Commission Delegated Regulation (EU) 2019/856 of 26 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/856

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supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund

(Text with EEA relevance)

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 to the fourth subparagraph of Article 10a(8) thereof,

Whereas:

(1) Detailed rules on the operation of the Innovation Fund should be established taking into account lessons learnt from the NER300 programme established under Directive 2003/87/EC and implemented on the basis of Commission Decision 2010/670/EU[(2)]; notably the conclusions of the Court of Auditors report[(3)] should be taken into account.

(2) In order to cover the lower profitability and the higher technological risks of the eligible projects compared to conventional technologies, a significant part of the Innovation Fund financing should be provided in the form of a grant. Detailed rules on the disbursement of grants should therefore be established.

(3) As the risks and profitability of eligible projects may differ across sectors and activities of those projects and may also evolve over time, it is appropriate to allow for a part of the Innovation Fund support to be provided through contributions to blending operations under the Union investment support instrument, as well as in other forms provided for in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(4)] (the 'Financial Regulation').

(4) It is appropriate to consider the difference between the total costs of an eligible project and the total costs of an equivalent project using conventional technology as relevant costs for the purposes of financing under the Innovation Fund. However, in order to avoid excessive administrative burden for small-scale projects and address their particular difficulties in obtaining financing, the relevant costs of a small-scale project should be the total capital expenditure cost of such a project.

(5) With a view to making adequate financial resources timely available to the eligible projects, the disbursement of grants should be based on the achievement of

milestones. For all projects, the milestones should include financial close and entry into operation. As some projects might need the support to be disbursed at a different point in time, it is appropriate to provide for the possibility to determine additional milestones in the contractual documentation.

(6) In order to increase the probability of success of the projects, the possibility to disburse a part of the grant prior to the entry into operation of a project should be established. The disbursement of grants should in principle start at the financial close and continue during the development and operation of the project.

(7) The major part of the Innovation Fund support should depend on verified avoidance of greenhouse gas emissions. Substantial underperformance on planned greenhouse gas emission avoidance should therefore lead to the reduction and recovery of the amount of the support dependant on such avoidance. The reduction and recovery mechanism, however, should be flexible enough to take into account the innovative nature of projects supported by the Innovation Fund.

(8) Grants under the Innovation Fund should be awarded following a competitive selection process, via calls for proposals. In order to reduce the administrative burden for project proponents, a two-phase application procedure should be established, comprising an expression of interest and the full application.

(9) Projects applying for the Innovation Fund support should be assessed on the basis of qualitative and quantitative criteria. The combination of such criteria should ensure the completeness of the project assessment in terms of its technological and business potential. To ensure fair and merit-based selection, projects should be selected based on the same selection criteria, but be evaluated and ranked first *vis-à-vis* other projects in the same sector and subsequently *vis-à-vis* projects across sectors.

(10) Projects whose planning, business model and financial and legal structure appear insufficiently mature, in particular in light of a possible lack of support by the Member States concerned or of the necessary national permits, should not be selected for Innovation Fund support. However, such projects may be promising. Therefore, the possibility to provide development assistance to such projects should be laid down. Project development assistance should in particular benefit small-scale projects and projects in lower-income Member States to help achieving a geographically balanced distribution of the Innovation Fund support.

(11) It is important to achieve a geographically balanced distribution of the Innovation Fund support. To prevent a situation where some Member States are not sufficiently covered, the possibility should be laid down to establish additional selection criteria aimed at achieving geographical balance in a second or subsequent calls for proposals.

(12) The Commission should ensure the implementation of the Innovation Fund. The Commission should however be enabled to delegate some of the implementation actions, such as the organisation of the call for proposals, pre-selection of projects or contractual management of grants, to implementing bodies.

(13) The revenues of the Innovation Fund, including the revenues from the allowances monetised on the Common Auction Platform in accordance with Commission

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/856. (See end of Document for details)*

Regulation (EU) No 1031/2010[(5)], should be managed in accordance with the objectives of Directive 2003/87/EC. The Commission should therefore carry out that task itself and be enabled to delegate this task to the European Investment Bank.

(14) The Commission should apply different rules depending on the mode of the implementation of the Innovation Fund. Where the Innovation Fund is implemented in direct management, the provisions of this Regulation should be fully aligned with the provisions of the Financial Regulation.

(15) Member States should play an important role in the implementation of the Innovation Fund. In particular, the Commission should consult the Member States on the key implementation decisions, as well as on the development of the Innovation Fund.

(16) The Innovation Fund should be implemented in accordance with the sound financial management principles as laid down in the Financial Regulation.

(17) Clear reporting, accountability and financial control arrangements should be laid down in order to ensure that the Commission receives complete and timely information on the progress of projects supported by the Innovation Fund, the entities managing the Innovation Fund apply sound financial management principles, and the Member States are in a timely manner informed about the implementation of the Innovation Fund,

HAS ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Subject matter

This Regulation lays down detailed rules supplementing Directive 2003/87/EC as regards:

(a) the operational objectives of the Innovation Fund established by Article 10a(8) of Directive 2003/87/EC;

(b) the forms of support provided under the Innovation Fund;

(c) the application procedure for the Innovation Fund support;

(d) the procedure and criteria for project selection under the Innovation Fund;

(e) disbursement of the Innovation Fund support;

(f) the governance of the Innovation Fund;

(g) reporting, monitoring, evaluation, control, and publicity concerning the operation of the Innovation Fund.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/856. (See end of Document for details)*

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

(1) 'financial close' means the moment in the project development cycle where all the project and financing agreements have been signed and all the required conditions contained in them have been met;

(2) 'entry into operation' means the moment in the project development cycle where all elements and systems required for operation of the project have been tested and activities resulting in effective avoidance of greenhouse gas emissions have commenced;

(3) 'small-scale project' means a project with a total capital expenditure not exceeding EUR 7 500 000.

Article 3

Operational objectives

The Innovation Fund shall have the following operational objectives:

(a) to support projects demonstrating highly innovative technologies, processes or products, that are sufficiently mature and have a significant potential to reduce greenhouse gas emissions;

(b) to offer financial support tailored to market needs and risk profiles of eligible projects, while attracting additional public and private resources;

(c) to ensure that the revenues of the Innovation Fund are managed in accordance with the objectives of Directive 2003/87/EC.

Article 4

Forms of the Innovation Fund support

The Innovation Fund support to the project may take the following forms:

(a) grants;

(b) contributions to blending operations under the Union investment support instrument;

(c) where necessary to achieve the objectives of Directive 2003/87/EC, funding in any of the other form laid down in Regulation (EU, Euratom) 2018/1046 (the 'Financial Regulation'), in particular prizes, and procurement.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/856. (See end of Document for details)*

CHAPTER II

Specific provisions applicable to grants

Article 5

Relevant costs

1 For the purposes of the fourth sentence of the third subparagraph of Article 10a(8) of Directive 2003/87/EC, the relevant costs shall be the additional costs that are borne by the project proponent as a result of the application of the innovative technology related to the reduction or avoidance of the greenhouse gas emissions. The relevant costs shall be calculated as the difference between the best estimate of the total capital expenditure, the net present value of operating costs and benefits arising during 10 years after the entry into operation of the project compared to the result of the same calculation for a conventional production with the same capacity in terms of effective production of the respective final product.

Where conventional production referred to in the first subparagraph does not exist, the relevant costs shall be the best estimate of the total capital expenditure and the net present value of operating costs and benefits arising during 10 years after the entry into operation of the project.

2 The relevant costs of a small-scale project shall be the total capital expenditure costs of that project.

Article 6

Disbursement of grants

1 The Innovation Fund support, in the form of a grant, shall be disbursed upon reaching the pre-determined milestones.

2 For all projects, the milestones referred to in paragraph 1 shall be based on the project development cycle and shall be at least the following:

a financial close;

b entry into operation.

3 Taking into account the technology deployed and the specific circumstances of the sector or sectors in which it is being deployed, additional specific milestones may be determined in the contractual documents.

4 Up to 40 % of the total amount of the Innovation Fund support, including project development assistance, to a specific project shall be disbursed upon financial close or upon reaching a specific milestone preceding financial close where such a milestone has been determined in accordance with paragraph 3.

5 To the extent that the total amount of the Innovation Fund support to a specific project has not been disbursed pursuant to paragraph 4, that amount shall be disbursed after the financial close. It may be partially disbursed prior to the entry into operation and in annual instalments after the entry into operation.

6 For the purposes of paragraphs 4 and 5 of this Article, the total amount of the Innovation Fund support provided to a specific project shall include the amount of the