

**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**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC <sup>(1)</sup>, and in particular Article 10d(12) thereof,

Whereas:

- (1) Directive 2003/87/EC establishes the Modernisation Fund for the period from 2021 to 2030, to support investments in modernising energy systems and improving energy efficiency in certain Member States. As stated in the Communications from the Commission entitled 'The European Green Deal' <sup>(2)</sup> and 'The European Green Deal Investment Plan' <sup>(3)</sup>, the implementation of the Modernisation Fund should contribute to the attainment of the objectives of the European Green Deal, by supporting green and socially just transition.
- (2) Detailed rules on the operation of the Modernisation Fund should be laid down to allow for smooth distribution of its financial resources to the beneficiary Member States, in particular by laying down procedures for submission and assessment of investment proposals and for disbursement of the Fund revenues.
- (3) In order to ensure the compatibility of the financing under the Modernisation Fund with the internal market, beneficiary Member States should notify the Commission, in accordance with Article 108(3) of the Treaty, of any planned investment constituting State aid within the meaning of Article 107(1) of the Treaty and that would not be covered by an existing approved or exempted aid scheme or an individual decision. The assessment of investments covered by the Fund should be coordinated with the State aid assessment, and the modalities of submission of investment proposals should take into account the modalities of submission of State aid notifications. The disbursement of the revenues from the Fund should depend on State aid clearance.
- (4) 'The European Green Deal' envisages territorial just transition plans as a cornerstone of the Just Transition Mechanism. When an investment under the Modernisation Fund aims at implementation of a territorial just transition plan of the beneficiary Member State, that Member State should provide information about the expected contribution of the investment to that plan, with a view of supporting coherence and complementarity with the objectives of the plan.
- (5) Beneficiary Member States should regularly inform the European Investment Bank (EIB) and the Investment Committee for the Modernisation Fund ('Investment Committee') of the planned investments to facilitate the planning of disbursement and management of the resources from the Modernisation Fund. However, that information should not bind the beneficiary Member States when submitting future investments proposals.

<sup>(1)</sup> OJ L 275, 25.10.2003, p. 32.

<sup>(2)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal', COM(2019) 640 final of 11 December 2019.

<sup>(3)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal Investment Plan', COM(2020) 21 final of 14 January 2020.

- (6) A simplified procedure for disbursement of the Fund revenues should apply to investments in the priority areas listed in Article 10d(2) of Directive 2003/87/EC ('priority investments'). Non-priority investments should undergo a comprehensive assessment of their technical and financial viability and their added value to the Fund objectives.
- (7) Pursuant to Article 10d(2) of Directive 2003/87/EC, at least 70 % of the financial resources from the Modernisation Fund are to be allocated to priority investments. To ensure fair distribution of the financial resources across all beneficiary Member States, that requirement should apply to the individual share in the Fund of each beneficiary Member State.
- (8) The financing of investments from the Modernisation Fund should depend on the availability of the funds at disposal of the beneficiary Member State and the proportion of funds allocated to priority investments. In order to enable close monitoring of allocation of the funds, while ensuring efficiency of the disbursement process, the assessment of the investment proposals by the EIB or, as appropriate, by the Investment Committee, and disbursement of the funds by the Commission should be organised in biannual cycles.
- (9) The procedures for the operation of the Modernisation Fund should take into account the specificities of schemes submitted by the beneficiary Member States. Once the EIB confirms the scheme as a priority investment or, as appropriate, the Investment Committee recommends the financing of the scheme in the non-priority area, and once the Commission decides on the first disbursement of the funds for the scheme, the beneficiary Member State should submit a new proposal for any subsequent disbursement. For the purpose of any such subsequent disbursement, the confirmation by the EIB or, as appropriate, the recommendation by the Investment Committee should be limited to verification of the availability of the funds at disposal of the beneficiary Member State, and in respect of schemes that qualify as non-priority investments, verification of compliance with the thresholds for the permissible support specified in Article 10d(2) and the fourth sentence of the second subparagraph of Article 10d(6) of Directive 2003/87/EC. Furthermore, simplified rules should apply to the annual reporting on schemes by the beneficiary Member States.
- (10) Discontinued investments should not receive further financing from the Modernisation Fund. Any amounts already paid to discontinued investments but not yet consumed by such investments should be made available for the financing of other investments.
- (11) Detailed rules should be laid down regarding the composition and operation of the Investment Committee.
- (12) Pursuant to Article 10d(3) of Directive 2003/87/EC, the EIB is to manage the revenues from the Modernisation Fund. For this purpose, the EIB should develop asset management guidelines which support the objectives of the Directive and which take account of the internal rules of the EIB. In addition, the EIB is to carry out other tasks related to the implementation of the Modernisation Fund, as laid down in Directive 2003/87/EC. The specific terms and conditions for carrying out those tasks should be laid down in an agreement between the Commission and the EIB. The mechanism for the recovery of costs of the EIB should correspond with those tasks, and it should also take into account the number and complexity of investment proposals submitted by respective beneficiary Member States, and whether the proposals concern priority or non-priority investments.
- (13) Where Member States decide to use the revenues generated from the auctioning of allowances to finance their expenses related to implementation of the Modernisation Fund, such expenses could qualify as administrative expenses referred to in Article 10(3)(i) of Directive 2003/87/EC, and therefore they might count towards the 50 % objective of climate-related use of the auctioning revenues.
- (14) Clear monitoring and reporting arrangements should be laid down to provide the Commission with complete and timely information on the progress of particular investments and overall implementation of the Modernisation Fund.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter**

This Regulation lays down detailed rules on the operation of the Modernisation Fund as regards the following:

- (a) submission of proposals for financing of investments;
- (b) assessment of priority investments and non-priority investments;
- (c) management, disbursement and payment of the resources from the Modernisation Fund;
- (d) composition and operation of the Investment Committee for the Modernisation Fund ('Investment Committee');
- (e) monitoring, reporting, evaluation, and auditing;
- (f) information and transparency.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation the following definitions apply:

- (1) 'beneficiary Member State' means a Member State listed in Annex IIb to Directive 2003/87/EC;
- (2) 'non-priority investment' means an investment that does not fall into any area listed in Article 10d(2) of Directive 2003/87/EC;
- (3) 'non-priority small-scale project' means a non-priority investment receiving State aid the total amount of which meets the criteria of the *de minimis* aid in accordance with Article 3 of Commission Regulation (EU) No 1407/2013<sup>(\*)</sup>;
- (4) 'priority investment' means an investment that falls into at least one area listed in Article 10d(2) of Directive 2003/87/EC;
- (5) 'scheme' means an investment proposal which complies with the following criteria:
  - (a) it comprises a consistent set of priorities coherent with the objectives of the Modernisation Fund, and because of the characteristics of the projects under the scheme, it can be qualified either as a priority or non-priority investment;
  - (b) it has a duration of more than one year;
  - (c) it has a national or regional scope; and
  - (d) it aims to support more than one public or private person or entity responsible for initiating or initiating and implementing projects under the scheme.

<sup>(\*)</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

## 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.

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 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 <sup>(5)</sup>,
    - 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.
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.

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<sup>(5)</sup> 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).

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.
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.

#### *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 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.

*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 <sup>(9)</sup>;
  - (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.

<sup>(9)</sup> 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).

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.

### CHAPTER III

#### MONITORING, REPORTING, EVALUATION AND AUDITING

##### Article 13

#### **Monitoring and reporting by the beneficiary Member States**

1. Beneficiary Member States shall monitor implementation of investments financed from the Modernisation Fund. By 30 April, beneficiary Member States shall submit to the Commission an annual report for the preceding year containing information specified in Annex II.
2. The annual report referred to in paragraph 1 shall be accompanied by the following information:
  - (a) documentary evidence of the financing of investments from the Modernisation Fund in the preceding year;
  - (b) the annual financial statement in respect of each investment, or in the case of a scheme, the financial statement providing for aggregated data on expenditures to the scheme in the preceding year.

##### Article 14

#### **Reporting by the Investment Committee**

1. The annual report of the Investment Committee referred to in the first sentence of Article 10d(11) of Directive 2003/87/EC shall include the following information:
  - (a) the number of investment proposals received, including the specification of the investment area;
  - (b) the number of recommendations issued and summary conclusions of each recommendation;
  - (c) an overview of the main conclusions regarding the proposed investments following from the technical and financial due diligence carried out by the EIB;
  - (d) the practical experience on procedural aspects of issuing the recommendations.
2. On the basis of a draft prepared by the EIB, the Investment Committee shall adopt the final report for the preceding year by 15 March, and it shall forthwith submit it to the Commission.

##### Article 15

#### **Review and evaluation of the Fund**

1. In the review referred to in the second sentence of Article 10d(11) of Directive 2003/87/EC, the Commission shall cover the following areas:
  - (a) confirmation of priority investments by the EIB;
  - (b) assessment of non-priority investments by the Investment Committee;
  - (c) financing and monitoring of investments by the beneficiary Member States;
  - (d) any relevant procedural aspects regarding the implementation of the Modernisation Fund.

Based on the results of the review, the Commission shall, where appropriate, make the relevant proposals.

2. At the end of the implementation of the Modernisation Fund, the Commission shall carry out a final evaluation of the implementation of the Modernisation Fund. In particular, the Commission shall evaluate the progresses towards the achievement of the Fund objectives as laid down in paragraphs 1, 2 and 3 of Article 10d of Directive 2003/87/EC.
3. The Commission shall make the results of the review and evaluation publicly available.

#### Article 16

##### **Audits and protection of the financial interests of the Fund**

1. The EIB shall prepare annual accounts of the Modernisation Fund for each financial year, which shall run from 1 January to 31 December, taking into account the financial statements provided pursuant to Article 13(2)(b). Those accounts shall be subject to an independent external audit.
2. The EIB shall submit to the Commission the following statements:
  - (a) by 31 March, the unaudited financial statements of the Modernisation Fund covering the preceding financial year;
  - (b) by 30 April, the audited financial statements of the Modernisation Fund covering the preceding financial year.
3. The accounts and financial statements referred to in paragraphs 1 and 2 shall be drawn up in compliance with the International Public Sector Accounting Standards (IPSAS).
4. The beneficiary Member States shall have the power to audit, on the basis of documents and on-the-spot checks, over all project proponents and scheme managing authorities, contractors and subcontractors to whom they provided support from the Modernisation Fund.
5. For the purpose of paragraphs 1 and 2, beneficiary Member States, project proponents and scheme managing authorities, contractors and subcontractors who have received the resources from the Modernisation Fund shall keep available, for a period of five years following the last payment in respect of any project or scheme, all supporting documents and information regarding the payment or expenditure made.
6. Beneficiary Member States shall take appropriate measures to ensure that, where activities financed under this Regulation are implemented, the financial interests of the Modernisation Fund are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts unduly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties. Recoveries shall be implemented in accordance with the legislation of the beneficiary Member States.

For any amounts recovered, the beneficiary Member State shall request a modification of a disbursement decision in accordance with Article 10(3).

#### CHAPTER IV

##### **FINAL PROVISIONS**

#### Article 17

##### **Information, communication and publicity**

1. The beneficiary Member States shall make publicly available on the websites of the relevant departments of their administrations information on the investments supported under this Regulation, in order to inform the public of the role and objectives of the Modernisation Fund. Such information shall include an explicit reference to the Modernisation Fund support received.
2. The beneficiary Member States shall ensure that the final recipients of the Modernisation Fund support provide coherent, relevant and targeted information on the Modernisation Fund support received to multiple audiences, including the media and the public.

3. The Modernisation Fund name shall be used for all communication activities and appear on notice boards at strategic places visible to the public.
4. The beneficiary Member States and the Commission shall perform information, communication and promotion actions relating to the Modernisation Fund support and results. Such actions shall facilitate exchanges of experience, knowledge and best practices as regards the design, preparation and implementation of investments under the Modernisation Fund.

#### Article 18

### Transparency

1. Without prejudice to paragraph 2, the secretariat of the Investment Committee shall arrange for the publication on the Modernisation Fund website of the following information:
  - (a) the names of the members and observers to the Investment Committee, and their affiliation;
  - (b) the curricula vitae and the declarations of interest of the members of the Investment Committee;
  - (c) the confirmations of the EIB concerning priority investments;
  - (d) the recommendations of the Investment Committee concerning non-priority investments;
  - (e) the disbursement decisions of the Commission;
  - (f) the annual reports submitted by the beneficiary Member States under Article 13;
  - (g) the annual reports submitted by the Investment Committee under Article 14;
  - (h) the Commission's review and evaluation of the Modernisation Fund under Article 15.
2. Member States, the Commission and the EIB shall not disclose any commercially confidential information included in any document, information or other material submitted by them or by any third party in connection with implementation of the Modernisation Fund.

#### Article 19

### Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 July 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

## ANNEX I

**Information about investment proposal to be submitted to the EIB and to the Investment Committee****1. All investment proposals**

- 1.1. specification of the investment area in accordance with Article 10d(1) or (2) of Directive 2003/87/EC, as appropriate;
- 1.2. general description of the investment, including the objectives and targeted beneficiary(ies), technology (if relevant), capacity (if relevant), and estimated duration of the investment;
- 1.3. justification for the Modernisation Fund support, including the confirmation of the compliance of an investment with Article 10d(1) of Directive 2003/87/EC;
- 1.4. specification of costs to be covered from the Modernisation Fund;
- 1.5. description of the support instrument(s) used;
- 1.6. requested amount of the financing from the Modernisation Fund;
- 1.7. contribution(s) from other Union and national instruments;
- 1.8. existence of State aid (within the meaning of Article 107(1) of the Treaty), and indication of the following, as applicable:
  - (a) reference to the Commission decision clearing national aid measure;
  - (b) reference under which the block-exempted measure has been registered (State aid number attributed by the Commission's electronic notification system referred to in Article 11 of Regulation (EU) No 651/2014);
  - (c) expected date for notification of the aid measure to the Commission;
- 1.9. Member State's declaration of compliance with the applicable Union and national laws;
- 1.10. when the investment aims at implementation of a territorial just transition plan, information about the expected contribution of the investment to that plan.

**2. Additional information about schemes**

- 2.1. name of the managing authority;
- 2.2. indication whether the proposal concerns an existing scheme;
- 2.3. total volume of the scheme.

**3. Additional information about proposals other than schemes**

- 3.1. name of the project proponent;
- 3.2. location of the project;
- 3.3. total investment costs;
- 3.4. development stage of the project (from feasibility to operation);
- 3.5. list of mandatory permits obtained or to be obtained.

**4. Additional information about non-priority proposals**

- 4.1. quantitative data on the construction and operation phases, including proposal's contribution to the objectives of the Modernisation Fund, the Union's 2030 climate and energy policy framework and the Paris Agreement;
  - 4.2. certified financial forecast, including intended financial contribution from private sources;
  - 4.3. description of any other targeted performance indicator, as requested by the EIB;
  - 4.4. other relevant information related to the project proponent, the investment, the general market conditions and environmental issues.
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## ANNEX II

**Information to be provided by the beneficiary Member State in the annual report to the Commission****1. Overview of investments**

- 1.1. number of investments financed from the Modernisation Fund to date;
- 1.2. number of on-going, completed and discontinued investments;
- 1.3. overall ratio of the financing provided to priority investments against non-priority investments, if any, in the beneficiary Member State.

**2. Information on each investment**

- 2.1. total investment triggered (total investment costs);
- 2.2. dates and amounts of payments from the Modernisation Fund to the project proponent or the scheme managing authority;
- 2.3. amounts received from the Modernisation Fund by the beneficiary Member State but not yet paid to the project proponent or the scheme managing authority;
- 2.4. any amounts recovered by the beneficiary Member State from the project proponent or the scheme managing authority, and the dates of recovery;
- 2.5. an assessment of the added value of the investment in terms of energy efficiency and modernisation of the energy system, including information on the following:
  - (a) the energy saved in MWh;
  - (b) expected cumulative MWh saved by the end of the investment lifetime;
  - (c) the greenhouse gas emissions saved in tCO<sub>2</sub>;
  - (d) expected cumulative tCO<sub>2</sub> saved by the end of the investment lifetime;
  - (e) the additional renewable energy capacity installed, if applicable;
  - (f) achieved leverage of funds (total amount invested in relation to the contribution from the Modernisation Fund);
- 2.6. when the investment aims at implementation of a territorial just transition plan, information about the expected contribution of the investment to that plan.
- 2.7. for schemes, the reporting data specified shall be presented in aggregated form.

**3. Additional information about investments other than schemes**

- 3.1. milestones achieved since the previous annual report;
- 3.2. expected entry into operation;
- 3.3. identified or expected delays in implementation;
- 3.4. identified or expected changes in eligible costs, technology applied or results of an investment.

**4. Additional information about non-priority investment**

- 4.1. confirmation of co-financing from private sources.
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