Council of the European Union

Brussels, 21 May 2021
(OR. en)

8871/21

Interinstitutional File: 2021/0142(APP)

RECH 224
FIN 364
COMPET 367
ENER 189

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	9772/20
Subject:	Proposal for a COUNCIL DECISION Amending Decision 2003/76/EC establishing the measures necessary for the implementation of the Protocol, annexed to the Treaty establishing the European Community, on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel *- General Approach*

1. On 16 July 2020, the Commission submitted to the Council the proposal for a Council Decision amending Decision 2003/76/EC establishing the measures necessary for the implementation of the Protocol, annexed to the Treaty establishing the European Community, on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel[1].

[1] Doc.9772/20.

2. The Research Fund for Coal and Steel (RFCS) is an EU research programme, funded outside the Multiannual Financial Framework by the revenue of the assets of the European Coal and Steel Community (ECSC) in liquidation allocated to this fund according to Protocol 37. In accordance with this Protocol, the RFCS finances exclusively research projects in the coal and steel sectors.

3. Due to the low interest rate context, the revenues assigned to the funding of research projects for coal and steel are rapidly decreasing, leading to a situation where the critical minimum budget available for organising an annual call for proposal for the RFCS research programme might not be met. The proposed Decision aims at allowing selling a share of the assets of the ECSC in liquidation for the period 2021-2027 in order to provide an annual RFCS allocation of EUR 111 million that will be used as follows: EUR 40 million per year will finance collaborative research in the coal and steel sectors. The remaining EUR 71 million will finance breakthrough technologies leading to near-zero carbon steel making and research projects for managing the just transition of formerly operating coal mines or coal mines in the process of closing, and related infrastructure in line with the Just Transition Mechanism. The sale of a share of the assets is allowed on the condition that reserves should be kept to guarantee the limited remaining obligations, resulting from any unforeseeable liability and that reasonable part of the assets, which are no longer needed for the above, should still be invested to generate revenues.

4. The Research Working Party examined the proposal on 21 September 2020, 15 February, 24 March and 10 May 2021, and agreed to introduce only some limited drafting changes.

5. In accordance with the first paragraph of Article 2 of Protocol No 37 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel, the consent of the European Parliament on the draft Council Decision is to be requested by the Council before its adoption.

6. The Permanent Representatives Committee is therefore invited to confirm the agreement on the proposal as set out in Annex to this Note, and to recommend to the Council, as an "A" item in one of its next sessions, to agree on a General Approach on the Decision.

ANNEX

Proposal for a

COUNCIL DECISION

Amending Decision 2003/76/EC establishing the measures necessary for the implementation of the Protocol, annexed to the Treaty establishing the European Community, on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Protocol No 37 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 2 thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[1],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The Treaty establishing the European Coal and Steel Community expired on 23 July 2002 in accordance with Article 97 of that Treaty. All assets and liabilities of the European Coal and Steel Community (ECSC) were transferred to the Union on 24 July 2002.

(2) In accordance with Protocol No 37, the net worth of the assets and liabilities, as they appear in the balance sheet of the ECSC of 23 July 2002, is to be considered as assets intended for research in the sectors related to the coal and steel industry, referred to as the 'ECSC in liquidation', and, on completion of the liquidation, as the 'assets of the Research Fund for Coal and Steel'.

[1] OJ C , , p. .

(3) Protocol No 37 also provides that the revenue from those assets, referred to as the 'Research Fund for Coal and Steel' (RFCS), is to be used exclusively for research, outside the research framework programme, in the sectors related to the coal and steel industry in accordance with the provisions of Protocol No 37 and of acts adopted on the basis thereof.

(4) On 1 February 2003, the Council adopted Decision 2003/76/EC[2], which establishes the rules for implementing Protocol No 37.

(5) Due to the low interest rate context the revenues assigned to the funding of research projects for coal and steel are rapidly decreasing.

(6) This is leading to a situation where the critical minimum budget available for organising an annual call for proposal for the research programme of the Research Fund for Coal and Steel (the 'programme') might not be met.

(7) A critical minimum budget for organising a call is necessary in order for the programme to provide meaningful support to worthwhile collaborative research projects having the critical mass and EU added value for improving the sustainability, i.e. health, safety, working conditions and reducing the environmental impact in the sectors related to the coal and steel industry.

(8) Within the Communication on the European Green Deal – COM(2019) 640 final, the Commission committed to support clean steel breakthrough technologies leading to near zero-carbon steelmaking by 2030. To enable this, the Commission committed to explore whether part of the funding under the ECSC in liquidation could be used.

(9) To meet EU targets, the Green Deal Investment Plan and Just Transition Mechanism Communication – COM(2020) 21 final - considered necessary a revision of the RFCS legal bases to enable using the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the RFCS.

[2] OJ L 29, 5.2.2003, p. 22–24.

(10) The sale of a share of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the RFCS to finance research projects in the coal and steel sectors should be allowed on the condition that reserves should be kept to guarantee the limited remaining obligations, resulting from any unforeseeable liability and that reasonable part of the assets, which are no longer needed for the above, should still be invested to generate revenues.

(11) The sale of a share of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the RFCS could be necessary to provide until the year 2027 an annual allocation of EUR 111 million to the RFCS that will be used as follows: EUR 40 million per year will finance collaborative research in the coal and steel sectors and whereas the remaining EUR 71 million will finance breakthrough technologies leading to near-zero carbon steel making and research projects for managing the just transition of formerly operating coal mines or coal mines in the process of closing, and related infrastructure in line with the Just Transition Mechanism and in compliance with Article 4(2). The possibility to sell a share of the assets of ECSC in liquidation and, on completion of the liquidation, the assets of the RFCS is limited to the funding of annual allocations for the financial years 2021-2027.

(12) The RFCS should therefore be financed not only by the net revenue from the investments but also, where needed, by the revenue generated by selling part of the assets in the fund up to the amount envisaged for the period 2021-2027.

(13) Paragraph 2 of Article 2, laying down the procedure for the adoption of the multiannual financial guidelines for management of the assets and paragraph 3 of Article 4, laying down the procedure for the adoption of multiannual technical guidelines for the programme, should be deleted because they are redundant with paragraph 2 of Article 2, of Protocol 37.

(14) It is proposed the abolition of the smoothing mechanism as it is an obsolete tool.

(15) A new paragraph should be added to Article 1, in order to allow the writing off of claims based on the principles established by Article 101(2), first subparagraph, of the Financial Regulation[3]

(16) Decision 2003/76/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2003/76/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) The following paragraph 1a is inserted:

'1a. The Commission shall write off claims, even before exhausting all the said remedies, in the following cases:

(a) Where the foreseeable cost of recovery would exceed the amount to be recovered and the write off would not harm the image of the Union

(b) Where the claim cannot be recovered in view of the insolvency of the debtor, or of any other insolvency proceedings

(c) Where recovery is inconsistent with the principle of proportionality.'

(2) Article 2 is amended as follows:

[3] OJ L 193, 30.7.2018, p. 1

(a) Paragraph 1 is replaced by the following:

‘1. The assets shall be managed by the Commission in such a manner as to keep an annual RFCS allocation of EUR 111 Million until the year 2027 to finance research in the sectors related to coal and steel industry and namely EUR 40 Million to finance collaborative research in the said sectors and EUR 71 Million to finance research for breakthrough technologies leading to near zero-carbon steel-making and research projects for managing the just transition of formerly operating coal mines or coal mines in the process of closure, and related infrastructure in line with the Just Transition Mechanism and in compliance with Article 4(2). After the year 2027, the assets shall be managed by the Commission in such a manner as to ensure a long-term return. The assets shall be invested with the objective of preserving, and where possible enhancing, the value of those assets.’

(b) The following paragraph 1a is inserted:

‘1a. The annual allocation of EUR 111 Million shall be constituted of the net revenue from the investments, and, when these are insufficient, the sale of part of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel.’

(c) Paragraph 2 is deleted.

(2) In Article 3,

(a) Paragraph 1 is replaced by the following:

‘1. Each year a profit-and-loss account, balance sheet and financial report shall be drawn up to show, separately from the other financial operations of the European Union, the liquidation operations provided for in Article 1 and the investment transactions and asset management operations under Article 2.

These financial statements shall be annexed to the financial statements drawn up by the Commission annually under Article 318 of the Treaty of the Functioning of the European Union and the Financial Regulation on the financial rules applicable to the general budget of the Union.'

(b) Paragraph 2 is replaced by the following:

'2. The powers of the European Parliament, the Council and the Court of Auditors concerning control and discharge as set out in the Treaty on the Functioning of the European Union and in the Financial Regulation on the financial rules applicable to the general budget of the Union shall apply to the operations referred to in paragraph 1.'

(3) In Article 4

(a) Paragraph 1 is replaced by the following:

'1. Net revenue from the investments provided for under Article 2 and the revenue generated by selling part of the assets shall constitute revenue in the general budget of the European Union. This revenue shall be earmarked for a specific purpose, namely financing research projects in the sectors related to the coal and steel industry not covered by the Research Framework Programme. It shall form the Research Fund for Coal and Steel and shall be managed by the Commission.'

(b) Paragraph 3 is deleted.

(4) Article 5, paragraph 2 is deleted.

(5) Annex is deleted.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

The President