

# Warning

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# Specifications for a Legally Binding Instrument and Award Conditions

**InfoDay : NER300 Project Implementation  
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**Unit C.1, Low Carbon Technologies  
DG Climate Action**

*Climate  
Action*

## Award decision-structure

*2 Articles + 3 Annexes (equally binding on Member States)*

*3 Annexes:*

- List of awarded projects*
- Conditions of the award*
- Specifications for Legally Binding Instrument (SLBI)*

## Award decision - Addressees

*Article 2 : the Award decision is addressed to the **Member States** who submitted the awarded projects in Annex 1*

### Consequence:

- The conditions in Annex 2 are binding on the Member States*
- Member States must ensure that Project Sponsors know and respect these conditions by means of the Legally Binding Instrument in Annex 3*

## Conditions of the award and SLBI

- *Two faces of the same coin*
- *The LSBI mirror the conditions of the award*
- *The disbursement of the revenues can be done **only** on the basis of the SLBI*
- *All the provisions of the SLBI must be included in the contract to be signed between MS and Project Sponsor (according to their national law)*

# Specifications for the Legally Binding Instrument – content (1/3)

- *Project (as determined in Annex 1 to the Award Decision)*
- *Maximum Funding Amount (as specified in Annex 1 to the Award Decision)*
- *Date of entry into operation (as specified in Annex 1 to the Award Decision)*

# Specifications for the Legally Binding Instrument – content (2/3)

## Funding disbursement:

- **For the first Year:** for the period between the date of entry into operation and the end of the year of the entry into operation
- **For the last year:** for the period between the beginning of the year of the long stop date and the long stop date
- **Annual disbursement:** for the full year for all the remaining years

## Specifications for the Legally Binding Instrument – content (3/3)

- *Recovery of Excess funding*
- *Knowledge sharing*
- *Monitoring, verification and reporting*
- *End of the effect of the award decision, project failure and adjustment of the award decision*



# Conditions of the award and SLBI - Project failure

## 1. *Non respect of conditions mentioned in Article 9 NER 300 Decision* (point 3a Annex 2 and point 5a SLIB):

- *The project fails before the entry into operation because:*

*a) The Final investment Decision has not been reached by 18th December 2014*

*b) All relevant permits have not been issued by 18th December 2014*

*c) Any state aid in respect of the Project has not been approved by the Commission by 18th December 2014*

## Conditions of the award and SLBI - Project failure

- *Member State must establish if the conditions are met and to inform both Project Sponsor and Commission (within one month from occurrence)*
- *The decision ceases to have effect retroactively (as if the award was never granted) on the date of notification*
- *The project sponsor must return any up-front funding disbursed to Member State within 3 months*
- *Member State must return any up-front funding granted to EIB within 4 months*

# Conditions of the award and SLBI - Project failure

## 2. Other reasons for definite failure of a project to enter into operation(point 3b Annex 2 and point 7a SLIB):

- *The project fails before entry into operation:*

a) *for any other reason than Article 9NER300 Decision*

b) *The project hasn't entered into operation 1 year after the date of entry into operation specified in Annex I*

# Conditions of the award and SLBI - Project failure

- *Project Sponsor must inform Member State within 1 week from the occurrence*
- *Member State must establish if the conditions are met and to inform both Project Sponsor and Commission (within one month from occurrence)*
- *The decision ceases to have effect retroactively (as if the award was never granted) on the date of notification*
- *The project sponsor must return any up-front funding disbursed to Member State within 3 months*
- *Member State must return any up-front funding granted to EIB within 4 months*

# Conditions of the award and SLBI - Project failure

## 3. Definite cease of operation of a project (point 3c Annex 2 and point 7a SLIB):

- The **project fails after entry into operation** (for any reason) or **ceases operation for one year**
- Project Sponsor to inform MS within 1 week from the occurrence
- Member State must establish if the conditions are met and to inform both Project Sponsor and Commission (within one month from occurrence)
- **The decision ceases to have effect** on the date of notification (for the future)
  - The project sponsor has to return any excess funding disbursed to Member State within 3 months
  - Any excess funding must be returned to EIB within 4 months

# Adjustment of the Award Decision

(Point 4 Annex 2 and point 6 SLBI)

## **1. A determined change as compared to the situation at the moment of the award:**

-The relevant costs based on the estimates on which the final investment decision is taken are lower than the estimated relevant costs on the basis of which the Award Decision was determined

-An intangible asset is sold before it has remained five years in the establishment of the recipient.

# Adjustments of the Award Decision

## (Point 4 Annex 2 and point 6 SLBI)

- *Project Sponsor must inform Member State in one week*
- *Member State informs the Commission within one month of the occurrence of the event*
- *The Commission **will** adjust the award decision (downwards)*
- *Member State adjusts the SLIB accordingly and calculates the funding exceeding the maximum amount of the adjusted funding*
- *Any funding exceeding the maximum amount of the 'adjusted funding' is returned to the Member State within 3 months and to the EIB within 4 months*

# Adjustments of the Award Decision

## (Point 5 Annex 2)

- 1. Any proposed changes to the projects listed in Annex 1 (except for the ones referred to in point 4 Annex 2)*
- 2. Member State notifies the Commission of any proposed change before its implementation*
  - The proposed change must be duly justified*
- 3. The Commission **will assess** the proposed change and **may adjust** the award decision (downwards).*
- 4. **Prior agreement of the Commission is required before implementation of any proposed change.***



# Adjustments of the Award Decision

(Point 5 Annex 2)

## ***3 situations possible:***

**1. The Commission agrees to the change without adjusting the Award Decision** :the change is implemented

**2. The Commission agrees to the change but adjusts the Award Decision:**

-Member State adjusts the SLIB accordingly, calculates the funding exceeding the maximum amount of the adjusted funding and returns it to the EIB within 4 months

**3. The Commission does not agree to the change:**

- The proposed change is not implemented, the project continues as before

# **Adjustments of the Award Decision**

(Point 5 Annex 2)

***The Commission may redraw the award (with effects for the future) if a proposed change is implemented without the agreement of the Commission***

# Contact

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