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

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[(1)], 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'[(2)] and 'The European Green Deal Investment Plan'[(3)], 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.

(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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1001. (See end of Document for details)*

(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;

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1001. (See end of Document for details)*

(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[(4)];

(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.

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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1001. (See end of Document for details)*

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.