Regulations of the Caja General de Depósitos.

CHAPTER V

Control and reimbursement of aid

Article 33. *Management, monitoring and control.*

1. Both the granting body and the ERDF Intermediate Body, each within the scope of its powers, shall ensure the proper management, interpretation and resolution of all aspects relating to the dossiers for the granting of aid applied for, as well as the monitoring, evaluation and control of such aid.

2. The ERDF Intermediate Body shall apply for reimbursement of the ERDF co-financing on the basis of the expenditure which has been justified. To this end, the granting authority shall provide the ERDF Intermediate Body with the information required for the correct certification of expenditure.

3. The ERDF Intermediate Body designated in accordance with the system of financial management provided for in Chapter 1 of Title I of Part Four of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and after the checks referred to in Article 125 of that Regulation, shall justify to the Managing Authority the expenditure on operations duly substantiated by the beneficiaries with a view to requesting reimbursement of the assistance granted to them from the European Commission.

In order to fulfil these control obligations, the ERDF Intermediate Body, in cooperation with the granting body where appropriate, shall carry out administrative and on-the-spot checks to verify the progress of the assisted actions and the eligibility of the certified expenditure.



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Beneficiaries shall be required to provide the information necessary for the purposes of verification and financial control by the ERDF Intermediate Body and by other competent bodies at national or European Union level.

4. The justification of the expenditure of the operations carried out by the beneficiaries shall be supported by accounting records kept by the beneficiaries, taking into account all provisions applicable to the Structural Funds concerning eligibility, management and control, and the management and control systems established by the Managing Authority, the Intermediate Body and, where appropriate, those approved by the European Commission for the assistance.

Article 34. *Instructions for compliance.*

The granting body and the ERDF intermediary body, within the scope of their respective powers, may issue any instructions necessary for compliance with the requirements of the relevant call for proposals and for the implementation and certification of expenditure to the ERDF of the subsidised operations.

Article 35. *Defaults, refunds and penalties.*

1. Failure to comply with the requirements set out in these bases, in the corresponding calls, in Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, in Regulation (EU) No. 1301/2013 of the European Parliament and of the Council of 17 December 2013 and in the other applicable rules, as well as failure to comply with the conditions that, where appropriate, have been established in the corresponding concession resolution, will result in the loss of the right to receive the aid and, where appropriate, after the appropriate procedure for repayment, to the obligation to return the amounts received plus the corresponding interest for late payment, at the time the breach is detected, in accordance with the provisions of Title II, Chapter I of Law 38/2003 of 17 November and Title III of Royal Decree 887/2006 of 21 July.

In particular, the refund procedure shall be initiated in the event of an unfavourable report of an audit by any of the administrations entitled to carry out such an audit.

2. Reimbursements shall be governed by the principle of proportionality, and by the extent of the financial consequences, as provided for in both national and Community rules, as set out in the following Article.



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3. The provisions of Title IV of Law 38/2003 of 17 November shall apply in the event of administrative infringements in the area of public subsidies and aid.

4. Infringements may be classified as minor, serious or very serious, in accordance with Articles 56, 57 and 58 of Law 38/2003 of 17 November. The power to impose sanctions for non-compliance is set out in Article 66 of the Act.

Article 36. *Criteria for graduation of possible non-compliance.*

1. Where compliance by the beneficiary comes significantly close to full compliance, and where there is evidence that the beneficiary has acted in a manner clearly conducive to satisfying its commitments and the conditions for the grant of the aid, a criterion of proportionality shall be taken into account in determining whether entitlement to the aid is lost or whether the advance on the aid is to be repaid.

If the actual installed capacity of the installation is less than the capacity for which the aid was granted as set out in the decision to grant the aid, the total aid received shall be reduced in proportion to the non-constructed capacity, the amount of unit aid granted in accordance with the methodology of Article 30 remaining constant.

2. If the installation is completed after the maximum time limit for carrying out the actions defined in Article 17, but within the maximum time limit for justifying the project defined in Article 29, eligible expenditure incurred before the maximum time limit for carrying out the actions may be considered validly justified.

If the installation is completed after the maximum time limit for justifying the project, the right to receive the aid granted will be lost, and any advance paid will be reimbursed, together with interest for late payment from the time of payment until the date on which the reimbursement is agreed.

The possibility of payment of the aid described in the previous paragraph shall in no case increase the time limits for justification laid down in Article 29.

3. In any case, the scope of the non-compliance will be total in the following cases:

- a) The distortion, inaccuracy or omission in the data supplied by the beneficiary which served as a basis for the grant.



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- b) Failure to comply with the purpose for which the funding was granted
- c) Non-registration in the official registers required by law for the development of the financed activity.

Article 37. *Information, communication, visibility and publicity.*

1. Any reference in any media to the subsidised project must comply with the requirements laid down by the granting body and the ERDF Intermediate Body, each within their respective areas of competence.
2. A poster must be installed and maintained in a place visible to the general public, of sufficient size to be perfectly visible and legible, clearly stating the title of the project and the name and image of the Programme, and mentioning the financial support granted by the ERDF, including the EU logo and the slogan "A way of making Europe", the poster for which must be installed, at least, for the period indicated in point 9 of Article 29, all as established in Article 18.4 of Law 38/2003 of 17 November. The graphic design of the poster and dissemination media to be used will comply with the requirements established by the ERDF Intermediate Body.

The beneficiary shall inform the public of the support obtained from the funds by providing a short description on its Internet site, if available, of the operation, in a manner proportionate to the level of support provided, with its objectives and results, and highlighting the financial support of the Union.

3. Acceptance of the grant implies acceptance of the provisions of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 and Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on information and publicity measures to be carried out by the Member States concerning the Funds of the European Union. In particular, the responsibilities of the beneficiaries for information and communication measures for the public are set out in paragraph 2.2. of Annex XII to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

Article 38. *Protection of personal data*

Compliance with the regulations established in Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the guarantee of digital rights, will be the responsibility of the granting body, before whom the



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interested parties may personally exercise their rights of access, rectification, cancellation or opposition.

Final disposition first. *Title of competence.*

This order is issued under the protection of rules 13 and 25 of article 149.1 of the Spanish Constitution, which give the State exclusive competence over the bases and coordination of the general planning of economic activity and the bases of the mining and energy regime, respectively.

Article 20(1)(1) and (3) shall apply only to the General State Administration.

Second final provision. *Development and implementation.*

The Minister for Ecological Transition and the Demographic Challenge, the competent bodies of the Secretariat of State for Energy and the Autonomous Communities and the IDAE, using their respective powers, shall adopt the measures required to implement this Order and its implementing and executing provisions.

Final disposition third. *Entry into force.*

This order shall enter into force on the day following its publication in the "Official State Gazette".

Madrid, a of 2020

The Fourth Vice-President of the Government and
Minister for Ecological Transition and the Demographic Challenge

Teresa Ribera Rodríguez