



**Confederation of Industry of the Czech Republic's comments on the proposal for the revision of 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 Commission presented on 1 August 2023 „ COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX amending Implementing Regulation (EU) 2020/1001 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” (“MFR revision”).

We welcome the opportunity to comment on this proposal.

**1. General comment**

MFR revision in general should not retroactively change the requirements for awarding the support or subsequent disbursement for already approved schemes or projects by investment committee, where this approval took place before the 1 January 2024, when the MFR revision shall apply from.

***Justification:***

MFR revision should not retroactively set further requirements for already approved projects/schemes in investment committee prior to the date, when it shall apply from (as of 1.1. 2024 as proposed in Article 2 MFR revision). Once approved in the investment committee, the investor legitimately expects the adequate support for the project under given conditions by investment committee and starts implementing the project. To “re-approve” schemes/projects undermines legal certainty and legitimate expectation, which is not acceptable.

**2. In Article 2, the following new points should read:**

(6) ‘large-scale scheme’ means a scheme for which the total Modernisation Fund support requested exceeds EUR ~~100 000 000~~ **400 000 000**;

(7) ‘large-scale project’ means an investment other than a scheme, for which the total Modernisation Fund support requested exceeds EUR ~~70 000 000~~ **150 000 000**;

***Justification:***

The “large-scale scheme” and “large-scale project” thresholds should be increased in order to reflect thresholds given by the Revised 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

("GBER") and EIB internal rules. Revised GBER considers certain categories of projects within notification thresholds up to 150 mil. EUR. EIB internal rules set minimum support (loan) on the level of 15 mil. Thresholds for large-scale projects and as well for large-scale schemes thus need to be increased.

**3. In the Article 4 new paragraph 2b should read:**

„2b. Beneficiary Member States shall consult the relevant stakeholders on the draft investment proposals for ~~large-scale projects and~~ large-scale schemes, in compliance with the relevant provisions on the protection of confidential information. Beneficiary Member States shall set reasonable timeframes for the relevant stakeholders to be informed and express their views before the submission of the investment proposals to the EIB.“

**Justification:**

Large projects are, by definition, subject to a very strict approval process within the construction permitting process, environmental (integrated) permitting process and other related legislation. This additional requirement to consult stakeholders above already applied substantial consultation within the existing legislative instruments would further prolong the approval process and could jeopardize the implementation of the necessary investments to modernize the energy sector in the Czech Republic.

**4. In the Article 6, paragraph 8, point (b) should read:**

„Where a proposal concerns a subsequent disbursement for a scheme or a large-scale project confirmed by the EIB in accordance with paragraph 9 prior to the first disbursement and there have been no changes to the scheme or the large-scale project, the EIB may confirm the proposal as a priority investment, provided that the following conditions are met:

(b) the investment fulfils the requirement specified in paragraph 7, point (ca), except for the schemes confirmed by the EIB in accordance with paragraph 9 before ~~5 June 2023~~ 31 December 2023;“

**Justification:**

MFR revision should not retroactively set deadlines for already approved projects/schemes prior to the date, when it shall apply from (as of 1.1. 2024 as proposed in Article 2 MFR revision).

**5. In the Article 6, paragraph 7, point (f) and Article 7, paragraph 7, point (h)**

The 5-year criterion related to duration of the schemes should be deleted.

**Justification:**

- 1) It is not clear whether the 5-year criterion is meant to apply also to the current schemes. If yes, it is not acceptable as it would have retroactive impacts on already approved projects under such scheme and it could hamper their successful realization in case the scheme would not be approved again after those five years.
- 2) Even if the rule is meant to be related to schemes approved since 2024 it gives no sense to apply if the Modernisation fund's functioning is planned by 2030.

**6. In the Article 7, paragraph 8, point (b) should read:**

„8. Where a proposal concerns a subsequent disbursement for a scheme or a large-scale project recommended for the financing by the Investment Committee in accordance with paragraph 9 prior to the first disbursement and there have been no changes to the scheme or the large-scale project, the Investment Committee may recommend the proposal for financing, provided that the following conditions are met:

(b) the investment fulfils the requirement specified in paragraph 7, point (ea), except for the schemes recommended for financing by the Investment Committee in accordance with paragraph 9 before ~~5 June 2023~~ **31 December 2023**;

**Justification:**

MFR revision should not retroactively set deadlines for already approved projects/schemes prior to the date, when it shall apply from (as of 1.1. 2024 as proposed in Article 2 MFR revision).

**7. In Article 10, paragraph 1, point (a) should read:**

“the beneficiary Member State or the scheme managing authority has not entered, within a reasonable timeframe set by the beneficiary Member state and no longer than five years from the latest transmission of funds by the EIB under Article 9, a legal commitment with the project proponent or any of the scheme’s final recipients to finance the investment;”

**Justification:**

Recital 10 of the draft of the Regulation stresses the need to have more clarity about discontinued investments, however, explicitly mentions a certain period of time instead of concrete deadlines. That seems fully logic given the difference within individual Members states in terms of permitting procedures. Therefore, Member states should keep their discretion about concrete deadlines. Suggested period of two years would not respect such approach.

**8. In the Annex I point 1.15 should read:**

“1.15. for ~~large-scale projects and~~ large-scale schemes: information about the outcome of the consultation of stakeholders.”

**Justification:**

Large projects are, by definition, subject to a very strict approval process within the construction permitting process, environmental (integrated) permitting process and other related legislation. This additional requirement to consult stakeholders above already applied substantial consultation within the existing legislative instruments would further prolong the approval process and could jeopardize the implementation of the necessary investments to modernize the energy sector in the Czech Republic.

Contact point for further information:

**ZUZANA SÁDLOVÁ**  
Energy Industry Manager

**CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC**

Economic affairs

Freyova 948/11 | 190 00 Prague 9

Mobile: (+420) 703 154 238

[zsadlova@spcr.cz](mailto:zsadlova@spcr.cz)