DECISIONS

COUNCIL DECISION (EU) 2021/1207

of 19 July 2021

amending Decision 2003/77/EC laying down multiannual financial guidelines for managing the assets of the ECSC in liquidation and, on completion of the liquidation, the Assets of 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 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 Article 2(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ([1]),

Whereas:

(1) To be climate-neutral by 2050, the Union needs 'climate and resource frontrunners' to develop the first commercial applications of breakthrough technologies in key industrial sectors by 2030, and a zero-carbon steelmaking process by 2030.

(2) Pursuant to Council Decision 2003/76/EC ([2]), the Commission is to manage the assets of the European Coal and Steel Community (ECSC) in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel in such a manner as to ensure a long-term return. Council Decision 2003/77/EC ([3]) lays down the multiannual financial guidelines for managing those assets. Pursuant to Article 2 of Decision 2003/77/EC, the Commission is to review or supplement those guidelines and reassess their operation and effectiveness.

(3) In order 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 in the sectors related to the coal and steel industry, there is a need to ensure that payments related to the annual allocation as defined and established in Article 2 of Decision 2003/76/EC until the year 2027 are provided to fund such projects. Such payments should be financed by the net revenue from the investments and by the revenues generated by selling part of the assets up to the annual amount set out by the designated service of the Commission based on Decision 2003/76/EC and Council Decision 2008/376/EC ([4]).

(4) The experience gained over the most recent five-year period of implementation of the financial guidelines (2012–2017) and developments in financial market conditions show a need to adapt those guidelines.

(5) The assets remaining after the withdrawals until 2027 related to the annual allocation established by Decision 2003/76/EC should be managed on the basis of a longer-term investment horizon, enabling further diversification.

([1]) Opinion of 7 July 2021 (not yet published in the Official Journal).

([2]) 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).

([3]) Council Decision 2003/77/EC of 1 February 2003 laying down multiannual financial guidelines for managing the assets of the ECSC in liquidation and, on completion of the liquidation, the Assets of the Research Fund for Coal and Steel (OJ L 29, 5.2.2003, p. 25).

([4]) Council Decision 2008/376/EC of 29 April 2008 on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme (OJ L 130, 20.5.2008, p. 7).

(6) On average, investing a large part of the assets over the longer term is consistent with higher expected returns, keeping in mind the possibility of increased fluctuations over the short term. Notwithstanding this, the investments should aim to ensure a sufficient amount of liquid assets for the annual payments requested by the designated service of the Commission based on Decisions 2003/76/EC and 2008/376/EC.

(7) The financial guidelines should enable a more flexible approach as regards the technical aspects of implementation and should determine appropriate investment instruments to achieve the investment objectives.

(8) Each asset class should not be considered alone, but by the role it plays in a diversified portfolio. Diversification between asset classes historically leads to increased returns for the same level of risk. The correlation between assets is important in making decisions related to the allocation of assets within the context of overall investment risk and return.

(9) The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel should be managed on the basis of an investment strategy expressed in the form of a strategic asset allocation and a strategic benchmark, reflecting the investment objectives and the risk tolerance of the assets. The benchmark provides long-term investment guidance to the portfolio managers, in the form of allocations to different asset classes.

(10) The financial guidelines should allow investments in highly liquid bonds denominated in US dollars issued by sovereigns, supranationals, sub-sovereigns and government agencies in order to enhance diversification, while hedging – at an appropriate extent – the risks of losses due to the fluctuation of the foreign exchange rate. The Commission should be able to decide, subject to the agreement of the accounting officer of the Commission, on investments in other assets denominated in currencies of other advanced economies or other Member States. Such decisions should be based on a fully substantiated demonstration of the advantages of the investment in question for the performance of the assets. The financial guidelines should broaden the scope of eligible investments to offer the possibility of diversified exposure to broad market indices, certain geographic sectors and particular asset classes.

(11) The financial guidelines should allow other financial instruments such as futures, forwards and swaps in order to manage risks and exposures such as interest rate and currency risk.

(12) Environmental, social and governance (ESG) practices of an investment are becoming more and more important and should be taken into account for investment decisions. Decision 2003/77/EC should be amended so as to introduce ESG practices by including a positive screening, favouring the integration of ESG considerations in the selection of investments, and a negative screening, containing a list of activities excluded for treasury investment purposes on ethical or moral grounds.

(13) The annual report from the Commission to the Member States on management operations carried out under the financial guidelines should provide information on the allocation to the different asset classes. The annual report should also explain any major change in the strategic asset allocation.

(14) Decision 2003/77/EC should therefore be amended accordingly.

(15) Given the structural linkage with Decision 2003/76/EC, this amendment should apply only from the date of application of Decision (EU) 2021/1208 ([5]),

([5]) Council Decision (EU) 2021/1208 of 19 July 2021 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 (see page 54 of this Official Journal).

HAS ADOPTED THIS DECISION:

Article 1

Decision 2003/77/EC is amended as follows:

(1) the following Article is inserted:

'*Article 1a*

The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel shall be managed to provide annual payments within the limits of the annual allocation of EUR 111 million in order to finance collaborative research in the sectors related to the coal and steel industry. The annual payments shall be financed by the net revenue from the investments and by the revenues generated by selling 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, up to the annual amount set out by the designated service of the Commission based on Decision 2003/76/EC and Council Decision 2008/376/EC (*).

(*) Council Decision 2008/376/EC of 29 April 2008 on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme (OJ L 130, 20.5.2008, p. 7).';

(2) the Annex is replaced by the text in the Annex to this Decision.

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*.

It shall apply from the date on which Decision (EU) 2021/1208 applies.

Done at Brussels, 19 July 2021.

For the Council
The President
J. PODGORŠEK

ANNEX

Financial guidelines for managing the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel

1. USE OF FUNDS

The assets of the European Coal and Steel Community (ECSC) in liquidation, including both its loan portfolio and its investments, shall be used as necessary to meet the remaining obligations of the ECSC, in terms of its outstanding borrowings, of its commitments resulting from previous operating budgets, and of any unforeseeable liability.

To the extent that the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel are not needed to meet obligations as described in the first subparagraph, those assets shall be prudently invested in accordance with the chosen investment horizon in order to achieve returns that can be used to continue funding of research in the sectors related to the coal and steel industry.

The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel shall be used to provide annual payments, within the limits of the annual allocation of EUR 111 million, for research in the sectors related to the coal and steel industry. Those payments are to be generated by the net revenue from the investments. Where that net revenue is insufficient to honour the annual allocation, it shall be supplemented by the revenues generated by selling 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. After the year 2027, the assets of the Research Fund for Coal and Steel shall be invested in such a manner as to provide income that can be used to fund the continuation of research in the sectors related to the coal and steel industry.

2. INVESTMENT HORIZON, OBJECTIVE AND RISK TOLERANCE

The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel, shall be invested with the objective of preserving and where possible enhancing the value of those assets (the 'investment objective'). The investment objective shall be pursued over the investment horizon, and delivered with a high confidence level.

The assets shall be managed in accordance with prudential rules and the principles of sound financial management and in accordance with the rules and procedures set out by the accounting officer of the Commission.

The investment objective shall be served through the implementation of a prudent investment strategy based on a high degree of diversification across eligible asset classes, geographical areas, issuers and maturities (the 'investment strategy'). The investment strategy shall be set out taking into account the investment horizon and to ensure that necessary funds are available in a sufficiently liquid form as and when needed.

The investment strategy shall be expressed in the form of a strategic asset allocation, which shall set out the indicative target allocations to different categories of eligible financial assets.

The Commission shall reflect the strategic asset allocation in a strategic benchmark (the 'benchmark'), against which the performance of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel shall be compared.

The investment strategy and the benchmark shall be proposed by the Commission and agreed with the accounting officer of the Commission, after consulting the Commission's authorising officers by delegation.

The investment strategy and the benchmark may be modified by the Commission in the event of a duly documented and motivated change in economic conditions, a substantial change in the needs and situation of the contributing instruments or a significant change in inflow/outflow estimates. The procedure for modification of the investment strategy shall be the same as for its initial adoption.

The investment strategy shall be established taking into account the investment horizon and risk tolerance 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. ASSET ALLOCATION PRINCIPLES AND ELIGIBLE INVESTMENTS

Sufficient diversification among and within all asset classes shall be assured to reduce investment risks. In principle, the riskier or less liquid an asset, the less concentrated the exposure should be.

Exposure to the different asset classes and diversification may also be achieved via investments into collective investment undertakings or exchange-traded products.

The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel shall be invested only in:

(a) euro-denominated money market assets;

(b) fixed income securities; and

(c) regulated collective investments in debt and equity.

The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel shall obtain exposure to the asset classes referred to in the previous subparagraph through investment in the following instruments or by engaging in the following operations:

(a) deposits;

(b) money market instruments and money market funds which offer daily liquidity, as regulated by Regulation (EU) 2017/1131 of the European Parliament and of the Council ([1]);

(c) debt instruments, such as bonds, bills and notes, and securitised instruments in line with the simple, transparent and standardised (STS) criteria set out in Regulation (EU) 2017/2402 of the European Parliament and of the Council ([2]);

(d) collective investment undertakings covered by Directive 2009/65/EC of the European Parliament and of the Council ([3]), including exchange-traded funds which invest in equity or in debt instruments where maximum losses cannot exceed amounts invested;

(e) repurchase agreements in accordance to the principle established by Article 212(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([4]) (the 'Financial Regulation');

(f) reverse repurchase agreements;

(g) securities lending operations with recognised clearing systems such as Clearstream and Euroclear, or with leading financial institutions specialising in this type of operation.

Derivatives, in the form of forward and future contracts and swaps, shall be used solely for the purposes of efficient portfolio management and not for the purposes of speculation or leveraging of positions. Those derivatives may be used for adjustment of duration, mitigation of credit or other relevant risk or changes in asset allocation consistent with the investment policy.

The assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel may be invested in highly liquid bonds denominated in US dollars issued by sovereign and supranational entities solely for the purposes of diversification and exposure to another interest rate curve. Any currency risk shall be hedged by making appropriate use of swaps or other instruments for foreign exchange hedging, as specified in the previous subparagraph.

([1]) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

([2]) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

([3]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).

([4]) 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).

The Commission may, subject to the agreement of the accounting officer, enlarge the scope of eligible investments to include other asset classes and investment operations consistent with the investment strategy and objectives, as well as currencies of other advanced economies, as listed from time to time by the International Monetary Fund and subject to hedging of currency risk. Any decision to include new asset classes, investment operations or currencies of advanced economies shall be supported by a substantiated justification per asset class, operation or currency, of how the expanded investment possibilities will enhance the risk-return performance of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel. That justification shall include an assessment of the operational capacities needed to support these new investment possibilities.

4. ENVIRONMENTAL, SOCIAL, GOVERNANCE AND MORAL CONSIDERATIONS

The following environmental, social and governance (ESG) criteria shall apply:

(a) the investments of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel shall be implemented in line with the Union's policy objective of fostering sustainable finance and social fairness to the extent consistent with the preservation of the capital of the assets;

(b) the implementation of the investment policy shall comply with all relevant legislation promoting ESG financial instruments and shall respect the relevant standards, systems, criteria and processes established in the regulatory framework of the Union;

(c) the Commission may consult the EU Technical Expert Group on Sustainable Finance, or its successor, on the implementation of ESG factors in the investment strategy for the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel;

(d) the Commission shall monitor the ESG profile of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel, and report on it within the annual report referred to in point 7 (Management procedures).

The following list of activities shall be excluded for investment purposes on ethical or moral grounds:

(a) investments in securities issued by entities that, to the Commission's knowledge, have been found, by a final judgement or a final administrative decision, to be engaged in one of the following:

  (i) activities deemed illegal or banned on ethical or moral grounds under the Union regulatory framework and international conventions and agreements;

  (ii) activities related to the development, production and trade of ammunition or weaponry that are prohibited by the applicable international law;

(b) investments in securities issued by undertakings that, to the Commission's knowledge, generate more than 25 % of their overall annual revenues from the activities listed below:

  (i) gambling-related activities (production-, construction-, distribution-, processing-, trade- and software-related activities);

  (ii) tobacco-related products and activities (production, distribution, processing and trade);

  (iii) the sex trade and related infrastructure, services and media.

5. TRANSFER TO THE GENERAL BUDGET OF THE UNION

The net revenue from the investments of the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel, and the revenues generated by selling part of the assets, will be committed to the general budget of the Union as dedicated revenue and will be transferred from the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel when necessary to meet the obligations from the budget line directed to research programmes for sectors related to the coal and steel industry.

6. ACCOUNTING

The management of the funds shall be accounted for in the annual accounts for the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel. These shall be based upon and presented in accordance with the Commission's Accounting Rules as adopted by the Commission's accounting officer, taking into account the specific nature of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel. The accounts will be approved by the Commission and examined by the Court of Auditors. The Commission shall engage external firms to carry out an annual audit of its accounts.

7. MANAGEMENT PROCEDURES

The Commission shall carry out, in relation to the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel, the abovementioned management operations in accordance with these guidelines and under its internal rules and procedures in force for the ECSC at the time of its dissolution or as modified thereafter.

A detailed report on management operations carried out under these financial guidelines shall be drawn up annually by the Commission and sent to the Member States. In the annual report, the Commission shall include information on the use of the different asset classes, on the reasons behind its choice to invest in specific asset classes and on the observed performance of each asset class.