

## **ORDER ESTABLISHING THE REGULATORY BASES FOR AWARDING SUBSIDIES AS PART OF THE "INNOVA INVEST PROGRAMME" AT ICEX ESPAÑA EXPORTACIÓN E INVERSIONES, E.P.E. AND CALLING FOR APPLICATIONS IN 2021, WITHIN THE FRAMEWORK OF THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN.**

### I

ICEX España Exportación e Inversiones, E.P.E. (hereinafter, ICEX) is a public body whose purposes include attracting foreign investment to Spain. This government jurisdiction forms part of the general planning of economic activity related to trade.

As regards research subsidies, the Constitutional Court indicated in Ruling 175/2003, FJ. 8, that, "starting with subsidies for the "promotion and general coordination of scientific and technical research", this matter is reserved for the State, pursuant to the provisions of Article 149(1) 15 of the Spanish Constitution.

This authority includes the regulatory and executive actions required for the full performance of promotional activities (included in Constitutional Court rulings 90/1992, F. 2 and 190/2002, F. 8, in addition to any others), ensuring full compliance with the constitutional system for the distribution of authorities by which "the State regulates the conditions for granting subsidies under the aforementioned Article 149(1)(15) of the Spanish Constitution. This should, in short, be in a properly organised manner to promote research and development of technical innovations [...] (including the procedure rules), and to assume the administrative management of these subsidies' (STC (Constitutional Court ruling) 190/2000, F. 12)".

This is part of the INNOVA INVEST Programme, and pursuant to Article 3 of its Statutes, approved by Royal Decree 1636/2011 of 14 November, approving the statutes of the public body ICEX España Exportación e Inversiones to regulate the conditions for granting subsidies aimed at promoting foreign investment. The above with a view to attracting innovative, technology companies with a marked R&D&I component to Spain, and pursuant to the provisions of Article 149(1)(15) of the Spanish Constitution, providing the State with authority for the "promotion and general coordination of scientific and technical research". The order is therefore sufficiently enshrined in the Constitution for it to be approved.

### II

Following the World Health Organisation declaration as regards the international pandemic caused by COVID-19 on 11 March 2020, the Member States of the European Union quickly adopted coordinated emergency measures to protect the health of citizens and prevent the collapse of the economy.

These measures have had a drastic impact on the economy and society in all EU countries and, as a result, at the European Council meeting held on 21 July 2020, aware of the need for combined efforts and an innovative approach that would promote unity, resilience and transformation across the European Union, an agreement was reached on a far-reaching package of measures. This was known as the European Union Recovery Instrument (*Next Generation EU*), amounting to €750 billion and consisting of two instruments: the Recovery and Resilience Facility (hereinafter, RRF), and Recovery Assistance for Cohesion and the Territories of Europe (*REACT-EU*).

As a result of these agreements, the European Union adopted Council Regulation (EU) No 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument for supporting the recovery from the COVID-19 crisis and Regulation (EU) No 2021/241 of the European Parliament and of the Council of 12 February 2021, establishing the Recovery and Resilience Facility. This Facility is at the core of the EU's Extraordinary Recovery Measures.

Based on the foregoing, the Government of Spain has developed the Recovery, Transformation and Resilience Plan (hereinafter, the Recovery Plan), which sets out ten driving policies or levers that will directly affect the production sectors with the greatest capacity to transform the economic and social fabric. The Recovery Plan was approved by the Council on 13 July 2021.

The projects that fall under this Recovery Plan, in line with the objectives of the Recovery and Resilience Facility, and the ecological and digital transition, will facilitate structural reforms over the coming years through regulatory changes and investments that make it possible, on the one hand, to pursue a change in the productive model for the recovery of the economy after the COVID-19 pandemic and, on the other, to facilitate a transformation towards a more resilient structure that allows our model to successfully overcome any other possible crises or challenges in the future.

The INNOVA INVEST Programme, whose regulatory bases are approved under this order, forms part of policy V, "Modernisation and digitalisation of the industrial fabric and SMEs, the recovery of tourism and the promotion of an entrepreneurial Spain", specifically under component 13, "Promotion of SMEs", as investment 5.2. This programme contributes to achieving Objective 213 of the Council's Implementing Decision of 13 July 2021 approving the assessment of Spain's recovery and resilience plan, and consisting of at least 3,000 companies, at least 2,500 of which are SMEs. These must have participated in and completed projects by the fourth quarter of 2024 to support their internationalisation within the framework of the 2021-2022 and 2023-2024 Action Plans for the Internationalisation of the Spanish Economy. This objective is shared by all projects classed under investment 5 of component 13.

The INNOVA INVEST Program supports foreign investment in R&D, through a line of subsidies aimed at companies with foreign capital that undertake R&D activities in Spain, forming part of the national production and research fabric.

Furthermore, pursuant to the provisions of the Recovery Plan, Regulation (EU) 2021/241 of 12 February 2021, and its implementing regulations, in particular the Commission Communication regarding Technical Guidance on the application of the principle of "do no significant harm" as part of the Regulation on the Recovery and Resilience Facility, and in addition to the requirements of the Council Implementing Decision of 13 July 2021, all financed actions to be performed pursuant to this order shall respect the so-called principle of not causing significant harm to the environment ("Do No Significant Harm" principle, or the DNSH principle). This includes compliance with the specific conditions set out in component 13, Investment 5.2, of which it forms part.

### III

This order is structured into three Chapters, consisting of 43 articles, which, pursuant to Article 61 of Royal Decree-Law 36/2020 of 30 December, approving urgent measures for the modernisation of Public Administration and for the implementation of the Recovery, Transformation and Resilience Plan, contain both the regulatory bases, such as the 2021 non-regulatory call for subsidies. Finally, it includes a single additional provision on the protection of personal data, three final provisions on authority, the non-regulatory nature of the call and its entry into force.

As a result of the mandate established by Additional Provision 26 of Law 38/2003 of 17 November, on General Subsidies, this subsidy programme is regulated in its entirety by the aforementioned Law.

Article 17 of Law 38/2003 of 17 November establishes that, within the scope of Public Administration, as well as public bodies and other public entities with their own legal status and linked or dependent on the above, the corresponding ministers shall establish the appropriate regulatory bases for awarding subsidies by ministerial order. Taking into account that ICEX is attached to the Ministry of Industry, Trade and Tourism through the Secretary of State for Commerce, the corresponding Minister shall be responsible for establishing these bases. The procedure for awarding subsidies shall be competitive tendering.

These subsidies are considered as State aid and are awarded pursuant to 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 Text. Specifically, the subsidies regulated under this order are intended for industrial research and experimental development projects, pursuant to Article 25 of the aforementioned Commission Regulation (EU) No 651/2014 of 17 June 2014, respecting the maximum aid intensities set out in Article 25(5) and (6) the eligible expenditure set out in Article 25(3) and the thresholds in Article 4(1)(i).

This order complies with the principles of proper regulation, necessity, effectiveness, proportionality, legal certainty, transparency and efficiency set out under Article 129 of Law 39/2015 of 1 October, on the Common Administrative Procedure of Public Administration.

The principles of necessity and efficiency are therefore satisfied, as the regulatory initiative is justified within the framework of promoting investment by companies with some foreign ownership and a marked innovation component, contributing to improving the competitiveness and productivity of the Spanish economy. Furthermore, pursuant to the principle of proportionality, the rule is limited to regulations considered essential for establishing the regulatory bases.

Pursuant to the principle of legal certainty, this order is consistent with the entirety of the legislative order within its scope. Consideration has in addition been given to the principle of transparency, defining the purpose and scope, in addition to the involvement of the competent authorities in the process.

Finally, by applying the principle of efficiency, and by establishing objective and clear criteria for the complete management cycle as regards the processing of subsidies, this order pursues the correct use of public resources.

Finally, consideration must be given to the fact that Article 61 of Royal Decree-Law 36/2020 of 30 December, approving urgent measures for the modernisation of Public Administration and for the implementation of the Recovery, Transformation and Resilience Plan, addresses the processing of the regulatory bases and the call for subsidies that can be financed jointly using European funds. Bearing in mind, as indicated above, that the INNOVA INVEST Programme is financed, by the Recovery and Resilience Facility, these Regulatory Bases of the INNOVA INVEST Programme include the call for applications for the first edition.

In line with the article indicated above, this order has been subject to the mandatory report from the Attorney General and the delegated intervention of the Comptroller of the State Administration at the Ministry of Industry, Trade and Tourism.

The order is therefore adopted:

## CHAPTER 1

### General provisions

#### **Article 1.** *Object and purpose of the subsidies.*

1. The purpose of this order is to approve the regulatory bases of the subsidies aimed at promoting investments in Spain with a marked component of innovation undertaken by companies with some foreign ownership, within the framework of the INNOVA INVEST programme at ICEX España Exportación e Inversiones, E.P.E. (hereinafter, ICEX).

2. ICEX's INNOVA INVEST programme aims to promote investment in Spain by foreign companies with a marked innovation component. This thereby promotes integration with the national production and research fabric for those companies that contribute to improving the competitiveness and productivity of the Spanish economy.

The subsidy awarded as part of the INNOVA INVEST programme forms part of investment 5, internationalisation, Component 13, Promotion of SMEs, the Recovery, Transformation and Resilience Plan (hereinafter, Recovery Plan) of the Government of Spain and will contribute to achieving the corresponding objectives, pursuant to the regulations of the Recovery and Resilience Facility and the Recovery Plan for both a Europe and Spain.

## CHAPTER 2

### Regulatory Bases

#### **Article 2. Applicable regulations.**

1. The subsidies regulated in these regulatory bases will be governed, in addition to the provisions thereof, by the provisions of Law 38/2003 of 17 November, on General Subsidies, Royal Decree-Law 36/2020 of 30 December, approving urgent measures for the modernisation of Public Administration and for the implementation of the Recovery, Transformation and Resilience Plan, the regulation of Law 38/2003 of 17 November, on General Subsidies, approved by Royal Decree 887/2006 of 21 July, and by any current regulations that are applicable.
2. Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility and Commission Regulation (EU) 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 Text also apply to such subsidies.

#### **Article 3. Incentive effect of the subsidies.**

1. The subsidies must incentivise the activity to receive funding, i.e. the subsidies must change the behaviour of the company receiving the subsidy in such a way that it performs additional activities that it would not normally carry out, or that, without the subsidy, it would perform in a limited or different way.
2. Pursuant to the provisions of Article 6 of Regulation (EU) No 651/2014 of 17 June 2014, the subsidies shall be considered as having an incentive effect if the application for the subsidy has been submitted before work begins.
3. "Start of the project" means either the start date of the R&D activities, or the date on which the first agreement between the recipient and a potential contractor to perform project tasks is entered into, whichever happens first; preparatory work such as obtaining

permits and performing feasibility studies are not considered for the purpose of establishing when work begins.

#### **Article 4. Advertising.**

These regulatory bases, which, pursuant to Article 61 of Royal Decree-Law 36/2020 of 30 December, include the call for the 2021 Programme, will be published on the ICEX and Invest in Spain websites ([www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org)), as well as in the National Subsidies Database (hereinafter, the BDNS) and in the "Official State Gazette", pursuant to the provisions of Article 17(3)(b) and 20(8) Law 38/2003 of 17 November.

The calls will be published in the BDNS, and an extract of them in the Official State Gazette, pursuant to the procedure established in Article 20(8) of Law 38/2003 of 17 November.

#### **Article 5. Requirements of beneficiaries.**

Companies that meet the following requirements may obtain the status of beneficiaries for the subsidies regulated under this order:

- a) Perform an economic activity, whatever its legal form. They must prove that they are registered in the Census of Business People, Professionals and Withholding Agents held by the National Tax Administration or in the equivalent census held by the Regional Tax Administration, which must reflect the economic activity actually carried out on the date of applying for the aid.
- b) Be validly established in Spain at the time the subsidy is awarded.
- c) Have a foreign stake of at least 50% in its share capital. Foreign shareholders that hold share capital may be either legal persons residing abroad or natural persons residing in Spain.
- d) Have no outstanding debt with ICEX.
- e) Satisfy the requirements of Article 13(2) of Law 38/2003 of 17 November.
- f) Not be considered a "company in difficulty", pursuant to Article 1(4)(c) of Commission Regulation (EU) No 651/2014 of 17 June 2014, and in line with the definition of "company in difficulty" set out in Article 2(18) of that Regulation".
- g) Satisfy the current regulations on foreign investments.
- h) Satisfy the current regulations on equal treatment and opportunities between men and women in employment and the workplace.
- i) Not have any outstanding repayments of subsidies or loans with the Administration or be subject to an outstanding recovery order following a preliminary decision of the European Commission that has declared a subsidy unlawful and incompatible with the common market.



- j) Accept the transfer of data between Public Authorities involved in order to comply with the provisions of the applicable European regulations, and in accordance with Organic Law 3/2018 of 5 December on the Protection of Personal Data and the guarantee of digital rights (Sample Annex IV).

**Article 6. Obligations of beneficiaries.**

The following shall be considered obligations of subsidy beneficiaries:

- a) The obligations set out in Article 14 of Law 38/2003 of 17 November.
- b) Maintain a separate accounting system that makes it possible to distinguish the recording of all transactions relating to the project for which the subsidy is granted, and using a dedicated accounting code for this purpose.
- c) Inform ICEX of any application and the securing of other subsidies for the performance of the financed activities.
- d) Accept their inclusion in a list of beneficiary companies published on the ICEX and Invest in Spain websites ([www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org)).
- e) As part of the design and implementation of the subsidised activities, the beneficiary companies shall ensure respect for the principle of "Do No Significant Harm", as provided for in the Recovery Plan, in Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 and its implementing regulations, in particular the Commission Communication regarding Technical Guidance on the application of the principle of "not causing significant harm" as part of the Regulation on the Recovery and Resilience Facility, in addition to the requirements of the Council Implementing Decision approving the assessment of Spain's recovery and resilience plan.
- f) Prove, at any time upon request, that it complies with the current regulations on equal treatment and opportunities between women and men in employment and the workplace.
- g) The beneficiary companies shall also comply with European and national obligations as regards the financing of the EU Recovery and Resilience Facility. To this end, they shall comply with the following:
- 1st) They shall be subject to monitoring actions performed by EU institutions pursuant to Article 22(2)(e) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February.
- 2nd) For the purposes of auditing and monitoring the use of funds in electronic form, they shall gather the harmonised categories of data referred to in Article 22(2)(d) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February. This data shall be entered into a single database.

- 3rd) They shall be responsible for reliability and monitoring in the implementation of subsidised activities, allowing the degree of achievement of each activity to be ascertained at all times.
- 4th) They shall establish mechanisms to ensure that the activities to be undertaken by third parties contribute to the achievement of the planned actions and that these third parties provide any necessary information that may be required to calculate the value of the corresponding indicators, milestones and objectives under the Recovery Plan.
- 5th) They shall assume responsibility for maintaining an adequate audit trail of the activities performed within the framework of this subsidy and the obligation to keep the supporting documents. Information will be supplied under the terms established by the Ministry of Finance and Public Service pursuant to the corresponding national and European Union regulations.
- 6th) Keep documents in electronic form for a period of five years after the task is undertaken, pursuant to Article 132 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012. This period shall be three years when the funding is for less than 60,000 euros.
- 7th) Ensure the consistency of the underlying expenditure and the adoption of measures aimed at preventing, detecting, reporting and correcting fraud and corruption, preventing a conflict of interests and double funding.
- h) Comply with the advertising and information obligations set out under Article 23.

#### **Article 7. Subcontracting.**

1. For the purposes of this subsidy, it is considered that a beneficiary subcontracts activities when it agrees with third parties that they will perform part or all of the activity that is the purpose of the subsidy. This concept does not apply to contract costs that the beneficiary incurs when performing the subsidised activity on its own account.
2. The subcontracted activities must be described and a financial estimate included in the application for the subsidy. At the request of ICEX, the beneficiary companies shall support these estimates using documents that certify the subcontracting agreements entered into with third parties at this stage.
3. The beneficiary may not subcontract more than 50% of the value of the subsidised activity.

Under no circumstances may they subcontract activities that increase the cost of the subsidised activity without adding value to its contents.



4. When the activity agreed with third parties exceeds 20% of the value of the subsidy and this amount exceeds 60,000 euros, the subcontracted activity shall be required to comply with the following requirements:

- a) The agreement shall be entered into in writing.
- b) The agreement shall be authorised in advance by ICEX.

5. No agreement may be divided with a view to reducing the value of the agreement and avoiding complying with the requirements of the above paragraph.

6. Subcontractors will only be answerable to the beneficiary, who shall be fully responsible to the Administration for the performance of the subsidised activity.

For the purposes of the provisions in the above paragraph, beneficiaries shall be responsible for ensuring, as part of the performance of the subsidised activity outsourced to third parties, that the limits established in the regulations governing the subsidy are satisfied in terms of the nature and value of eligible expenses. Contractors shall also be subject to the duty to collaborate provided for in Article 46 of Law 38/2003 of 17 November, allowing proper verification of compliance with these limits.

7. Should the beneficiary of the subsidy subcontract part of the activity covered by this subsidy, it shall put mechanisms in place to ensure that subcontractors satisfy the principle of "Do No Significant Harm" to the environment.

8. Under no circumstance may the beneficiary agree for the subsidised activities to be performed by:

- a) Persons or companies affected by any of the prohibitions under Article 13 of Law 38/2003 of 17 November.
- b) Persons or companies that have received other subsidies for the performance of the outsourced activity.
- c) Intermediaries or advisers when the corresponding payments are defined as a percentage of the total cost of the transaction, unless this payment is justified by reference to the market value of the work performed or services rendered.
- d) Companies related to the beneficiary, unless under the following circumstances:
  - 1) Prior authorisation is obtained from ICEX
  - 2) The eligible amount does not exceed the direct cost incurred by the related company. The cost will be proven in justifying this under the same terms established for proving the beneficiary's expenses
- e) Persons or companies applying for subsidies as part of the same call and programme who have not obtained a subsidy because they do not meet the requirements or do not pass the corresponding assessment

**Article 8. Eligible expenses.**

1. The subsidy shall be awarded to cover expenses on experimental development or industrial research projects that fall within the following scope of eligible expenses:

- a) staff costs: researchers, technicians and other auxiliary staff, in so far as they are dedicated to the project. Beneficiaries are required to prepare time sheets signed by their employees.
- b) instrument and equipment costs in so far as they are during the period in which they are used for the project; when the instruments and equipment are not used throughout their useful life for the project, only depreciation costs incurred during the project shall be considered eligible, calculated using generally accepted accounting principles,;
- c) building and land costs, in so far as they are during the period in which they are used for the project; as regards buildings, only depreciation costs incurred during the project shall be considered eligible, calculated using generally accepted accounting principles,; in the case of land, the transfer costs or capital costs actually incurred shall be considered eligible;
- d) The costs of contract research, knowledge and patents acquired or licensed from external sources in fully competitive conditions, as well as the costs of consultancy and equivalent services dedicated exclusively to the project;
- e) overheads and other additional operating expenses, including the cost of materials, supplies and similar products directly attributable to the project. These general costs shall not exceed 15% of the eligible staff costs.

2. Under no circumstances shall indirect taxes be considered eligible expenses.

3. Projects that do not fully comply with the EU's climate and environmental rules and priorities or the principle of 'Do No Significant Harm' as per the meaning defined in Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 in the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, shall not be eligible. The following shall not be eligible for funding, in so far as they are applicable to items where expenses for subsidies are not intended.:

- a) Investments relating to fossil fuels (including subsequent use).
- b) Activities under the Emissions Trading System (ETS) with projected greenhouse gas emissions that are not substantially lower than the benchmarks set for free allocation.
- c) The treatment of waste generated using mechanical biological treatment (MBT), incineration or landfills.
- d) Activities forming part of the long-term disposal of waste that may cause long-term damage to the environment (e.g. nuclear waste).

Furthermore, only activities that comply with the relevant national and European environmental legislation may be selected.

**Article 9. Duration of eligible activities, value of the subsidies and criteria for their determination.**

1. Eligible projects within the framework of these subsidies shall last a maximum of 24 months, with their specific duration established in each call for applications.
2. The maximum subsidy per beneficiary shall not exceed 800,000 euros. In the event that several beneficiaries on the programme belong to the same business group, this maximum limit shall apply to the total subsidies granted to them. If this amount is exceeded, the subsidy amount shall be awarded to the projects with the highest valuation until this limit is exhausted. A business group shall be considered as per the provisions of Article 42 of the Commercial Code.
3. Furthermore, each call for applications shall establish the minimum amount of all eligible items included in each application, which shall be at least 250,000 euros.
4. The subsidy shall be calculated as a percentage of the eligible items pursuant to the following maximum intensity percentages, depending on the size of the company and the type of project:

	Small companies	Medium-sized companies	Large companies
Industrial research	70%	60%	50%
Experimental development	45%	35%	25%

To establish the type of project referred to in the above table, industrial research projects and experimental development projects shall be considered pursuant to the definitions in Articles 2(85) and 2(86) of Commission Regulation (EU) No 651/2014 of 17 June 2014.

Furthermore, in determining the size of the company, the criteria used shall be that set out in Article 2 of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014.

5. Under no circumstances shall self-billing of the beneficiary company be accepted, nor the billing of natural persons or self-employed persons with a direct relationship with the foreign parent company or the beneficiary company (shareholders, directors, staff, etc.).
6. The granting of subsidies is conditional on the existence of adequate and sufficient credit at the time of the award decision.
7. Pursuant to the provisions of Article 7 of Law 11/2020 of 30 December on the National Budget for 2021, and Article 37 of Royal Decree-Law 36/2020 of 30 December, financing corresponding to these subsidies is contingent upon the objectives set out in the Recovery Plan being met.

8. The amount of financing may not in any case exceed the cost of the activity.

**Article 10. Guarantee system.**

Beneficiaries shall not be required to provide a guarantee.

**Article 11. Competent bodies in relation to subsidy management and decisions.**

1. The Research and Innovation Financing Department at Invest in Spain, the Executive Division at ICEX, shall be responsible for instructing and organising the procedure for awarding subsidies. This body shall also be responsible for monitoring activities in receipt of funding.

2. The Assessment Committee shall be appointed by the Person in charge of the Delegated Council and shall be made up of the following:

- a) The Head of Invest in Spain's Executive Management, who will act as the Chairman, although this position may be delegated to the Head of the Management team in charge of the programme.
- b) The Head of the Management team in charge of the programme, who may delegate this position to the Head of the corresponding department.
- c) The head of the Economic and Finance Department, who may delegate this position to the Deputy Head of the Economic Finance Department.
- d) Up to a maximum of four public sector experts in the field of foreign investment, EU programmes and R&D activities.
- e) The General Secretary, who may delegate this position to the Deputy Head of the Legal Advice Department, will act as the Secretary.

Decisions shall be taken by a simple majority of the members with the right to vote. The Secretary shall have the right to speak, but not to vote.

Its functioning shall comply with the provisions set out in Section 3, Chapter 2 of the Preliminary Title of Law 40/2015 of 1 October on the Legal System for the Public Sector, using the human and material resources currently available to ICEX. This is pursuant to the provisions of Article 2.2 of Royal Decree 776/2011 of 3 June, which abolishes certain professional bodies and establishing criteria for standardisation in the creation of professional bodies in Public Administration and Public Bodies.

3. The decision in the procedure shall correspond to the Chairman of ICEX, notwithstanding any delegation of powers that may be in place at any given time.

4. The ethical performance of the investigating body, the assessment committee and the award body will adhere to the Code of Ethics and Conduct published on the ICEX

website: <https://www.icex.es/icex/es/navegacion-inferior/codigo-etico-conducta/index.html>.

5. Generally speaking, pursuant to the rules set out for the prevention of fraud, all persons involved in the procedure for selecting beneficiaries and ensuring compliance with the corresponding conditions, including members of the Assessment Committee, shall reinforce their commitment to this objective by making a conflict of interest disclosure statement, undertaking to keep this up to date in the event that the circumstances regarding the original declaration change, which will prevent them from participating in the procedure. The template used for this shall be provided for in Annex IV.A to Order HFP/1030/2021 of 29 September, which sets out the management system for the Recovery, Transformation and Resilience Plan.

#### **Article 12. *Electronic processing***

1. Pursuant to Article 14(2) of Law 39/2015 of 1 October, on the Common Administrative Procedure of Public Administration, companies shall interact with the Administration using electronic means, meaning that applications must be submitted electronically. Both the award procedure and the justification procedure and, where appropriate, the repayment procedure, shall be managed electronically using ICEX's electronic records (<https://oficinavirtual.icex.es/oficinavirtual/>).

2. The applicant may access the ICEX e-Office through the certificate used to submit their application,,: <https://oficinavirtual.icex.es/planesempresa/login>, to consult the documents submitted and the status of their application.

3. The use of electronic notifications shall comply with the provisions of Article 43 of Law 39/2015 of 1 October. Furthermore, a complementary system of alerts shall be made available to the affected party by email.

4. The provisional and final decision proposals, in addition to rejection, award, any possible amendment decisions and any other instruments forming part of the procedure shall be published at <https://www.icex.es/icex/es/index.html> and <https://www.investinspain.org/en/index>, and shall have all the effects of notifications made pursuant to the provisions of Article 45 of Law 39/2015 of 1 October, in relation to competitive tender procedures.

5. Forms, statements of compliance and the other electronic documents to be submitted during the different phases of the procedure will be available on the ICEX and Invest in Spain websites and must be filled in when necessary.

6. During the phases of the procedure in which, in the interests of administrative simplification, the submission of statements of compliance is permitted instead of certain documentation, these statements of compliance shall be submitted in electronic format, electronically signed by the declarant.

7. Applicants shall not be required to file documents already held by the body with competence for the award, pursuant to the provisions of Articles 28(3) and 53(1)(d) of

Law 39/2015 of 1 October. The time at which the documents were submitted, and the administrative body to which they were submitted to, must be specifically indicated in the application questionnaire, details thus being provided of the application number indicated at the time, providing that no more than five years have elapsed since the end of the corresponding procedure. Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, express consent shall be requested by ICEX to process the data included in the questionnaire by the beneficiary. In cases where it is materially impossible to obtain the document or when the interested party refuses to consult their personal data, the competent authority shall require that the applicant submits it, or, failing that, demonstrates the requirements referred to in the document by other means.

**Article 13.** *Procedure for granting subsidies.*

1. The system for granting subsidies will be competitive tendering.
2. The award procedure shall begin ex officio with the publication of the call for applications, as set out in Article 4.

**Article 14.** *Representation.*

1. Natural persons signing or electronically submitting the documents on behalf of the applicant or beneficiary companies must be awarded the necessary power of attorney for each intervention, as established under the terms of Article 5 of the aforementioned Law 39/2015 of 1 October.
2. The person signing the application shall be required to demonstrate when submitting the application that they have sufficient legal powers to act on behalf of the requesting legal person. Failure to comply with this obligation, when remedial action is not taken, shall result in the application being rejected, pursuant to the provisions of Article 68 of Law 39/2015 of 1 October.

**Article 15.** *Deadline for the submission of applications.*

1. The term for submitting applications shall begin on the day following the date on which the extract of the call for applications is published in the Official State Gazette and will close, at the latest, 2 months later (at 23:59:59 Spanish mainland time), to be counted from the day following the date on which the extract of the call for applications is published in the aforementioned Gazette.
2. Applications submitted after the deadline shall be considered inadmissible.

**Article 16.** *Formalisation and submission of applications*



1. Applications shall be submitted using the ICEX e-Office (<https://oficinavirtual.icex.es/planesempresa/login>), accessible via the ICEX website [www.icex.es](http://www.icex.es) and the INVEST IN SPAIN website [www.investinspain.org](http://www.investinspain.org), depending on the template available for the subsidy in question. The process shall be performed electronically, a digital certificate recognised by ICEX thus being required (anyone signed up to the @firma platform).

2. In addition to the application filled out online applicants shall also submit the following via the e-Office:

- a) Annex 1, Project Report, including a description and the aims of the project, in addition to the corresponding technical information.
- b) Annex 2, Financial data, providing economic and financial information.
- c) Other documentation that the applicant considers relevant to the assessment of the project, such as Remuneration Records or collaboration agreements.
- d) Written declaration granting the necessary rights and access to ensure that the Commission, the European Anti-Fraud Office ("OLAF"), the European Court of Auditors, the European Public Prosecutor's Office and the competent national authorities can exercise their powers.
- e) Acceptance of the transfer of data between the Public Authorities involved. in compliance with the provisions of the applicable European regulations and pursuant to Law 3/2018 of 5 December on the Protection of Personal Data and guarantee of digital rights, in line with the approach established in Annex IV.B of Order HFP/1030/2021 of 29 September.
- f) The following statements of compliance:
  - 1 Statement of Compliance in which the applicant lists any subsidies requested or received from other Authorities or bodies for the same purpose and object and the amount, in addition to agreeing to provide information on anything that may be requested or obtained while these subsidies remain active.
  - 2 Statement of Compliance stating that they have no outstanding debts in relation to the repayment of subsidies, loans or advances with the Administration and that they are not subject to an outstanding recovery order following a previous decision from the European Commission declaring the subsidy unlawful and incompatible with the common market.
  - 3 Statement of Compliance stating that they are not affected by any of the prohibitions referred to in Article 13(2) of Law 38/2003 of 17 November, pursuant to the provisions of Articles 26 and 27 of the Subsidies Regulation, approved under Royal Decree 887/2006 of 21 July.
  - 4 Statement of Compliance regarding the commitment to comply with the cross-cutting principles established in the Recovery Plan and that could affect the

aspect being dealt with, pursuant to the model established in Annex IV.C to Order HFP/1030/2021 of 29 September.

5 Statement of Compliance stating that no significant harm is caused to the six environmental objectives, pursuant to Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, as per the model set out in Annex III to this order.

6 Statement of Compliance with the corresponding models approved by the competent authorities pursuant to national and European regulations, and in compliance with the obligations required within the framework of the Recovery Plan. These statements of compliance will be determined in the call for applications and will have been advertised accordingly before the deadline for submitting applications.

**Article 17. Compatibility with other subsidies.**

1. Receipt of the subsidies provided for in this order shall be compatible with the receipt of any others that, for the same purpose and objective, may be offered by other public authorities or other public or private, national, regional or local bodies, provided that the combined sum of the subsidies does not exceed the total cost of the subsidised activity or the cumulative limits set out in this article.
2. Pursuant to Article 8 of Commission Regulation (EU) No 651/2014 of 17 June 2014, the subsidy covered by this order may be combined with State subsidies granted by any other public authority, provided that they relate to different identifiable eligible costs. Furthermore, these subsidies may only be combined with State subsidies awarded by any other public authority, when fully or partly related to the same eligible costs, when this combination does not exceed the aid intensity or the highest aid amount applicable to the subsidy in question pursuant to Commission Regulation (EU) No 651/2014 of 17 June 2014.
3. Pursuant to Article 9 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021, projects covered by this order may receive support from other EU programmes and instruments provided that this support does not cover the same cost.

**Article 18. Criteria for assessing applications.**

1. The assessment will be performed using the selection criteria set out below:

CRITERIA	WEIGHTING
a) Impact on employment	30

b) Investment in technology resources used for R&D purposes	20
c) Promotion of partnership agreements with public and private stakeholders	15
d) Continuity in the performance of R&D activities	15
e) Contribution to the ecological transition and digital transformation	20
<b>Total</b>	<b>100</b>

Applications that do not reach a minimum of 45 points, as set out in the table, will be directly ruled out.

In the event of a tie, priority will be given to those awarded the highest score for the a) "Impact on employment" criteria in the table above.

2. In the criteria assessed, consideration shall be given to the following aspects:

a) Impact on employment (30 points)

1) Impact on job creation (20 points)

In assessing this sub-criterion, consideration shall be given to the intensity of the investment project in creating new jobs in the project. The recruitment of new qualified workers, especially on permanent contracts, will be viewed positively.

2) Impact on maintaining jobs (5 points)

In assessing this sub-criterion, consideration shall be given to the intensity of the investment project in creating a workload for workers already employed by the company. The participation of qualified, permanent workers will be regarded positively.

3) Impact on the gender gap (5 points)

5 points will be awarded when the salaries of men and women with the same responsibilities are similar. To prove this, the applicant may present the company's Remuneration Records or any other document to prove it.

b) Investment in technology resources used for the purposes of R&D (20 points)

In assessing this criterion, consideration shall be given to the investment volume. Expenses on items with a marked R&D component, such as those relating to patents or licenses, will be regarded positively. The launch of the project being associated with a patent or license acquired, or the result of the project being subject to a patent or license shall be regarded positively.

c) Promotion of partnership agreements with public and private stakeholders (15 points)

The technology contribution made to the project by other agents operating in Spain, whether public or private, will be taken into consideration with this criterion. Consideration shall be given to both the weight of the work the collaborating agent is responsible for and the technology quality of the work. Letters of intent, agreements and other documents detailing the work to be carried out with collaborators may be submitted to prove this collaboration.

d) Continuity in the performance of R&D activities (15 points)

For the purposes of assessing this criterion, both the long-term contribution of the project to R&D activities in Spain by the beneficiary company and, where appropriate, the group company, shall be taken into consideration. This assessment shall be performed by duly checking the foreign owner's plans to undertake new R&D activities in Spain as a result of the project for which funding is being requested, particularly plans for opening new units to carry out future R&D projects.

e) Contribution to the ecological transition and digital transformation (20 points)

1) Contribution to the ecological transition (10 points)

This criterion shall assess the project's contribution to the ecological transition, pursuant to Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment.

2) Contribution to the digital transformation (10 points)

To assess the project's contribution to the digital transformation, consideration shall be given to the digital innovation of the project; the intensity with which digital technologies are used; and the impact of these technologies on other industries and society as a whole.

**Article 19. Instruction and assessment of the procedure.**

1. Pursuant to Article 11, the Department for Research and Innovation Financing at ICEX-Invest in Spain's Executive Division shall be responsible for the instruction and organisation of the procedure for awarding subsidies, which shall perform as many actions as it deems necessary ex officio to determine, establish and check the data based on which the proposed decision is supported.

2. Once the deadline for submitting applications has elapsed, and once compliance with the requirements has been ensured, the body responsible for the procedure shall publish a provisional list of accepted applications that were submitted on time and will, therefore, move on to the assessment phase on the ICEX and Invest in Spain websites ([www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org)).

Furthermore, and simultaneously, the body responsible for the procedure shall publish a provisional list of applications that have been rejected, with the reasons for their rejection

on the ICEX and Invest in Spain websites ([www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org)), allowing the affected parties to submit the documentation required to correct the corresponding shortcoming within 10 working days from the day following the publication of the provisional list.

Once the deadline for submitting corrections has elapsed, a final list of the accepted and rejected applications will be published by the same means.

3. The assessment body is the Assessment Committee, assisted by the body responsible for the procedure. It shall be responsible for the technical analysis and economic feasibility of the applications accepted. It will subsequently issue a report indicating the result of the assessment performed, as established in Article 24.4 of Law 38/2003 of 17 November.

4. The members of the Assessment Committee shall not receive any remuneration for the performance of their corresponding duties.

5. The body responsible for the procedure, taking into account the file and the report from the Assessment Committee, will prepare the proposed provisional decision up to the maximum amount of subsidies that may be distributed, providing due justification. This will then be communicated to the beneficiaries.

6. Likewise, it will communicate the proposed provisional decisions for all applications that comply with the administrative and technical conditions established to acquire the status of beneficiaries, but which have been unsuccessful as the maximum authorised amount for each call for applications has been reached.

7. Proposed decisions will be published at [www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org).

#### **Article 20. Award resolution.**

1. Following the publication of the proposed provisional decision, a period of 10 working days shall be granted for the submission of objections.

2. In the event that funds are released before the approval of the final decision, due to any of the subsidy beneficiary companies withdrawing from the process or failing to adequately fulfil the requirements to be named as a beneficiary, the funds released will be allocated to the next applicant in the list after the last beneficiary awarded the subsidy and based on the score obtained, and without the need for the Assessment Committee to meet again..

3. Once the objections filed by the interested parties have been examined, the proposed final decision will be prepared. This final decision must contain the proposed list of successful applicants and the corresponding amount, setting out their assessment score and the criteria followed to reach this assessment. This will then be submitted by the body responsible for the procedure to the award body in order to proceed with the final decision.

4. The final decision will be published on the ICEX and Invest in Spain websites ([www.icex.es](http://www.icex.es)/[www.investinspain.org](http://www.investinspain.org)) and on the National Subsidies Database, and will be communicated to the interested parties within 20 working days following the date on which the instrument is issued.

5. Pursuant to Article 25(4) of Law 38/2003 of 17 November, the deadline for issuing and communicating the award decision shall be six months following the publication of the call for applications in the Official State Gazette, unless its effects are postponed to a later date.

Similarly, pursuant to Article 25(3) of Law 38/2003 of 17 November, the decision, will indicate, where appropriate, the list of alternates and state that all other applications have been rejected, in addition to containing the list of companies to which the subsidy is being awarded.

Should this period end without any resolution having been communicated, pursuant to Article 25(5) of Law 38/2003 of 17 November, the interested companies shall consider that their application has been rejected on account of administrative silence in response to their application for subsidies.

6. An appeal for reconsideration may be filed against the decision, which puts an end to the administrative procedures as established in Article 114 of Law 39/2015 of 1 October., This shall be within a period of one month from the day after the notification of the decision, pursuant to the provisions of Articles 123 and 124 of Law 39/2015 of 1 October. Administrative appeal proceedings may be taken before the Administrative Appeal Chamber of the High Court within two months from the day after notification or publication of the decision, pursuant to the provisions of Law 29/1998 of 13 July regulating Administrative Appeals Jurisdiction.

Appeals for reconsiderations for the reversal of the decision in the award procedure shall be filed electronically, pursuant to Law 39/2015 of 1 October.

**Article 21.** *Proof of compliance with the purpose of the subsidy, the expenses incurred and payment of the subsidy*

1. In so far as these subsidies are likely to be financed using funds from the Recovery and Resilience Facility, this shall be proven pursuant to the applicable national and European regulations.

2. The project's compliance with the purpose of the subsidy and the justification of expenses incurred shall be proven once the project is complete, within three months as a maximum, and with the possibility of extending this period for a maximum of three further months, subject to a request for extension from ICEX. The late submission of any documents proving the eligible investment shall lead to the withdrawal of the subsidy awarded.

3. This proof shall be submitted electronically and digitally using ICEX's e-Office, at <https://oficinavirtual.icex.es/justificacionayudas/inicio>.



4. Evidence shall be submitted to prove any expenses incurred, pursuant to the provisions of the certification manual published on the ICEX and Invest in Spain websites, available at [www.icex.es/criteriosjustificacion](http://www.icex.es/criteriosjustificacion).

5. The beneficiary shall demonstrate compliance with the purpose of the subsidy by submitting a technical report of the activities carried out as part of the project.

6. The subsidy shall only be paid once the corresponding activities forming part of the project or activity are undertaken, having certified compliance with the purpose for which the subsidy was awarded and the supporting documents filed have been checked as regards the expenses incurred. ICEX reserves the right to perform any checks it deems appropriate, including a physical verification of the project.

However, the call for applications may offer the possibility of making partial payments of the total subsidy awarded, based on partial justification, and depending on the expenses incurred up until a given date. The conditions for this partial payment shall be determined in the same way in the corresponding award decision.

7. Additional supporting documents may be required to justify the expenditure incurred, as well as to comply with the Recovery Plan's appropriate management and monitoring system, providing details of what has to be introduced into this system. This is in addition to the computer applications or databases provided for in the national or European regulations for the management, monitoring and control of funding and objectives.

**Article 22.** *Changes in the conditions for performing the activity.*

1. The subsidised activities must be performed in the time and manner established in the award decisions.

2. However, the beneficiaries may ask ICEX to change the decision awarding the subsidy. The Chairman of ICEX, notwithstanding any delegated duties at any given time, is responsible for approving the decision that amends the decision originally awarding the subsidy. Any change in the conditions established for awarding the subsidy must satisfy the following five criteria:

- a) The change does not affect the objectives pursued by the subsidy, its core aspects or the appointment of the beneficiary.
- b) The change is expressly accepted by ICEX-Invest in Spain.
- c) The rights of third parties are not adversely affected.
- d) The modification request is submitted before the end of the eligible period.
- e) The amendment does not affect compliance with the principle of "Do No Significant Harm".

Any unauthorised changes with regard to this procedure in the funded budget approved shall result in the loss of the amounts subject to change. However, without changing the

total amount of the approved subsidy, any discrepancy between approved expenditure items, representing up to 20% of the subsidy authorised for each expenditure item, shall be permitted without the need to request prior authorisation from ICEX, provided that the other conditions established by the programme for each expenditure item are met.

3. The maximum period for deciding and providing notification of the modification decision shall be thirty working days from the date ICEX is informed of the change in the conditions considered for the awarding of the subsidy.

Once this period elapses, without the interested parties having been informed of a decision, the request for modification of the subsidy shall be understood as having been rejected on the grounds of administrative silence.

An appeal for reconsideration may be filed against the decision, which puts an end to the administrative procedures as established in Article 114 of Law 39/2015 of 1 October. This shall be within a period of one month from the day after the notification of the decision, pursuant to the provisions of Articles 123 and 124 of Law 39/2015 of 1 October. Administrative appeal proceedings may be taken before the Administrative Appeal Chamber of the High Court within two months from the day after notification or publication of the decision,

4. No obligations affecting European or national legislation relating to the Recovery, Transformation and Resilience Plan may be modified.

### **Article 23. Advertising and information**

Beneficiaries of subsidies shall comply with the following obligations as regards advertising and information:

a) Those relating to the funding of the Recovery and Resilience Facility, pursuant to the applicable European and national regulations. In particular, in accordance with Order HFP/1030/2021 of 29 September, which sets out the management system for the Recovery, Transformation and Resilience Plan, information and communication measures in relation to activities implementing investments (informative posters, placards, printed and electronic publications, audiovisual material, websites, advertisements and press inserts, certificates, etc.) shall include the following logos:

1 The emblem of the European Union,

2 Along with the emblem of the Union, the sentence "Funded by the European Union – Next Generation EU";

3 Consideration shall be given to the graphic standards and standardised colours set out in Annex II to Implementing Regulation 821/2014, which lays down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, reporting on financial instruments, technical characteristics of information and communication measures for operations and the

system to record and store data. The following website can also be consulted: <http://publications.europa.eu/code/es/es-5000100.htm> and various examples of the emblem downloaded at [https://europa.eu/european-union/about-eu/symbols/flag\\_es#download](https://europa.eu/european-union/about-eu/symbols/flag_es#download).

- b) Those set out in Article 18 of Law 38/2003 of 17 November. In this regard, any reference in any media in relation to the approved investments shall include reference to the fact that they have been funded by the Ministry of Industry, Trade and Tourism.

Failure to comply with this obligation shall be considered a minor breach pursuant to Article 56(c) of Law 38/2003 of 17 November, and will be penalised in the form of a fixed fine as provided for in Article 59 of this law. Furthermore, this may be considered as cause for repayment pursuant to the provisions of Article 37(1)(d) of Law 38/2003 of 17 November and Article 93 of its Implementing Regulations, approved by Royal Decree 887/2006 of 21 July.

- c) Any reference in any media to the approved investments shall use the Recovery Plan logo as a means of dissemination, available at <http://planderecuperación.gob.es/identidad-visual>

- d) When co-funded by another public authority, this shall be reflected when advertising the project.

All information posters and plaques shall be placed in a clearly visible location that is accessible to the public.

#### **Article 24. Control of the subsidy.**

1. The award body may, in addition to the competent supervisory bodies, including those defined in Article 22(2)(e) of Regulation (EU) 2021/241 of 12 February 2021 and Article 129 of the Financial Regulation (Regulation (EU, Euratom) 2018/1046 of 18 July 2018, perform any controls and inspections considered appropriate, both during the award stage and when paying the subsidy, or after this stage. This with a view to ensuring the proper allocation of the subsidy awarded, with the applicants required to collaborate and provide any other documentation and information deemed necessary to ensure compliance with the conditions established in this order. Furthermore, the beneficiaries hereby agree to facilitate any inspections and checks that may, as appropriate, be carried out.

In accordance with Article 16(2)(d), receipt of funds from the Recovery Plan shall be conditional upon a written commitment to grant the necessary rights and access to ensure that the Commission, OLAF, the European Court of Auditors, the European Public Prosecutor's Office and the competent national authorities exercise their powers of control.

Opposing these checks and inspections may constitute grounds for repayment of the subsidy, notwithstanding the corresponding sanctioning proceedings launched.

2. The award body shall apply measures aimed at preventing, detecting, communicating and correcting fraud and corruption, preventing conflicts of interests and double funding, pursuant to the provisions of Order HFP/1030/2021 of 29 September.
3. The Administration and any other body included in those referred to in Article 22 of Regulation (EU) 2021/241 of 12 February 2021 may access the information set out in the Beneficial Ownership Records, in addition to any other database at the Administration used to provide this information on beneficial owners.
4. For information purposes and in order to monitor these subsidies, the information will be transferred between the systems established with the European Funds Systems for management and control of these subsidies.

**Article 25. Non-compliance, repayments and penalties.**

1. Failure to comply with the requirements set out in this order and in other applicable provisions, as well as any conditions that, as appropriate, have been established in the corresponding award decision, shall give rise to the obligation to repay the subsidy received plus the corresponding interest on arrears at the time the non-compliance is detected, pursuant to the provisions of Article 77 of Law 47/2003 of 26 November on the National Budget.
2. The reasons indicated in Article 37.1 of Law 38/2003 of 17 November will be considered grounds for total or partial repayment. Furthermore, failure by entities in receipt of the subsidy to comply with the conditions of the "Do No Significant Harm" principle shall also result in the obligation to repay the amounts received.
3. The verification and control procedure shall be detailed in the calls for applications and shall be governed pursuant to the instructions and regulations established by the Ministry of Finance and Public Service in relation to the Recovery and Resilience Facility.
4. Pursuant to the provisions of Article 7 of Law 11/2020 of 30 December, and Article 37 of Royal Decree-Law 36/2020 of 30 December, if no expenses are incurred or in the event of total or partial non-compliance with the planned objectives, the beneficiary companies shall repay the funds received from the Public Treasury, either fully or partly, as applicable. The repayment procedure shall comply with the provisions of Law 38/2003 of 17 November.
5. Pursuant to Article 90 of the regulations implementing the General Subsidies Law, approved by Royal Decree 887/2006 of 21 July, voluntary repayments shall be understood as repayments made by the beneficiary without a request having been lodged by the Administration. To proceed with this payment, the provisions of the Economy and Finance Ministry Order of 1 February 1996 shall apply, the latter approving the Instruction for accounting operations to be followed as part of State expenditure implementation, and amended by Order HAP/336/2014 of 4 March. The interested party shall communicate their intention to proceed with a voluntary repayment of the

corresponding amount to the award management service, waiting to receive payment document 069 before proceeding with the payment.

6. Title II on the repayment of subsidies in Law 38/2003 of 17 November shall apply in relation to all items not regulated in this Article.

**Article 26. Criteria for assessing non-compliance.**

1. In the event of non-compliance with the conditions set out when awarding the subsidies, the amount to be deducted from the subsidy awarded shall be determined by applying the following criteria:

- a) Non-compliance with the purposes for which the subsidy was awarded or with the obligation to provide justification shall result in the full repayment of the subsidy awarded.
- b) When the beneficiary almost entirely complies with the aforementioned purposes and the beneficiary demonstrates that unmistakable actions have been taken with a view to satisfying its commitments and the conditions for the award of the subsidy, the amount to be deducted from the subsidy awarded shall be solely determined using the sum corresponding to the unjustified amount.

2. As regards capitalisation of the funded investment, the following criteria apply:

- a) If, as a result of the verification processes, it is concluded that the eligible investment was lower than the budgeted investment, but higher than the amount established in the call for applications as being the minimum amount acceptable for considering the project purpose to have been fulfilled, the subsidy awarded shall in this case be reduced, adjusting the corresponding amount to the investment actually justified.
- b) However, if it is determined that the eligible investment was lower than the amount established in the call for applications as the minimum acceptable investment, the beneficiary will be informed that the subsidy has been withdrawn. Likewise, if it is determined that the purposes for which the subsidy was awarded have been breached for any other reason, the beneficiary shall be informed that the subsidy has been withdrawn.

3. Unauthorised amendments to the eligible budget shall result in the value of the subsidy being reduced by the same amount as the amounts altered.

## CHAPTER 3

### Call for applications for subsidies in 2021

**Article 27.** *Purpose of the call for applications, purpose of the award and conditions.*

1. Calls for applications for subsidies in 2021 are hereby issued, pursuant to the terms of the regulatory bases set out in Chapter 2 of this order.
2. The purpose of these subsidies as part of the INNOVA INVEST programme is to promote investment in Spain by foreign companies with a high innovation component, fomenting their integration with the national production and research fabric, and contributing to improve the competitiveness and productivity of the Spanish economy.
3. This call for applications forms part of investment 5, internationalisation, Component 13, Promotion of SMEs, the Recovery, Transformation and Resilience Plan (hereinafter, Recovery Plan) of the Government of Spain and will contribute to achieving the corresponding objectives, pursuant to the regulations of the recovery and resilience facility and the Recovery Plan for both Europe and Spain.
4. The granting of subsidies is conditional on the existence of adequate and sufficient credit at the time of the award order.
5. The minimum amount for all eligible items included in each application shall be at least 500,000 euros.
6. The maximum subsidy per beneficiary shall be 800,000 euros.
7. The foreign stake in the beneficiary company must account for at least 50% of its share capital, on the provision that the country or territory in which it is located is not classified as a tax haven in accordance with Spanish regulations.

**Article 28.** *Financing.*

1. The budget allocated to this call for applications is 5m euros and shall be charged to heading 20.50.430A,742 of the 2021 National Budget. This item is being funded by the EU Recovery and Resilience Facility, established under Council Regulation (EU) No 2020/2094 of 14 December 2020 and providing for a European Union Recovery Instrument for supporting recovery from the COVID-19 crisis and regulated pursuant to Regulation (EU) No 2021/241 of the European Parliament and of the Council, of 12 February 2021.

Pursuant to the provisions of Article 7 of Law 11/2020 of 30 December, and Article 37 of Royal Decree-Law 36/2020 of 30 December, funding corresponding to these subsidies is legally dedicated to funding projects or action that form part of the Recovery Plan.



**Article 29.** *Procedure for granting subsidies.*

The procedure for awarding subsidies shall be competitive tendering, assessing the applications submitted by potential beneficiaries as established in Article 5, pursuant to the principles of advertising, transparency, equality and non-discrimination.

The criteria for assessing applications shall be those set out in Article 18 of this Order.

**Article 30.** *Requirements for applying for the subsidy and providing proof.*

The provisions of Articles 5 and 16 of this Order shall apply with respect to the requirements for applying for the subsidy and the means of proving them..

In terms of identifying applicants, the items set out in Article 8.1 of Order HFP/1030/2021 of 29 September shall be included: the tax identification number of the beneficiary, company name and tax address, in addition to proof of their registration in the Tax Records for business people, employers and withholding agents kept by the National Tax Administration or in the equivalent tax records of the Provincial Tax Authority, indicating the economic activity actually carried out on the date on which the application for the subsidy was made.

**Article 31.** *Obligations of beneficiaries.*

Beneficiaries shall comply with the obligations set out in Article 6 of this order.

**Article 32.** *Competent bodies in relation to the instruction and resolution of the procedure.*

With respect to the competent bodies for directing and deciding on the procedure, the provisions of Article 11 of this order shall apply.

**Article 33.** *Deadline for the submission of applications.*

The deadline for submitting applications shall begin on the day following the date on which the extract of the call for applications is published in the Official State Gazette and will close, at latest, 2 months later (at 23:59:59 Spanish mainland time), to be counted from the day following the date when the call for applications is published in the aforementioned Gazette.

**Article 34.** *Deadline for decision and notification.*

Articles 19 and 20 of this Order shall apply.

**Article 35.** *Documents and information that must be submitted with the application.*

The documents and information to be submitted with the application shall be as indicated in Article 16 of this Order.

**Article 36. Award decision.**

1. In addition to the publication of the provisional award resolution at [www.icex.es](http://www.icex.es) and [www.investinspain.org](http://www.investinspain.org), the body responsible for the procedure shall send an individual provisional notification by email to the companies due to receive a subsidy, asking them to submit the following documentation:

- a) A template in which they indicate whether they accept the proposed subsidy.
- b) An agreement between the parties for cases of outsourcing, pursuant to the programme conditions.
- c) The company's articles of association, indicating the percentage of foreign capital in its share capital.
- d) Valid evidence of the signatory's power of attorney.
- e) Any considered necessary in specific cases.

Once the period for the submission of objections has elapsed, the body organising the procedure, subject to a favourable report from the Budget Committee as regards the approval of the expenditure, shall send a proposal for a final decision to the ICEX Chairman.

2. The maximum period for issuing and providing notification of the award decision shall be six months after the end of the period for submitting applications.

**Article 37. Criteria for assessing applications.**

The provisions of Article 18 of this Order shall apply with respect to criteria for assessing applications.

**Article 38. Means of notification and publication.**

The provisions of Articles 12, 19 and 20 of this Order shall apply with respect to means of notification and publication of award orders,

**Article 39. Period for the performance of eligible activities.**

Eligible projects shall be implemented once the subsidy has been requested, between 1 January 2022 and 30 June 2023. The expenses listed in Article 8 of the regulatory bases that have been incurred in that period after the subsidy has been requested shall be eligible for receiving support.

#### **Article 40. Justification for subsidies.**

1. Justification as regards compliance with the purpose of the subsidy in undertaking the project for which it was awarded, and justification of expenses incurred, shall be submitted electronically and digitally via ICEX's e-Office <https://oficinavirtual.icex.es/justificacionayudas/inicio>. Justification shall be provided pursuant to the conditions set out in the award decision, once the project has been undertaken and no more than three months thereafter, with the possibility of extending this deadline by a maximum of three additional months, subject to a request for extension from ICEX.

However, in cases where the beneficiary requests partial payment of the subsidy awarded pursuant to the provisions of Article 41 of this order, a partial justification of the expenses incurred up until the date indicated in this article (31 December 2022) shall be provided before the project actually comes to an end.

2. The late submission of any documents certifying the eligible investment shall lead to the withdrawal of the subsidy awarded.

3. The expenses incurred shall be accredited by submitting evidence of the expenditure incurred, pursuant to the provisions of the certification manual published on the ICEX and Invest in Spain websites, available at [www.icex.es/criteriosjustificacion](http://www.icex.es/criteriosjustificacion). This supporting economic report shall contain the following:

a) A summary sheet containing the budget approved for the activity and its comparison with the budget actually used, breaking down the expenses according to annual payments and items appearing in the award granted.

b) A numbered list of expenses and investments in relation to the activity, providing all the necessary supporting documents and amounts paid with the total amount, including identification of the payer and the document, the total amount and the part applicable to the project, date of issue and date of payment, making reference to any possible deviations from the approved budget and the explanations for these deviations.

c) A list of other income or subsidies used to fund the activities, with an indication of the amount and origin, as applicable.

d) Unless submitted previously, three quotes for when the amount of the eligible expenditure exceeds 15,000 euros that, pursuant to Article 31.3 of Law 38/2003 of 17 November on General Subsidies, must have been requested by the beneficiary. In the event that the amount for the requirement to request three quotes is modified in the ICEX Internal Procurement Instructions, the provisions of these shall apply.

e) In the event that ICEX has not been authorised in the application to consult the applicant's status at the Social Security Treasury General and the Tax Administration, the certificates demonstrating that it is up to date in the payment of its tax and social security obligations, pursuant to the provisions of Article 14(1)(e) of Law 38/2003 of 17 November.

f) Certificate from the company, signed by an individual with sufficient power, as regards the costs of in-house staff employed on the project (with a breakdown of people, professional category, hours worked and cost/hour), attaching a copy of the payroll document and TC1 and TC2 social security documents (only the page corresponding to the person or persons assigned to the project). Timesheets signed by the employees must in addition be submitted to show proof of the work carried out.

g) When recruiting highly-qualified personnel, a certificate of the employment history of the recruited staff issued by the Social Security, in addition to the documentation listed in the above point.

h) Any other documentation that the body responsible for the procedure deems necessary to correctly justify the costs of the activities undertaken.

4. Compliance with the purpose of the subsidy shall be demonstrated by the beneficiary in the form of a technical report, indicating the activities undertaken and the results obtained, containing:

- a) Identification of the beneficiary and their status as a company with foreign ownership.
- b) Location of the activity.
- c) Contribution to the pillars of the Recovery Plan (Ecological Transition, Digital Transformation, Social and Territorial Cohesion, Gender Equality).
- d) Information on the compliance with contracts and agreements entered into with subcontractors (research centres, universities, companies, etc.)
- e) Activities undertaken.
- f) Modifications made, as applicable, along with justification of the need for these.
- g) Results obtained and their dissemination.
- h) Conclusions.

#### **Article 41. Payments**

1. The subsidy shall only be paid once the activities corresponding to part of the project or activity are undertaken, having demonstrated compliance with the purpose for which the subsidy was awarded and checked the supporting documents filed as regards the expenses incurred. ICEX reserves the right to perform any checks it deems appropriate, including a physical verification of the project.

2. However, the beneficiary company may request the partial payment of the subsidy awarded for work performed between 1 January 2022 and 31 December 2022. The beneficiary companies requesting this partial payment shall be required to demonstrate the partial results of the subsidised R&D project, clearly identified during the period in question. The body responsible for the procedure will open a justification period of 1

month in which companies requesting partial payment can submit a technical and economic justification of the work performed for the corresponding checks to be carried out. The body responsible for the procedure shall approve the partial payment at its discretion, based on verification of the partial results, or refuse it, with the justification being given at the end of the eligible period for all valid expenditure. The amount of the partial payment shall be determined based on the accepted expenditure, applying the corresponding aid intensity. The procedures for justifying expenses established in the conditions shall apply, in addition to the instructions set out in the award decision.

#### **Article 42. *Non-compliance***

In cases of non-compliance in relation to the value of the eligible investment budgeted for, the value to be deducted from the subsidy shall be determined by taking the value of the unjustified amount, when compliance by the beneficiary is equal to or greater than 60% of the budgeted investment and it demonstrates that unmistakable actions have been taken with a view to satisfying its commitments and the subsidy award conditions.

#### **Article 43. *Resources.***

1. The instruments issued as part of the procedure for awarding subsidies may be challenged in the cases and forms established in Law 39/2015 of 1 October, on the Common Administrative Procedure of the Public Authorities. An appeal for reconsideration may be filed against the specific decision with the same body within a period of one month, this putting an end to the administrative procedure., Alternatively, an administrative appeal may be filed within a period of two months, calculated from the day following the date on which the notification was issued in the event that a specific instrument has been issued, and in the second case, the day following that date on which, pursuant to the specific regulations, the implied rejection was issued, notwithstanding any other appeals that may be lodged.

2. The filing of appeals for reconsideration shall be filed before ICEX, using its Electronic Records.

#### **Sole additional provision. *Personal data protection.***

Pursuant to the provisions of Organic Law 3/2018 of 5 December, on personal data protection and the guarantee of digital rights, and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, it is hereby indicated that:

a) Pursuant to the provisions of the aforementioned regulations, ICEX has a Personal Data Protection Policy in place. To this end, the purpose of the collection and automated processing of personal data requested under this procedure is to handle your

participation in the ICEX programme known as INNOVA INVEST. Furthermore, and pursuant to the provisions of Article 16(1)(e) of this order, the transfer of data between the Public Authorities involved is accepted along with the request to comply with the provisions of European regulations.

b) The data subject is required to provide the details requested by ICEX. Should they refuse to provide these details, they shall not be allowed to participate in this programme.

c) The data subject provides their consent for the processing of their personal data by ICEX, according to the purpose indicated above.

d) Once the data subject's involvement in the programme run by ICEX has come to an end, ICEX shall retain the data for the period required by law to comply with its legal obligations, notwithstanding the rights of the data subject, which may be exercised at any time pursuant to the provisions of the following points.

e) In no case will ICEX employ its users' personal data for purposes other than those mentioned above. Furthermore, the data subject declares that all of their data provided are true and correct and is obliged to notify ICEX of any changes in relation to this.

f) The data subject is entitled to oppose the processing of any of their data that is not absolutely necessary for formalising their involvement in the programme and to use it for any purposes other than the maintenance of their contractual relationship. They may exercise their rights of access, rectification, erasure, opposition, limitation of processing and data portability at any time when these rights are applicable, by writing via email to our Data Protection Officer at [delegadoprotecciondatos@icex.es](mailto:delegadoprotecciondatos@icex.es), attaching a photocopy of their ID or equivalent identification document and substantiating their request.

g) Furthermore, if the data subject believes that their data has been processed inappropriately, they shall have the right to file a claim with the Spanish Data Protection Agency (Call Jorge Juan, 6 – 28001 Madrid [www.aepd.es](http://www.aepd.es)) or ICEX's Data Protection Officer.

### **First final provision. Powers**

This ministerial order is protected by the powers conferred upon the State in Article 149(1)(15) of the Spanish Constitution on the promotion and general coordination of scientific and technical research.

### **Second final provision. Non-regulatory status of the call for applications**

The call for applications for subsidies in 2021 set out in Chapter 3 of this order lacks regulatory status as it is an administrative instrument. Therefore, an appeal for reconsideration may be filed against the call for applications, which puts an end to the



administrative procedures. This shall be within a period of one month to the body responsible for issuing the instrument, pursuant to the provisions of Articles 123 and 124 of Law 39/2015 of 1 October. Administrative appeal proceedings may also be taken before the Administrative Appeal Chamber of the High Court within two months from the day after notification or publication of the decision.

**Third final provision. *Entry into force***

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

THE MINISTER FOR INDUSTRY, TRADE AND TOURISM

María Reyes Maroto Illera

## ANNEXES

The following annexes shall be downloaded from [www.icex.es](http://www.icex.es) or [www.investinspain.org](http://www.investinspain.org) and attached to the application via ICEX's e-Office (<https://oficinavirtual.icex.es/planesempresa/login>)

### ANNEX I - PROJECT REPORT

<b>1.1. DESCRIPTION OF THE CONTENT, OBJECTIVES AND TECHNOLOGY INNOVATIONS PROVIDED BY THE PROJECT</b>
<b>1.1.1 Background</b>
<b>1.1.2 Objectives of the project</b>
<b>1.1.3 Technology developments.</b>
<b>1.1.4 Work plan</b>
<b>1.1.5 Results</b>
<b>1.1.6 Knock-on effect on the regional economy</b>
<b>1.1.7 Strategic interest of the technologies to be developed in Spain</b>
<b>1.1.8 Other</b> <i>(add other information that the applicant considers relevant to the assessment of the project)</i>

*Add more pages if necessary*

**1.2. BREAKDOWN OF THE TECHNICAL ACTIVITIES IN COLLABORATIONS, DISTINGUISHING BETWEEN PUBLIC AND PRIVATE AGENTS IN THE PROJECT**

**1.2.1 Promotion of collaboration agreements between private stakeholders**

**1.2.2 Promotion of collaboration agreements between public stakeholders**

**1.3. CONTINUITY IN THE PERFORMANCE OF R&D ACTIVITIES**

**1.4. CONTRIBUTION TO THE ECOLOGICAL TRANSITION AND DIGITAL TRANSFORMATION**

**1.5. CONTRIBUTION TO GENDER EQUALITY**

**1.6. IF THE PROJECT BUDGET INCLUDES PATENTS, LICENSES, ETC. DESCRIBE THESE BELOW. OTHERWISE, INDICATE AS "NOT APPLICABLE"**

**1.7. ADVERTISING AND MARKETING OF THE PROJECT OUTCOME, INCLUDING SPECIFIC REFERENCES**

## ANNEX II - FINANCIAL DETAILS OF THE PROJECT

<b>1.1. PROFIT AND LOSS STATEMENT</b> (In euros without decimals) Data as at 31 December each year	HISTORIC		FORECAST		
	2019	2020	2021	2022	2023
OPERATING INCOME (1)					
- REVENUE					
Domestic Sales					
Exports					
- OTHER INCOME					
Subsidies					
Other income					
OPERATING EXPENSES (2)					
- OPERATING CONSUMPTION					
- STAFF COSTS					
- PROVISION FOR FIXED ASSET DEPRECIATION					
- OTHER COSTS					
OPERATING PROFIT (1) – (2)	0 €	0 €	0 €	0 €	0 €
NET FINANCIAL INCOME					
EXTRAORDINARY PROFIT					
PRE-TAX PROFIT					
TAXES					
RESULTS FOR THE YEAR					

<b>1.2. SUMMARY BALANCE SHEET</b> (In euros without decimals) Data as at 31 December each year	HISTORIC		FORECAST		
	2019	2020	2021	2022	2023
NET FIXED ASSETS					
- INTANGIBLE FIXED ASSETS					
- PROPERTY, PLANT AND EQUIPMENT					
- FINANCIAL FIXED ASSETS					
- OTHERS					
CURRENT ASSETS					
OTHERS					
- TOTAL ASSETS					
SHAREHOLDERS' EQUITY					

- SHARE CAPITAL					
- RESERVES					
- OTHERS					
LONG-TERM PAYABLES					
SHORT-TERM PAYABLES					
OTHERS					
TOTAL LIABILITIES					

1.3. TOTAL STAFF AT THE APPLICANT COMPANY OR ENTITY	HISTORIC		FORECAST		
	2019	2020	2021	2022	2023
MANAGEMENT AND ADMINISTRATION (No. of individuals)					
<i>From the previous entry, indicate the No. of women</i>					
PRODUCTION (No. of individuals)					
<i>From the previous entry, indicate the No. of women</i>					
SALES (No. of individuals)					
<i>From the previous entry, indicate the No. of women</i>					
R&D (No. of individuals)					
<i>From the previous entry, indicate the No. of women</i>					
Others (No. of individuals)					
<i>From the previous entry, indicate the No. of women</i>					
<b>Total (No. of individuals)</b>					
<i>From the previous entry, indicate the No. of women</i>					

1.4 R&D, PROPERTY, PLANT AND EQUIPMENT AT THE APPLICANT ENTITY	HISTORIC		FORECAST		
	2019	2020	2021	2022	2023
Land and buildings					
Hardware and software					
Others					

1.5. ANNUAL R&D EXPENDITURE AT THE APPLICANT ENTITY	HISTORIC		FORECAST		
	2019	2020	2021	2022	2023
ACTIVE INVESTMENTS IN R&D AND TANGIBLE FIXED ASSETS					
Land and Buildings					

Hardware and software					
Others					
<b>CURRENT R&amp;D COSTS</b>					
Staff					
<i>From the Staff costs indicated in the previous entry, indicate the amount corresponding to women</i>					
Materials					
Other Costs					
<b>TOTAL INVESTMENT AND EXPENSES</b>	<b>€0</b>	<b>€0</b>	<b>€0</b>	<b>€0</b>	<b>€0</b>



### ANNEX III

**STATEMENT OF COMPLIANCE WITH THE PRINCIPLE OF 'DO NO SIGNIFICANT HARM' TO THE SIX ENVIRONMENTAL OBJECTIVES ACCORDING TO ARTICLE 17 OF REGULATION (EU) 2020/852<sup>1</sup>**

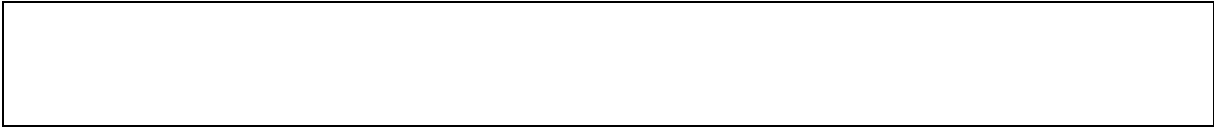
<b>Name of the activity</b>	
<b>PRTR (Recovery, Transformation and Resilience Plan) component to which the activity belongs</b>	
<b>Measure (Reform or Investment) of the PRTR Component to which the activity belongs, stating the sub-measure where appropriate</b>	
<b>Climate and environmental labelling assigned to the measure (Reform or Investment) or, where appropriate, to the PRTR sub-measure (Annex VI, Regulation 2021/241)</b>	

<b>Mr/Ms</b>	
<b>Holder of NIF (Tax Identification Number)</b>	
<b>Representing him/herself or the company</b>	
<b>Holder of CIF (Tax Identification Code)</b>	
<b>In his/her capacity as</b>	
<b>Contact details (address, telephone, e-mail)</b>	

### STATES

That he/she has submitted a request for the above activity for the project called:

<sup>1</sup> Model statement prepared pursuant to the provisions of the "Guidance for the design and implementation of actions in line with the principle of "Do No Significant Harm" to the environment Annex III.



and that it complies with the following:

**A.** The activities carried out do no significant harm to the following environmental objectives, as set out in Article 17 of Regulation (EU) 2020/852 establishing a framework to facilitate sustainable investment by introducing a classification system (or 'taxonomy') for environmentally sustainable economic activities:

1. **Climate change mitigation** - an activity is considered to cause significant harm to climate change mitigation if it results in significant greenhouse gas (GHG) emissions.
2. **Climate change adaptation** - an activity is considered to do significant harm to climate change adaptation if it leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets.
3. **Sustainable use and protection of water and marine resources** - an activity is considered to do significant harm to the sustainable use and protection of water and marine resources if it is detrimental to the good status or the good ecological potential of bodies of water, including surface water and groundwater, or to the good environmental status of marine waters.
4. **Circular economy, including waste prevention and recycling** - an activity is considered to do significant harm to the circular economy, including waste prevention and recycling, if it leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources, or if it significantly increases the generation, incineration or disposal of waste, or if the long-term disposal of waste may cause significant and long-term environmental harm.
5. **Air, water or soil pollution prevention and control** - an activity is considered to do significant harm to pollution prevention and control if it leads to a significant increase in emissions of pollutants into air, water or land.
6. **Protection and restoration of biodiversity and ecosystems** - an activity is considered to do significant harm to the protection and restoration of biodiversity and ecosystems if it is significantly detrimental to the good condition and resilience of ecosystems, or detrimental to the conservation status of habitats and species, including those of Union interest.

**B.** The activities are adapted, where appropriate, to the characteristics and conditions established for the measure and sub-measure of the Component and reflected in the Recovery, Transformation and Resilience Plan.

**C.** The activities carried out under the project will comply with existing applicable environmental regulations.

**D.** The activities carried out are not excluded for financing by the Plan as they do not comply with the DNSH principle in accordance with the Technical guidance on the

application of 'do no significant harm' under the Recovery and Resilience Facility Regulation (2021/C 58/01)<sup>2</sup>, Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Spain and the appropriate Annex<sup>3</sup>.

1. Construction of crude-oil refineries, coal-fired thermal power stations and projects involving the extraction of petroleum or natural gas, due to failure to comply with the climate change mitigation objective.
2. Activities related to fossil fuels, including downstream use of fossil fuels, except for projects related to power and/or heat generation using natural gas, as well as related transport and distribution infrastructure, which meet the conditions set out in Annex III of the Technical Guidance of the European Commission.
3. Activities under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks. Where the greenhouse gas emissions from the subsidised activity are not expected to be significantly below the benchmarks, a reasoned explanation shall be provided.
4. Compensation for indirect costs of the ETS.
5. Activities related to waste landfill and incinerators. This exclusion does not apply to actions in plants exclusively dedicated to treating non-recyclable hazardous waste, and to existing plants, where the actions are for the purpose of increasing energy efficiency, capturing exhaust gases for storage or use or recovering materials from incineration ashes, provided such actions under this measure do not result in an increase of the plants' waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level.
6. Activities related to existing mechanical biological treatment plants. This exclusion does not apply to actions in existing mechanical biological treatment plants, where the actions under this measure are for the purpose of increasing energy efficiency or retrofitting to recycling operations of separated waste to compost bio-waste and anaerobic digestion of bio-waste, provided such actions under this measure do not result in an increase of the plants' waste processing capacity or in an extension of the lifetime of the plants; for which evidence is provided at plant level.
7. Activities where the long-term disposal of waste may cause harm to the environment.

**E.** The activity carried out does not have a direct impact on the environment, or primary indirect effects across the life cycle, i.e. any that materialise once the activity has been completed.

Failure to comply with any of the requirements set out in this statement shall give rise to the obligation to repay the amounts received and pay any default interest.

**Date**

**Signature:**

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<sup>2</sup> <https://www.boe.es/buscar/doc.php?id=DOUE-Z-2021-70014>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52021PC0322&from=EN>

## ANNEX IV

*Sample Declaration Form for the transfer and processing of data in relation to the implementation of actions for the Recovery, Transformation and Resilience Plan (PRTR).*

Mr/Ms ....., national ID no. ...., as  
Managing Director/Manager/ of the entity  
....., with tax ID No.  
....., and tax address at  
.....

....., beneficiary of aid financed with  
resources from the PRTR/ that is participating as a contractor/subcontractor in  
implementing the actions necessary for the achievement of the objectives defined  
in Component XX ".....", declares that they are aware of the  
applicable regulations, in particular the following paragraphs of Article 22 of  
Regulation (EU) 2021/241 of the European Parliament and of the Council of 12  
February 2021 establishing the Resilience and Recovery Facility:

1. Paragraph 2(d): "to collect, for the purpose of auditing and monitoring the use  
of funds in relation to measures for implementing reforms and investment projects  
under the Recovery and Resilience Plan, the following standardised categories  
of data in a searchable electronic format and in a single database:

i. The name of the end recipient of the funds;

ii. the name of the contractor and the subcontractor, where the final recipient of  
the funds is a contracting authority in accordance with Union or national public  
procurement law;

iii. the names, surnames and dates of birth of the beneficial owners or the  
recipients of the funds or the contractors, as defined in Article 3(6) of Directive  
(EU) 2015/849 of the European Parliament and of the Council (26);

iv. a list of measures for implementing reforms and investment projects under the  
Recovery and Resilience Plan, together with the total amount of public funding

*for these measures and indicating the amount of funds disbursed under the Facility and other Union funds".*

*2. Paragraph 3: "The personal data referred to in Paragraph 2(d) of this Article shall be processed by the Member States and by the Commission only for the purposes and for the duration of the relevant discharge audit and control procedures relating to the use of funds in connection with the implementation of the agreements referred to in Articles 15(2) and 23(1). As part of the Commission's discharge procedure, in accordance with Article 319 of the TFEU, the Facility shall be subject to reporting within the framework of the integrated financial and accountability reporting referred to in Article 247 of the Financial Regulation and, in particular, separately in the annual management and performance report".*

*In accordance with the aforementioned legal framework, the above party agrees to the transfer and processing of data for the purposes expressly stated in the aforementioned articles.*

....., XX ..... 202X

Signature: .....

Role: .....