

Commission Implementing Regulation (EU) 2020/1001 of 9 July 2020 laying down detailed rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the operation of the Modernisation Fund supporting investments to modernise the energy systems and to improve energy efficiency of certain Member States

CHAPTER II

FINANCING OF INVESTMENTS

Article 3

Overview of investments

1 By 30 November of each year, each beneficiary Member State shall provide the European Investment Bank (EIB) and the Investment Committee with an overview of investments in respect of which it intends to submit investment proposals in the next two calendar years, as well as updated information on investments covered by any previous overview.

2 In the overview referred to in paragraph 1, the beneficiary Member State shall provide the following information about each planned investment:

- a the name of the project proponent or the scheme managing authority;
- b the specific location of the investment or the geographical scope of the scheme;
- c an estimate of the total cost of the investment;
- d the investment field and a summary description of the investment;
- e the status of any State aid assessment concerning the investment, where applicable;
- f an estimate of the financing from the Modernisation Fund and an outline of the intended financing proposals.

3 The information included in the overview shall not be binding for the beneficiary Member State when submitting investment proposals in accordance with Article 4.

Article 4

Submission of investment proposals

1 Beneficiary Member States may submit investment proposals to the EIB and the Investment Committee at any time during a calendar year.

When submitting investment proposals, beneficiary Member States shall provide information specified in Annex I.

The beneficiary Member State shall indicate whether the proposal concerns a priority investment or a non-priority investment.

2 Where an investment concerns a scheme, beneficiary Member State shall submit a proposal in accordance with paragraph 1 and specify the amount requested as the first disbursement for the scheme.

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After the Commission has decided on the first disbursement to the scheme in accordance with Article 8(1), any subsequent disbursement shall require a separate proposal from the beneficiary Member State specifying the amount to be disbursed and containing the updated information about the scheme, as appropriate.

3 Where the beneficiary Member State submits several investment proposals to be assessed in the same biannual disbursement cycle, it shall indicate a priority order for assessment of priority investments and a priority order for assessment of non-priority investments. If the Member State fails to indicate a priority order, the EIB or, as appropriate, the Investment Committee shall assess the proposals according to the dates of their submission.

4 A proposal concerning a non-priority small-scale project may be submitted only as part of a scheme.

5 The beneficiary Member State shall not request the financing from the resources of the Modernisation Fund of any costs of the investment which are financed by another Union or national instrument.

Article 5

Available funds

1 Four weeks before the meeting of the Investment Committee referred to in Article 11(1), the EIB shall inform the beneficiary Member State, the Investment Committee and the Commission about the funds available to that Member State to finance investments from the Modernisation Fund ('statement of the available funds').

2 The statement of the available funds shall specify the following:

- a the amount held with the EIB, excluding any amounts already disbursed but not yet paid to the Member State in accordance with Article 9, and excluding any costs of the EIB specified in the agreement referred to in Article 12(3);
- b any amounts disbursed to discontinued investments which increase the resources in the Modernisation Fund available to the beneficiary Member State in accordance with Commission decision referred to in Article 10(2).

3 The closing date of the statement of the available funds shall be the last day of the calendar month preceding the date of transmission of information in accordance with paragraph 1.

4 Without prejudice to paragraphs 1 to 3, the beneficiary Member State may request from the EIB information about the amount earmarked for that Member State held with the EIB at any given point in time.

Article 6

Confirmation of priority investments

1 Investment proposals submitted by the beneficiary Member States as priority investments shall be assessed by the EIB in the first biannual disbursement cycle of the calendar year, if submitted at least six weeks before the first biannual meeting of the Investment Committee referred to in Article 11(1).

If submitted later than six weeks before the first biannual meeting of the Investment Committee referred to in Article 11(1), but at least six weeks before the second biannual

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meeting of the Committee, they shall be assessed in the second biannual disbursement cycle of the calendar year.

If submitted later than six weeks before the second biannual meeting of the Investment Committee referred to in Article 11(1), they shall be assessed in the first biannual disbursement cycle of the following calendar year.

2 The EIB may request from the beneficiary Member State any information or documents that it considers necessary to assess the investment, provided that such information or documents are required by Annex I. The EIB shall request the information or documents without undue delay. If the beneficiary Member State provides the requested information or documents less than six weeks before the meeting of the Investment Committee referred to in Article 11(1), the EIB may postpone the assessment of the proposal to the next biannual disbursement cycle.

3 If the EIB is of the opinion that the proposal concerns a non-priority investment, the EIB shall inform thereof the beneficiary Member State not later than within four weeks from submission of the proposal, and state the reasons for its conclusion. In that case, the proposal shall be assessed in accordance with the requirements and timelines specified in Article 7.

4 If the proposal does not comply with Article 10d(1) of Directive 2003/87/EC or the requirements of this Regulation, the EIB shall return the proposal to the beneficiary Member State not later than within four weeks from submission of the proposal, and state the reasons for its conclusion. The EIB shall forthwith inform the Investment Committee.

5 The assessment of the proposal shall include verification of the costs of the proposed investment, unless the proportionality of the amount of aid received has been verified by the Commission under the relevant State aid procedure.

6 The EIB shall assess the proposal respecting the applicable Union law.

7 The EIB may confirm the proposal as a priority investment provided that the following conditions are met:

- a the beneficiary Member State has demonstrated that the investment complies with the requirements laid down in Article 10d(1) of Directive 2003/87/EC and that it falls into at least one area listed in Article 10d(2) of that directive;
- b the beneficiary Member State has sufficient funds available according to the statement of the available funds referred to in Article 5(1) and after deduction of any amounts to be disbursed for investments already confirmed in accordance with paragraph 9 of this Article;
- c the beneficiary Member State has provided evidence that the investment proposal fulfils either of the following requirements:
 - obtained State aid clearance in accordance with the Commission decision,
 - is exempted from the State aid notification in accordance with Commission Regulation (EU) No 651/2014⁽¹⁾,
 - does not constitute State aid within the meaning of Article 107(1) of the Treaty;
- d the beneficiary Member State has confirmed in writing that the investment complies with any other applicable requirements of Union and national law;
- e according to the information provided by the beneficiary Member State about contributions from other Union and national instruments, the amounts requested from the Modernisation Fund are not intended to cover the same costs of the investment as those financed by another Union or national instrument.

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8 Where a proposal concerns a subsequent disbursement for a scheme confirmed by the EIB in accordance with paragraph 9 prior to the first disbursement, the assessment of the proposal by the EIB shall be limited to verification of the available funds in accordance with point (b) of paragraph 7, provided that there have been no changes to the scheme.

9 The EIB shall decide on confirmation of the proposal as a priority investment at the latest two weeks before the meeting of the Investment Committee referred to in Article 11(1).

The EIB shall forthwith inform the beneficiary Member State concerned and the Commission about the decision referred to in the first subparagraph.

10 At the latest one week before the meeting of the Investment Committee referred to in Article 11(1), the EIB shall inform the Committee about the investment proposals of each beneficiary Member State confirmed as priority investments in accordance with paragraph 9 of this Article and the amount to be disbursed to each investment.

Article 7

Recommendations on non-priority investments

1 The investment proposals submitted by the beneficiary Member States as non-priority investments shall be assessed by the Investment Committee in the first biannual disbursement cycle of the calendar year, if submitted at least 10 weeks before the first biannual meeting of the Investment Committee referred to in Article 11(1).

If submitted later than 10 weeks before the first biannual meeting of the Investment Committee referred to in Article 11(1), but at least 10 weeks before the second biannual meeting of the Committee, they shall be assessed in the second biannual disbursement cycle of the calendar year.

If submitted later than 10 weeks before the second biannual meeting of the Investment Committee referred to in Article 11(1), they shall be assessed in the first biannual disbursement cycle of the following calendar year.

2 At the latest two weeks before the meeting of the Investment Committee referred to in Article 11(1), the EIB shall complete a technical and financial due diligence assessment of the proposal, including an assessment of the expected emission reductions.

3 The EIB may request from the beneficiary Member State any information or documents that it considers necessary to carry out the technical and financial due diligence assessment, provided that such information or documents are required by Annex I. The EIB shall request the information or documents without undue delay. If the beneficiary Member State provides the requested information or documents less than 10 weeks before the meeting of the Investment Committee referred to in Article 11(1), the EIB may postpone the completion of the due diligence assessment to the next biannual disbursement cycle.

4 The financial due diligence assessment by the EIB shall include verification of the costs of the proposed investment, unless the proportionality of the amount of aid received has been verified by the Commission under the relevant State aid procedure.

5 The EIB shall carry out the due diligence assessment respecting the applicable Union law.

6 The due diligence assessment by the EIB shall be accompanied by a statement of the EIB representative regarding the endorsement of the financing of the investment proposal. The EIB shall forthwith transmit the due diligence assessment to the Investment Committee.

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7 The Investment Committee may issue a recommendation on financing the investment proposal provided that the following conditions are met:

- a the beneficiary Member State has demonstrated that the investment complies with the requirements laid down in Article 10d(1) of Directive 2003/87/EC;
- b the beneficiary Member State has sufficient funds available according to the statement of the available funds referred to in Article 5(1) and after deduction of any amounts to be disbursed according to information specified in Article 6(10) and on the basis of the recommendations already issued in accordance with paragraph 9 of this Article;
- c the share of the funds allocated to priority investments is at least 70 % of the total amount of funds used by the beneficiary Member State, including the following funds:
 - funds already disbursed for priority and non-priority investments,
 - funds still to be disbursed according to information specified in Article 6(10),
 - funds still to be disbursed in accordance with the recommendations already issued under paragraph 9,
 - funds requested for the investment proposal under the assessment;
- d the financing complies with the fourth sentence of the second subparagraph of Article 10d(6) of Directive 2003/87/EC;
- e the beneficiary Member State has provided evidence that the investment proposal fulfils any of the following requirements:
 - it has obtained State aid clearance in accordance with the Commission decision,
 - it is exempted from the State aid notification in accordance with Regulation (EU) No 651/2014,
 - it does not constitute State aid within the meaning of Article 107(1) of the Treaty;
- f the beneficiary Member State has confirmed in writing that the investment complies with any other applicable requirements of Union and national law;
- g according to the information provided by the beneficiary Member State about contributions from other Union and national instruments, the amounts requested from the Modernisation Fund are not intended to cover the same costs of the investment as those financed by another Union or national instrument.

8 Where a proposal concerns a subsequent disbursement for a scheme recommended for the financing by the Investment Committee in accordance with paragraph 9 prior to the first disbursement, the proposal shall not require carrying out of due diligence assessment by the EIB, and the assessment of the proposal by the Committee shall be limited to verification of compliance with the requirements specified in points (b), (c) and (d) of paragraph 7, provided that there have been no changes to the scheme.

9 The Investment Committee shall issue a recommendation on the investment proposal in the meeting referred to in Article 11(1), specifying the amount of the support from the Modernisation Fund, stating the reasons for its conclusion, and including any suggestions regarding appropriate financing instruments.

10 If the Investment Committee does not recommend financing the investment, it shall state the reasons for its conclusion. In such case, the investment shall not be supported from the Modernisation Fund. The concerned Member State may revise the investment proposal taking into consideration the findings of the Investment Committee and it may submit a new investment proposal in any subsequent biannual disbursement cycle.

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Article 8

Disbursement decision of the Commission

1 After the meeting referred to in Article 11(1) of this Regulation, the Commission shall without undue delay adopt the decision referred to in Article 10d(3) of Directive 2003/87/EC specifying the amount of the resources from the Modernisation Fund to be disbursed to each investment confirmed as a priority investment by the EIB or recommended for the financing by the Investment Committee ('disbursement decision').

A decision concerning a disbursement of the resources from the Modernisation Fund to a scheme shall specify the amount of the first or any subsequent disbursement, as appropriate.

2 The Commission shall notify the disbursement decision to the beneficiary Member States concerned, and it shall inform thereof the EIB and the Investment Committee.

Article 9

Payments

Within 30 days of the date of the disbursement decision, the EIB shall transmit to the beneficiary Member State the relevant amount of the Modernisation Fund support.

Article 10

Discontinued investments

1 Subject to the documentary evidence provided by the beneficiary Member State in the annual report referred to in Article 13, an investment shall be deemed discontinued in either of the following cases:

- a the project proponent or the scheme managing authority has not financed the investment for the period exceeding two consecutive years;
- b the project proponent has not spent the total amount of the revenues from the Modernisation Fund disbursed to the investment within five years from the date of the relevant disbursement decision of the Commission.

Point (b) shall not apply to schemes.

2 By the decision adopted in accordance with Article 8, the Commission shall modify the amount already disbursed for the discontinued investment by deducting any amount not yet paid by the beneficiary Member State to the project proponent or the scheme managing authority. Any such unpaid amount shall increase the resources in the Modernisation Fund available to the concerned Member State in accordance with Article 5(2)(b), and it shall be set off against any future payment by the EIB to the Member State concerned under Article 9.

3 Without prejudice to paragraph 1 of this Article, prior to the closing date of the statement of the available funds referred to in Article 5(3), the beneficiary Member State may inform the Commission about a discontinued investment and request a modification of the disbursement decision in accordance with paragraph 2 of this Article. This request may concern the amounts not yet paid to the project proponent or the scheme managing authority and the amounts already paid to the project proponent or the scheme managing authority, but

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subsequently recovered by the beneficiary Member State. The beneficiary Member State shall provide the relevant documentary evidence justifying the request. Paragraph 2 of this Article shall apply to modification of the disbursement decision, the increase of the resources in the Modernisation Fund available to the concerned Member State, and the setting off of the amount returned to the Fund against any future payment by the EIB to the Member State.

Article 11

Operation of the Investment Committee

1 The Investment Committee shall meet twice a year, at the latest by 15 July and 15 December. The secretariat of the Investment Committee shall communicate the date of the meeting to the Member States as soon as that date becomes available.

2 Unless the Committee issues a recommendation in accordance with the first and second sentence of the second subparagraph of Article 10d(7) of Directive 2003/87/EC, it shall be quorate if at least half of the representatives of the beneficiary Member States, all representatives of the non-beneficiary Member States and the representatives of the Commission and of the EIB are present.

3 The non-beneficiary Member States shall elect three representatives in the Investment Committee in a vote comprising all candidates. Each non-beneficiary Member State may propose one candidate. The three candidates who received the largest numbers of votes shall be elected. If two or more candidates obtained the same number of votes and as a result, more than three candidates would be elected, the vote shall be resumed, comprising all candidates, except for the candidate(s) who received the highest number of votes, and if appropriate, the second highest number of votes.

4 The members of the Investment Committee may not have financial or other interests in industries which qualify for the Modernisation Fund support, whether direct or indirect, which could affect their impartiality or may objectively be perceived as such. They shall act in the public interest and in an independent manner. They shall make a declaration of interests prior to taking up function in the Investment Committee, and they shall update their declarations whenever a relevant change occurs.

5 The EIB shall provide administrative and logistic support to the Investment Committee (the secretariat), including support with the administration of a website dedicated to the Modernisation Fund.

6 On a proposal from the competent Commission department, the Investment Committee shall establish its rules of procedure which shall, in particular, lay down procedures for the following:

- a appointment of members and observers to the Investment Committee, and their alternates;
- b organisation of the meetings of the Investment Committee;
- c detailed rules regarding conflict of interest, including the model declaration of interests.

7 Members of the Investment Committee shall not receive any remuneration or reimbursement of costs for their participation in the activities of the Committee.

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Article 12

Asset management guidelines and agreement with the EIB

1 The EIB shall develop asset management guidelines to manage the revenues from the Modernisation Fund, taking into account the objectives of Directive 2003/87/EC and the internal rules of the EIB.

2 After consulting the Member States, the Commission shall enter into an agreement with the EIB laying down the specific terms and conditions under which the EIB shall perform its tasks in relation to implementation of the Modernisation Fund. Those terms and conditions shall cover the following tasks:

- a auctioning and monetisation of the allowances destined for the Modernisation Fund, in accordance with Commission Regulation (EU) No 1031/2010⁽²⁾;
- b management of the revenues from the Modernisation Fund;
- c confirmation of the priority investment proposals under Article 6 and carrying out due diligence of non-priority investment proposals under Article 7;
- d providing the secretariat to the Investment Committee, including administration of a website dedicated to the Modernisation Fund;
- e preparation of draft reports of the Investment Committee under Article 14.

3 The agreement referred to in paragraph 2 shall specify the mechanism for the recovery of the costs of the EIB for the performance of its tasks. The costs recovery mechanism related to confirmation of priority investments and carrying out of due diligence of non-priority investments shall take into account the number and complexity of proposals submitted by each beneficiary Member State. The costs of the EIB for the performance of its tasks shall be financed from the funds available to each beneficiary Member State as referred to in Article 5(2)(a). The EIB shall report to the Commission and to the Member States on the completion of the tasks under the agreement and the related costs.

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- (1) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ([OJ L 187, 26.6.2014, p. 1](#)).
- (2) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community ([OJ L 302, 18.11.2010, p. 1](#)).

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