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"I/A" ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)/Council

Subject: COMMISSION DECISION on the signature on behalf of the European Union of a Memorandum of Understanding between the European Union and the European Bank for Reconstruction and Development to reinforce cooperation in the field of energy, strengthening climate action
- *Establishment of the EU position*

1. On 5 February 2016, the Commission adopted the above mentioned Decision approving the signature, by the Commission, of a Memorandum of Understanding between the European Union and the European Bank for Reconstruction and Development (EBRD). The signature is planned to take place in the first quarter of 2016.
2. The Working Party on Energy examined the Decision and the Memorandum of Understanding at its meeting on 9 February 2016, expressed support for strengthening cooperation with the EBRD and endorsed the political position of the Union as reflected in the Memorandum of Understanding set out in the Annex.¹
3. Following the above, the Permanent Representatives Committee is invited to confirm the **approval** and suggest to the Council to approve the political position of the Union as set out in the draft Memorandum of Understanding contained in the Annex.

¹ No Council document was issued, however a courtesy copy of the adopted Decision was sent by email to delegations prior to the meeting.



Brussels, 5.2.2016
C(2016) 502 final

COMMISSION DECISION

of 5.2.2016

**on the signature on behalf of the European Union of a Memorandum of Understanding
between the European Union and the European Bank for Reconstruction and
Development to reinforce cooperation in the field of energy, strengthening climate action**

COMMISSION DECISION

of 5.2.2016

on the signature on behalf of the European Union of a Memorandum of Understanding between the European Union and the European Bank for Reconstruction and Development to reinforce cooperation in the field of energy, strengthening climate action

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union, and in particular Article 17 thereof

Whereas:

- (1) In July 2007 Commissioners Piebalgs and Almunia on behalf of the European Commission and President Lemierre on behalf of the European Bank for Reconstruction and Development (EBRD) signed a Memorandum of Understanding between the respective institutions intended to reinforce cooperation in the field of energy².
- (2) Section 4.2 of the above mentioned Memorandum of Understanding provided for its possible review in light of the evolution of the policies or developments in the countries of operations.
- (3) The energy policy framework has evolved importantly as recognised in the Commission's "Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy"³, adopted on 25 February 2015. The EBRD has been increasingly focusing on the energy sector as established in its specific Energy Strategy, its Sustainable Energy Initiative and its recently adopted Green Economy Transition approach.
- (4) These developments on the side of both of the institutions call for bringing the initially signed Memorandum of Understanding up-to-date, in particular to recognise the opportunities for further intensification of the mutual cooperation.
- (5) The present Memorandum of Understanding updates the one signed in July 2007 and sets out the terms for this reinforced cooperation which shall be implemented without prejudice to the normal decision-making processes of the European Union and the respective governing bodies of the EBRD.

² Memorandum of Understanding between the European Commission and the European Bank for Reconstruction and Development in respect of reinforcing cooperation in the field of energy, 13 July 2007.

³ COM(2015)80.

- (6) This sectoral Memorandum of Understanding is updated under the framework of the Tripartite Memorandum of Understanding signed by the Commission with EBRD and European Investment Bank (EIB) on 29 November 2012⁴. Therefore, whenever opportune, linkages to the EIB are foreseen. It is also taking account of the Framework Administrative Agreement between the European Union and the EBRD signed on 1 June 2015⁵.
- (7) The cooperation envisaged will be carried out fully within existing Union policies and legislation, as defined in particular in the Commission's "Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy"⁶, adopted on 25 February 2015, which the Council has endorsed on March 19-20, 2015 as the basis for the European Union's commitment to building an Energy Union.
- (8) The present Memorandum of Understanding has no financial implications.
- (9) The present Memorandum of Understanding does not, nor is it intended to, create any binding or legal obligations on either side under domestic or international law.
- (10) The draft Memorandum of Understanding will be formally sent to the Council working party for information at least two weeks prior to signature.

HAS DECIDED AS FOLLOWS:

Article 1

The Commission approves the Memorandum of Understanding between the European Union and the European Bank for Reconstruction and Development to reinforce cooperation in the field of energy, strengthening climate action. The text of the Memorandum is attached to this Decision.

⁴ Memorandum of Understanding between the European Commission, the European Investment Bank together with the European Investment Fund and the European Bank for Reconstruction and Development in respect of cooperation outside the European Union, signed on 29 November 2012.

⁵ Framework Administrative Agreement between the European Union and the European Bank for Reconstruction and Development on Actions administered by the European Bank for Reconstruction and Development and funded or co-funded by the European Union, June 1, 2015.

⁶ COM(2015)80.

Article 2

The Commissioner in charge of Climate Action and Energy is authorised to sign on behalf of the European Union the Memorandum of Understanding between the European Union and the European Bank for Reconstruction and Development to reinforce cooperation in the field of energy, strengthening climate action.

Done at Brussels, 5.2.2016

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

ANNEX

Memorandum of Understanding

between the European Union and

the European Bank for Reconstruction and Development

to reinforce cooperation in the field of energy, strengthening climate action

1. PRINCIPLES

The goal of a resilient Energy Union with an ambitious climate policy at its core is to give European Union consumers - households and businesses - secure, sustainable, competitive and affordable energy. Achieving this goal will require a fundamental transformation of Europe's energy system⁷.

The European Union ("the Union") and the European Bank for Reconstruction and Development ("EBRD") share the objectives of pursuing a transition to a low carbon economy, of promoting sustainable growth and increasing energy security both inside the Union, in the neighborhood countries and in other developing countries and emerging economies where their activities overlap.

In pursuing these objectives, areas of common interest include the scaling-up of energy efficiency investments, wider deployment of renewable energy and the strengthening of energy security. Deepened cooperation in these areas between the Union and EBRD would be particularly meaningful in the context of the 2030 Sustainable Development Agenda, where access to sustainable energy and climate action are emphasized, and of the Paris Climate Agreement, in which all Parties to the UNFCCC⁸ commit themselves to global greenhouse gas emissions neutrality in the second half of this century and where the focus is on pursuing domestic emission reduction measures with an enhanced transparency and accountability framework applicable to all.

⁷ A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank of 25 February 2015.

⁸ United Nations Framework Convention on Climate Change.

In this context and in view of the successful implementation of the Union energy policy objectives as set out in the European Commission's Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, endorsed by the Council on 19-20 March 2015, and the mandate of EBRD to foster the transition towards open market-oriented economies and promote private and entrepreneurial initiatives in EBRD countries of operations, its specific Energy Strategy, its Sustainable Energy Initiative and its recently adopted Green Economy Transition approach, the Union and the EBRD will reinforce their tradition of cooperation.

The present Memorandum of Understanding ("MoU") updates the MoU signed on July 13, 2007⁹ and sets out the terms for this reinforced cooperation which shall be implemented without prejudice to the normal decision-making processes of the Union and the respective governing bodies of the EBRD.

This sectoral MoU is updated under the framework of the Tripartite MoU signed by the European Commission (the "Commission") with EBRD and EIB on November 29, 2012¹⁰. Therefore, whenever opportune, linkages to the EIB are foreseen.

This MoU is established taking account of the Framework Administrative Agreement between the European Union and the EBRD signed on 1 June 2015¹¹.

2. FIELDS OF CO-OPERATION

Overall both the European Union and EBRD share a common goal of supporting the development of sustainable, efficient and cost reflective energy markets, through consistent policies and financing criteria.

⁹ Memorandum of Understanding between the European Commission and the European Bank for Reconstruction and Development in respect of reinforcing cooperation in the field of energy, 13 July 2007.

¹⁰ Memorandum of Understanding between the European Commission, the European Investment Bank together with the European Investment Fund and the European Bank for Reconstruction and Development in respect of cooperation outside the European Union, signed on 29 November 2012.

¹¹ Framework Administrative Agreement between the European Union and the European Bank for Reconstruction and Development on Actions administered by the European Bank for Reconstruction and Development and funded or co-funded by the European Union, June 1, 2015.

Both Sides have identified the following areas to be priority areas for co-operation in the EBRD countries of operation within and outside the EU:

- Scaling-up energy efficiency financing
- Increased investment in renewable energy
- Smart Grids Development
- Enhancing Resilience to Climate Change
- Energy security, through promoting increased interconnectivity of energy systems
- Nuclear safety and decommissioning (including consequential measures)
- Policy, regulations and financing criteria

Cooperation in these areas will contribute to the Union's objective of building an Energy Union with a forward-looking climate policy on the basis of the Commission's framework strategy, through actions on its five dimensions (energy security, solidarity and trust; a fully integrated European energy market; energy efficiency contributing to moderation of demand; decarbonising the economy; and research, innovation and competitiveness).

Outside the Union, where activities in the above areas overlap, due consideration will be paid by both Sides to the priorities highlighted in any bilateral Memoranda of Understanding with partner countries which may have been signed in the energy sector.

Scaling-up energy efficiency financing

Increased energy efficiency investments have the potential to make the most decisive contribution to achieving the goal of sustainable, secure and competitive energy for all. The European Council set in October 2014 an indicative target at the Union level of at least 27% for improving energy efficiency by 2030. This will be reviewed by 2020, having in mind a Union level of 30%. This is fully in line with the EBRD's Energy Strategy (2014-2018) which defines, as a priority, support for improvements in energy efficiency and energy savings across all its countries of operation and its Green Economy Transition approach.

Most of the work has to be done at national, regional and local level. Enhanced cooperation between the Union and the EBRD can encourage countries inside and outside the Union to give energy efficiency primary consideration in their policies, not only in the energy sector but across the whole economy. To unlock the significant energy efficiency potential in its countries of operations, the widest possible range of demand-side as well as supply-side efficiency investments should be promoted.

The Union and the EBRD have established a strong track record of co-operation in the development and implementation of energy efficiency financing through Union support extended to Sustainable Energy Financing Facilities (SEFFs) in a number of countries inside and outside the Union. Work on these credit lines involves a combination of policy dialogue, regulatory reform, investment preparation, technical assistance, and financing supported by a structured financing package from the Union and the EBRD.

Building on the experience and local banking network that supports energy efficiency, further collaboration could focus on the expansion of financing for:

- energy efficiency in industrial processes and Small and medium-sized enterprises (SMEs),
- energy savings in residential and public buildings and,
- investments in public transport energy efficiency.

In the Union Member States, the European Structural and Investment Funds (ESI Funds) implemented under shared management can contribute to these areas, either in the form of grants or in the context of enhanced use of ESI Funds financial instruments. The Union and EBRD intend to seek further collaboration. Moreover, in close coordination with the EIB, the Commission, on behalf of the Union, and EBRD intend to build on these areas of co-operation further by examining options for the combination of the funding and capabilities of the European Fund for Strategic Investment (EFSI) with that of the EBRD.

In addition, there are significant opportunities for cooperation in the context of policy and regulatory reform in the field of energy efficiency, such as removing environmentally harmful subsidies, the use of (EU) eco-design standards, energy labelling, CO₂ and automobile standards, energy performance standards for buildings and the application of best available techniques in industry.

Increased investment in renewable energy

To improve the investment framework for all investors, the Union and EBRD could build on the successful co-operation where the Union supports EBRD direct-lending in renewables and EBRD technical assistance programs to promote e.g. legal assistance to establish regulatory frameworks for renewable energy, project scoping and environmental impact assessments.

Sustainable Energy Financing Facilities (SEFFs) are an example of such cooperation for the development and implementation of small-scale renewables. In Turkey for instance, Union funding for technical assistance has been instrumental in unlocking EUR 1.5 billion in investment through the EBRD's Mid-size Sustainable Energy Financing Facility (MidSEFF) credit line for renewables offered through local banks.

Building on this experience, in addition to re-inforced cooperation outside the EU, the Commission, on behalf of the Union, and EBRD intend to examine options for enabling additional financing of the EBRD for both small-scale and large renewable energy projects in those Union Member States where the Bank carries out its operations. The ESI Funds implemented under shared management can contribute to these areas, either in the form of grants or in the context of enhanced use of ESI Funds financial instruments. The Union and EBRD intend to seek further collaboration. Moreover, in close coordination with the EIB, the Commission, on behalf of the Union, and EBRD could examine options for the combination of the funding and capabilities of the European Fund for Strategic Investment with that of the EBRD in support of renewable energy projects.

There are also opportunities for policy dialogue cooperation in the field of renewable energy, for instance as regards regulatory frameworks supporting renewable energy deployment, in particular in Energy Community and European neighbourhood countries.

Furthermore, the Commission, on behalf of the Union, and the EBRD may identify opportunities to restore and scale-up competitive manufacturing for the next generation of highly performing renewables, in the Union countries of operation of the EBRD.

Smart grids development

The Union and EBRD endeavor to identify opportunities to cooperate in promoting and financing the introduction of smart grids, both managing and strengthening networks to increase their capacity to absorb intermittent renewables and empowering and informing consumers through widespread adoption of smart meters. Together the sides intend to focus on financing schemes in the Union and, as they mature, on promotion of such developments also in neighboring and other transition economies within the EBRD's mandate.

Enhancing resilience to climate change

As a new field of co-operation, the Union and EBRD intend to promote climate resilience investments in the private and public sector, with a focus on large-scale infrastructure (including power generation facilities), buildings and vulnerable industries. Enhanced co-operation in this area, in particular in the Mediterranean and Eastern neighborhood, as well as Central Asia, could bring multiple development benefits to these countries.

Energy security

In a context of growing global energy demand, energy security is a key priority of European energy policy and for the EBRD's countries of operations. To ensure security of supply for oil, gas and electricity it is important to promote diversity with regard to energy supply sources and routes. This implies in particular new transport routes and transport methods. Already, EBRD activities in Union and neighbourhood countries are closely aligned with the European Union Energy Security Strategy of May 2014. A good example of existing cooperation is the development and financing of the Southern Corridor, the modernization of gas transmission systems and reforms of the Ukrainian gas sector.

Looking ahead, the completion of Projects of Common Interest (PCI), including sections outside Union borders, and the implementation of Projects of Energy Community Interest (PECI) are a clear priority as is the modernization of production infrastructure and existing energy networks in producer and transit countries.

The implementation of this priority requires the creation of a favorable environment at political, regulatory and investment levels. For energy security both Sides intend to reinforce existing cooperation and the EBRD will work in close partnership with the EIB for the possible financing of PCIs and PECIs.

Further opportunities to build on this may include where relevant co-financing alongside the Connecting Europe Facility, European Structural and Investment Funds and EIB, including under EFSI.

Nuclear decommissioning (including consequential measures)

From the outset the importance of nuclear safety was recognised by the European Community in the Euratom Treaty.

Nuclear safety is still a central issue in the context of the recent enlargements of the Union. Four nuclear reactors (Ignalina 1 and 2 in Lithuania and Bohunice VI-Units 1 and 2 in Slovakia) of RBMK and first-generation Soviet VVER- design¹² have been shut down in predetermined stages in compliance with the 2004 Accession Treaty¹³. Similar arrangements are in place for four of the six VVER reactors at Kozloduy, which were closed in 2002 and at the end of 2006 as part of Bulgaria's European Union Accession Treaty.

The total financial assistance from the European Union to Bulgaria and Slovakia and Lithuania until the end of 2013 was EUR 2 848 million. Further support for the period 2014-2020 is provided through two Council Regulations adopted in December 2013¹⁴ for the nuclear decommissioning assistance programs. The overall budget for the programs in current prices is EUR 969 million. These later contributions are for decommissioning activities only. A large part of this Community financial assistance is being managed by the EBRD. Currently most of the funds for Ignalina are managed by the Lithuanian national agency, the Central Project Management Agency (CPMA). In the near future the funds for Bohunice are expected to be managed by a Slovak national agency. This sets the trend towards a gradual transfer of management of projects from the EBRD to national agencies. EBRD, while staying committed to the full and successful completion of the projects it currently manages, will endeavour to effectively assist the beneficiary countries in building up the needed capacity for a successful transfer of responsibilities.

Overall, finance from the European Union budget, implemented by the Commission, constitutes the largest contribution to the seven Nuclear Safety Funds managed by the EBRD¹⁵. Close cooperation is therefore essential.

¹² RBMK stands for Reaktor Bolschoi Moschnosti Kanalnij or High Power Channel Type Reactor. VVER stands for Vodo-Vodyanoi Energetichesky Reaktor or Water-Water Energetic Reactor.

¹³ OJ L 236 of 23.9.2003

¹⁴ Council Regulation (Euratom) No 1368/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programmes in Bulgaria and Slovakia, and repealing Regulations (Euratom) No 549/2007 and (Euratom) No 647/2010 and Council Regulation (Euratom) No 1369/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programme in Lithuania, and repealing Regulation (EC) No 1990/2006.

¹⁵ I1DSF (Ignalina International Decommissioning Support Fund), B1DSF (Bohunice International Decommissioning Support Fund), K1DSF (Kozloduy International Decommissioning Support Fund), NSA (Nuclear Safety Account), CSF (Chernobyl Shelter Fund) and NDEP (Nuclear window of the Northern Dimension Environmental Partnership Support Fund).

The European Commission, representing Euratom, and the EBRD also jointly finance nuclear safety upgrades in Ukraine and intend to continue to co-operate on nuclear safety issues in EBRD's countries of operation.

Policy, regulations and financing criteria

The EU regulatory reform agenda is of central importance for EU and neighboring countries. In areas such as regional integration and market coupling, market liberalisation, and renewable support mechanisms, there are considerable opportunities for cooperation in helping EBRD countries of operation in their transition pathway and decarbonisation of their economy. These countries can also benefit of experience and best practices on the phasing out of subsidies for fossil fuels and the introduction of robust emissions monitoring, reporting and verification frameworks, including in the longer term, emission trading systems.

Moreover, both the Union and the EBRD support investments in the field of energy and climate and have progressively aimed at mainstreaming sustainability in their financing criteria. There are opportunities for further convergence in these financing criteria to achieve policy objectives, both inside and outside the European Union.

3. IMPLEMENTATION OF COOPERATION

The Sides intend to cooperate through two main channels.

1. Upstream enhanced coordination of policies and activities

High level representatives of the Commission's Directorate General for Energy and EBRD's Senior Management intend to meet at least once a year to review cooperation in the energy field, share experience and identify synergies in policy support, advisory services, financing, and grant funding. Sectoral and regional issues of relevance to the implementation of this MoU will be reviewed. Where appropriate, other Commission Services concerned as well as other International Financial Institutions will be invited to participate. Concrete implementing modalities will be agreed upon by both Sides at the first meeting, which it is intended to convene within six months of the date of signature of this MoU.

In addition, the Sides intend to set up a Contact Group composed of staff of the Commission and the EBRD to operationalize the cooperation and report to the High Level representatives. This Contact Group would discuss progress in the fields of cooperation and updates on project pipeline, policy and instruments from both Sides. This is envisaged to allow, in particular, to provide an opportunity to feed policy dialogue activities in Union and non-Union countries, to develop lending criteria aligned with Energy Union policy objectives (market reform, decarbonisation, energy security), to help in identifying concrete bottlenecks for the implementation of investments and to allow for the discussion of issues related to the financial support from Union funds.

2. Optimisation of financing synergies

This MoU builds on a broad range of cooperation between the Union and the EBRD in the energy and climate areas. The Commission, on behalf of the Union, and EBRD have already developed a range of activities combining Union funds with EBRD investment and expertise in the energy sector and climate change area including, for example, sustainable energy financing facilities in the Western Balkans, European neighborhood, Turkey and the South eastern Mediterranean, as well as transmission network rehabilitation in Ukraine and Moldova.

The main instruments to develop activities and achieve concrete results in the areas of cooperation identified include technical assistance, for example for project preparation or capacity building, grants to address market failures and mitigate risk, and investment, including both direct EBRD finance and finance mobilised from other sources, which contributes to increased leverage, as well as policy dialogue. Optimum impact is achieved through the appropriate combination of these instruments reflecting specific country conditions and project objectives.

The Commission, on behalf of the Union, welcomes proposals by EBRD for indirect management of its funds in the fields of cooperation identified above. In addition, in the Union Member States, the EBRD and the Commission, on behalf of the Union, intend to assess the scope for expanding this cooperation with European Structural and Investment Funds across the areas covered by this MoU, including specific areas such as energy efficiency or renewable energy, taking into account the fact that these Funds are implemented under shared management by the Union Member States.

Co-operation could also build, where relevant, on existing Union instruments to promote energy efficiency investments, such as ELENA (European Local Energy Assistance Facilities). The EBRD could add its specific expertise, both on energy projects and in the area of financial instruments, in order to advance Projects of Common Interests (PCIs) and of Energy Community Interest (PECIs) located in the EBRD's countries of operation.

4. COMMUNICATIONS

Any notice or other communication to be given or made under this MoU will be addressed and sent to the following contact points or at such other address as either side designates by notice to the other side:

For the Commission, representing the European Union:

Address:

Attention of:

Fax:

E-mail:

For the EBRD:

Address:

Attention of:

Fax:

E-mail:

5. APPLICATION AND REVISION

The cooperation described in this MoU will commence from the date of its signature by both Sides.

This MoU may be reviewed every five years and at the request of either Side in the light of developments in the beneficiary countries and the evolution of the policies and financial instruments of the Union or the EBRD.

Either Side has the possibility to withdraw from this Memorandum at any time by giving notice to the other Side.

This MoU may be amended by mutual written consent of the sides.

6. MISCELLANEOUS

This reflects the views and intentions of the sides to co-operate on a non-exclusive basis, expressed in good faith and it does not, nor is it intended to, create any legal obligations on either Side under domestic or international law. In particular, nothing in this MoU shall represent a commitment of financing on the part of either Side. Any such commitment could be undertaken in separate financing agreements. Furthermore, this MoU does not intend to represent any commitment from either side to give preferred treatment to the other Side in any matter contemplated herein or otherwise.

Both sides will endeavor that any exchange of information contemplated in this MoU and all activities undertaken pursuant to this MoU are consistent with their respective policies and procedures on disclosure of information. In addition, both sides may make this MoU publicly available.

It is understood and agreed that nothing in this MoU will constitute, or be construed as, an offer, promise or undertaking by either side to finance all or part of any activity or project identified in or pursuant to this MoU.

In the event that opportunities are identified, specific arrangements for any such activity or project would need to be agreed upon between the sides. Each of the sides will incur its own expenditure arising as the result of the implementation of this MoU, unless otherwise specified in relevant separate agreements.

Nothing in this MoU will constitute nor be construed as a waiver, renunciation or other modification of any of the privileges, immunities and exemptions granted to the EBRD under the Agreement Establishing the European Bank for Reconstruction and Development, international conventions or any applicable laws.

Any dispute arising out of, or in connection with, the interpretation or application of any provisions of this MoU will be settled amicably through consultations.

Done at

Done at

Date

Date

For the EBRD

For the European Union
