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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	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

COUNCIL DECISION (EU) 2021/…

of …

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,

After transmission of the draft legislative act to the national parliaments,

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

Acting in accordance with a special legislative procedure,

[1] Consent of … 2021 (not yet published in the Official Journal).

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'.

(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[1], which establishes the rules for implementing Protocol (No 37).

[1] Council Decision 2003/76/EC of 1 February 2003 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 (OJ L 29, 5.2.2003, p. 22).

(5) Due to the low interest-rate context, the revenues assigned for the funding of research projects for coal and steel are rapidly decreasing. This is leading to a situation where the critical minimum budget available for organising an annual call for proposals for the research programme of the RFCS (the 'programme') might not be met. A critical minimum budget for organising a call is necessary in order for the programme to provide meaningful support for worthwhile collaborative research projects that have the critical mass and Union added value for improving the sustainability, competitiveness, health, safety and working conditions, and reducing the environmental impact, in the sectors related to the coal and steel industry.

(6) In its communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal, 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.

(7) In its communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal Investment Plan, the Commission took the view that, in order to meet Union targets, the revision of the RFCS legal bases was considered necessary in order to enable the use of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the RFCS.

(8) 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 be kept in order to guarantee the limited remaining obligations resulting from any unforeseeable liability and on the condition that a reasonable part of the assets which are no longer needed to guarantee those obligations be invested to generate revenues.

(9) 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 an annual allocation of EUR 111 million to the RFCS until 2027. That allocation will be used as follows: EUR 40 million per year will finance collaborative research in the coal and steel sectors and the remaining EUR 71 million will finance breakthrough technologies leading to near-zero-carbon steelmaking 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) of Decision 2003/76/EC. The possibility of selling 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.

(10) 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 RFCS up to the amount envisaged for the period 2021–2027.

(11) The provisions laying down the procedure for the adoption of the multiannual financial guidelines for the management of the assets and those laying down the procedure for the adoption of multiannual technical guidelines for the programme should be deleted because they are covered by Article 2(2) of Protocol (No 37) and are therefore redundant.

(12) The smoothing mechanism referred to in Article 5(2) of Decision 2003/76/EC should be abolished as it is an obsolete tool.

(13) A new paragraph should be inserted in Article 1 of Decision 2003/76/EC, in order to allow the writing off of claims based on the principles established by the first subparagraph of Article 101(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[1] ('the Financial Regulation').

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

HAS ADOPTED THIS DECISION:

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1 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).

Article 1

Decision 2003/76/EC is amended as follows:

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

‘*Article 2*

1. The assets shall be managed by the Commission in such a manner as to keep an annual Research Fund for Coal and Steel allocation of EUR 111 million until the year 2027 to finance research in the sectors related to the coal and steel industry, namely EUR 40 million to finance collaborative research in those sectors and EUR 71 million to finance research for breakthrough technologies leading to near-zero-carbon steelmaking 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.

2. The annual allocation of EUR 111 million shall be constituted of the net revenue from the investments, and, if that revenue is 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.’;

(3) Article 3 is replaced by the following:

'*Article 3*

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 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 TFEU and Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council* ('the Financial Regulation').

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 shall apply to the operations referred to in paragraph 1.

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* 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).';

(4) Article 4 is amended as follows:

(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 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;

(5) in Article 5, paragraph 2 is deleted;

(6) the 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 …,

For the Council
The President