



# CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC RESPONSE TO THE CONSULTATION ON THE COMMISSION IMPLEMENTING REGULATION ON THE MODERNISATION FUND

PRAGUE, 16 MARCH 2020

## GENERAL COMMENTS

### 1. Legal basis

1. Paragraph 3 in Article 10d of the Directive makes it clear that the Modernisation Fund (hereinafter “MF”) shall operate under the responsibility of the beneficiary Member States. Therefore it should be Member states responsibility to ensure that supported investment comply with State aid or other lawful requirements.
2. Paragraph 6 in article 10d of the Directive stipulates that “where the EIB confirms that an investment falls into the areas listed in paragraph 2, the Member State may proceed to finance the investment project from its share.” It is therefore clear that EIB scrutiny concerns only compliance with investment compliance with paragraph 2 and not any other areas which are in sole responsibility by Member states and there is no right for EIB to check this compliance.
3. Paragraph 6 in article 10d of the Directive requires that “where an investment in the modernisation of energy systems, which is proposed to be financed from the Modernisation fund, does not fall into the areas listed in paragraph 2, the investment committee shall assess the technical and financial viability of that investment, including the emission reduction it achieves, and issue a recommendation on financing the investment from the Modernisation fund”. From this is again clear the investment committee has strictly defined role and cannot base its recommendation on state aid clearance, sufficiency of funds or any other issues, which are in the responsibility of beneficiary Member states. Of course this is without prejudice to standard state aid control mechanisms that apply to any kind of state aid provided by Member states. But it is neither EIB nor investment committee that would be entitled to check state aid compliance or require its clearance before they made their recommendation.
4. It follows from point 2 that neither confirmation by EIB nor recommendation of the investment committee can be conditioned by funds available at the moment. In fact it is beneficiary Member state who decides to finance an investment from its share (see paragraph 6 of article 10d in the Directive). It is clear that only financial means available can actually be disbursed but there is no link between approving the projects and funds available at given moment in the Directive.
5. Paragraph 12 in article 10d of the Directive entitles the Commission to “adopt implementing acts concerning detailed rules on the operation of Modernisation fund.” It follows that the Commission is not entitled to extend roles and responsibilities of neither EIB nor investment committee under rules of operation of Modernisation fund.

## **2. Practical considerations**

Especially for larger long-term project is important to ensure expedite approval process so that the project can be developed after the approval is received. Requirement that there should be immediately available sufficient funds for the approved projects creates following problems:

1. It will be necessary to wait for the funds for the projects to be approved in the Modernization Fund. This inevitably leads to postponing of the whole process and creates pressure on the approval order of the projects (following the rule for share of priority and non-priority projects).
2. The project implementation period is very diverse, it will not be possible to approve projects “in the pipeline”.
3. Difficult resource management, where it will be necessary at EU level to deal with potentially cancelled projects.
4. Unnecessary merging of material approval process and financial management of the fund.
5. Problematic fulfilment of criterion 70/30 (share of priority and non-priority projects)

Further delay in approval of the projects will be caused by requirement that state aid is cleared before the project is submitted for approval. In case of larger, more complex projects which are not covered by GBER regulation state aid clearance takes considerable time and resources. It is therefore important that compliance of the project with purpose of Modernization fund is resolved before the procedure of state aid clearance starts or both processes go in parallel.

## **3. General comments**

1. The approval of projects (in terms of their material admissibility) and their subsequent reimbursement should be fundamentally separated. All projects/programs/schemes should be approved only on material basis irrespective of the available funds and state aid clearance.
2. Subsequently, the Member State will request the disbursement of funds (at a time at its discretion). At the moment of disbursement the Commission will check whether the 70/30 criterion is met and that there are currently sufficient funds available and can eventually also check whether state aid clearance was ensured and will issue a 'disbursement decision' on the basis of which the EIB pays funds to the Member State.
3. Sufficient resources and fulfilment of criterion 70/30 and eventually state aid clearance should be checked only when approving the payment of funds, not when approving the project/program/scheme itself. This is absolutely crucial for practical possibility to finance larger long-term projects from MF without undue delays.
4. The text should explicitly mention that it is clearly up to the MS to choose the projects for approval to comply with the rule of 70 % (on priority projects) x 30 % (on non-priority projects). Except the control of the compliance with 70x30 rule, it should not be the role of the Commission or EIB to decide which projects will be financed within the cycles. This must be the role of individual eligible MS.

## **SPECIFIC COMMENTS**

## 1. Art. 3 Overview of investments

### Paragraph 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.”

**Proposal: Paragraph 2 should be deleted.**

### **Justification:**

The list of investments / investment plan with a 2-year outlook should not consist of a list of specific individual investment projects (and the details referred to in Article 3, paragraph 2), but of a list of supported activities (investment axis). Given that, at least in the part of the fund the default selection method is a competitive bidding process, it is not possible to precisely identify projects that will be successful in the process and will therefore be implemented (and supported).

## 2. Art. 3 Overview of investments

### Paragraph 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.“

**Proposal: It must be clear from the text that it is also possible for the MS to submit additional project proposals anytime during the biannual cycle, i.e. projects beyond the overview already provided, although these projects would eventually have lower priority in assessment than those included in the overview.**

### **Justification:**

The Modernisation fund should be sufficiently flexible in this sense. The overview should serve as some pre-indication rather than some „final“ plan. The possibility of including new projects beyond the overview would de facto mirror possibility that some projects may fall out from the overview, e.g. due to company decisions or due to other reasons.

## 3. Art. 4 Submission of investment proposal

### Paragraph 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.”

**Proposal: Words “and specify the amount requested as the first disbursement for the scheme” should be deleted.**

**Justification:**

There is no need to specify "first disbursement". The Commission approves the maximum funding for given scheme and subsequently Member state submits the payment request under the approved scheme as necessary (but only payment request). In this case, further drawing will no longer be a separate proposal, but only a request for payment, the approval of which is governed only by sufficient funds available and meeting the 70/30 criterion. It needs to be clarified, the Member State should inform how the program is running and that it needs additional money according to a pre-planned schedule, and the EIB should only confirm that the money is available and release it.

#### **4. Art. 4 Submission of investment proposal**

Paragraph 2, point d)

“Member States may submit investment proposals only for schemes that comply with the following criteria:

d) where the scheme constitutes State aid, it has obtained State aid clearance under the Commission decision or which has been exempted from the State aid notification in accordance with Commission Regulation (EU) No 651/20145.”

**Proposal: Point d) should be deleted.**

**Justification:**

The requirement for state aid clearance goes beyond the criteria for project approval according to the Directive – see Legal Basis section. State aid requirements will have to be cleared in a separate process and should not limit the approval process under the MF. It should be considered that state aid clearance can be substantial and long-lasting process and it makes sense for Member states to first have clearance on eligibility under MF to even start it. Second both processes can run in parallel which will save time and ensure swift use of funds. Condition of state aid clearance could apply to first disbursement under the scheme, not to approval of the scheme as such.

#### **5. Art. 4 Submission of investment proposal**

Paragraph 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.”

**Proposal: Paragraph 3 should be deleted.**

**Justification:**

There is no reason to prioritize the order of proposals' assessment. All proposals submitted should always be considered by EIB/Investment committee.

## **6. Art. 4 Submission of investment proposal**

Paragraph 4

„A proposal concerning a non-priority small-scale project may be submitted only as part of a scheme.“

***Proposal: Paragraph 4 should be deleted.***

***Justification:***

Eligibility of small-scale non-priority projects should not be limited by their inclusion in the schemes. This inclusion depends on many factors, including specific setting of the schemes, way of their financing or instruments used which may not match with the project specificities. For such projects it could become problematic to receive support despite their environmental benefits can be high and at the concrete time they can offer the only affordable and relevant solution. It should be up to the MSs whether they submit such individual projects, especially if they would have strong rationale.

## **7. Art. 5 Available funds**

Paragraph 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').“

***Proposal: The text should ensure that MS have possibility to verify with EIB the funds at their disposal, despite even significant changes may occur very close to date of the Investment Committee meetings.***

***Justification:***

Regular information on funds available for MS would ensure better predictability not only for MS themselves but also for project proponents. This enables better planning.

## **8. Art. 6 Confirmation of priority investments**

Paragraph 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).“

***Proposal: It is necessary to set a deadline for the EIB for submission of its assessment to MS, e.g. four weeks after the project submission.***

***Justification:***

To ensure better predictability for project proponents or the relevant MS, time for possible advocacy of submitted projects against possible negative decision of the EIB/Investment Committee and dynamic functioning of the Modernisation fund, this time limitation for the project assessment is crucial. Thus, both the “deadline” to submit projects well before the meeting (as already proposed) and “deadline” for EIB but also for Investment Committee for project evaluation should be included in the text. This would also go in parallel with other deadlines

## **9. Art. 6 Confirmation of priority investments**

### Paragraph 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.”

***Proposal: Following text should be added in the 2<sup>nd</sup> sentence “The EIB shall request the information or documents without undue delay, 4 weeks after receiving projects or proposals from the beneficiary Member States at the latest.”.***

### ***Justification:***

A clear specific deadline should be set from the submission of the project until the EIB can request additional documents. Corresponding provision: "The EIB shall request information or documents without undue delay." is not sufficiently clear. Otherwise EIB could ask for additional information in time too close before the committee meeting which would postpone the project in practice.

## **10. Art. 6 Confirmation of priority investments**

### Paragraph 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.“

***Proposal: The text should ensure a possibility for the MS (and the relevant project proponent) to explain the reasons why the project was classified by them as priority project and to advocate this reason in a time limit (e.g. two/four weeks) starting from the EIB’s announcement.***

### ***Justification:***

Some misinterpretation could occur on the side of the EIB when assessing the priority nature of the projects. As the EIB decision in the sense of this paragraph is a crucial phase for the project either to get a green light for its financing immediately or to undergo further comprehensive assessment, the possibility of MS to advocate its decision to mark the project as priority project should be added to the text.

## **11. Art. 6 Confirmation of priority investments**

Paragraph 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.”

***Proposal: Paragraph 4 should be deleted.***

***Justification:***

The Directive does not give the EIB any mandate to “return” projects. Only Investment committee has such right. The only possible procedure is that EIB classifies such a project as non-priority one and does not recommend it for approval by Investment committee. However, the final decision should always be on the Investment committee. At the same time, the Member State should be able to withdraw the project before the Investment committee meeting (and, possibly, revise and resubmit it again to EIB in the next cycle).

## **12. Art. 6 Confirmation of priority investments**

Paragraph 7 point b)

“The EIB may confirm the proposal as a priority investment provided that the following conditions are met:  
b) the beneficiary Member State has sufficient funds available according to the statement referred to in Article 5 and after deduction of any amounts to be disbursed for investments already confirmed in accordance with paragraph 9 of this Article;”

***Proposal: Point b) should be deleted.***

***Justification:***

There is no reason to make the approval of a project conditional on sufficient funds available. Also the Directive does not provide for such a condition of approval – see Legal Basis section. Sufficient funds should be verified only when disbursements of funds are requested by the beneficiary Member State. In this way, the functionality of the MF will be practically paralyzed in the beginning, as projects will only be approved once the funds are available. That would create a significant undue barrier for projects with the longer preparation time which need to be approved quickly but will only require disbursement of funds after several years of preparation.

## **13. Art. 6 Confirmation of priority investments**

Paragraph 7 point c)

“The EIB may confirm the proposal as a priority investment provided that the following conditions are met:  
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 Regulation (EU) No 651/2014;
- does not constitute State aid within the meaning of Article 107(1) of the Treaty;”

***Proposal: Point c) should be deleted.***

***Justification:***

According to the Directive EIB should only assess that the project complies with requirements of MF – see Legal Basis section. The Investment committee should only address admissibility in terms of meeting the requirements of the MF – see Legal Basis section. It should be considered that state aid clearance can be substantial and long-lasting process and it makes sense for Member states to first have clearance on eligibility under MF to even start it. Second both processes can run in parallel which will save time and ensure swift use of funds. The state aid rules clearance can be verified at the time the request for funds disbursement is submitted by beneficiary Member State as technical condition. It has nothing to do with approval of the project under MF.

#### **14. Art. 6 Confirmation of priority investments**

Paragraph 7 point d)

“The EIB may confirm the proposal as a priority investment provided that the following conditions are met:  
d) the beneficiary Member State has confirmed in writing that the investment complies with any other applicable requirements of Union and national law;”

***Proposal: Point d) should be deleted.***

***Justification:***

It is not possible to provide such a declaration of conformity with any other applicable Union and national law, because it is not possible to verify in advance the fulfilment of all laws and requirements within the project. Moreover, Member States cannot take responsibility on behalf of the final beneficiary. The only permissible requirement is compliance with the objectives of the Directive.

#### **15. Art. 6 Confirmation of priority investments**

Paragraph 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.”

***Proposal: The paragraph should be rewritten as follows:***

“Where a proposal request for disbursement 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 request for disbursement 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.”



**Justification:**

It is essential to differentiate between the approval of project/scheme which should be done only once and the subsequent request for disbursement of funds for a project/scheme already approved. Moreover, it is limited to priority project schemes only. However, schemes should also be possible for non-priority projects.

## **16. Art. 7 Recommendations on non-priority investments**

Paragraph 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.“

**Proposal:**

**1) The comprehensive assessment and final decision on approval of the project should be left on the Investment Committee.**

**2) If the EIB/investment Committee would make its assessment then it is necessary to set also deadlines for the EIB for submission of its assessment to MS starting both with the project submission by MS and with the time when the MS provides additional data or information possibly required for the assessment. This should be set at no more than eight weeks from the mentioned submissions by MS. In this context, the text should also clearly state that any assessment of the EIB should be made immediately available to the proposing MS.**

**Justification:**

Add 1) According to the EU ETS Directive (Art. 10d (6)), the only task for the EIB in this sense is to decide whether the investment falls under priority or non-priority areas. Art. 10d (6): "...Where an investment in the modernisation of energy systems, which is proposed to be financed from the Modernisation Fund, does not fall into the areas listed in paragraph 2, the investment committee shall assess the technical and financial viability of that investment, including the emission reductions it achieves, and issue a recommendation on financing the investment from the Modernisation Fund. ...". Thus, if the EIB would make any due assessment, it should be used for the expressing its opinion to the Investment Committee.

2) To ensure better predictability for project proponents or the relevant MS, time for possible advocacy of submitted projects against possible negative assessments or decision of the EIB/Investment Committee and dynamic functioning of the Modernisation fund, this time limitation for the project assessment is crucial.

## **17. Art. 7 Recommendations on non-priority investments**

Paragraph 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.”

***Proposal: Following text should be added in the 2<sup>nd</sup> sentence “The EIB shall request the information or documents without undue delay, 4 weeks after receiving projects or proposals from the beneficiary Member States at the latest.”***

***Justification:***

A clear specific deadline should be set from the submission of the project until the EIB can request additional documents. Corresponding provision: "The EIB shall request information or documents without undue delay." is not sufficiently clear. Otherwise the EIB could ask for additional information in time too close before the committee meeting and thus postpone the project approval. By the time of the Committee meetings, the EIB should assess the proposals.

## **18. Art. 7 Recommendations on non-priority investments**

Paragraph 7 point b)

“The Investment Committee may issue a recommendation on financing the investment proposal provided that the following conditions are met:

b) the beneficiary Member State has sufficient funds available according to the statement referred to in Article 5 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; “

***Proposal: Point b) should be deleted.***

***Justification:***

There is no reason to make the approval of a project conditional on sufficient funds available. Also the Directive does not provide for such a condition of recommendation – see Legal Basis section. Sufficient funds should be technical condition verified by EIB only when disbursements of funds are requested by beneficiary Member State. Otherwise the functionality of the MF will be practically paralyzed in the beginning, as projects will only be approved once the funds are available. That would create a significant undue barrier for projects with the longer preparation time which need to be approved quickly but will only require disbursement of funds after several years of preparation.

## **19. Art. 7 Recommendations on non-priority investments**

Paragraph 7 point c)

“The Investment Committee may issue a recommendation on financing the investment proposal provided that the following conditions are met:

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;”

***Proposal: Point c) should be deleted.***

***Justification:***

There is no reason to verify share of the funds used for priority investments at the time when Investment committee issues its recommendation. Also the Directive does not provide for such a condition of the recommendation by Investment committee – see Legal Basis section. Suggested conditions should be technical conditions verified by the Commission/EIB before disbursement decision is issued at the request of beneficiary Member State.

## **20. Art. 7 Recommendations on non-priority investments**

Paragraph 7 point e)

“The Investment Committee may issue a recommendation on financing the investment proposal provided that the following conditions are met:

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;”

***Proposal: Point e) should be deleted.***

***Justification:***

The requirement for state aid clearance goes beyond the criteria for project approval according to the Directive – see Legal Basis section. State aid requirements will have to be cleared in a separate process and should not limit the approval process under the MF. It should be considered that state aid clearance can be substantial and long-lasting process and it makes sense for Member states to first have clearance on eligibility under MF to even start it. Second both processes can run in parallel which will save time and ensure swift use of funds. Condition of state aid clearance could apply to first disbursement of funds, not to approval of the investment project.

## **21. Art. 7 Recommendations on non-priority investments**

Paragraph 7 point f)

“The Investment Committee may issue a recommendation on financing the investment proposal provided that the following conditions are met:

f) the beneficiary Member State has confirmed in writing that the investment complies with any other applicable requirements of Union and national law;”

***Proposal: Point f) should be deleted.***

***Justification:***

It is not possible to provide such a declaration of conformity with any other applicable Union and national law, because it is not possible to verify in advance the fulfilment of all laws and requirements within the project. Moreover, Member States cannot take responsibility on behalf of the final beneficiary. The only permissible requirement is compliance with the objectives of the Directive.

## **22. Art. 7 Recommendations on non-priority investments**

Paragraph 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.”

***Proposal:***

***1) The MS should have a possibility to send to the Investment Committee for consideration its advocacy against possible negative recommendations or conclusions of due assessment made by the EIB.***

***2) The MS should have a possibility to propose a level of support intensity from the Modernisation fund and relevant financing instruments. If the EIB or Investment Committee comes to some opinion that differs from the view of the MS, the MS should have a right to advocate its suggestions.***

***Justification:***

Some misinterpretation could occur on the side of the EIB/Investment Committee when assessing the projects. To ensure predictability, transparency and right and dynamic functioning of the Fund, the role of the Member states must not end with the proposal submission. They should at least have the immediate access to any information/assessments/conclusions on their projects anytime during the whole approval process.

## **23. Art. 7 Recommendations on non-priority investments**

Paragraph 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.”

***Proposal: The text should ensure a possibility for the MS to advocate its projects against possible negative statements of the Investment Committee. MS should have the assessments and proposals of the Investment committee well before the meeting so that they can advocate the submitted projects. This should be anchored in the text.***

***Justification:***

Some misinterpretation could occur on the side of the EIB/Investment Committee when assessing the projects. To ensure predictability, transparency and right and dynamic functioning of the Fund, the role of the Member states must not end with the proposal submission. They should at least have the immediate access to any information/assessments/conclusions on their projects anytime during the whole approval process.

## **24. Art. 8 Disbursement decision of the Commission**

### Paragraph 1

“After the meeting referred to in Article 11(1) of this Regulation, the Commission shall 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.”

***Proposal: The paragraph should be rewritten as follows:***

“Within three weeks after receiving disbursement request from Member State but not earlier than four weeks after the meeting referred to in Article 11(1) of this Regulation and subject to availability of funds and requirements on share of priority investments, the Commission shall 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’).”

***Justification:***

It should be up to Member States to request disbursement of funds for approved projects at the time they see it appropriate. Actual project development from the date of approval may take several years. There will also be dropout rate and it seems easier to cancel discontinued projects before the funds are actually disbursed by the beneficiary Member State. It will also enable Member State to manage condition regarding share of priority projects without delaying approval of non-priority projects.

## 25. Art. 10 Discontinued investments

Paragraph 1 point a)

“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 an investment for the period exceeding two consecutive years;”

***Proposal: Point a) should be deleted.***

***Justification:***

It is not clear what the condition actually means. Project preparation can take more than two years. Schemes should have predetermined allocation and Member State should be able to finance predetermined types of projects. Discontinued projects should be such where project beneficiary cancels the project/grant agreement in the first place.

## 26. Art. 11 Operation of the Investment Committee

Paragraph 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.”

***Proposal: The paragraph should be rewritten as follows:***

“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 **but not later than one week after the last meeting.**”

***Justification:***

In a situation with fixed periods both for elaborating the investment proposals and for other related steps, there must be some fixed period for the communication of the date of the next meeting also, in order to plan the necessary steps properly.

## 27. Art. 11 Operation of the Investment Committee

Paragraph 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.”

***Proposal: Words “all representatives of the non-beneficiary Member states” should be replaced with “two representatives of the non-beneficiary Member states”.***

**Justification:**

Under this arrangement any representative of a non-beneficiary Member State could paralyze the Investment committee by his/her absence indefinitely.

**28. Art. 12 Asset management guidelines and agreement with the EIB**

Paragraph 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. ...”

**Proposal: Approval of the basic aspects related to the agreement should not only be dependent on consultation with MS but also approval at least by qualified majority of the MS.**

**Justification:**

The agreement has impact on project proposals and possibly on the amount of funds available for individual MS in the Modernisation fund. The consultation with Member States does not ensure the national opinions would be taken on board in the end. Thus, also more official way in terms of decision-making process is needed next to the consultation.

**29. Art. 12 Asset management guidelines and agreement with the EIB**

Paragraph 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 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 referred to in Article 5. The EIB shall report to the Commission on the completion of the tasks under the agreement and the related costs.”

**Proposal: Clear budgetary limits concerning the EIB fees should be added. Sentence “The costs of the EIB for the performance of its tasks shall be financed from the funds available to each beneficiary Member State referred to in Article 5.” should be deleted.**

**Justification:**

Clear limits for EIB fees need to be determined upfront. Modernization fund can only be used to finance eligible projects according to the Directive. It cannot be used to finance EIB fees.

**30. Art. 13 Monitoring and reporting by the beneficiary Member States**

Paragraph 2 point b

“The annual report referred to in paragraph 1 shall be accompanied by the following information:

(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.”

***Proposal: Term “financial statement” should be clarified.***

***Justification:***

It is not clear what “financial statement” means. It is not possible to publish a financial audit for each project.

### **31. Art. 17 Information, communication and publicity**

Paragraph 2

“The beneficiary Member States shall ensure that the final recipients of the Modernisation Fund support provide coherent, effective and targeted information on the Modernisation Fund support received to multiple audiences, including the media and the public.”

***Proposal: The paragraph should be deleted.***

***Justification:***

Such a requirement on final recipients is unclear and cannot be enforced in practice. Transparency regarding projects approved need to be ensured by Member states which is already stipulated in paragraph 1.