Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1233/2010 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Regulation (EU) No 1233/2010 of the European Parliament and of the Council of 15 December 2010 amending Regulation (EC) No 663/2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

REGULATION (EU) No 1233/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 December 2010

amending Regulation (EC) No 663/2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (c) of Article 194(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 663/2009 of the European Parliament and of the Council[(3)] established the European Energy Programme for Recovery (EEPR) to aid economic recovery by granting a financial envelope of EUR 3,98 billion for 2009 and 2010.

(2) This Regulation should be without prejudice to the aim of granting as much of the financial envelope of EUR 3,98 billion as possible by the end of 2010 to the sub-programmes referred to in Chapter II of Regulation (EC) No 663/2009. However, it has been established that part of that amount will not be committed under those sub-programmes.

(3) In the spirit of the Europe 2020 strategy for sustainable growth and jobs, and in line with the EU climate and energy package and the 2006 Action Plan for Energy Efficiency, the development of further renewable energy sources and the promotion of energy efficiency would contribute to green growth, building a competitive and sustainable economy, and tackling climate change. By supporting those policies, the Union will create new jobs and green market opportunities, thereby fostering the development of a competitive, secure and sustainable economy. Cooperation among the various tiers of government (multi-level governance) is essential in this context.

(4) Providing increased financial incentive is a key element in lowering the barriers that high up-front costs represent and in stimulating sustainable energy improvements. A

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dedicated financial facility (the facility) should therefore be created to use the funding under Chapter II of Regulation (EC) No 663/2009 which cannot be committed by the end of 2010. The creation of the facility should be considered in the light of the Sustainable Energy Financing Initiative proposed by the Commission. The facility should support the development of energy efficiency and renewable energy projects and facilitate the financing of investment projects related to energy efficiency and renewable energy by local, regional and national public authorities, in particular in urban settings. In this process, attention should be paid to synergies with other financial resources available in the Member States, such as the Structural and Cohesion Funds, the European Local Energy Assistance (ELENA) Facility and the European Regional Development Fund under Regulation (EC) No 397/2009[(4)], in order to avoid overlaps with other financial instruments.

(5) Investment support in sustainable energy can be most effective and beneficial when targeted at local level. However, in duly justified cases it may be more effective to aim at the national level, e.g. for reasons related to the availability or functioning of relevant administrative structures.

(6) To maximise the impact of the Union funding in the short term, the facility should be managed by one or more financial intermediaries such as international financial institutions. The selection of such financial intermediaries should take place on the basis of their demonstrated ability to use the funding in the most efficient and effective way, with the objective of maximising the participation, within the shortest possible time, of other public and private investors and of achieving the highest leverage between the Union funding and the total investment with a view to raising significant investments in the Union. However, in times of financial and economic crises which have a particularly adverse effect on the finances of local and regional authorities, it should be ensured that the difficult budgetary situation of those authorities does not hinder them from being able to access the funding.

(7) In compliance with Regulation (EC) No 663/2009, investment projects should be financed under the facility only if they have a rapid, measurable and substantial impact on economic recovery within the Union, increased energy security and the reduction in greenhouse gas emissions. Such investment projects contribute to green growth, the development of a competitive, connected, sustainable and green economy, as well as to the protection of employment, job creation and tackling climate change, in accordance with the ‘Europe 2020’ objectives.

(8) The criteria set out in Regulation (EC) No 663/2009 should apply to the selection and eligibility of the projects financed under the facility. The geographical balance of the projects should also be taken into account as an essential element, to ensure the impact of this Regulation on economic recovery throughout the Union, and in recognition of the fact that in some Member States, projects have not or have only partially been financed under Chapter II of Regulation (EC) No 663/2009.

(9) In view of the required short-term economic impact of this Regulation, the period between receipt of an application for a project and the final decision thereon should not exceed 6 months.

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(10) Individual legal commitments implementing budgetary commitments under Chapter IIa should be made by 31 March 2011.

(11) The facility should not constitute a precedent with regard to the use of the general budget of the Union and possible future funding measures, including in the energy sector, but should be considered rather as an exceptional measure adopted during a period of economic difficulty.

(12) Due to the urgent need to address the economic crisis, expenditure incurred under Chapter II of Regulation (EC) No 663/2009 should be eligible as from 13 July 2009 as many applicants requested the eligibility of expenditure from the submission of the grant application in line with Article 112 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(5)] (the Financial Regulation). Expenditure incurred under Chapter IIa should be eligible as from 1 January 2011.

(13) Due to the urgent need to address the economic crisis, this Regulation should enter into force immediately on publication,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 663/2009

Regulation (EC) No 663/2009 is hereby amended as follows:

1. in Article 1, the following paragraph is added:

> This Regulation provides for the creation of a financial facility (the facility) to support energy efficiency and renewable energy initiatives.;

2. Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

> 2. Individual legal commitments under Chapter II implementing the budgetary commitments made in 2009 and 2010 shall be made by 31 December 2010. Individual legal commitments under Chapter IIa shall be made by 31 March 2011.;

(b) the following paragraph is added:

> 3. The financial intermediaries described in Annex II shall endeavour to allocate all the funding from the Union contribution available in the facility to investment projects and to technical assistance for energy efficiency and renewable energy projects by 31 March 2014. No funding from the Union contribution shall be allocated after that date. All funding from the Union contribution not allocated by the financial intermediaries by 31 March 2014 shall be returned to the general budget of the Union. The funding from the Union contribution allocated to investment projects shall remain invested for a specified length of time that may not extend beyond 31 March 2034. The Union shall be entitled to returns on its investment in the

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facility throughout the lifetime of the facility, in proportion to its contribution to the facility and in accordance with its shareholder rights.;

3. the following Chapter is inserted:

CHAPTER IIa

FINANCIAL FACILITY

Article 21a

Funding that cannot be committed under Chapter II

1 Funding which according to Article 3(2) cannot be subject to individual legal commitments under Chapter II for an amount of EUR 146 344 644,5 shall be for the facility referred to in the fourth paragraph of Article 1, for the purpose of developing suitable funding instruments in cooperation with financial institutions, so as to give a major stimulus to energy efficiency projects and projects for the exploitation of renewable energy sources.

2 The facility shall be implemented in compliance with Annex II. Article 23(1) shall not apply to the facility.

3 The Union's exposure to the facility, including management fees and other eligible costs, shall be limited to the amount of the Union contribution to that facility specified in paragraph 1, and there shall be no further liability on the general budget of the Union.;

4. Article 22 is deleted;

5. Article 23 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. EEPR assistance shall cover only project-related expenditure incurred by the beneficiaries and, as regards projects under Article 9, also by third parties responsible for the implementation of a project. Expenditure incurred under Chapter II may be eligible as from 13 July 2009.;

(b) the following paragraph is inserted:

2a. Financial assistance given under Chapter IIa shall cover expenditure relating to investment projects and to technical assistance for energy efficiency and renewable energy projects incurred by the beneficiaries described in point 3 of Part A of Annex II. Such expenditure may be eligible as from 1 January 2011.;

6. Article 27 is amended as follows:

(a) the following paragraph is inserted:

1a. By 30 June 2013 the Commission shall submit to the European Parliament and the Council a mid-term evaluation report on the measures taken under Chapter IIa focusing in particular on:

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a the cost-effectiveness, leverage effect and additionality demonstrated by the facility;

b evidence of sound financial management;

c the extent to which the facility has achieved the objectives set out in this Regulation;

d the extent to which continued support under the facility for projects relating to energy efficiency and energy from renewable sources is required.

The mid-term evaluation report shall, if appropriate, and in particular if the Commission's assessment of the measures taken under Chapter IIa is positive, be accompanied by a legislative proposal for the continuation of the facility.;

(b) paragraph 3 is replaced by the following:

3. The Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an evaluation report on the results achieved by the EEPR and in accordance with Article 27(4) of the Financial Regulation.;

7. in Article 28, the following paragraph is added:

The report shall include information about all overhead costs related to the establishment and implementation of the facility set up under Chapter IIa.;

8. the Annex is renamed 'Annex I' and the following Annex is added:

'ANNEX II

FINANCIAL FACILITY

A. **Implementation of the financial facility for sustainable energy projects**

1. *Scope of the facility*

The financial facility (the facility) shall be used for the development of energy saving, energy efficiency and renewable energy projects and shall facilitate the financing of investments in those areas by local, regional and, in duly justified cases, national public authorities. The facility shall be implemented in accordance with the provisions on the delegation of budgetary execution tasks laid down in the Financial Regulation and its implementing rules.

The facility shall be used for sustainable energy projects, in particular in urban settings. This shall include, in particular, projects concerning:

(a) public and private buildings incorporating energy efficiency and/or renewable energy solutions including those based on the usage of Information and Communication Technologies (ICT);

(b) investments in high energy efficient combined heat and power (CHP), including micro-cogeneration, and district heating/cooling networks, in particular from renewable energy sources;