



2023/2537

20.11.2023

COMMISSION DELEGATED REGULATION (EU) 2023/2537

of 15 September 2023

amending Delegated Regulation (EU) 2019/856 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund

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 Article 10a(8), nineteenth subparagraph thereof,

Whereas:

- (1) Directive (EU) 2023/959 of the European Parliament and of the Council ⁽²⁾ amended Directive 2003/87/EC by extending the range of projects that the Innovation Fund can support, by specifying how projects applying for Innovation Fund support are to be evaluated and by strengthening the governance of the Innovation Fund. Directive (EU) 2023/959 has also enabled the Commission to award Innovation Fund support through competitive bidding procedures.
- (2) The Commission Communication of 1 February 2023 'A Green Deal Industrial Plan for the Net-Zero Age' ⁽³⁾ provides that a first competitive bidding procedure will be launched in autumn 2023 to support the production of renewable hydrogen under the Innovation Fund. The Commission Communication of 16 March 2023 on the European Hydrogen Bank ⁽⁴⁾ reaffirmed that objective.
- (3) In light of the amendment of Directive 2003/87/EC and the objectives expressed in those communications, it is necessary to amend Commission Delegated Regulation (EU) 2019/856 ⁽⁵⁾.
- (4) Chapter II of Delegated Regulation (EU) 2019/856 lays down the rules for awarding grants under the Innovation Fund. Those rules have proven to be effective overall since the publication of the first call for proposals on 3 July 2020. However, they should be amended to align them with the new requirements of Directive 2003/87/EC as amended by Directive (EU) 2023/959 and to improve the efficiency and effectiveness of the grant award procedure based on the experience gained in the past few years.
- (5) Calls for small-scale projects have been undersubscribed, notably because small-scale projects have easier access to funding at national level, while calls for large-scale projects have been heavily oversubscribed. It is therefore appropriate to modify the definition of small-scale projects to include projects with a total capital expenditure not exceeding EUR 20 000 000 and to introduce a new category of medium-scale projects to address both under- and over-subscription issues, allow the selection of projects within similar size brackets and thereby support the highest quality projects of all sizes at the EU level.

⁽¹⁾ OJ L 275 25.10.2003, p. 32.

⁽²⁾ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134).

⁽³⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Green Deal Industrial Plan for the Net-Zero Age (COM(2023) 62 final).

⁽⁴⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Hydrogen Bank, Brussels (COM(2023) 156 final).

⁽⁵⁾ 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 (OJ L 140, 28.5.2019, p. 6).

- (6) Directive 2003/87/EC provides that grants that are not awarded through a competitive bidding procedure are limited to 60 % of the project's relevant costs. It is appropriate to distinguish between the economic revenues and the operational benefits of projects in the calculation of the relevant costs to establish the correct value of relevant costs that can be supported. It should also be possible to decide in a decision launching a call for proposals that the relevant costs are calculated by comparing the project's estimated costs with a conventional production counterfactual, depending on the nature of the call and past experience.
- (7) To avoid overcompensation of small-scale projects that have significant economic revenues, their relevant costs should no longer be calculated as their total capital expenditure costs. The same method for the calculation of relevant costs should apply to all projects, ensuring fair and equal treatment of applicants considering also the increase in the ceiling of total capital expenditure for small-scale projects. This calculation method should also better accommodate projects relying on a high level of consumption of renewable electricity since operational costs of such projects will be taken into account in the calculation of the relevant costs.
- (8) Some innovative projects can have a positive climate impact that is broader than just a reduction in greenhouse gas emissions. That is, for example, the case for projects that reduce black carbon emissions in the maritime sector, which account for 75 % of the non-carbon dioxide climate impacts from shipping. It is also the case for projects in the aviation sector that reduce the climate impact of non-greenhouse gases, which have two to four times the impact of carbon dioxide. The criterion on greenhouse gas reduction potential should therefore be amended to include such broader climate benefits beyond the reduction in greenhouse gas emissions in the criteria used for the assessment of projects.
- (9) The criterion of technical and market potential for widespread application or replication should also be broadened to take into account the potential of a proposed project to address multiple environmental impacts as well as its contribution to the EU's zero pollution, and circularity objectives.
- (10) The criterion of cost efficiency should be amended to indicate how other public support is considered in the calculation.
- (11) Projects in the maritime sector are already being supported by the Innovation Fund in advance of the inclusion of maritime emissions in the EU Emission Trading System ('EU ETS') from 2024, where those involve the use of renewables or energy storage. By 2030, 20 million allowances from the EU ETS should be deployed to support the decarbonisation of the maritime sector. In addition, projects in sectors covered by the Carbon Border Adjustment Mechanism should be given special attention under the Innovation Fund.
- (12) In light of the new types of projects and sectors eligible under the Innovation Fund, the Commission may launch dedicated calls or topics for certain sectors. In the context of those sector-specific calls or topics, additional award criteria or requirements may be applied to evaluate the potential contribution of the proposed projects to the objectives and priorities of the European Green Deal. Such additional award criteria or requirements may include the potential contribution of the project to the EU's access to a secure and sustainable supply of net-zero technologies needed to safeguard the resilience of the EU's energy system and to contribute to the creation of quality jobs.
- (13) Given the technical nature and variety of the projects applying to the Innovation Fund, it is appropriate for the evaluation committee to be composed of independent external experts who have the necessary expertise to assess the applications in the best possible way. The inclusion of independent external experts makes it possible to adapt expertise to the types of projects or sectors concerned by a call for projects and to adequately process a large number of applications. Articles 12 and 12a should be amended to specify that applications can be assessed by an evaluation committee fully or partially composed of independent external experts.

- (14) In view of the limited number of projects currently eligible for project development assistance and in order to enlarge the scope of such assistance, it should be possible to apply for project development assistance in respect of any projects falling within the scope of the Innovation Fund, irrespective of whether a grant under the Innovation Fund has been previously applied for in respect of such projects. However, in order for the assistance to be effective, only projects demonstrating a sufficient degree of innovation and having the potential to significantly reduce the climate impacts and potential for widespread application should be awarded project development assistance. The eligibility and award criteria should be consistent with the requirements of the amended Directive 2003/87/EC. In order to maintain synergies between the grant award procedure and the project development assistance mechanism, it should be possible to decide whether the applicants who have participated in a call for proposals and have met the emission reduction effectiveness and innovation criteria may, if they so wish, have their applications automatically considered for project development assistance. To reflect the decoupling of project development assistance from the grant award procedure, provisions on the selection procedure should be amended.
- (15) The amended Directive 2003/87/EC provides that the Innovation Fund may award support through competitive bidding for the production of low or zero carbon products, which include products that can be used to reduce an activity's emissions. The basic set of rules governing the granting of support through the competitive bidding should therefore be set out. Competitive bidding should especially contribute to the new objective of the Innovation Fund of scaling up innovative techniques, processes and technologies, with a view to their broad roll-out across the EU.
- (16) In view of the Green Deal Industrial Plan for the Net-Zero Age and the Communication on the European Hydrogen Bank, support granted through the first competitive bidding procedures should take the form of fixed premiums. The applicants that offer the lowest bid price should be selected for a fixed premium contract, which sets out a fixed amount of support for each unit of production. The amount of each fixed premium should be equal to the bid price offered by the applicants. The fixed premiums should be considered to be grants within the meaning of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁶⁾ ('the Financial Regulation').
- (17) Each competitive bidding procedure should be designed by the Commission in accordance with the principles of openness, clarity, transparency and non-discrimination, and with a view to minimise the risk of speculative bidding. The design of each competitive bidding procedure should include the main economic parameters that directly influence the incentive structure and bidding behaviour of potential project proponents, and should be published sufficiently in advance of the publication of the call for proposals in order to enable effective competition. *Ex post* adjustments to the bidding procedures outcome such as subsequent negotiations on bid results or rationing should be avoided.
- (18) In order to ensure sufficient and effective competition between applicants, the competitive bidding procedure should have a maximum budget or volume that acts as a binding constraint in that it can be expected that not all applicants would receive support. If a competitive bidding procedure is undersubscribed, the design of the subsequent competitive bidding procedures should be adapted to ensure effective competition.
- (19) Each competitive bidding procedure (including the definition and requirements of the low or zero carbon product for which support may be granted) should be designed in such a way that only those projects are selected that have the potential to reduce emissions in several sectors and to contribute to the EU's climate and energy targets and the EU's zero pollution and circularity objectives. The auctioned product should have a potential for widespread application and to reduce the costs of the transition to a climate-neutral economy in the sectors concerned. In addition, priority should be given to products that have the potential to address multiple environmental impacts.

⁽⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (20) For each competitive bidding procedure, the Commission should clearly set out qualification requirements that must be met in order for a proposal to be ranked. Those qualification requirements should be limited to what is necessary to ensure an effective competitive bidding procedure and a completion of the proposed project in accordance with the objectives of the call for proposals and in compliance with EU law.
- (21) Proposals meeting the qualification requirements should be ranked from the lowest to the highest bid price. It should be possible, in exceptional cases, to use additional criteria to rank the proposals, provided that the bid price, put in direct relation to the product or objective forming the subject of the competitive bidding procedure, accounts for at least 70 % of the weighting of the ranking criteria.
- (22) The projects involving the production of low or zero carbon products may already be supported to varying degrees in different Member States. In order to ensure a level playing field between applicants and to ensure that the most cost-efficient projects are selected, it should be possible to restrict the possibility for projects already receiving public support for the production of low or zero carbon products to participate in a competitive bidding procedure. Such restriction should be clearly set out in a decision launching a call for proposals.
- (23) Deposits can be required in order to avoid speculative bidding and ensure the sincerity and high quality of proposals, as well as to facilitate the assessment of the proposals through lighter project maturity checks. Deposits should take the form of cash deposits, bank guarantees, guarantees from a mother company or other commonly used forms of guarantee.
- (24) In order to operationalise 'Auctions as a Service' (the EU Auction Platform referred to in the Communication on the European Hydrogen Bank), the implementing body in charge of ranking the proposals might be required to rank the proposals whose bid price is higher than the clearing price, so that these projects can be supported by Member States in the context of the Auction as a Service.
- (25) In accordance with Directive 2003/87/EC, the Commission shall provide technical assistance to Member States that request it and that have a low level of effective participation in projects funded under the Innovation Fund. That technical assistance should increase the capacities of the requesting Member State to support the efforts of project proponents in their respective territories to submit applications for funding from the Innovation Fund, in order to improve the effective geographical spread of participation in the Innovation Fund and increase the overall quality of submitted projects. In accordance with Article 110 of the Financial Regulation, the Commission is to determine the amount available for technical assistance to the Member States and the list of Member States eligible for technical assistance. Member States eligible for technical assistance should be those with the lowest ratio between the Innovation Fund support received by projects on their territory (both in terms of number and monetary amount) and their share of EU ETS verified emissions over the period 2013-2020. The list of eligible Member States should be updated at least once every two years.
- (26) In accordance with Directive 2003/87/EC, the Commission is to seek synergies between the Innovation Fund and the Horizon Europe Framework Programme for research and innovation, and, where relevant, between the Innovation Fund and other EU programmes. It is therefore appropriate to require the implementing body to foster synergies between the Innovation Fund and other EU funding programmes that it manages.
- (27) In order to ensure the visibility of the funding from the Innovation Fund, project proponents should promote their projects and their results and impact, and they shall clearly indicate the origin of the support received by using the promotional elements pre-agreed with the implementing body.
- (28) Delegated Regulation (EU) 2019/856 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2019/856

Delegated Regulation (EU) 2019/856 is amended as follows:

(1) Article 2 is amended as follows:

(a) point (3) is replaced by the following:

‘(3) “small-scale project” means a project with a total capital expenditure not exceeding EUR 20 000 000;’

(b) the following points (4) to (10) are added:

‘(4) “medium-scale project” means a project with a total capital expenditure above EUR 20 000 000 and not exceeding EUR 100 000 000;

(5) “decision launching a call for proposals” means a financing decision by which the Commission enables the financing of a call for proposals in accordance with Article 110 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council * (“the Financial Regulation”);

(6) “competitive bidding procedure” means a procedure whereby producers of low or zero carbon products that have applied for Innovation Fund support are selected on the basis of the most competitive bid, in accordance with Article 13d of this Regulation;

(7) “qualification requirement” means a condition that shall be fulfilled by a bidder in a competitive bidding procedure in order for its bid to be ranked;

(8) “ranking criterion” means the criterion used in competitive bidding procedures to rank proposals that meet the qualification requirements. The ranking criterion is always the bid price, put in direct relation to the product or objective forming the subject of the competitive bidding procedure, but may exceptionally be supplemented by other ranking criteria;

(9) “competitive bidding procedure design” means the description of the main economic parameters of a competitive bidding procedure that directly influence the incentive structure and bidding behaviour of project proponents;

(10) “clearing price” means the price of the marginal bid that fulfils the applicable qualification requirements in a competitive bidding procedure.

* Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 30.7.2018, p. 1).;

(2) in Article 3, the following point (aa) is inserted:

‘(aa) to support projects that are sufficiently mature, have a significant potential to reduce greenhouse gas emissions and are aimed at scaling up innovative technologies, processes or products to achieve their broad commercial roll-out across the EU;’

(3) Article 4 is amended as follows:

(a) the introductory part is replaced by the following:

‘The Innovation Fund support may take the following forms;’

(b) point (c) is replaced by the following:

‘(c) where necessary to achieve the objectives of Directive 2003/87/EC, funding in any of the other form laid down in the Financial Regulation, in particular prizes and procurement.’;

(4) The title of Chapter II is replaced by the following:

‘Specific provisions applicable to grants that are not awarded on the basis of Chapters IIa, IIb or IIc’;

(5) Article 5 is replaced by the following:

‘Article 5

Relevant costs

For the purposes of the fifth sentence of the sixteenth subparagraph of Article 10a(8) of Directive 2003/87/EC, the relevant costs shall be the net extra 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 net extra costs shall be calculated as the difference between (i) the best estimate of economic costs (covering investment and operation) and economic revenues and operational benefits, and (ii) the best estimate of the economic costs and revenues and operational benefits of a project using a conventional technology with the same capacity in terms of effective production of the analogous final product.

The Commission may also decide that the relevant costs shall be the net extra costs, calculated as the difference between the best estimate of (i) the economic costs (covering investment and operation) and (ii) the economic revenues and operational benefits.’;

(6) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Grants shall be disbursed when the pre-determined milestones are reached.’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. Up to 40 % of the total amount of the grant 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. The remainder of the total amount of the grant 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.’;

(c) paragraph 6 is deleted;

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The project proponents shall be invited to apply for grants through open calls for proposals launched by the Commission. Before adopting a decision launching a call for proposals, the Commission shall consult the Member States on the draft decision.’;

(b) paragraph 2 is amended as follows:

(1) point (b) is deleted;

(2) point (d) is replaced by the following:

‘(d) a description of the application procedure, specifying whether a one-stage or two-stage procedure applies, and specifying the information and documentation to be submitted with the application.’;

(3) points (g) and (h) are replaced by the following:

‘(g) if the Commission is reserving a part of the total amount of the Innovation Fund support available for the call to small-scale or medium-scale projects, the amount of that part;

(h) whether additional award criteria are applied in accordance with Articles 11(2) and 11(3).’;

(8) in Article 10, paragraphs 2 and 3 are replaced by the following:

‘2. If the two-stage application procedure is being used, it shall consist of the following consecutive stages:

(a) the expression of interest stage;

(b) the full application stage.

During the expression of interest stage, the project proponent shall submit a description of the key project characteristics in line with the requirements laid down in the relevant call for proposals. This description shall include a description of the project’s effectiveness, degree of innovation, and maturity as specified in Article 11(1), points (a), (b) and (c).

During the full application stage, the project proponent shall submit a detailed description of the project and all supporting documentation, including the knowledge-sharing, communication and dissemination plans.

3. Where the one-stage application procedure applies, the project proponent shall submit a full application as described in paragraph 2, third subparagraph.’;

(9) Article 11 is amended as follows:

(a) the title is replaced by the following:

‘Award criteria’;

(b) paragraphs 1 and 2 are replaced by the following:

‘1. Grants shall be awarded on the basis of the following criteria:

(a) effectiveness of the proposed projects in terms of their greenhouse gas emission avoidance potential and in terms of reducing overall climate impact using, where applicable, the benchmarks referred to in Article 10a(2) of Directive 2003/87/EC;

(b) the degree of innovation of the proposed projects compared with the state of the art;

(c) project maturity in terms of planning, the business model, the financial and legal structure as well as the prospect of reaching the financial close within a pre-defined period of time not exceeding four years after the award decision;

(d) technical and market potential of the proposed projects for widespread application or replication, or for future cost reductions, and in terms of the proposed projects’ potential to address multiple environmental impacts and its contribution to the EU’s zero pollution and circularity objectives;

(e) efficiency in terms of the requested Innovation Fund grant amount plus any other public support that is part of the project’s financial model, divided by the total projected amount of greenhouse gas emissions to be avoided in the first 10 years of operation.

2. Additional award criteria aimed at achieving a geographically balanced distribution of the Innovation Fund support may also be included in the call for proposals for the purposes of awarding grants to the selected projects.’;

(c) the following paragraph 3 is added:

‘3. Where the Commission launches a sector-specific call for proposals or provides for a sector-specific topic within a call for proposals, additional award criteria or requirements may be included in the call documents to evaluate the potential contribution of the proposed projects to the objectives and priorities of the European Green Deal. Such additional award criteria or requirements may include the potential contribution of the proposed projects to the EU’s access to a secure and sustainable supply of net-zero technologies needed to safeguard the resilience of the EU’s energy system and to contribute to the creation of quality jobs.’;

(10) Article 12 is amended as follows:

(a) the title is replaced by the following:

‘Selection procedure for the two-stage application procedure’;

(b) paragraphs 1 to 5 are replaced by the following:

‘1. Based on the applications received during the expression of interest stage, the implementing body shall assess the eligibility of each proposed project in accordance with Article 10a(8) of Directive 2003/87/EC. The implementing body shall then select eligible projects in accordance with the procedure set out in paragraphs 2 and 3 of this Article.

2. Based on the applications received at the expression of interest stage, the implementing body shall draw up a list of the projects that meet the award criteria laid down in Article 11(1), points (a), (b) and (c), and shall invite the proponents of those projects to submit a full application.

3. Based on the full application received in accordance with paragraph 2, the implementing body shall proceed with the project evaluation and ranking based on all award criteria laid down in Article 11. Applications shall be assessed by an evaluation committee, which may be fully or partially composed of independent external experts. At the end of the evaluation, the implementing body shall draw up a list of pre-selected projects.

4. The list of pre-selected projects referred to in paragraph 3 shall be communicated to the Commission and shall include at least the following:

(a) a confirmation of compliance with the eligibility and award criteria;

(b) details on project evaluation and ranking;

(c) total project costs and relevant costs referred to in Article 5 in euro;

(d) the amount of the requested grant in euro;

(e) the projected amount of greenhouse gas emissions to be avoided.

5. On the basis of what was communicated pursuant to paragraph 4, the Commission shall, after consulting the Member States in accordance with Article 21(2), adopt the award decision specifying the support to be provided to the selected projects and, where appropriate, draw up a reserve list.’;

(c) the following paragraph 6 is added:

‘6. The implementing body shall provide the Commission with the applications that meet the criteria set out in Article 11(1), points (a) and (b), but that have not been pre-selected. If the applicants agree, the Commission may transfer these applications to the entity in charge of awarding project development assistance in accordance with Article 13.’;

(11) Article 12a is amended as follows:

(a) the title is replaced by the following:

‘Selection procedure for the one-stage application procedure’

(b) paragraphs 2, 3 and 4 are replaced by the following:

‘2. Based on the applications received, the implementing body shall draw up a list of the projects that meet the award criteria laid down in Article 11 and shall proceed with the project evaluation and ranking based on the award criteria laid down in that Article. Applications shall be assessed by an evaluation committee, which may be fully or partially composed of independent external experts. At the end of the evaluation, the implementing body shall draw up a list of pre-selected projects.

3. The implementing body shall provide the Commission with the applications that meet the criteria set out in Article 11(1), points (a) and (b), but have not been pre-selected. If the applicants agree, the Commission may transfer these applications to the entity in charge of awarding project development assistance, in accordance with Article 13.

4. The list of pre-selected projects referred to in paragraph 2 shall be communicated to the Commission and shall include at least the following:

- (a) a confirmation of compliance with the eligibility and award criteria;
- (b) details on project evaluation and ranking;
- (c) total project costs and relevant costs referred to in Article 5 in euro;
- (d) the amount of requested grant in euro;
- (e) the projected amount of greenhouse gas emissions to be avoided.;

(12) after Article 12b, the following Chapter title is inserted:

‘CHAPTER IIa

Project development assistance’;

(13) Article 13 is replaced by the following:

‘Article 13

Project development assistance

1. The Commission shall, after consulting the Member States in accordance with Article 21(2), point (c), determine the maximum amount of Innovation Fund support available for project development assistance.

2. The Commission may award project development assistance in the form of technical assistance to any project that falls within the scope of the Innovation Fund, as set out in Article 10a(8), first and sixth subparagraphs of Directive 2003/87/EC.

3. The following activities may be funded by way of project development assistance:

- (a) improvement and development of project documentation or of components of the project design with a view to ensuring the sufficient maturity of the project;
- (b) assessment of the feasibility of the project, including technical and economic studies;
- (c) advice on the financial and legal structure of the project;
- (d) capacity building of the project proponent.

4. If project development assistance is implemented under indirect management, the implementing entity shall carry out the selection procedure and take the decision to award the project development assistance after having consulted the Commission. The award criteria shall take into account the degree of innovation compared to the state of the art, the potential to significantly reduce climate impacts and to support widespread application, the maturity as well as the geographical and sectoral balance in relation to the portfolio of funded projects.;

(14) the following Chapter IIb is inserted:

‘CHAPTER IIb

Specific provisions applicable to competitive bidding procedures

Article 13a

Competitive bidding procedure design and principles

1. The Commission shall set out the competitive bidding procedure design in accordance with the principles of openness, clarity, transparency and non-discrimination.

2. Competitive bidding procedures shall be designed so as to minimise the risk of speculative bidding.

3. All competitive bidding procedures shall have a maximum budget or volume that acts as a binding constraint. Undersubscribed competitive bidding procedures shall be adapted to restore effective competition in the subsequent competitive bidding procedures.

4. The competitive bidding procedure design shall be published sufficiently in advance of the publication of the call for proposals to enable effective competition.

Article 13b

Calls for proposals

1. Project proponents shall be invited to apply for a competitive bidding procedure through open calls for proposals launched by the Commission.

2. Before adopting a decision launching a call for proposals, the Commission shall consult the Member States on the draft decision.

3. The Commission decision launching the calls for proposals shall clearly set out the following:

- (a) the policy objectives pursued by the call;
- (b) the precise definition and requirements of the low or zero carbon product for which support may be granted;
- (c) the budget provided by the Innovation Fund;
- (d) whether a maximum bid price or volume per bid will apply;
- (e) whether restrictions to cumulation or combination of the support awarded on the basis of a competitive bidding procedure with EU or national support measures will apply;
- (f) whether criteria other than the bid price will apply in order to rank the proposals;
- (g) the maximum duration of the support awarded on the basis of the competitive bidding procedure;
- (h) a description of the application and selection procedures.

Article 13c

Qualification requirements

1. Only proposals that meet the qualification requirements shall be considered for the ranking procedure set out in Article 13d.

2. Qualification requirements shall aim at ensuring that project proponents participating in the competitive bidding procedure are able to complete the proposed project in accordance with the competitive bidding procedure design, with the terms of the call for proposals and with the objectives in Article 3, and in compliance with EU law.

3. Qualification requirements shall be limited to what is necessary to achieve the objectives of the competitive bidding procedure and to ensure the highest degree of competition and quality of submitted proposals.

4. Qualification requirements may be eligibility, selection, and award criteria within the meaning of the Financial Regulation.

Article 13d

Ranking procedure

1. Proposals that meet the qualification requirements shall be ranked from the lowest offered price to the highest, unless additional criteria are applied pursuant to paragraph 2.

2. The Commission may decide, exceptionally, to use additional criteria for the ranking of the proposals, provided that the bid price, put in direct relation to the product or objective forming the subject of the competitive bidding procedure, accounts for at least 70 % of the weighting of the ranking criteria. The use of additional criteria shall be clearly set out in the call for proposals and shall be justified by the nature of the auctioned product and the objectives of the call.

3. The implementing body shall draw up the list of pre-selected proposals and communicate it to the Commission. The list shall contain:

- (a) a confirmation of compliance with the qualification requirements;

- (b) details on the ranking;
- (c) the amount of support requested;
- (d) the projected volume of the auctioned product.

4. At the request of the Commission, the implementing body shall also communicate the ranking of proposals that meet the qualification requirements but whose price is above the clearing price.

5. On the basis of what was communicated pursuant to paragraph 3, the Commission shall, after consulting the Member States in accordance with Article 21(2), adopt the award decision specifying the support to be provided to the selected proposals and, where appropriate, draw up a reserve list.

Article 13e

Cumulation

1. For each competitive bidding procedure, the Commission may decide to restrict the possibility for a project proponent to cumulate the support awarded on the basis of a competitive bidding procedure with EU funding or national public support.
2. Any restrictions adopted pursuant to paragraph 1 shall be limited to what is necessary to ensure a level playing field and to achieve the objectives of the competitive bidding procedure.
3. The scope and rationale of the restrictions referred to in paragraph 1 shall be clearly set out in the draft decision submitted to Member States pursuant to Article 13b(2) as well as in the publication of the competitive bidding procedure design elements referred to in Article 13a(4).

Article 13f

Deposits

1. The Commission may request deposits, in accordance with Article 10a(8a) of Directive 2003/87/EC, in the form of a financial guarantee, in order to mitigate the risk of speculative bidding or to incentivise project proponents to deliver the proposed project on time and in accordance with their proposal.
2. Retained deposits shall accrue to the Innovation Fund as external assigned revenue pursuant to Article 21(5) of the Financial Regulation;

(15) the following Chapter IIc is inserted:

‘CHAPTER IIc

Specific provisions applicable to technical assistance provided to Member States with a low level of effective participation

Article 13g

Technical assistance provided to Member States with a low level of effective participation

1. Member States with the lowest ratio based on the Innovation Fund support received by projects on their territory compared with their share of EU ETS verified emissions in 2013-2020 may be eligible for technical assistance provided by the Commission in accordance with Article 10a(8), fourteenth subparagraph, of the Directive 2003/87/EC.
2. The maximum amount of the Innovation Fund support available for technical assistance as well as the list of Member States eligible for technical assistance shall be determined by the Commission after consulting the Member States in accordance with Article 21(2)(d). The list of eligible Member States shall be updated at least once every two years thereafter;

(16) the title of Chapter III is replaced by the following:

‘Specific provisions applicable to other forms of Innovation Fund support’;

(17) Article 18 is amended as follows:

(a) the first paragraph is amended as follows:

(1) the first sentence of the introductory part is replaced by the following:

‘The implementing body designated in accordance with Article 17(1) of this Regulation to implement the Innovation Fund in accordance with Article 17(2) may be entrusted with the overall management of the calls for proposals, the disbursement of the Innovation Fund support and the monitoring of the implementation of selected projects.’;

(2) point (c) is replaced by the following:

‘(c) organising the selection procedure, including the proposals’ evaluation and ranking’;

(3) point (m) is replaced by the following:

‘(m) information, communication and promotion actions, including the production of the promotion materials’;

(4) the following point (oa) is inserted:

‘(oa) fostering synergies between the Innovation Fund and other EU funding programmes (including Horizon Europe)’;

(b) the following paragraphs are added:

‘Following the closure of each call for proposals organised pursuant to Articles 9 and 10, the implementing body shall share information with the Member States on the applicants, their projects, their contact details, the requested grant amount, the greenhouse gas emission avoidance potential and envisaged dates of financial close and entry into operation.

Following the closure of each call for proposals organised pursuant to Article 13b, the implementing body shall share with the Member States information on the project proponents, their projects, their contact details, the amount of Innovation Fund support requested and, where relevant, envisaged dates of financial close and entry into operation.

The sharing of information referred to in second and third paragraphs is subject to the project proponents’ consent and EU legislation.’;

(18) Article 19 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Where disbursed amounts are recovered under Articles 7 and 8 of this Regulation, the recovered amounts shall constitute external assigned revenue in accordance with Article 21 of the Financial Regulation and shall be used to finance the Innovation Fund’s operations.’;

(b) paragraph 3 is replaced by the following:

‘3. For all implementing tasks carried out by the Commission, including through an executive agency, the revenue of the Innovation Fund shall constitute external assigned revenue within the meaning of Article 21, paragraphs 1 and 5 of the Financial Regulation. The revenue of the Innovation Fund shall cover all administrative and management costs related to its implementation. The Commission may use a maximum of 5 % of the Innovation Fund envelope to cover its management costs.’;

(c) paragraph 4 is replaced by the following:

‘4. A project that has received the Innovation Fund support may also receive a contribution from any other EU programme, including funds under shared management, provided that those contributions do not cover the same costs and no restrictions have been introduced in accordance with Article 13e(1). The cumulative financing shall not exceed the total eligible costs of the project and the support from different EU programmes may be calculated on a pro-rata basis.’;

(19) in Article 20, paragraph 4 is replaced by the following:

‘4. Subject to the provisions of Directive 2003/87/EC, Innovation Fund revenues remaining at the end of the eligibility period for the supported projects shall be used to support new projects that meet the eligibility criteria laid down in Article 10a(8) of that Directive until all the revenues are spent on the objectives of the Innovation Fund.’;

(20) in Article 21, paragraph 2 is amended as follows:

(a) points (a), (b) and (c) are replaced by the following:

‘(a) the list of the pre-selected proposals, including the reserve list, established in accordance with Articles 12, 12a and 13d;

(b) draft Commission decisions referred to in Articles 9(1), 13b, 14(2) and 15(1);

(c) the maximum amount of the Innovation Fund support to be made available for the project development assistance in accordance with Article 13;’

(b) the following point (d) is added:

‘(d) the maximum amount of the Innovation Fund support to be made available for technical assistance and the list of Member States with a low level of effective participation, in accordance with Article 13g.’;

(21) in Article 23, paragraphs 5 and 6 are deleted;

(22) in Article 24, paragraph 1 is replaced by the following:

‘1. In 2025 and every 5 years thereafter, the Commission shall carry out an evaluation of the operation of the Innovation Fund. The evaluation shall focus on, but shall not be limited to, the assessment of synergies between the Innovation Fund and other relevant EU programmes, notably the EU Framework Programme for Research and Innovation (including Horizon Europe and Horizon 2020), as well as the procedure for disbursement of the Innovation Fund support.’;

(23) Article 27 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The project proponents shall proactively and systematically promote the projects supported under this Regulation and their results and impact by making relevant information publicly available through all available communication channels, including their websites and social media accounts. That information shall include an explicit reference to the Innovation Fund support received. The project proponents shall nominate a focal point for project communication and shall inform the implementing body well in advance before engaging in specific project communication or dissemination activities with a potentially substantial media impact.’;

(b) paragraph 3 is replaced by the following:

‘3. The label “(co-)funded from the EU Emissions Trading System (the Innovation Fund)”, the emblem of the Union and other promotional elements required shall be used for all communication and knowledge-sharing activities and appear on notice boards at strategic places visible to the public, in accordance with the contractual requirements associated with the Innovation Fund support.’;

(c) paragraph 4 is replaced by the following:

‘4. The project proponents shall provide detailed information on the planned actions in accordance with paragraphs 1 and 2 in their knowledge-sharing, and communication and dissemination plans. They shall regularly monitor and, if appropriate, review their implementation.’.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 September 2023.

For the Commission
The President
Ursula VON DER LEYEN
