

# **MODERNISATION FUND**

Accelerating the transition to climate neutrality

## **Rules of Procedure of the Investment Committee of the Modernisation Fund**

Approved in its meeting of 14 October 2020





## **RULES OF PROCEDURE OF THE INVESTMENT COMMITTEE OF THE MODERNISATION FUND**

The Investment Committee,

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<sup>1</sup>, and in particular Article 10d(5) thereof,

Having regard to Commission 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<sup>2</sup>, and in particular Article 11(6) thereof,

Has adopted the following Rules of Procedure:

### *Point 1*

#### **Operation of the Investment Committee**

1. The Investment Committee provides recommendations regarding the financing from the Modernisation Fund of non-priority investments, and it reports to the Commission on its activities. The Investment Committee acts in accordance with provisions of Article 10d of Directive 2003/87/EC, Implementing Regulation (EU) 2020/1001, and the Rules of Procedure.
2. The Investment Committee is chaired by a representative of the Commission.
3. The EIB provides the secretariat of the Investment Committee.

### *Point 2*

#### **Members and observers**

1. The Investment Committee is composed of a representative from each beneficiary Member State, the Commission and the EIB, and three representatives elected by the non-beneficiary Member States (individually referred to as a 'member' or jointly as 'members').

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<sup>1</sup> OJ L 275 25.10.2003, p. 32.

<sup>2</sup> OJ L 221, 10.07.2020, p. 107.

2. In accordance with Article 11(3) of Implementing Regulation (EU) 2020/1001, the three representatives are elected by the non-beneficiary Member States in a vote comprising all candidates. Each non-beneficiary Member State may propose one candidate. The three candidates who received the largest numbers of votes shall be elected. If two or more candidates obtained the same number of votes and as a result, more than three candidates would be elected, the vote shall be resumed, comprising all candidates, except for the candidate(s) who received the highest number of votes, and if appropriate, the second highest number of votes.
3. Each of the three representatives elected by the non-beneficiary Member States is appointed for a term of five years which may be renewed. (S)he remains in office until replaced or the appointment is renewed.
4. When the appointment of a representative elected by the non-beneficiary Member States has been terminated before the end of the five year term, the replacement is elected applying *mutatis mutandis* paragraph 2. The elected replacement is appointed for the remainder of the five year term.
5. Each Member State which is not a member of the Investment Committee may appoint an observer. The observers have the right to participate in the meetings of the Investment Committee, take part in the discussions and provide expertise, however, they do not have voting rights and they do not participate in formulation of the recommendations or positions on other matters of the Investment Committee.
6. Each beneficiary Member State, the Commission and the EIB may appoint one alternate to replace the representative in his/her absence. An alternate of a representative of non-beneficiary Member States may be appointed by the Member State of affiliation of that representative.
7. Member States, the Commission and the EIB shall notify in writing, without undue delay, the name, the affiliation, and the contact details of the appointed representatives, alternates and observers, and any changes in the appointment, to the secretariat.

### *Point 3*

### **Meetings**

1. In accordance with Article 11(1) of Implementing Regulation (EU) 2020/1001, the Investment Committee meets twice a year, at the latest by 15 July and 15 December. The secretariat of the Investment Committee publishes the date of the meeting on the Committee's website and informs the Committee members as soon as that date becomes available.
2. Extraordinary meetings may be convened either on the Chair's own initiative or at the request of a simple majority of all Investment Committee members after the Chair has given the agreement.
3. The Investment Committee shall meet either in physical meetings or in audio or videoconferences. Physical meetings of the Investment Committee shall be held in Luxemburg or in Brussels, at the premises of the EIB or the Commission.
4. Each member of the Investment Committee may be accompanied in a meeting by an

expert from the public administration, subject to agreement of the Chair. Within a reasonable period of time before the date of a meeting, the name and function of the expert shall be communicated to the Chair. The expert shall not represent the member and shall not have voting rights.

5. Without prejudice to paragraph 4, the EIB staff may participate in meetings in connection with the EIB's tasks relating to the implementation of the Modernisation Fund.

#### *Point 4*

#### **Agenda**

1. The secretariat shall draw up the agenda under the responsibility of the Chair of the Investment Committee, and submit it to the members and observers of the Investment Committee.
2. The agenda shall indicate which agenda points are for:
  - a) Investment Committee's recommendation on an investment proposal;
  - b) Investment Committee's position on other matters;
  - c) information or exchange of views.

The agenda shall include a list of documents for respective agenda points, if available.

3. Any member of the Investment Committee may propose a new item on the agenda.
4. The agenda shall be adopted by the Investment Committee at the start of the meeting.

#### *Point 5*

#### **Documentation for the meeting**

1. The secretariat shall send the invitation to the meeting, the draft agenda and the documents to be adopted during the meeting to the members and observers of the Investment Committee no later than 14 calendar days before the date of the meeting.
2. In urgent or exceptional cases, the time limit laid down in paragraph 1 may be reduced to 10 working days before the date of the meeting, in agreement with the Chair.
3. Paragraphs 1 and 2 do not apply to documents to be presented at the meeting for information purposes only.

#### *Point 6*

#### **Recommendations and deliberations**

1. Unless the Investment 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 elected by the non-beneficiary Member States and the representatives of the Commission and of the EIB are present.

2. As far as possible, and unless otherwise specified in these Rules of Procedure, the Investment Committee shall act by consensus. If the Investment Committee is not able to decide by consensus within a deadline set by the Chair, it shall take a decision by simple majority of all members.
3. The members who have voted against or abstained shall have the right to have their position and the grounds on which it is based recorded in the overall position of the Investment Committee and in the minutes.
4. The voting rights shall be one per member, including the Chair.
5. In accordance with the second subparagraph of Article 10d(7) of Directive 2003/87/EC, if the representative of the EIB does not endorse financing of an investment, a recommendation shall only be adopted if a majority of two-thirds of all members vote in favour. The representative of the Member State in which the investment is to take place and the representative of the EIB shall not be entitled to cast a vote in this case. This point does not apply however to small-scale projects funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund, provided that not more than 10 % of the Member State's share in the Modernisation Fund is used under the programme.
6. A member of the Investment Committee, or his/her alternate, may represent another member if the latter does not participate in a meeting of the Investment Committee. The member that is being represented shall inform the Chair of this before the meeting, or, at the latest, before the vote. A member, or his/her alternate, may represent more than one other members.

#### *Point 7*

#### **Written procedure**

1. If necessary, the Investment Committee's recommendation on an investment proposal or position on another matter may be delivered *via* a written procedure. To this end, the Chair may request the secretariat to send to the members and observers the document(s) on which the Investment Committee is being consulted. The Chair shall indicate the timeline, within which the members of the Investment Committee shall express their view. That timeline shall not be less than 14 calendar days, except for urgent or exceptional cases, where that time limit may be reduced to 10 working days.
2. Any member of the Investment Committee who does not express his opposition or intention to abstain from voting in a written procedure within the laid down time-limit shall be considered to have given his tacit agreement. Provisions of point 6 apply as appropriate.
3. The secretariat shall inform the members and observers of the outcome of the written procedure.
4. However, if a simple majority of all appointed members asks for the question to be

examined at a meeting of the Investment Committee, and provided that the postponement of that examination is not considered by the Chair to adversely affect any significant public interests, the written procedure shall be terminated without result and the Chair shall convene a meeting of the Investment Committee as soon as possible.

*Point 8*

**Minutes of the meetings**

1. Minutes on the discussion on each point on the agenda and on the positions delivered by the Investment Committee shall be meaningful and complete.
2. Draft minutes shall be drafted by the secretariat under the responsibility of the Chair.
3. The secretariat of the Investment Committee shall send the members and observers the draft minutes, indicating the timeline, within which written comments may be submitted to the secretariat.
4. The final minutes shall be approved by the Investment Committee as an item on the agenda of a future meeting or by the written procedure.
5. Minutes shall be signed by the Chair. The minutes shall, unless the contrary is proved, be a conclusive evidence of the proceedings of a meeting.

*Point 9*

**Attendance list**

At each meeting, the secretariat shall draw up an attendance list, under the responsibility of the Chair. The list shall specify, as appropriate, the affiliations of the participants.

*Point 10*

**Conflicts of interest**

1. In accordance with Article 11(4) of Implementing Regulation (EU) 2020/1001, members of the Investment Committee shall not have financial or other interests in industries or undertakings which qualify for the Modernisation Fund support, whether direct or indirect, which could affect their impartiality. They shall undertake to act in the public interest and in an independent manner.
2. For this purpose, the members shall make a declaration of interests prior to taking up functions in the Investment Committee, in accordance with the Annex, and update that declaration whenever a relevant change occurs. The declarations of interests shall be sent to the secretariat, for the attention of the Chair, and published on the website of the Modernisation Fund, in accordance with point 12. Until the member has declared its interests in accordance with this paragraph, (s)he cannot participate in the works of the Investment Committee.

3. Any questions regarding a conflict of interest, whether arising from the declaration made or otherwise brought to the attention of the Chair, shall be presented by the Chair to the Investment Committee, who shall determine whether the conflict of interest exists. A position of the Investment Committee as to whether the conflict of interest exists shall be recorded in the minutes, with an explanation on the specific conflict that has been identified and the way it has been managed. Information recorded must be adequate, relevant and not going beyond what is necessary for the purpose of the management of the conflict of interest.

The member whose interests have been submitted for examination by the Investment Committee shall not participate in the formulation of the Committee's position on this subject.

4. For the purpose of the assessment as to whether a conflict of interest exists, a number of factors shall be taken into account, including the nature, type and magnitude of the individuals' interest, as well as the degree to which interest may be reasonably expected to influence the individual's position. An affirmative answer in the declaration made in accordance with the above paragraphs does not automatically mean a conflict of interest. An interest shall be considered insignificant or minimal where it is unlikely to compromise or to be reasonably perceived as compromising the individuals' capacity to act independently and in the public interest.
5. The Chair, either on the request of any member of the Investment Committee or on the own initiative, may decide to request the secretariat to contact the individual in question, in order to obtain any additional information that may be needed for the assessment of any conflict of interest.
6. In the event of a conflict of interest, the individual concerned shall, at the request of the Chair, withdraw from the meeting whilst the relevant item(s) of the agenda are being dealt with, including the vote. That individual shall not communicate with Investment Committee members or observers about the relevant item. If a conflict of interest is declared at an early stage, then the individual concerned shall not subsequently receive the documentation concerning the relevant item.

When the nature of the conflict of interest prevents the concerned member from carrying out his/her function in an independent manner, the Investment Committee may request that member to resign from his function.

7. Any newly reported conflicts of interest shall be recorded, in the minutes of a meeting.

#### *Point 11*

### **Correspondence**

1. Correspondence relating to the Investment Committee shall be addressed to the secretariat, for the attention of the Chair.
2. Correspondence to the members or observers or any other third parties shall be sent to the e-mail address which they provide for that purpose.



## *Point 12*

### **Transparency**

1. In accordance with Article 10d(5) of Directive 2003/87/EC and Article 18(1) of Implementing Regulation 2020/1001, the secretariat shall make available on a dedicated website of the Modernisation Fund the following information:
  - a) the names of the members and observers to the Investment Committee, and their affiliation;
  - b) the curricula vitae and the declarations of interest of the members of the Investment Committee;
  - c) the confirmations of the EIB concerning priority investments;
  - d) the recommendations of the Investment Committee concerning non-priority investments and record of positions of the Committee on other matters, including on the conflict of interest;
  - e) the disbursement decisions of the Commission;
  - f) the annual reports submitted by the beneficiary Member States under Article 13 of Implementing Regulation 2020/1001;
  - g) the annual reports submitted by the Investment Committee under Article 14 of Implementing Regulation 2020/1001;
  - h) the Commission's review and evaluation of the Modernisation Fund under Article 15 of Implementing Regulation 2020/1001.
2. Access to the Modernisation Fund website shall not be submitted to user registration or any other restriction. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001<sup>3</sup>.

## *Point 13*

### **Professional secrecy and handling of classified information**

The members, alternates and observers are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443<sup>4</sup> and 2015/444<sup>5</sup>. If they fail to respect these obligations, the

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<sup>4</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>5</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Commission services may take all appropriate measures.

*Point 14*

**Travel and subsistence expenses**

1. Members shall not be remunerated for the participation in the Investment Committee.
2. Members, alternates and observers shall not be reimbursed for their travel expenses or other expenses incurred in relation to the Investment Committee works.

*Point 15*

**Access to documents**

1. Without prejudice to paragraph 2, applications for access to documents held by the Investment Committee shall be handled in accordance with the Transparency Policy of the European Investment Bank Group<sup>6</sup>.
2. Applications for access to documents drawn up by the Commission or in its possession shall be handled in accordance with Regulation (EC) No 1049/2001<sup>7</sup>.

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<sup>6</sup> Available at: [https://www.eib.org/attachments/strategies/eib\\_group\\_transparency\\_policy\\_en.pdf](https://www.eib.org/attachments/strategies/eib_group_transparency_policy_en.pdf)

<sup>7</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

## ANNEX

### DECLARATION OF INTERESTS OF A MEMBER OF THE INVESTMENT COMMITTEE / AN ALTERNATE

#### Legal basis:

Article 10d(5) of Directive 2003/87/EC

Article 11(4) of Implementing Regulation (EU) 2020/1001

#### Definitions:

"**Conflict of interest**" means any situation where an individual has an interest that may compromise or be reasonably perceived to compromise the individual's capacity to act independently in relation to the subject of the work of the Investment Committee.

"**Immediate family member**" means the individual's spouse, children and parents. "Spouse" includes a partner with whom the individual has a registered non marital regime. "Children" means the child(ren) the individual and the spouse have in common, the own child(ren) of the individual and the own child(ren) of the spouse.

"**Legal entity**" means any commercial business, business association, consultancy, research institution or other enterprise whose funding is significantly derived from commercial sources. It also includes independent own commercial businesses, law offices, consultancies or similar.

"**Body**" means a governmental, international or non-profit organisation.

"**Industry or undertaking which qualifies for the Modernisation Fund support**" means any organisation undertaking commercial activities in the areas specified in Article 10d(1) of Directive 2003/87/EC, including areas specified in Article 10d(2) of that directive.

"**Meeting**" includes a series or cycle of meetings.

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Please answer each of the questions below. If the answer to any of the questions is "yes", please briefly describe relevant interests and circumstances, as appropriate.

If you do not describe relevant interests, your DOI form will be considered incomplete and, therefore, you may not participate in the work of the Investment Committee.

Please note that having a declared interest does not necessarily mean having a conflict of interest. Answering "Yes" to a question on this DOI form does not automatically disqualify you or limit your status in the Investment Committee / your participation in the works of the Investment Committee. The Investment Committee will review your answers in accordance with the Rules of Procedure of the Investment Committee and determine whether a conflict of interest relevant to the subject at hand exists.

First name and surname: Name of affiliation (e.g. name of the national authority): Member State: Member / Alternate: <i>[please specify]</i>
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**1 EMPLOYMENT, CONSULTANCY AND LEGAL REPRESENTATION**

	<i>Within the past 5 years, were you employed or have you had any other professional relationship with a natural or legal entity, or held any non-remunerated post in a legal entity or other body with an interest in the industry or undertaking which qualifies for the Modernisation Fund support?</i>	<b>yes</b>	<b>no</b>
<b>1a</b>	<b>Employment</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>1b</b>	<b>Consultancy, including services as an advisor</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>1c</b>	<b>Non-remunerated post</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>1d</b>	<b>Legal representation</b>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Activity</b>	<b>Time period (from... month/year until)</b>	<b>Name of entity or body</b>	<b>Description</b>

## 2 MEMBERSHIP OF MANAGING BODY, ADVISORY BODY OR EQUIVALENT STRUCTURE

	<i>Within the past 5 years, have you participated in the internal decision-making of a legal entity or other body with an interest in the industry or undertaking which qualifies for the Modernisation Fund support or have you participated in the works of an advisory body with voting rights on the outputs of that entity?</i>	<b>yes</b>	<b>no</b>
<b>2a</b>	<b>Participation in a decision-making process</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>2b</b>	<b>Participation in the work of an advisory body</b>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Activity</b>	<b>Time period (from... until month/year)</b>	<b>Name of legal entity or body</b>	<b>Description</b>

## 3 RESEARCH SUPPORT

	<i>Within the past 5 years, have you, or the research entity to which you belong, received any support from a legal entity or other body with an interest in the industry or undertaking which qualifies for the Modernisation Fund support?</i>	<b>yes</b>	<b>no</b>
<b>3a</b>	<b>Research support, including grants, rents, sponsorships, fellowships, non-monetary support</b>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Activity</b>	<b>Time period (from... until month/year)</b>	<b>Name of legal entity or body</b>	<b>Description</b>

## 4 FINANCIAL INTERESTS

	<i>Do you have current investments in a legal entity with an interest in the industry or undertaking which qualifies for the Modernisation Fund support, including holding of stocks and shares, and which amounts to more than 10,000 EUR per legal</i>	<b>yes</b>	<b>no</b>
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	<i>entity or entitling you to a voting right of 5% or more in such legal entity?</i>		
<b>4a</b>	<b>Shares</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4b</b>	<b>Other stock</b>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Investment</b>	<b>Name of legal entity</b>	<b>Description</b>

## 5 INTELLECTUAL PROPERTY

	<i>Do you have any intellectual property rights that might be affected by the outcome of the work carried out by the Investment Committee?</i>	<b>yes</b>	<b>no</b>
<b>5a</b>	<b>Patent, trademarks, or copyrights</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>5b</b>	<b>Others</b>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Intellectual property</b>	<b>Description</b>

## 6 PUBLIC STATEMENTS AND POSITIONS

	<i>Within the past 5 years, have you provided any expert opinion or testimony in the field of activity of the Investment Committee, for a legal entity or other body with an interest in the industry or undertaking which qualifies for the Modernisation Fund support, as part of a regulatory, legislative or judicial process? Have you held an office or other position, paid or unpaid, where you defended an opinion/represented interests of the industry or undertaking which qualifies for the Modernisation Fund support?</i>	<b>yes</b>	<b>no</b>
<b>6a</b>	<b>For a legal entity or other body as part of a regulatory, legislative or judicial process</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>6b</b>	<b>Represented interests or defended an opinion</b>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Activity</b>	<b>Time period (from... until month/year)</b>	<b>Name of legal entity or body</b>	<b>Description</b>

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**7 INTERESTS OF IMMEDIATE FAMILY MEMBERS**

yes      no

<b>7a</b>	To your knowledge, are there any interests of your immediate family members which could be seen as undermining your independence when participating in the works of the Investment Committee?	<input type="checkbox"/>	<input type="checkbox"/>
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Interests	Time period (from... until month/year)	Name of legal entity or body	Description

<b>7b</b>	If interests of your immediate family members are declared, it is your responsibility to inform them about the collection and publication of information on their interests included in the DOI and to provide them with the privacy statement attached to the guidance for filling in this DOI, and this at the latest when you file the DOI form with the Commission.
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**8 OTHER RELEVANT INFORMATION**

yes      no

<b>8a</b>	Are there any other elements that could be seen as undermining your independence when participating in the works of the Investment Committee?	<input type="checkbox"/>	<input type="checkbox"/>
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Description:

I declare on my honour that the information disclosed in this form is true and complete to the best of my knowledge.

Should there be any change to the above information, including as regards upcoming activities, I will promptly notify the secretariat of the Investment Committee and complete a new DOI form describing the changes in question.

**I am informed that my personal data are stored, processed and published by Secretariat of the Investment Committee in accordance with Regulation (EU) 2018/1725.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

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In accordance with Article 10d(5) of Directive 2003/87/EC, the DOI of a member of the Investment Committee shall be made publicly available on the website of the Modernisation Fund, as long as the member is appointed to the Investment Committee. Technical measures will be taken to indicate to search engines that the DOI form should not appear in search results.