

Clean energy for
EU islands:
SYMBIOTIX
Menorca, Spain

**Technical assistance for Menorca
Socialised PV plant and energy community with public-private
collaboration for building and exploiting (SYMBIOTIX)**

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Summary of technical assistance

The goal of the technical assistance is to find regulatory ways to involve local citizens as investors and owners of the PV plant implemented, owned and operated by the consortium of local municipalities. The project is led by the Consorci de Residus i Energia de Menorca – a Consortium formed by the eight municipalities of Menorca and the Insular Council of Menorca. The project also involves Institut Balear de l'Energia (public knowledge institution), who will help to ensure knowledge transfer after the project, and Ajuntament d'Es Castell, the municipality whose land will be used for the installation of the PV plant.

The Balearic Climate change and Energy Transition Law, approved in February 2019, requires the public administrations of the Balearic Islands to support participation of citizens, civil society organisations and local renewable energy communities in the deployment and management of renewable energy systems, specifically minimum 20% share for projects with installed capacity of more than 5 MW. This hasn't been implemented yet in any project. The PV project discussed in the report has an installed capacity less than 5 MW. However, it is used to show how the local participation can be achieved. Moreover, the report provides a guidance on different regulatory supported options for participation of local citizens and provides (if possible) existing examples in Spain (replication roadmap).

While in Spain there is experience in cooperative of citizens, fully public or private ownership of generation plants, there is limited experience with public-private collaboration in renewable energy project.

The technical assistance was implemented through multiple steps. During the first step, together with involved local and regional partners we assessed current status of the planned project, identifying open questions and relevant national, regional and local stakeholders that should be involved. The main open question was to identify possible options for co-ownership of RES plant between public bodies and local citizens, based on the national, regional, and local legal and regulatory framework

The report identifies possible regulatory solutions for the involvement of local stakeholder for the specific RES project and its implementation conditions identified by the local stakeholder. The options have been discussed with the representatives of Consell Insular de Menorca (CIME), the regional stakeholder, Balearic Institute of Energy and national stakeholder, IDAE. Based on the feedback the regulatory solutions and possible examples are proposed. In order to identify steps for the local implementation proposed solutions and its implementation steps have been discussed with the project partners.

While Menorca PV project represents a specific case, the report also provides the Replication roadmap for the involvement of local communities and citizens in the RES projects based on the current Spanish regulation. Roadmap includes five possible implementation options: RES as a separate entity, cooperative, public-private partnership, collective self-consumption or energy communities. For each of the provided options description, relevant legislation, possible stakeholder, ownership and management of RES plant, limitations and examples from Spain are provided.

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1. Menorca PV plant project

Consortio de Residuos y Energía de Menorca (referred to as the Consortium in this project) is the joint public body in charge of waste management and promoting energy efficiency in Menorca. The Consortium was created in April 1994. It is made up of the Consell Insular de Menorca (CIME) and the eight city councils of the island, that jointly undertake the study, programming and provision of services in the field of waste and energy in order to protect the environment and the health of people under the principles of sustainable development on the island of Menorca.

The Consortium is initiating a 0.5 MWp PV plant project that will be installed on the land owned by the Ajuntament d'Es Castell (Figure 1). The Consortium has already carried out a techno-economic analysis of a project with a capacity of 1.6 MWp that was planned on the provided location. Due to the connection of another RES project on the same grid connection line, the size of the planned project had to be decreased to 0.5 MWp.

The project “Socialised PV plant and energy community with public-private collaboration for building and exploiting” (SYMBIOTIX) aims to build and exploit the 0.5 MWp PV plant co-owned by public entities, including the Consortium and citizens as small investors.

The project to build the PV plant is approved and is undergoing the authorisations'/validation process. The public bodies are currently preparing the framework needed for the project. They will look for private investors through the public procurement procedure.

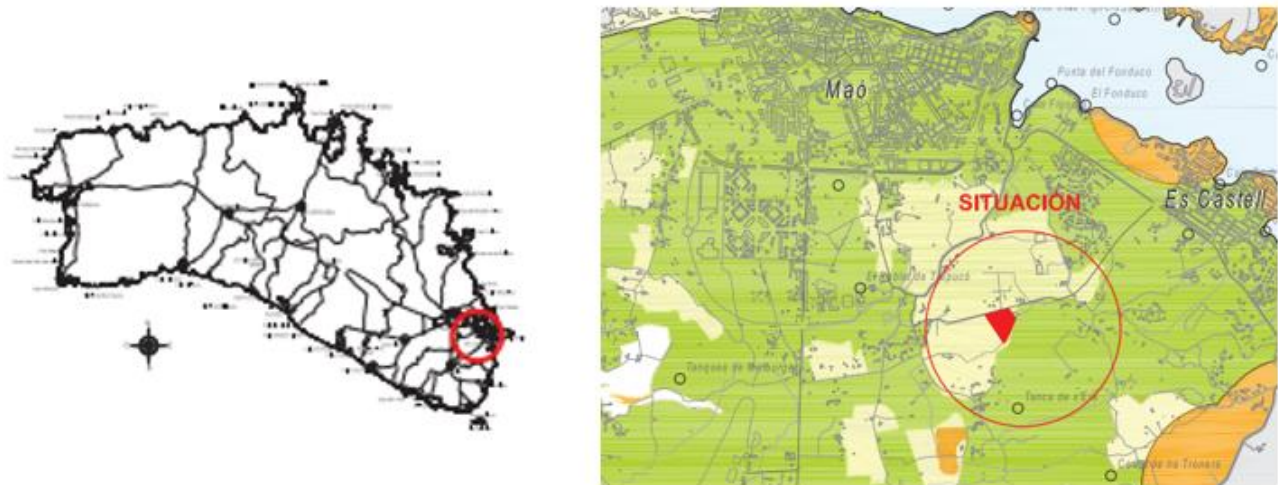


Figure 1- Location of the PV plant

The **main open question** to be answered in this report is to identify possible options for co-ownership of RES plant between public bodies and local citizens, based on the national, regional, and local legal and regulatory framework. During the process of preparation of this report, CIME and the project team have consulted with: the local legal representative and financial manager of the Consortium, representatives of Balearic Energy Institute and the Institute of Diversification and Saving of Energy (IDAE), the institute of the Ministry for the Ecological Transition and the Demographic Challenge.

2. Involvement of local citizens

The Balearic Climate change and Energy Transition Law¹, approved in February 2019, requires the public administrations of the Balearic Islands to support participation of citizens, civil society organisations and local renewable energy communities in the deployment and management of renewable energy systems. More precisely, Article 49 of the Law defines that the local participation of at least 20% should be encouraged or obliged for RES projects with less than 5.0 MWp or more than 5 MWp, respectively. The RES projects with local participation are defined to be projects of regional interest, with the effects regulated in articles 5.3, 6, 7 and 8 of Law 4/2010 on urgent measures for the investment boost in the Balearic Islands. The implementation of this 0.5 MWp project provides the Consortium with a first co-ownership project. This project is used as a showcase for finding a suitable way to allow participation of citizens in a renewable energy project.

Even if the location and technical aspects of the project are known, it is yet not clear what is the optimal legal procedure for involvement of the citizens as co-owners in such projects. The Consortium would like to start the process of project implementation in 2022.

The location of the PV plant will be on the land owned by the local government. Hence, taking into account the conditions needed for receiving a subsidy scheme², the community involvement will be limited to investment and possibly ownership of the plant but not management and operation. The PV plant is seen as a collective investment of public bodies and local community. Investors and owners will benefit from the sale of generated electricity depending on their ownership/investment share. Electricity will be sold to Endesa based on the Power Purchase Agreement (PPA). This project represents a case of collective investment in the independent renewable energy project. The community/citizens involved in investment and ownership will not be using the generated electricity for their self-consumption.

The project has the following conditions that should be satisfied:

- The public land for PV installation requires the public procurement procedure to be followed.
- The PV plant should have majority ownership by the Consortium.
- The operation and maintenance of the PV plant should be managed by the Consortium for at least five years from the start of the project.
- Citizens should be involved through individual contracts and not as a legal entity representing the community.
- Electricity generated by the plant will be fed into the grid. Discussions with Endesa are ongoing for a Power Purchase Agreement (PPA). Therefore, the electricity will not be self-consumed by the owners of the plant.

The goal of this project is to create a way to involve local citizens in the ownership of the specific PV plant in collaboration with the local government, taking into account the conditions defined above. However, Section 4 of this report also includes the Replication roadmap which can be used to help increase local involvement in the implementation of RES projects, not following the above defined conditions. Therefore, the Replication roadmap represents broader scope of possibilities based on the current regulatory framework in Spain.

¹ http://www.caib.es/sites/canviclimatic2/es/llei_de_ccite/

² Subsidy scheme requires that the PV plant has majority ownership and is operated and managed by CIME for at least 5 years from the start of operation.

3. Possible regulatory solutions for Menorca

In this section we summarise the results of the interactions organised with the local, regional and national stakeholders in order to assess the possible regulatory solutions. Based on those interactions, options were identified. For each of them, the following subsections explain the regulation on which they are based, conditions under which they can apply and how they enable or limit the implementation of the PV plant on Menorca with the local participation under the conditions defined by the Consortium and explained in Section 2.

3.1 Local, regional and national feedback

The discussion on the possible regulatory solutions started from the recommendation of the local stakeholders. Local stakeholders included in the project proposed that the possible regulatory solutions are provided in the interpretation of the two laws: Law 33/2003 on the Heritage public administration³ and Law 9/2017 on Public sector contracts⁴. This proposition came from the previous discussion with the Balearic Institute of Energy (Institut Balear de l'Energia (IBE)), where a possible solution was proposed to the Consortium in June 2021, prior to the start of the technical assistance from the Islands secretariat. IBE is a partner in the project: it is foreseen that the ownership of the PV plant is shared among the Consortium, IBE, the local municipality owning the land and the local citizens. In order to further this discussion and understand the proposed solution we organised a meeting with Javier Castro Raimondez from IBE on 14th of September 2021.

From the meeting with Mr. Raimondez it was concluded that additional discussions are needed with the local legal personnel of the Consortium regarding how to best implement the option of Heritage exploitation. The owner, Ajuntament d'Es Castell, could either lease the land to the Consortium or participate in the ownership for the public interest of the generation of renewable energy for local use. Since the Law on the Heritage public administration does not regulate the award procedure, the Law on Public sector contracts applies.

In addition to this option, the secretariat proposed the implementation of local involvement in the co-ownership of the PV plant through the creation of a separate entity which would operate and own the PV plant. Such entity could be a Special purpose vehicle or a cooperative, as discussed below.

The proposed options were summarised and presented to the representatives of IDAE, Rosa Mingo Avila and Sara de la Serna Fernandez on 16 November 2021. During the meeting, the representatives of IDAE were presented four regulatory options for the project shown in Annex 2 of this report. Based on this document and the discussion we received a response, legal opinion from IDAE presented in Annex 3 of this document. Based on this feedback we provide the regulatory solutions explained in Section 3.2.

3.2 Analysis of proposed regulatory options

Based on the discussion with different level stakeholder, as explained above, the following three options for the co-ownership of the RES plant, that fit the conditions defined in Section 2, are

³ <https://www.boe.es/buscar/act.php?id=BOE-A-2003-20254>

⁴ <https://www.boe.es/buscar/act.php?id=BOE-A-2017-12902>

identified. For each option the legal aspects and examples from Spain (if existent) are discussed. This discussion includes feedback from IDAE on the proposed solutions.

Three possible options are discussed below. However, based on the Spanish legislation and the conditions of the project provided by the Consortium and presented in Section 2, only the 2nd and 3rd options are recommended by this report, as it is explained below. These options are forming a separate entity being a Special Purpose Vehicle (SPV) (3.2.2) or a cooperative (3.2.3). Further details of the proposed options are discussed below.

3.2.1 *Expediente patrimonial* with citizens involved either as investors or exploiters

Allowing citizens to co-invest in the public project that is owned by the public company or co-ownership and exploitation by citizens of the public project which is located on the public land and partially owned by the public company. This option is based on the Heritage public administration law 33/2003⁵. The citizens would receive an annual benefit based on generated electricity and injected into the grid (Power Purchase Agreement) for a defined number of years, based on their investment and/or ownership share defined by the financial contract.

The advantage of such option would be that the Consortium does not need to form a new public entity for the PV project. Depending on whether the citizen is co-investing or co-owning and exploiting the project, the benefits, responsibilities, and risks are defined by a contract between the Consortium and the citizens. The Consortium would be majority owner of the PV plant in either case. The disadvantage is obvious, as such procedure has not been done for a RES project.

The Patrimony public administration law 33/2003 is used to provide authorisation on the use of the public domain for the specific period. The maximum duration for the authorisation would be four years (art. 92.3 Law 33/2003), or 75 years in case of a concession for the use of the public domain (art. 93.1 Law 33/2003). While the granting of the concessions has to happen through competitive basis, it can also be done directly but only under specific conditions defined by art. 137.4 Law 33/2003. According to this article, the direct granting would be allowed when the right of use is granted to the public company (citizen or any other 3rd party ownership is a problem) or if the land is used to fulfil a specific public service. This could be the case if the electricity of the PV plant was used for local self-consumption of its citizens, for helping energy poor citizens or similar. Commercial sale of electricity through PPA is not considered public service.

In addition, art 106 and 107 of the Law 33/2003 covers the use of patrimonial rights where it is indicated that they can be granted for the maximum of 20 years and the rights of use can be granted only through a competitive procedure. Therefore, providing the possibility for citizens to become partial owners of the plant would not be possible.

One relevant **example** in Spain is Barrio Solar de Zaragoza⁶, which represents a collaboration of the energy company EDP, the NGO Ecodes and the local government of Zaragoza, with the support of the Schneider Electric Foundation, the EDP Foundation and Zaragoza Vivienda (housing association). The project represents a collective self-consumption project that helps increase use of renewable energy by local citizens and businesses and fosters solidarity in a neighbourhood. The PV is installed on two municipal pavilions and anyone living or having their business in the

⁵ <https://www.global-regulation.com/translation/spain/1449812/law-33-2003-of-november-3%252c-the-heritage-of-the-public-administrations.html>

⁶ <https://ecodes.org/hacemos/energia-y-personas/comunidades-energeticas-y-autoconsumo/barrio-solar>

neighbourhood (500 m range⁷) can register for energy by paying €6.9 per month to receive solar generated energy that is subtracted from their electricity bill. Energy poor citizens do not have to pay and they can still use electricity from the PV plant.

3.2.2 Forming a new legal entity - Special Purpose Vehicle for the PV project

Forming a separate legal entity called Special Purpose Vehicle (SPV) for the PV project itself. Co-ownership of the project by public bodies, citizens or even 3rd parties is possible. Citizens and possibly local businesses could participate by acquiring their shares in the PV plant company (SPV). Citizens can acquire shares through crowdfunding or through a cooperative as a community. SPV can be a limited partnership, trust, corporation, limited liability corporation, cooperative or other legal entity. The citizen receives a benefit from sale of energy throughout project lifetime. This option is presented by the scheme in Figure 2.

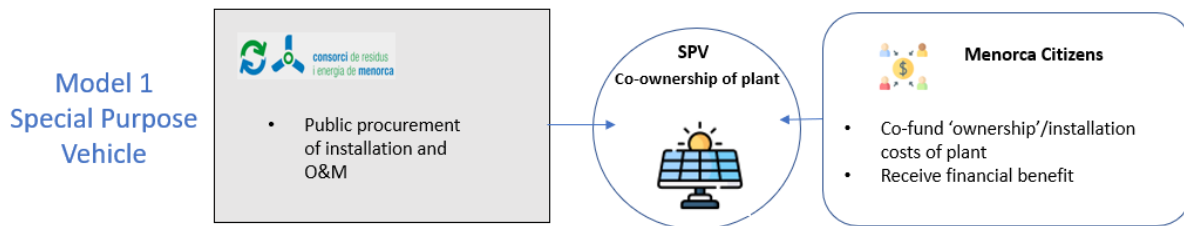


Figure 2 PV plant as SPV where the ownership is based on the investment by the public body and the citizens as separate investors.

The advantage of this option is that it allows for ownership to be separate from the operation, management, and exploitation. It allows for easy refinancing or change of ownership of the project as well as for a clear definition of PV project boundaries/risks. Public procurement of installation and operation and maintenance can be separate from the SPV. Moreover, the Consortium can start as a majority owner of the SPV and in time, the ownership structure can change if needed.

The SPV is usually set up as a legally separate and unconsolidated entity from the originator or transferor of the assets. The legal form varies according to jurisdictions. In Spain, the specific vehicles recognised by law for securitisation issues are the so-called Mortgage Securitisation Funds or Asset Securitisation Funds (regulated and described in Law 19/1992 of 7 July 1992⁸ and Royal Decree 926/1998 of 14 May 1998⁹). The SPV is usually nothing more than a limited company set up for the sole purpose of being the framework for investment in renewable energy.

The SPV is often already constituted by the developer of the PV project, i.e. the company in charge of obtaining the access point and grid connection and the rest of authorisations and licences as well as the contract for the land on which the installation is located. All of these are called project rights and have to be in the name of the SPV. During the project development process, the SPV passes from the ownership of the developer to the final investor who finances and maintains the PV plant. Due to the structure of the financing (project finance) and the guarantees to be given to the financing institutions (banks), including the pledge of the shares, it is advisable to use a new SPV for each PV project. Furthermore, it is of great importance for the project developer to

⁷ Condition for collective self-consumption in Spain - Royal Decree 244/2019 regulating the administrative, technical and economic conditions of the self-consumption of electric energy

⁸ <https://www.boe.es/buscar/act.php?id=BOE-A-1992-16412>

⁹ <https://www.boe.es/buscar/doc.php?id=BOE-A-1998-11425>

allocate the costs of the individual projects to the SPVs so that these costs can be amortised in the SPV during the operating phase.

Initially, the SPV is set up with a minimum capital of €3,000. Throughout the development of the project, the SPV needs its own funds to meet the costs of engineering, fees, etc. (and no income). The SPV manager needs to make sure that the SPV doesn't become undercapitalised, which happens when equity is below 50% of the share capital. There are various ways to provide the SPV with more equity, ranging from capital increase (with or without premium), shareholder contributions to shareholder loans.

Crowdfunding

Crowdfunding is a very promising financing scheme for clean energy projects, as it allows a large number of people to each invest small amounts of money into a scheme in order to raise money for a project. The benefits from the sale of energy in RES generation projects are returned to the investors based on their individual investment through the lifetime of a project.

Crowdfunding in Spain is regulated with the Law 5/2015 of 27 April. The context of application of this law is very specific and is applicable when the crowdfunding activity happens in Spain. The crowdfunding collects the participants through an online platform (such as Fundeen) where they can choose the project to invest in.

The activity is considered as happened in Spain:

- If the crowdfunding platform social headquarters are located in Spain.
- If the platform is based in a foreign country, but actively recruits clients in Spain (through marketing activities)
- If the services offered by the platform are specifically tailored for investors or initiators residing in Spain.

A platform based in Spain must follow specific requirements and authorisations by the Spanish National Securities Market Commission (share capital and minimum set of guarantees for investors). Article 67 of the Law 5/2015 defines nothing about the public or private nature of the project promotor.

The project owner must be based or incorporated in the EU and must not be disqualified by insolvency, convicted of crimes against Social Security and public treasury, company mismanagement or money laundering.

The maximum limit for funds raised for a single project is €2 million (or €5 million for funding aimed at professional investors). The platform must ensure that investors are completely informed about the project and the project owner. Nevertheless, investors are responsible for the accuracy of the information provided.

Non-professional investors cannot invest more than €3 000 per project or €10 ,000 within a 12-month period from the same platform. Investors must be clearly informed about the possible risks if the project fails.

This way of financing has been used for privately owned projects. A recent example of this is on Balearic Islands is the PV plant in Mallorca. <https://euislands.eu/node/1055>

3.2.3 Cooperative

Forming a cooperative enables citizens to be owners of the PV plant. In addition, cooperative also allows the possibility for citizens to be involved in the management of the project. The project is handled by the cooperative/jointly from the idea to the end of life. The cooperative provides two possibilities, one where citizens are represented by a cooperative, and not each separately or where the cooperative is formed by citizens and the public bodies.

Two options are presented in the scheme in Figure 3.

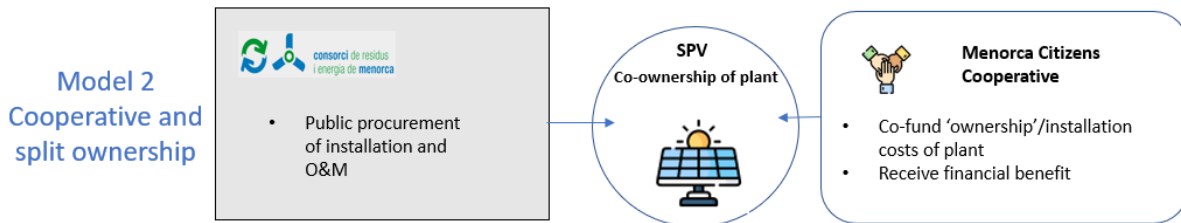


Figure 3 Two cooperative options: citizens as part of the cooperative participate in the ownership of the PV plant SPV (top) and citizens and local stakeholder form a cooperative which owns and operates the PV plant.

The cooperatives are regulated in Spain by the general framework of the Law 27/1999, from 16 July¹⁰. On the regional level, cooperatives are further defined for the Balearic Islands by Law 1/2003, from 20 March¹¹.

Based on this legislation, the membership of the cooperatives is open to both natural and legal persons, public or private, with the specific exceptions established by this law for each type of co-operative. The Law defines that any administration or public body with legal personality may be a member of a co-operative in order to provide public services or to exercise powers recognised in the legal system and to exercise public economic initiative, provided this does not involve the exercise of public authority.

The details of the functioning of the cooperative are defined by the cooperative, including the requirements for membership. This is taking into account that no one may belong to a cooperative in the capacity of entrepreneur, contractor, capitalist or other similar capacity, in respect of the co-operative or its members as such.

3.3 Proposed next steps

As is presented from this section, the Consortium with its legal personnel and intervenor and in collaboration with its project partner IBE should analyse the presented regulatory options to see which option is the most feasible. If the conditions presented in Section 2 are not something that can be changed, then either SPV or a cooperative are the current feasible options. For example, the condition that the PV project will be selling energy and owners and shareholders receive benefit from sale of energy, is not considered a public service and therefore the heritage exploitation is not considered an option according to IDAE. If the Consortium however decides to provide the produced energy for local self-consumption, for consumption by the energy poor

¹⁰ https://www.mites.gob.es/es/Guia/texto/quia_2/contenidos/quia_2_7_1.htm
https://www.iempren.es/wp-content/uploads/Gu-%C3%ADa_Cooperativas.pdf

¹¹ <https://www.boe.es/buscar/doc.php?id=BOE-A-2003-7872>

citizens or benefits are used for a public service then this could be treated with the Law on Heritage public administration.

SPV can also be a cooperative and these options as explained in Section 3.2 above offer more flexibility for the project ownership and involvement of various types of local stakeholders such as citizens, local businesses.

4. Replication Roadmap

Local participation in clean energy projects is a crucial part of the energy transition. This is even more the case on the islands where the land area is limited and the local community should collaboratively define how this land is used for their own socio-economic benefit.

Here we provide possible options for local community, citizens and local businesses participation in the renewable energy projects based on the current Spanish regulation. Moreover, the future developments are discussed. The citizens and local community participation can range from being an investor and co-owner, overusing the energy from the RES plant for self-consumption, to co-management of the plant and providing energy supply or service to citizens outside of their community.

As the possibilities for involvement of the citizens and community in management and energy services increase, there is a need for awareness-raising of all stakeholders and local advisory services.

For each of the presented options, the following aspects are provided:

- Description
- Relevant legislation
- Possible stakeholder involved
- Ownership and management of RES plant
- Limitations
- Example

IDAE maps active energy related initiatives which involve citizen participation. The map and their main information can be found on the IDAE website¹².

In this replication roadmap, five options for citizen or community involvement in renewable energy projects are presented:

1. RES plant as a separate entity
2. Cooperative
3. Public-private partnership
4. Collective self-consumption and
5. Energy community.

While these options are presented separately, they can co-exist in the single initiative, where for example cooperative could apply for collective self-consumption.

¹² <https://www.idae.es/ayudas-y-financiacion/comunidades-energeticas/comunidades-energeticas-vigentes-en-las-distintas-comunidades-autonomas>

4.1. RES plant as a separate entity

Description

The RES plant is formed as a Special Purpose Vehicle (SPV). SPV can be a limited partnership, trust, corporation, limited liability corporation or other legal entity. The SPV is usually set up as a legally separate and unconsolidated entity from the originator or transferor of the assets. The legal form varies according to jurisdictions. In Spain, the specific vehicles recognised by law for securitisation issues are the so-called Mortgage Securitisation Funds or Asset Securitisation Funds (regulated and described in Law 19/1992 of 7 July 1992 and Royal Decree 926/1998 of 14 May 1998). The SPV is usually nothing more than a limited company set up for the sole purpose of being the framework for investment in renewable energy.

Relevant legislation

Law 19/1992 of 7 July 1992¹³ and Royal Decree 926/1998 of 14 May 1998¹⁴.

Possible stakeholder involved

Any legal private or public entity. The citizens can individually participate in the share/investment of the SPV through crowdfunding as explained in the separate box in Part 3.

Ownership and management of RES plant

Ownership and management of the RES plant as separate. Anyone can invest in the plant and hence receive benefits as partial owner. However, the project owner/promotor as defined in the law is the one that manages the plant and that the shareholders sign the contract with.

Limitations

Non-professional investors (citizens) cannot invest more than €3 000 per project or €10 000 within a 12-month period from the same platform.

Investors are not involved in the management of the project.

¹³ <https://www.boe.es/buscar/act.php?id=BOE-A-1992-16412>

¹⁴ <https://www.boe.es/buscar/doc.php?id=BOE-A-1998-11425>

Example

Santa Margalida, Mallorca

The Law on Climate Change and Energy transition of the Balearic Islands (Law 10/2019) sets out the conditions relating to local participation in renewable generation facilities and establishes that they must be offered for local investment. In this regard, Article 49 of the Law states that "for the purposes of this Law, renewable generation projects with local participation are considered to be those in which it is accredited that the possibility of participating in at least 20% of the ownership of the project has been offered to natural or legal persons, public or private, located in the municipality in which the installation is intended to be located or in the municipalities bordering it".

It has been revealed that the first PV plant of 9.626 MWp, called Santa Eulalia, will be the first to allow for local participation in accordance to the law. The plant will be connected to the medium-voltage electricity grid, on the rural estate of polygon 14, plot 90, and will cover an area of 5 ha. The PV plant will consist of two identical installations of 4.813 MWp each, Santa Eulàlia I and Santa Eulàlia II. These installations are owned by different owners and have different and independent connection points in the distribution networks.

The project will be implemented by the private company, while the local residence will have a possibility to participate in the ownership through crowdfunding. The residents of Santa Margalida will have priority for 15 days to adhere to this investment. Once this period is over, the radius will be extended to the neighbouring municipalities: Artà, Petra, Ariany, Maria de la Salut, Llubí and Muro. It should be noted that 15 days later if this 40% of social participation has not been reached, it will be extended to the rest of the autonomous community. And 15 days later, to the rest of Spain.

<https://www.powerengineeringint.com/renewables/balearic-islands-opens-solar-pv-park-to-local-participation/>

4.2. Cooperative

Description

Cooperatives are not a new concept in Spain, as they have been regulated from 1930s. In 2006, there were as many as 25 000 cooperatives in Spain¹⁵. A cooperative can be started with minimum three members. Cooperatives are regulated by the federal and regional legislation and depending on those they can have different forms. Both public and private legal entities can be part of a cooperative.

Relevant legislation

Federal Law 27/1999, from 16 July¹⁶. On the regional level cooperatives are further defined. For example for the Balearic Islands by Law 1/2003, from 20th March¹⁷.

Possible stakeholder involved

Any public (including municipality) or private legal entity and natural body/citizens.

Ownership and management of RES plant

Cooperatives offer the possibilities to participate in the energy project as one of the investors or to own and operate the energy project by the cooperative.

Limitations

No obvious limitations.

Example

Som energia cooperative

Som energia is Spain wide cooperative with 80 304 members. Any individual, private or public company can become part of the cooperative with €100 share fee. One member one vote rule is used for making decisions in the cooperative. Members can get involved in generation of electricity, self-consumption, and other energy services and advice. Moreover members can get involved in the local energy actions.

<https://www.somenergia.coop/>

Som mobilitat cooperative

Som mobilitat is a non-for-profit cooperative in Catalonia that has a goal to bring sustainable mobility to the communities. It allows participation of individuals, private and public companies with a share investment of €10. Members have a benefit of using cooperative's mobility services and participating in activities.

<https://www.sommobilitat.coop/>

¹⁵ <https://ec.europa.eu/social/BlobServlet?docId=4809&langId=en>

¹⁶ https://www.mites.gob.es/es/Guia/texto/quia_2/contenidos/quia_2_7_1.htm
https://www.iempren.es/wp-content/uploads/Gu-%C3%ADa_Cooperativas.pdf

¹⁷ <https://www.boe.es/buscar/doc.php?id=BOE-A-2003-7872>

Nafarkoop

Nafarkoop is a cooperative in Navarra region of Spain. It has 1 085 members. It's main activities for members include investment in local renewable energy projects, help with organising local generation for self-consumption through technical and procedure advice and connection with the right organisations, supply of renewable electricity.

<https://nafarkoop.eus/es/>

La Palma Renewable

La Palma Renewable is a cooperative organised on the island of La Palma, Canary islands with a goal to promote and achieve 100 % renewable and self-sufficient island. The cooperative invites participation of any stakeholder from citizens to public and private companies. It is involved in projects raising awareness, renewable energy generation, energy saving and sustainable mobility.

<https://lapalmarenovable.es/>

La Corriente cooperative

La Corriente cooperative is an energy cooperative that produces and sells renewable energy to the members. The cooperative also offers advice and energy services such as sustainable mobility and helping organize energy communities.

<https://lacorrientecoop.es/>

4.3. Public-private partnership

Description

In the Spanish market, a Public-Private Partnership (PPP) is not a legal concept strictly speaking, but a type of public policy or management method that entails collaboration between a public entity and a private partner. This collaboration aims to implement, finance, and manage public infrastructures in broad terms, including facilities, services, and utilities. This clarification serves to avoid misidentifying PPP in general, with a specific and single contract form under the Spanish Public Procurement Law.

Under the Spanish Public Procurement Law in force until 9 March 2018, there were three main types of PPP contracts: public works concession contracts; public service management contracts; and partnership agreements between the public and the private sector. The [Spanish Public Procurement Law \(Law 9/2017\)](#)¹⁸ in force since March 2018 changed this classification.

Relevant legislation

Public procurement law – Law 9/2017¹⁹.

Possible stakeholder involved

Public, private legal bodies and citizens.

Ownership and management of RES plant

The ownership and management of a RES plant is done in collaboration of the sides involved.

Example

Viladecans Public-private-citizen partnership

An example can be found in where the Viladecans Public-Private-Citizen Governance Partnership at Local level (PPCP) is made up of the Viladecans City Council, the Barcelona Metropolitan Area and two associations: the Citizen Association for Energy Transition & the Business & retailers Association for Energy Transition. Currently, the City Council holds 80% of the rights and obligations of the Consortium & the Barcelona Metropolitan Area holds another 10%, while the remaining 10% is held by the two associations.

<https://www.uia-initiative.eu/en/uia-cities/viladecans>

¹⁸ [The main innovations of Law 9/2017 of 8 November on public sector contracts](#)

¹⁹ <https://www.boe.es/buscar/pdf/2017/BOE-A-2017-12902-consolidado.pdf>

4.4. Collective self-consumption

Description

Collective self-consumption means sharing the electricity produced from RES plants to the consumers connected at low voltage within a distance of 500 m. For members of collective self-consumption, grid fees are not charged for the electricity exchanges within the scheme. One can use fixed or variable distribution coefficient to distribute the generated electricity among end-consumers. This part has been further regulated in 2021.

Relevant legislation

The Royal Decree 244/2019²⁰ regulating the administrative, technical and economic conditions of the self-consumption of electric energy. The conditions for use of fixed or variable coefficients for energy distribution is further regulated in 2021²¹.

Possible stakeholder involved

Any end consumer, be it public or private company or citizen in 500 m radius of the RES generation and connected to the low voltage grid.

Ownership and management of RES plant

Collective self-consumption is more a service used by other options of community collaboration defined here. Therefore collective self-consumption can be done by a cooperative or an energy community.

Limitations

Members should be in the radius of 500 m of the renewable energy plant and connected at low voltage electricity distribution grid

Example

Pylon Network, Valencia

A community in Valencia has started the first collective self-consumption project in Spain using renewable energy generation among multiple houses. The collective self-consumption regulation has been improving introducing dynamic share of electricity, while the distance is defined to 500 m. The progress of this initiative and the regulation is followed by Pylon Network.

<https://pylon-network.org/pylon-networks-journey-collective-self-consumption-past-future.html>

²⁰ <https://climate-laws.org/geographies/spain/policies/royal-decree-244-2019-regulating-the-administrative-technical-and-economic-conditions-of-the-self-consumption-of-electric-energy>

²¹

https://www.miteco.gob.es/es/prensa/211116ndpelmitecoapruebaelrepartovariabledelaenergiaenlasinstalacionesdeautoconsumocompartido_tcm30-533048.pdf

4.5. Energy communities

Description

Renewable Energy Communities or Citizen Energy Communities as defined in the EU legislation are new entities that allow the involvement of local governments, citizens and small private stakeholder in the energy market with democratic and decentralised management of energy. The goal of energy communities is to provide non-financial benefits to the community, such as social, environmental and other benefits.

Relevant legislation

Renewable Energy Communities, as well as Citizen Energy Communities, are not fully regulated. RDL 23/2020 partially transposed the RED II EU Directive, since it adopted the definition of these communities and entitled them to participate in auctions. A further regulation is required. However, there are already community-led projects to share electricity, either under a cooperative form or under the collective self-consumption regime.

Spain still did not fully complete the transposition of the EU Directive REDII (2018/2001) regarding Energy Communities. However, the RDL 23/2020 modified Law 24/2013 and introduced some first references to Renewable Energy Communities.

Renewable Energy Communities are legal entities. consisting of members located in the vicinity of renewable energy projects owned and developed by them. The primary purpose of Renewable Energy Communities is to provide environmental, economic or social benefits to their partners or members or to the local areas where they operate, rather than financial profit.

Apart from that the auctions organised to grant the support scheme (Economic Regime for Renewable Energies) can take into consideration the particularities of these communities so that they can compete on an equal footing with other participants.

Possible stakeholder involved

Local governments, citizens, small private companies, etc. The involvement is indicated depending on if the stakeholder is a member or a shareholder (without voting rights). Shareholders can be large companies involved in energy sector but they cannot have voting rights. This is based on EU directives and their transposition in Spain might change or further specify aspects of this.

Ownership and management of RES plant

Energy communities can own and manage RES plants.

Limitations

Depends on the national legislation.

Example

No examples currently in Spain.

5. Conclusions

The Balearic Climate change and Energy Transition Law in Article 49 calls for minimum 20% local participation in renewable energy projects. For smaller projects (below 5 MWp installed capacity), this participation should be encouraged by the government, while for larger projects (above 5 MWp) it is obligatory. Due to the fact that no project has been implemented under this rule, this report provides legislative and regulatory guidance to the Menorca stakeholders for the implementation of 0.5 MWp photovoltaic plant on the publicly owned land.

Namely, the project is led by the Consorci de Residus i Energia de Menorca - Consortium formed by the eight municipalities of Menorca and the Insular Council of Menorca. In addition, it involves Institut Balear de l'Energia, who will help to ensure knowledge transfer after the project, and Ajuntament d'Es Castell, municipality whose land will be used for the installation of the PV plant. The report includes replication road map that identifies different ways of providing possibility for local citizen and community participation in renewable energy project. Up to now cooperatives are the most common way to implement such projects in Spain, with many successful examples presented.

The PV plant in Menorca can be implemented using one of the three possible regulatory option presented in Section 3. The limitation of the Heritage exploitation is that the PV plant generated electricity should be used for public service thus collective self-consumption with the citizens, but this is not in line with the conditions as defined above by the consortium. On the other hand, using a Special Purpose Vehicle or a cooperative is more flexible and offers the implementation of the business model under the conditions as defined above; there is no 'public service obligation', the consortium remains the majority owner and the one who operates and manages the PV plant.

In collaboration with the local legal personnel and intervenor the Consortium now needs to analyse the possibilities and the future use of the PV plant and identify the steps to take. Based on analysis of the Spanish regulatory framework, discussion with the stakeholders and examples of existing initiatives, we provide a Replication roadmap. The Replication roadmap provides five different ways that local stakeholder can be involved in the ownership and operation and maintenance of the renewable energy projects on Spanish islands.

Annex 1: Assessed legal frameworks

Climate change Law

http://www.caib.es/sites/canviclimatic2/es/llei_de_ccite/

Artículo 49

Participación local en instalaciones de generación renovable

Local participation in renewable generation facilities

1. Las administraciones públicas de las Illes Balears incentivarán la participación local en instalaciones de energía renovable y promoverán la capacitación de la ciudadanía, las comunidades de energía renovable locales y otras entidades de la sociedad civil para fomentar su participación en el desarrollo y la gestión de los sistemas de energía renovable.

1. The public administrations of the Balearic Islands shall encourage local participation in renewable energy installations and promote the training of citizens, local renewable energy communities and other civil society entities to encourage their participation in the development and management of renewable energy systems.

2. A los efectos de esta ley, se considerarán proyectos de generación renovable con participación local aquellos en los que se acredite que se ha ofrecido la posibilidad de participar, en al menos el 20% de la propiedad del proyecto, a aquellas personas físicas o jurídicas, públicas o privadas, radicadas en el municipio en el que se pretende situar su instalación o en los municipios limítrofes al mismo.

2. For the purposes of this law, renewable generation projects with local participation shall be considered to be those in which it is accredited that the possibility of participating in at least 20% of the ownership of the project has been offered to those natural or legal persons, public or private, located in the municipality in which the installation is intended to be located or in the municipalities bordering the same.

3. En caso de que el proyecto se vehicule a través de una sociedad mercantil, el 20% de la propiedad del proyecto se entenderá como el 20% de la sociedad vehicular. Si un mismo proyecto estuviera vehiculado en varias sociedades, la apertura a la inversión local nunca podrá ser inferior al 20% del total del valor nominal del conjunto de las acciones o participaciones de las sociedades vehiculares que componen el proyecto.

3. In the event that the project is carried out through a commercial company, 20% of the ownership of the project shall be understood as 20% of that of the vehicle company. If the same project is channelled through several companies, the opening to local investment may never be less than 20% of the total nominal value of all the shares or holdings of the channelling companies that make up the project.

4. También se considerarán proyectos de generación renovable con participación local aquellos promovidos por entidades que sean consideradas comunidades de energía renovable locales de acuerdo con la normativa europea.

4. Renewable generation projects with local participation shall also be considered to be those promoted by entities that are considered local renewable energy communities in accordance with European regulations.

5. Los proyectos de energías renovables con participación local tienen la consideración de inversiones de interés autonómico, con los efectos regulados en los artículos 5.3, 6, 7 y 8 de la Ley 4/2010, de 16 de junio, de medidas urgentes para el impulso de la inversión en las Illes Balears.

5. Renewable energy projects with local participation are considered investments of regional interest, with the effects regulated in articles 5.3, 6, 7 and 8 of Law 4/2010, of 16 June, on urgent measures to promote investment in the Balearic Islands.

6. La oferta de participación local de los anteriores apartados 2 y 3 será obligatoria cuando el proyecto de generación renovable esté ubicado en el suelo y tenga una potencia igual o superior a 5 MW. Si no llega al 20% el número de personas físicas o jurídicas interesadas, se ampliará la oferta a las personas físicas o jurídicas, públicas o privadas, radicadas en los municipios limítrofes. En caso de seguir sin agotarse el 20%, se extenderá la oferta a las personas físicas o jurídicas, públicas o privadas, radicadas en la comunidad autónoma de las Illes Balears.

6. The offer of local participation in paragraphs 2 and 3 above shall be mandatory when the renewable generation project is located on the ground and has a capacity equal to or greater than 5 MW. If the number of interested natural or legal persons does not reach 20%, the offer will be extended to natural or legal persons, public or private, located in neighbouring municipalities. If the 20% is still not reached, the offer will be extended to natural or legal persons, public or private, located in the autonomous community of the Balearic Islands.

7. El Gobierno de las Illes Balears creará una bolsa de terrenos donde sus propietarios los puedan poner a disposición para el desarrollo de proyectos de energías renovables. El desarrollo reglamentario de esta ley regulará sus criterios y requisitos.

Crowdfunding

Crowdfunding is a very promising solar financing scheme where a large number of people each put in small amounts of money into a scheme in order to raise money for a PV project.

Law 5/2015 addresses this phenomenon from three perspectives: the legal framework governing crowdfunding platforms; the authorisation, registry and reservation of activity in favour of the platforms; and the regulations applicable for each of the three sides involved in the financing channel, including restrictions on activities permitted and rules to protect non-qualified investors, as defined in Law 5/2015.

Framework governing the project owner and projects

The project owner must be incorporated or have its residence in Spain or in a European Union Member State and not have been disqualified pursuant to insolvency law or be serving a sentence for crimes or misdemeanours against the company's assets, the social-economic order, the Public Treasury, the Social Security, or money laundering. **Article 67 of the Law defines nothing about the public or private nature of the Project Promotor.**

CAPÍTULO IV

Sobre los promotores y los proyectos

Sección 1.ª Requisitos generales

Artículo 66. *Diligencia en la admisión y comprobación de la identidad del promotor.*

1. La plataforma de financiación participativa deberá evaluar con la debida diligencia la admisión de proyectos de financiación y su adecuación a los requisitos establecidos en este capítulo.

2. La plataforma de financiación participativa deberá comprobar la identidad del promotor e identificarlo debidamente.

Artículo 67. *Requisitos de los promotores.*

1. El promotor persona jurídica deberá estar válidamente constituido en España o en otro Estado miembro de la Unión Europea. En el caso de personas físicas, su residencia fiscal deberá estar en España o en otro Estado miembro de la Unión Europea.

2. Los promotores o socios de la entidad promotora, el administrador del promotor o los miembros de su Consejo de Administración no podrán hallarse inhabilitados conforme a lo previsto en la Ley 22/2003, de 9 de julio, Concursal, o normativa equivalente de otros Estados miembros de la Unión Europea, ni podrán estar cumpliendo condena por la comisión de delitos o faltas contra el patrimonio, el blanqueo de capitales, el orden socioeconómico, la Hacienda Pública y la Seguridad Social.

For each project, the platform must define a funding target and a time limit. If the funding target (or, in certain cases, 90% of the target) is not reached within the time limit, all funds must be returned. If the funds raised exceed the target, the excess amounts must be refunded to the investors. The maximum limit for funds raised for a project in a single platform is € 2 000 000. When the project is directed exclusively to qualified investors (as defined in the following section), the maximum amount is € 5 000 000.

The platform must ensure that the information published through the platform is complete and it must publish all other significant information available to it regarding the project or the project owners. Nevertheless, the project owner is the party liable to investors for the information provided.

Projects may be structured as loans or as issuances of securities. Projects based on loans may not include a mortgage guarantee created over the project owner's habitual residence and information on the loan's essential characteristics must be provided. For projects based on the issuance of securities, investors must be informed of the basic information on the issuer company and the securities issued. In addition, the articles of association of the project owner must contain certain shareholders rights.

Protection of investors

Law 5/2015 refers to qualified and non-qualified investors, differentiating them primarily on the basis of proven economic capacity and, in some cases, on whether the investor has expressly applied to be considered a qualified investor. In the latter case, if the requestor is a natural person, the crowdfunding platform must analyse the request on a case-by-case basis.

Non-qualified investors may not invest more than € 3 000 per project, or more than € 10 000 within any 12-month period, in projects published through a single crowdfunding platform.

Moreover, the platform must warn investors of specific risks associated with the investment.

Finally, subject to specific particularities, regulations on the protection of consumers and end users apply to relationships between project owners and investors as well as relationships between platforms and project owners, in the event the project owner is considered a consumer.

Cooperatives

Federal and regional law

General framework: Ley 27/1999, de 16 de julio, de Cooperativas (normativa estatal, de aplicación subsidiaria)²²

Law on cooperatives Balearic Islands: [Ley 1/2003, de 20 de marzo, de cooperativas de las Islas Baleares](#). · Ley 5/2011, de 31 de marzo, de modificación de la Ley 1/2003, de 20 de marzo, de cooperativas de las Islas Baleares.

Art. 19. Persons who may be members.

1. Membership is open to both natural and legal persons, public or private, with the specific exceptions established by this law for each type of co-operative.

²² https://www.mites.gob.es/es/Guia/texto/guia_2/contenidos/guia_2_7_1.htm
https://www.iempren.es/wp-content/uploads/Gu-%C3%ADa_Cooperativas.pdf

Any administration or **public body** with legal personality may be a member of a co-operative in order to provide public services or to exercise powers recognised in the legal system and to exercise public economic initiative, provided this does not involve the exercise of public authority.

2. The Articles of Association shall establish the requirements for acquiring membership, in accordance with this law. In any case, no one may belong to a co-operative in the capacity of entrepreneur, contractor, capitalist or other similar capacity, in respect of the co-operative or its members as such.

Public Private Partnerships²³

Law 9/2017

Key principles of the public procurement contracts regulation in Spain are:

- freedom of access to bidders, non-discrimination and equal treatment; and
- transparency and publicity of the proceedings.

There are various types of contracts that can be signed between public and private entities. According to LCSP, the main public contracts are the following ones:

- Works contract
- Contract for the concession of works
- Contract for the concession of services
- Supply contract
- Services contract
- Mixed contracts

The Spanish scheme for PPP projects illustrates that a range of different procurement methods may need to be adapted for different types of projects. The available processes can be summed up as:

- Open Procedure, which is the ordinary procedure, open for all interested bidders.
- Restricted Procedure, in which interested bidders submit an application of interest and the contracting entity selects the bidders invited to submit offers.
- Negotiated Procedure, an exceptional procedure requiring prior negotiation with the bidder and services that can only be carried out by a specific entity.
- Competitive Dialogue, which is also an exceptional procedure.

New type: PERTE

Section II, RDL 36/2020, established to foster the economy after the covid-19 pandemic, created the PERTE (Proyectos Estratégicos para la Recuperación y Transformación Económica) as a project with participation from both public and private parties, funded by public bodies, or even executed by public-private companies or consortia, which give place to a wide bunch of public-private structures. <https://www.lexology.com/library/detail.aspx?g=b5da9fcb-c89c-427f-b748-1f9b0f1098dd>

²³ <https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/spain>
<https://vlex.es/vid/contrato-colaboracion-sector-publico-590518802>

This is a new form of public-private partnership to identify projects with a high leverage capacity for economic growth, employment and competitiveness of the economy. It will be the Council of Ministers that declares a project PERTE, which may be a single project in terms of its objectives and implementation modalities or a group of projects that share the same objective and are based on a coherent systemic approach.

The criteria to be assessed are:

- Significant contribution to economic growth, job creation and the competitiveness of industry and the economy.
- Combination of knowledge, expertise, financial resources and economic actors
- Innovative character or relevant contribution of added value by enabling the development of new products, services or production processes.
- Quantitative or qualitative importance, with particularly large size or scope or involving a high level of technological or financial risk
- Favouring the integration and growth of small and medium-sized enterprises
- Specific contribution to one of the objectives of the Plan for the Recovery, Transformation and Resilience of the Spanish Economy.

All entities linked to the development of a PERTE must be registered in a newly created State Register under the Ministry of Finance. There, each PERTE will be grouped in a separate section managed by the competent ministerial department. Registration in this register may be considered a necessary requirement to be a beneficiary of aid.

Energy community legislation in Spain

Overview

Renewable Energy Communities, as well as Citizen Energy Communities, are not fully regulated. RDL 23/2020 partially transposed the RED II EU Directive, since it adopted the definition of these communities and entitled them to participate in auctions. A further regulation is required. However, there are already community-led projects to share electricity, either under a cooperative form or under the collective self-consumption regime.

Spain still did not fully complete the transposition of the EU Directive REDII (2018/2001) regarding Energy Communities. However, the RDL 23/2020 modified Law 24/2013 and introduced some first references to Renewable Energy Communities.

Renewable Energy Communities are legal entities. consisting of members located in the vicinity of renewable energy projects owned and developed by them. The primary purpose of Renewable Energy Communities is to provide environmental, economic or social benefits to their partners or members or to the local areas where they operate, rather than financial profit.

Apart from that the auctions organised to grant the support scheme (Economic Regime for Renewable Energies) can take into consideration the particularities of these communities so that they can compete on an equal footing with other participants.

Note: although Renewable Energy Communities are not yet regulated in Spain, similar projects are being conducted under the collective self-consumption regulations (RD 244/2019), since it is allowed to share electricity between buildings, i.e., using the grid.

Addressees

Partners or members of Renewable Energy Communities shall be located in the vicinity of renewable energy projects owned and developed by the communities. The partners or members are natural persons, SMEs or local authorities, including municipalities and whose primary purpose

is to provide environmental, economic or social benefits to their partners or members or to the local areas where they operate, rather than financial profit.

Requirements and conditions

In the case of collective self-consumption, all the consumers associated to the same generation unit must be under the same self-consumption modality and shall communicate to the distribution company an agreement signed by all participants, which includes the distribution criteria (article 4, RD 244/2019).

Tariff structure

The energy that is self-consumed and comes from renewable sources, cogeneration or waste is exempted from all types of charges and tolls (article 9, Law 24/2013). If there is transfer of energy through the distribution grid to nearby facilities for the purposes of self-consumption, fees for this usage may be established (article 9, Law 24/2013).

Geographical limitations

In collective self-consumption, the generation units can be interconnected through the grid, which means that energy sharing between buildings is allowed, however, there are some limitations. The interconnection through the grid shall fall in one of the following options: a) the units are connected to any of the low voltage networks derived from the same transformer substation; or b) both generation and consumption are connected at low voltage and at a distance of less than 500 meters from each other; or c) both generation and consumption are located in the same cadastral reference according to their first 14 digits (article 3, RD 244/2019).

When the self-consumption is carried out between near installation through the grid, collective self-consumption may belong to any of the modalities “with surplus” (article 3, RD 244/2019).

Financial support

Not yet regulated, but RDL 23/2020 recognises the possibility of Renewable Energy Communities to participate in auctions to compete for the remuneration framework (Economic Regime for Renewable Energy).

Under the modalities of self-consumption “with surplus”, consumers can decide to sell all electricity surplus directly on the market, or they can be compensated through a simplified mechanism (Net billing), where every month the value of the energy taken from the grid is compensated with the value of the surplus generation fed into the grid. Nevertheless, the maximum amount that can be compensated is the value of the energy taken from the grid (the energy purchased by the consumer) because the result of the compensation cannot be negative and may not offset other access fees.

Annex 2: Menorca regulatory options presented to IDAE on 16/11/2021



Clean energy for EU islands

Menorca project: Community involvement in PV plant

Consorci de Residus i Energia de Menorca is initiating a 1.7 MWp PV plant project that will be installed on the land owned by the Ajuntament d'Es Castell. CIME has already done techno-economic analysis of the project.

The Balearic Climate change and Energy Transition Law, approved in February 2019, requires the public administrations of the Balearic Islands to support participation of citizens, civil society organizations and local renewable energy communities in the deployment and management of renewable energy systems. CIME would like to use this PV project to find a suitable way to allow participation of citizens in a renewable energy project.

As the location and technical aspects of the project are known, it is yet not clear what is the optimal legal procedure for involvement of the citizens in such projects. CIME would like to start the process of project implementation in 2022.

As the location of the PV plant will be on the land owned by the local government and taking into account conditions needed for receiving subsidy scheme¹, the community involvement will be limited to ownership of the plant but not management and operation. The PV plant is seen as a collective investment of public bodies and local community and each of the owners will be benefiting from the sale of generated electricity based on their ownership share. This project represents a case of collective investment in the independent renewable energy project. The community/citizens involved in investment and ownership will not be using the generated electricity for their self-consumption.

Short term goal: Create a way to involve local citizens in the ownership of the specific PV plant in collaboration with the local government.

Long term goal: Create enabling framework to allow citizen engagement in the renewable energy projects on the islands using various paths, from low participation through ownership only to high involvement through energy communities.

Possible legal procedures for collaboration between local citizens and local government

1. Expediente patrimonial with citizens as investors

Explanation: Allowing citizens to co-invest in the public project which will be located on the public land and partially owned by the municipality. This option is based on the Patrimony public administration law 33/2003. The citizens will receive annual benefit

¹ Subsidy scheme requires that the PV plant has majority ownership and is operated and managed by CIME for at least 5 years from the start of operation.



from the electricity sale for defined number of years, based on their investment/ownership share defined by the financial contract.
Advantage: The investment/ownership can be dealt with separately from operation, management and exploitation. New entity is not needed.
Disadvantage: No example of this available in practice.

2. Expediente patrimonial with citizens as exploiters

Explanation: Allowing citizens to participate in ownership and exploitation of the project which is implemented on the public land and co-owned by public authority/municipality. Similar example is temporary ownership and exploitation of a space in the publicly owned building for a bar or restaurant. The citizens would receive benefit from PV operation through the lifetime/exploitation period.
Advantage: New entity is not needed.
Disadvantage: Cannot decouple ownership/investment from exploitation.

3. Forming new legal entity, SPV

Explanation: Forming a separate legal entity called Special Purpose Vehicle (SPV) for the PV project itself. This allows split ownership of the project/legal entity by public body, investor, citizens. Citizens can participate through crowd-funding or through a cooperative. SPV can be a limited partnership, trust, corporation, limited liability corporation or other legal entity. The citizen receive a benefit from sale of energy throughout project lifetime.
Advantage: Allows for ownership to be separate from the operation, management and exploitation. Allows for easy refinancing or change of ownership of the project and allows for clear definition of PV project boundaries/risks. Public procurement of installation and operation and maintenance can be separate from the SPV.
Disadvantage: Requires formation of a new entity.

4. Cooperative

Explanation: Forming a cooperative with the citizens to co-own and operate/manage/exploit the project. The project is handled by the cooperative/jointly from the idea to the end of life.
Advantage: This is closer to what the energy communities are meant to be. Can be beneficial if the produced energy will be used within the community/by citizens, which is not the case with Menorca PV project.
Disadvantage: The ownership and management are coupled. Requires significant awareness raising and involvement of citizens to allow for smooth operation of the project. Requires formation of a new entity.

With this we invite you to collaborate with us in finding the optimal legal procedure for this project and to co-create pathways for local involvement in RES projects and energy transition on Spanish islands.

euislands.eu
info@euislands.eu

Annex 3: IDAE response to proposed regulatory options 29/11/2021

En primer lugar, analizando el sujeto de las actuaciones, el Consorcio de Residuos y Energía de Menorca (CREM) es el organismo público mancomunado encargado de la gestión de los residuos y del impulso de la eficiencia energética en Menorca.

El CREM nace en abril de 1994, y está conformado por el Consell Insular de Menorca y los ocho ayuntamientos de la isla, que asumen de forma conjunta el estudio, la programación y la prestación de servicios en materia de residuos y energía con el fin de proteger el medio ambiente y la salud de las personas bajo los principios del desarrollo sostenible sobre los cuales se apoya la declaración de la isla de Menorca como reserva de biosfera.

Este Consorcio es quien ha iniciado, según informaciones de Clean energy for EU islands, el proyecto para instalar 1,7 MW de planta fotovoltaica en Menorca, en suelo municipal (es un consorcio que es una Administración Pública como tal, no una sociedad mercantil pública).

La presentación de Clean Energy alude a diferentes vías de participación ciudadana: baja participación a través de la titularidad o alta participación a través de comunidades energéticas.

Las vías jurídicas que plasma Clean Energy en el documento son las siguientes, las analizo en función de si tienen encaje en nuestro actual marco normativa:

1. **Expediente patrimonial de Ciudadanos como inversores:** Permitir a los ciudadanos co-invertir en la planta que se sitúa en dominio público y parcialmente titularidad del municipio. Aluden en Clean Energy la Ley 33/2003 de Patrimonio de las Administraciones Públicas, que regula el uso del dominio público a través de autorizaciones (Las autorizaciones habrán de otorgarse por tiempo determinado. Su plazo máximo de duración, incluidas las prórrogas, será de cuatro años, art. 92.3 Ley 33/2003), o concesiones para el uso del dominio público (máximo plazo de 75 años, y conforme al art. 93.1 Ley 33/2003: *"El otorgamiento de concesiones sobre bienes de dominio público se efectuará en régimen de concurrencia. No obstante, podrá acordarse el otorgamiento directo en los supuestos previstos en el artículo 137.4 de esta ley, cuando se den circunstancias excepcionales, debidamente justificadas, o en otros supuestos establecidos en las leyes"*). Según la presentación de Clean Energy (traduzco) *"los ciudadanos recibirán beneficios anuales de la venta de electricidad por un número de años definidos, basados en la inversión/participación accionarial definidos en el contrato financiero"*.

Sin embargo esta opción no es plausible conforme al régimen legal de la Ley 33/2003, y de hecho el papel de Clean Energy reconoce que no existe experiencia previa. Las concesiones de dominio público (uso prolongado y exclusivo por más de 4 años del dominio público), se otorgan previa solicitud de los interesados, de modo que no se permite co-inversión alguna, ni que una Administración sea titular de un bien y permita a los ciudadanos beneficiarse de la

explotación de ese bien. Precisamente la explotación de bienes de dominio público es exclusiva en caso de utilización privativa como es el caso (el titular de la planta tiene que estar en todo momento en posesión del dominio para poder explotar la instalación por muchos años). Conforme al art. 85.3 de la Ley 33/2003: *Es uso privativo el que determina la ocupación de una porción del dominio público, de modo que se limita o excluye la utilización del mismo por otros interesados"*

El procedimiento de concurrencia competitiva para otorgamiento de concesión sobre un terreno demanial es claro:

Conforme al art. 96 de la Ley 33/2003:

La iniciación de oficio se realizará mediante convocatoria aprobada por el órgano competente, que se publicará en el "Boletín Oficial del Estado", o en el de la comunidad autónoma, o provincia, según cual sea la Administración actuante, sin perjuicio de la posibilidad de usar otros medios adicionales de difusión. Los interesados dispondrán de un plazo de treinta días para presentar las correspondientes peticiones

5. Para decidir sobre el otorgamiento de la concesión o autorización, se atenderá al mayor interés y utilidad pública de la utilización o aprovechamiento solicitado, que se valorarán en función de los criterios especificados en los pliegos de condiciones.

6. El plazo máximo para resolver el procedimiento será de seis meses. Podrá considerarse desestimada la solicitud en caso de no notificarse resolución dentro de ese plazo.

Artículo 97. Derechos reales sobre obras en dominio público.

1. El titular de una concesión dispone de un derecho real sobre las obras, construcciones e instalaciones fijas que haya construido para el ejercicio de la actividad autorizada por el título de la concesión.

2. Este título otorga a su titular, durante el plazo de validez de la concesión y dentro de los límites establecidos en la presente sección de esta ley, los derechos y obligaciones del propietario

Es decir, la concesión se solicita en procedimiento de concurrencia competitiva por interesados (empresas o ciudadanos), y tras su otorgamiento son esos interesados los que disponen de un derecho real sobre el dominio público para construir y explotar la instalación (ejercicio de la actividad). La concesión conlleva así un uso del particular a su riesgo y ventura del dominio, sin que por tanto entidad local o regional pueda utilizar un bien de dominio público y dar beneficios a ciudadanos que lo soliciten. Solo excepcionalmente se puede otorgar concesión demanial de forma directa, en remisión que hace el artículo 93 de la Ley 33/2003 al artículo 137:

4. Se podrá acordar la adjudicación directa en los siguientes supuestos:

a) Cuando el adquirente sea otra Administración pública o, en general, cualquier persona jurídica de derecho público o privado perteneciente al sector público.

A estos efectos, se entenderá por persona jurídica de derecho privado perteneciente al sector público la sociedad mercantil en cuyo capital sea mayoritaria la participación directa o indirecta de una o varias Administraciones públicas o personas jurídicas de Derecho público.

b) Cuando el adquirente sea una entidad sin ánimo de lucro, declarada de utilidad pública, o una iglesia, confesión o comunidad religiosa legalmente reconocida.

c) Cuando el inmueble resulte necesario para dar cumplimiento a una función de servicio público o a la realización de un fin de interés general por persona distinta de las previstas en los párrafos a) y b).

d) Cuando fuera declarada desierta la subasta o concurso promovidos para la enajenación o éstos resultasen fallidos como consecuencia del incumplimiento de sus obligaciones por parte del adjudicatario, siempre que no hubiese transcurrido más de un año desde la celebración de los mismos. En este caso, las condiciones de la enajenación no podrán ser inferiores de las anunciadas previamente o de aquellas en que se hubiese producido la adjudicación.

e) Cuando se trate de solares que por su forma o pequeña extensión resulten inedificables y la venta se realice a un propietario colindante.

f) Cuando se trate de fincas rústicas que no lleguen a constituir una superficie económicamente explotable o no sean susceptibles de prestar una utilidad acorde con su naturaleza, y la venta se efectúe a un propietario colindante.

g) Cuando la titularidad del bien o derecho corresponda a dos o más propietarios y la venta se efectúe a favor de uno o más copropietarios.

h) Cuando la venta se efectúe a favor de quien ostente un derecho de adquisición preferente reconocido por disposición legal.

i) Cuando por razones excepcionales se considere conveniente efectuar la venta a favor del ocupante del inmueble.

5. Cuando varios interesados se encontraran en un mismo supuesto de adjudicación directa, se resolverá la misma atendiendo al interés general concurrente en el caso concreto.

No se contempla el supuesto de ciudadanos que participan en instalaciones de producción de energía promovidas por un ente público (por ejemplo una confederación hidrográfica o empresa pública)

Además en caso de que el bien no esté afecto a un servicio o finalidad pública (bien demanial), sería calificado como bien patrimonial (para lo cual tendría que desafectarse), que es un bien de uso privativo de la Administración (lo que no es el caso parece de los terrenos sobre el que se situaría la instalación).

En todo caso, sobre los bienes patrimoniales, conforme a los artículos 106 y 107 de la Ley 33/2003:

"La explotación de los bienes o derechos patrimoniales podrá efectuarse a través de cualquier negocio jurídico, típico o atípico.

2. Serán de aplicación a estos negocios las normas contenidas en el capítulo I del título V de esta ley.

3. Los contratos para la explotación de los bienes o derechos patrimoniales no podrán tener una duración superior a 20 años, incluidas las prórrogas, salvo causas excepcionales debidamente justificadas.

4. Podrán concertarse contratos de arrendamiento con opción de compra sobre inmuebles del Patrimonio del Estado con sujeción a las mismas normas de competencia y procedimiento aplicables a las enajenaciones.

Artículo 107. Procedimiento de adjudicación.

1. Los contratos para la explotación de los bienes y derechos patrimoniales se adjudicarán por concurso salvo que, por las peculiaridades del bien, la limitación de la demanda, la urgencia resultante de acontecimientos imprevisibles o la singularidad de la operación, proceda la adjudicación directa. Las circunstancias determinantes de la adjudicación directa deberán justificarse suficientemente en el expediente."

Por tanto, ni siquiera en caso de bienes patrimoniales podría hacerse un arrendamiento a ciudadanos, pues precisa concurso público al que se pueden presentar cualesquiera interesados y el contrato debe formalizar con aquel que otorgue el mayor beneficio para la Administración titular del bien patrimonial.

2. **Expediente patrimonial con ciudadanos como gestores:** permitir a los ciudadanos participar como cotitulares de la planta y percibir los beneficios de la explotación;

Tampoco en este caso la Ley de Patrimonio de las Administraciones Públicas o el Real Decreto 1372/1986, de 13 de junio, por el que se aprueba el Reglamento de Bienes de las Entidades Locales, contempla que un municipio otorgue autorización o concesión para el uso del dominio público a ciudadanos que no son solicitantes de la autorización/concesión o que les permita ser gestores de una planta titularidad de un municipio. Es decir, solo se permite la construcción y explotación de una planta fotovoltaica situada en dominio público mediante concesión administración en régimen de concurrencia competitiva.

3. **Formar una nueva entidad vehículo SPV:** Se alude a la participación por crowd funding de los ciudadanos en dicha entidad, recibiendo a cambio beneficios por la explotación.

En este caso las entidades locales pueden perfectamente constituir empresas públicas para producir energía, el ejemplo más reciente es la empresa pública que ha constituido el Ayuntamiento de Barcelona (El Plenario municipal del Ayuntamiento de Barcelona aprobó el 31 de marzo de 2017 la creación de una comercializadora pública de energía eléctrica a través de la empresa pública Tractament i Selecció de Residus, SA (TERSA). Desde el mes de febrero, Barcelona Energia ya

representa en el mercado eléctrico toda la energía verde que gestiona y explota, unos 200 GWh/año.)

La participación ciudadana les daría derecho a ser parte del accionariado, realmente estarían adquiriendo acciones de la empresa pública productora, con los consiguientes derechos que ello otorga, dependiendo de lo que figure en los estatutos de dicha sociedad.

4. Cooperativa: cooperativa formada por los ciudadanos para ser titulares y explotar la planta fotovoltaica.

Para formar parte de una cooperativa eléctrica el principal requisito es hacerse socio cooperativista. Así, consta en la Ley 27/1999, de 16 de julio, de Cooperativas, la cual debe constituirse en escritura pública por un acto de voluntad de sus socios fundadores. Generalmente, para inscribirse, el cliente deberá rellenar un formulario en las páginas webs y pagar la cuota anual de cada cooperativa. Pero la constitución de cooperativas es un acto de derecho privado que no puede impulsarse de oficio por las Administraciones. Lo que sí pueden realizar las Administraciones es otorgar subvenciones previa solicitud de cooperativas ya constituidas.

En este artículo de El País se reconoce el impulso de la Comisión Europea de las llamadas "Comunidades Energéticas", pero reconoce que en España no hay legislación sobre impulso público de cooperativas energéticas de ciudadanos: <https://elpais.com/clima-y-medio-ambiente/2021-07-29/ciudadanos-que-crean-y-comparten-su-propia-energia-frente-a-las-grandes-electricas.html>

Es verdad que la directiva europea debía haberse traspuesto en junio de este año pero al no estar transpuesta todavía no es directamente aplicable por las Administraciones.

Lo que sí se puede hacer es que en dominio pública una cooperativa solicite concesión para construcción y explotación de planta fotovoltaica, como ya he comentado.

De hecho en la noticia se alude a un ejemplo de cooperativa que construyó su instalación en solar de dominio público de un Ayuntamiento y que después recibió una subvención de IDAE:

la Cooperativa Eléctrica de Crevillent (Valencia), matriz de Enercoop, nació en 1925 impulsada por la industria textil local. Joaquín Mas, director de Enercoop, explica su caso: "Antes éramos distribuidora y comercializadora, pero ahora además estamos produciendo energía en la propia población mediante placas fotovoltaicas colectivas. Montamos las instalaciones en espacios municipales y la inversión la hace la propia cooperativa, con lo que los usuarios no tienen que desembolsar una gran cantidad de golpe. La mitad de los ahorros energéticos van para los consumidores y la otra mitad para pagar la instalación". El proyecto, denominado Comptem, pretende convertir la localidad (29.000 habitantes) en una gran comunidad energética y, de paso, mejorar los espacios públicos donde instalan las placas. Sus 11.000 socios — los consumidores vulnerables no pagan— cuentan con una app para aprender a ahorrar en la factura, ajustar los consumos... Y el próximo año instalarán tótems en la ciudad para informar sobre la energía.

Este proyecto piloto fue uno de los primeros que apoyó el Instituto para la Diversificación y Ahorro de la Energía (IDAE) del Ministerio para la Transición Ecológica, que a falta de legislación ya ha publicado una guía orientativa sobre esta nueva figura. En los próximos tres años, 100 millones de euros del plan de recuperación europeo se destinarán a estas entidades. Un portavoz del IDAE confirma que el departamento está trabajando para trasponer al completo la normativa europea sobre comunidades energéticas, que incluye comunidades de energías renovables (CER) y comunidades energéticas locales (CEL).

Otros ejemplos de la noticia son los siguientes:

El Ayuntamiento de Puente la Reina-Gares (Navarra, 2.800 habitantes) impulsa el proyecto Gares Energía, con el que quiere recuperar una pequeña central hidroeléctrica para abastecer el alumbrado y los edificios municipales y, la vez,

incentiva que los residentes creen su propia comunidad energética. “El Consistorio ha instalado placas solares en el frontón, y ha cedido otra parte para que los ciudadanos puedan establecer un autoconsumo colectivo”, cuenta Esther Muñoz, del despacho Kísar, que asesora la iniciativa ciudadana. La idea es que los ciudadanos se empoderen en energía a la vez que recuperan espacios sociales y fortalecen la comunidad. “Lo importante es que estos procesos se impulsen desde la participación ciudadana, que se capacite a las personas, y que en el futuro las comunidades energéticas se creen con la facilidad con que ahora se crean las asociaciones culturales”, añade Muñoz.

En Arroyomolinos de León (Huelva), un pueblo de menos de mil habitantes, tienen en marcha una comunidad energética rural denominada Alumbra y centrada en los niños. Así lo cuenta Rosario Alcantarilla, una de las socias: “En el inicio de curso queremos tener dos instalaciones funcionando, una municipal, que compartirá los excedentes con los vecinos, y otra que vamos a financiar los vecinos con un crowdfunding impulsado por Greenpeace. El Ayuntamiento nos cede la cubierta del colegio para instalar las placas y nosotros vamos a formar a los niños como gestores energéticos. Los niños son la vía de mayor impacto a nivel comunitario”.

En el caso de Puente La Reina lo que ha hecho es promover una instalación fotovoltaica y ceder un bien de dominio público (frontón) para que quien lo solicite pueda participar del autoconsumo colectivo, pero entiendo que a través de una autorización demanial.

En el caso de Arroyomolinos, es una comunidad energética promovida por ciudadanos, no por entidades locales. Otro ejemplo de la noticia:

*En Viladecans cuentan con Vilawat, un **consorcio público** que compra energía verde y la distribuye, más barata, entre sus 660 socios. “Una parte del ahorro se transforma en una moneda local —llamada también Vilawat— que se puede usar en los comercios del municipio”, dice Jordi Mazón, teniente de alcalde. “Ahora, vamos a instalar placas en 25 instalaciones municipales, y vamos a crear tres comunidades energéticas en otros tantos edificios. Y toda la energía se va a compartir entre todos los socios”, prosigue.*

Es un consorcio público el que promueve todo y los beneficiarios tienen que ser socios. Aunque en la web parecen aludir a que serán socios entidades ciudadanas que se van a constituir (pero son entidades ciudadanas del tipo asociaciones que se tienen que constituir y que sus miembros son aquellos que son socios de esas entidades):

Nos organizamos a través de un consorcio publico-privado-ciudadano que actualmente está constituido por el Ayuntamiento de Viladecans y el área Metropolitana de Barcelona. Próximamente se sumarán al consorcio una asociación de ciudadanos y ciudadanas, así como una asociación de comerciantes y empresarios y empresarias. La forma jurídica del Consorcio Público es una forma jurídica que permite que en un órgano de dirección y participen dos o más Administraciones Públicas y asociaciones de particulares.

Actualmente, al consistorio le corresponde el 90% del total de derechos y obligaciones del Consorcio, mientras que la entidad supramunicipal AMB controla un 10%; porcentajes que se modificarán a medida que se vayan incorporando los agentes de referencia como entidades ciudadanas y empresariales. El Ayuntamiento de Viladecans irá renunciando progresivamente a una parte de su porcentaje de participación que irá transfiriendo a los nuevos miembros adheridos.

Otro ejemplo final de la noticia:

Un último ejemplo es el [Barrio Solar de Zaragoza](#), impulsado por la energética EDP, la [ONG Ecodes](#) y el ayuntamiento zaragozano. Cecilia Foronda, portavoz de Ecodes, explica la idea: “Es un proyecto de autoconsumo colectivo que busca proporcionar energía renovable, de proximidad y solidaria en un barrio. Hemos instalado placas solares en dos pabellones municipales y cualquier vecino puede inscribirse pagando seis euros al mes. Las personas vulnerables no pagan”. Además, en torno a las instalaciones fotovoltaicas se va a tratar de dinamizar el barrio e impulsar la participación social.

En este caso hay una cesión del uso de bienes patrimoniales. El artículo 145 de La Ley 33/2003, de 3 de noviembre, del Patrimonio de las Administraciones Públicas establece que se podrá ceder gratuitamente sus bienes patrimoniales bajo

las condiciones siguientes:

- Debe tratarse de bienes patrimoniales, por cuanto los bienes demaniales (o de dominio público) son inalienables.
 - Debe tratarse de bienes cuya afectación o explotación no se juzgue necesaria; de lo contrario, sería una cesión contraria al interés público y, por tanto, contraria a derecho.
 - **Dicha cesión debe ser para cumplir con algún fin de utilidad pública o interés social.** Por consiguiente, aunque no sea por parte de la propia administración, deberá destinarse igualmente a alguna finalidad de tipo colectivo, social, de interés general, etc.
 - La cesión deberá documentarse en el correspondiente acuerdo (generalmente un convenio entre entidades cedente y cesionaria), en cuyo convenio se expresará el fin al cual obligatoriamente la entidad cesionaria deberá destinar los bienes.
 - A tal efecto, el acuerdo de cesión puede incluso sujetarse a condición, término o modo, que se regirán por lo dispuesto en el Código Civil.
 - Tanto el efectivo destino a una finalidad de tipo social como el cumplimiento de dichas condiciones eventualmente impuestas, serán objeto de control por parte del ente titular del bien cedido, hasta el punto de que, en caso de no ser así, se decretará la resolución de la cesión y la restitución del bien cedido a favor de la administración titular del mismo.
- Por tanto la cesión de un bien patrimonial de forma gratuita puede realizarse sobre bienes patrimoniales en caso de interés público y para entidades ya constituidas que acrediten cumplir con esa finalidad pública** (sea una entidad pública o sin ánimo de lucro declarada de utilidad pública, que se destinen a algún fin de interés público o social, y que la entidad cesionaria cumpla con las obligaciones impuestas por el órgano cedente), **pero dependerá de la normativa local y de cómo lo pueda motivar cada Ayuntamiento o Consorcio bajo informe de sus servicios jurídicos.** Además, esa cesión de bien patrimonial no podría conllevar que los cesionarios se beneficiaran para poder vender la energía sobrante, más allá del fin de interés general de proporcionarles energía, pues el uso del bien patrimonial cedido debería destinarse a un fin declarado de utilidad pública o interés social (podría ser el suministro de energía a la población), por lo que ello ameritaría un informe del servicio jurídico respectivo del municipio o consorcio o ente regional sobre el cumplimiento del Reglamento de bienes de las Entidades Locales y en defecto de la Ley 33/2003, lo que no podemos realizar nosotros. En todo caso no sabemos si en este caso es un bien patrimonial (tendría que desafectarse previamente por la Administración local y calificarse como tal), pues si como parece es un terreno de dominio público, por tanto afecto a un servicio público, el régimen aplicable es el comentado respecto a los bienes de dominio público.

Conclusión:

Las fórmulas con encaje jurídico actual podrían ser (a falta de transposición de directivas europeas sobre comunidades de energías renovables y comunidades energéticas locales, de lo que saben mucho más que yo nuestros compañeros del departamento solar que estarían en la hoja de ruta, a quienes podeis preguntar si queréis):

- solicitar una concesión administrativa por parte de una cooperativa de ciudadanos que tendría que crearse antes, dado que estamos ante un terreno de dominio público ("public land" según Clean Energy) (no bien patrimonial del Ayuntamiento). Pero esta cooperativa es de constitución voluntaria y privada y como regla general un Ayuntamiento no puede crear una cooperativa y dar entrada en ella a ciudadanos para el uso de su propio dominio público, sino que la Cooperativa de promoción municipal sería para cumplir un fin o prestar un servicio de interés general, sin poder ciudadanos concretos ser inversores o titulares de derechos en dicha cooperativa. Distinto es que se otorguen subvenciones o ayudas a cooperativas ya constituidas, pero que se otorgan en régimen de concurrencia competitiva con otras sociedades o entidades productoras de energía que también pueden solicitar esas ayudas (por ejemplo autoconsumo).
- crear una SPV pública (sociedad mercantil pública) que diera participación a los ciudadanos pero estos tendrían que comprar parte de las acciones de la sociedad, dado que esas sociedades están sometidas a derecho mercantil en cuanto a funcionamiento interno y reparto de beneficios. Parecido es el Consorcio de Viladecans, en el que los socios de dicho Consorcio son entidades que tienen que constituirse previamente.
- cesión de bienes patrimoniales de forma gratuita en caso de interés público y para entidades ya constituidas que acrediten cumplir con esa finalidad pública (sea una entidad pública o sin ánimo de lucro declarada de utilidad pública,

que se destinen a algún fin de interés público o social, y que la entidad cesionaria cumpla con las obligaciones impuestas por el órgano cedente), lo que en todo caso debería asegurar que el uso del bien cedido se destinaría a un fin declarado de utilidad pública o interés social que cumpla con los supuestos del Reglamento de bienes de las Entidades Locales y en defecto de la Ley 33/2003, lo que no podemos realizar nosotros, **pero dependerá de la normativa local y de cómo lo pueda motivar cada Ayuntamiento o Consorcio bajo informe de sus servicios jurídicos. Además los servicios jurídicos del Consorcio o entidad local titular de los terrenos deberían verificar si es un terreno de dominio público o patrimonial (pues si dominio público como parece solo puede convertirse el terreno en patrimonial tras su expresa desafectación por el órgano titular).**

En todo caso, dado que la actuación la realizaría la entidad local o regional de Menorca (es ante quien se tendría que solicitar la concesión en régimen de concurrencia competitiva), no tenemos la potestad de establecer las vías jurídicas que deben adoptar, bajo el principio de autonomía local que reconoce la Constitución, por lo que las vías jurídicas deberían ser analizadas por los servicios jurídicos de las entidades locales y del Consorcio que promueve la iniciativa.