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Proposal for a

COUNCIL DECISION

amending Decision 2008/376/EC on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Objectives of the proposal**

The purpose of this proposal is to **amend the legal basis** of the research programme dedicated to the Coal and Steel sectors after the periodical assessment of its management rules with a view to implement the following objectives:

- Ensuring a transparent management of a programme funded by the EU general budget and under the responsibility of the Commission with the implementation of the rules of the Commission concerning expert groups;
- Facilitating access to funding for beneficiaries with simplified rules and through a proportionate alignment with the rules of the general research programme ‘Horizon 2020’ with which Coal and Steel stakeholders are familiar;
- Updating the provisions referred to in the legal basis concerning in particular comitology.
- **General context**

After the expiry of the European Coal and Steel Community (ECSC) Treaty in 2012 and under a Protocol annexed to the EU Treaties, the European Member States established the new “Research Fund for Coal and Steel” (RFCS) and transferred all remaining assets of the (expired) ECSC to this new fund.

The RFCS Programme provides annually around 50 M€ of R&D and Innovation funding to both coal and steel sectors (with a distribution of 27,2 % for coal and 72,8 % for steel) bringing together industrial partners, SMEs, leading research centres and universities across the European Union to develop knowledge and foster innovation. It covers production processes, utilisation and conservation of resources, environmental improvements and safety at work in sectors related to the coal and steel industry. The Programme is funded by the EU general budget with the revenues generated by the remaining assets of the (expired) ECSC. It is managed by and under the responsibility of the Commission.

The legal basis laying down the management rules of the RFCS was adopted by the Council in 2003¹ and has already been revised in 2008². It provides for systematic periodical reassessments of the programme’s relevance and of the effectiveness of its management rules (multiannual technical guidelines).

- **Consistency with existing provisions in the policy area**

The **legal framework concerning ‘Horizon 2020’**, the European Union programme for research and innovation (2014-2020) and in particular the Regulation of the European Parliament and of the Council laying down the **rules for participation and dissemination in ‘Horizon 2020’** influence the revision of the multiannual guidelines for RFCS, since the latter is designed to complement the actions undertaken under the Framework Programme H2020

¹ - Council Decision 2003/78/EC of 1 February 2003 laying down the multiannual technical guidelines for the research programme of the Research Fund for Coal and Steel.

² - 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.

(Article 2 of the legal basis). This complementarity applies at different levels (e.g. research topics, the type of instrument involved in the programmes, and their budgets, etc).

The proposed revision of the RFCS legal basis is focused on the management rules of the RFCS programme (chapter III) and aligns, as much as possible the procedures and concepts used for H2020 to facilitate the participation of same beneficiaries to both programmes (RFCS and H2020). In particular:

- The different category of actors in a funded project (participant, subcontractor, third party), their eligibility and obligations are defined in accordance with the definitions used in H2020 programme (new Article 29a);
- The H2020 appointment procedure for independent experts charged with the evaluation of proposals submitted applies for the appointment of independent experts in the RFCS programme (Article 39);
- The possibility to charge as eligible costs an amount fixed by the Commission as Staff costs for SME's owners and other natural persons not receiving a salary is authorised (Article 33).
- **Consistency with Commission's horizontal rules**

A clarification on the nature of the experts appointed by the Commission to attend the Advisory Groups and the Technical Groups set up by the legal basis of the RFCS Programme is required to avoid any conflict of interests. The revised provisions are implementing the **horizontal rules of the Commission concerning its advisory groups** (Communication from the President to the Commission: *Framework for Commission Expert Groups Horizontal rules and public register* C(2010)7649).

To this end, the composition and tasks of the Advisory Groups (Articles 21 and 22) and the composition and tasks of the Technical Groups (Article 23) are revised. The competencies of the Advisory Groups are focused on the management rules and procedures, the segregation between Advisory and Technical groups is enhanced and the appointment procedure of their members is clarified.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Justification for the revision

The legal basis of the RFCS provides for two systematic periodical assessments:

- on the relevance of the programme : “The Commission shall carry out a monitoring exercise of the Research Programme, including an assessment of the expected benefits. A report on that exercise shall be issued by the end of 2013, and thereafter every seven years” (Article 38 of the Council Decision 2008/376/EC);
- on the effectiveness of the management rules: "The multiannual technical guidelines laid down in Chapter III shall be reviewed every seven years, first period ending on 31 December 2014. To this end, and at the latest in the first six months of the last year of each seven-year period, the Commission shall reassess the operation and the effectiveness of the multiannual technical guidelines and, where appropriate, propose any amendment.”(Article 40 of Council Decision 2008/376/EC).

On this basis, the Commission has completed in 2013 a Monitoring and Assessment exercise and has reassessed in 2014 the multiannual technical guidelines laid down in Decision 2008/376/EC.

While the Monitoring and Assessment exercise confirmed that the RFCS has fulfilled its mandate to support the competitiveness of the coal and steel industry, the assessment of the operation and the effectiveness of the multiannual technical guidelines confirmed that some changes were necessary to ensure a transparent, sound and efficient management of the RFCS and an appropriate level of simplification.

- **Subsidiarity and choice of the instrument**

Under the legal basis, only the Commission is entrusted with the management of the RFCS Programme. Amendments to the management rules of the programme can only be made at EU level, through the revision of the legal basis.

- **Proportionality**

The provisions concerning the Advisory Groups and the Technicals Groups have been aligned with the Commission horizontal rules on transparency while maintaining the architecture of the RFCS legal basis (the number of Groups as well as their core competencies are maintained) and ensuring a high level of professional expertise expected by the Commission from these groups (composition of the groups, appointment process).

3. STAKEHOLDER CONSULTATIONS

The RFCS stakeholders have been involved on the basis of a draft proposal in several ad-hoc meetings, specific Advisory Group meetings (Coal Advisory Group – CAG, Steel Advisory Group - SAG) and COSCO meetings (equivalent to the Programme Committee in Horizon 2020). Members of these groups had the opportunity to comment the draft proposal and the Commission services had the opportunity to explain the rationale behind the proposal and in particular the revised rules concerning the appointment of the members of the Advisory and Technical groups which have been detailed afterwards during the Commission’s interservice consultation.

4. BUDGETARY IMPLICATION

The proposal has no budgetary implication.

5. OTHER ELEMENTS

The revision concerns the sole Chapter III of the legal basis (multiannual technical guidelines). The objectives and the scope of the Programme are unchanged.

Only the following Articles require modification: Articles 21, 22, 24, 25, 27, 28, 29, 33, 38, 39, 41, 42 and a new Article 29a is inserted. All the other Articles are unchanged.

Beyond minor changes or updates, the substantial changes have been explained above : transparency rules for expert groups set up by the Commission (Articles 21, 22, 24), staff costs charged for SME’s owners and other natural persons not receiving a salary (Article 33), and alignment with H2020 rules for the conditions of participation to funded projects for participants, subcontractors and third parties (Article 29a).

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Protocol, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel,

Having regard to 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 Steel³, and in particular Article 4(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament⁴,

Whereas:

- (1) Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) set out in Regulation (EU) No 1291/2013 of European Parliament and of the Council⁵ ('Horizon 2020 Framework Programme') provides an incentive to review Council Decision 2008/376/EC⁶ in order to ensure that the Research Programme of the Research Fund for Coal and Steel ('RFCS Programme') complements the Horizon 2020 Framework Programme in the sectors related to the coal and steel industry.
- (2) In order to ensure a coherent framework for participation in both the RFCS Programme and Horizon 2020 Framework Programme it is necessary to align certain rules for participation under the RFCS Programme with those applicable under the Horizon 2020 Framework Programme.
- (3) It is necessary to revise the rules on the competencies and on the composition of the Advisory Groups and of the Technical Groups, notably as regards the nature of the experts appointed by the Commission to ensure increased transparency as well as

³ OJ L 29, 5.2.2003, p. 22.

⁴ OJ C , , p. .

⁵ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 948).

⁶ 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).

compliance and coherence with the framework for Commission expert groups, and contribute, as far as possible, to a balanced representation of relevant areas of expertise and areas of interest as well as to an optimal gender balance.

- (4) It is appropriate to consider simpler funding rules to ease the participation of small and medium-sized enterprises (SME) in the RFCS Programme and to permit the use of 'unit costs' to calculate eligible staff costs for SME owners and other natural persons not receiving a salary.
- (5) The measures necessary for the implementation of Decision 2008/376/EC should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.
- (6) Decision 2008/376/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2008/376/EC is amended as follows:

- (1) Article 21 is replaced by the following:

“Article 21

Tasks of the Advisory Groups

For the coal- and steel-related RTD aspects respectively, each Advisory Group shall advise the Commission on the following:

- (a) the overall development of the Research Programme, the information package as referred to in Article 25(3) and future guidelines;
- (b) the consistency and the possible duplication with other RTD programmes at Community and national level;
- (c) the setting-out of the guiding principles for monitoring RTD projects;
- (d) the relevance of the work being undertaken on specific projects;
- (e) the research objectives of the Research Programme listed in Sections 3 and 4 of Chapter II;
- (f) the annual priority objectives listed in the information package and, where appropriate the priority objectives for dedicated calls as referred to in Article 25(2);
- (g) the preparation of a manual for evaluating and selecting RTD actions, as referred to in Articles 27 and 28;
- (h) the rules and procedures concerning the evaluation of proposals for RTD actions;
- (i) the drawing-up of dedicated calls for proposals as referred to in Article 25(2);
- (j) other measures when requested to do so by the Commission.”;

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(2) Article 22 is replaced by the following:

“Article 22

Composition of the Advisory Groups

"1. Each Advisory Group shall be composed in accordance with the tables set out in the Annex. Members of the Advisory Groups shall be individuals appointed by the Director General of Directorate General for Research and Innovation to represent a common interest shared by stakeholders. They shall not represent an individual stakeholder, but shall express an opinion common to the different stakeholder organisations.

Appointments are made for a period of 42 months. Members who are no longer capable of contributing effectively to the group’s deliberations, who resign or who do not comply with the obligations set out in Article 339 of the Treaty on the functioning of the European Union, shall no longer be invited to participate in any meetings of the Advisory Groups and may be replaced for the remainder of their term of office.

2. Members of the Advisory Groups shall be selected from experts with competence in the areas referred to in Sections 3 and 4 of Chapter II and who have responded to public calls for applications. These experts may also be appointed on the basis of proposals put forward by the entities referred to in the tables in the Annex.

They shall be active in the field concerned and be aware of the industrial priorities.

3. Within each Advisory Group, the Commission shall aim at ensuring, as far as possible, a high level of expertise, as well as a balanced representation of relevant areas of expertise and areas of interest and a balanced representation of gender and geographical origin, taking into account the specific tasks of the Advisory Groups, the type of expertise required and the outcome of the experts' selection procedure.";

(3) Article 24 is replaced by the following:

"Article 24

Establishment and tasks of the Coal and Steel Technical Groups

1. The Coal and Steel Technical Groups (hereinafter referred to as ‘the Technical Groups’) shall support the Commission on the monitoring of research and pilot or demonstration projects.

Members of the Technical Groups shall be appointed in their personal capacity by the Director General of Directorate General for Research and Innovation.

Members who are no longer capable of contributing effectively to the group’s deliberations, who resign or who do not comply with the obligations set out in Article 339 of the Treaty on the functioning of the European Union, shall no longer be invited to participate in any meetings of the Technical Groups.

2. Members of the Technical Groups shall be selected from experts with competence in research strategy, management or production in the areas referred to in Sections 3 and 4 of Chapter II and who have responded to public call for applications.

They shall be active in the field concerned and have responsibility for research strategy, management or production in the related sectors.

3. Within each Technical Group, the Commission shall aim at ensuring a high level of professional expertise, and as far as possible, a balanced representation of relevant areas of

expertise and a balanced representation of gender and geographical origin, taking into account the specific tasks of the Technical Groups, the type of expertise required and the outcome of the experts' selection procedure.

The Commission shall ensure that rules and procedures are in place in order to properly avoid and manage conflicts of interests of members of the Technical Groups entrusted with the assessment of a specific project. These procedures shall also ensure equal treatment and fairness throughout the whole monitoring process of projects.

Meetings of the Technical Groups shall, whenever possible, be held at venues chosen in such a way that project monitoring and results assessment are best ensured.";

(4) Article 25 is replaced by the following:

"Article 25
Call for proposals

1. An annual call for proposals shall be published every year. The opening date for submission of proposals shall be published in the information package referred to in paragraph 3. Unless otherwise specified, 15 September of each year shall be the deadline date for the submission of proposals for evaluation. Where the 15 September falls on a week-end or on a Friday or a Monday, the deadline date shall be automatically shifted to the first working day following 15 September. The deadline date shall be published in the information package referred to in paragraph 3.

2. Where the Commission, in accordance with points (d) and (e) of Article 41, decides to modify the deadline date referred to in paragraph 1 of this Article for the submission of proposals, or to launch dedicated calls for proposals, it shall publish that information in the *Official Journal of the European Union*.

Dedicated calls shall indicate the dates and modalities for the submission, including whether it shall take place in one or two steps, and for the evaluation of the proposals, the priorities, the type of eligible projects as referred to in Articles 14 to 18, where necessary, and the envisaged funding.

3. The Commission shall ensure that sufficient guidance and information is made available to all potential participants at the time of publication of the call for proposals, in particular through an information package accessible on the Commission's website. A paper copy of this information package can also be obtained from the Commission on request.

The information package shall provide information on the detailed rules for participation, the methods of managing proposals and projects, application forms, rules for the submission of proposals, model grant agreements, eligible costs, the maximum financial contribution allowable, methods of payment and the annual priority objectives of the Research Programme.

Applications shall be submitted to the Commission in accordance with the rules laid down in the information package.";

(5) in Article 27, the second paragraph is replaced by the following:

"The Commission shall ensure that a manual for the evaluation and selection of RTD actions is made available to all potential participants.";

(6) in Article 28, paragraph 3 is replaced by the following:

"3. The Commission shall draw up a list of the proposals adopted in order of merit.";

(7) Article 29a is inserted:

"Article 29a

Implementation of actions

1. Participants shall implement actions in compliance with all the conditions and obligations set out in this Decision, Regulation (EU, Euratom) No 966/2012 (*) and Regulation (EU) No 1268/2012(**), the call for proposals and the grant agreement.

2. Participants shall make no commitments which are incompatible with this Decision or the grant agreement. Where a participant fails to comply with its obligations regarding the technical implementation of the action, the other participants shall comply with the obligations without any additional Union funding unless the Commission expressly relieves them of that obligation. Participants shall ensure that the Commission is informed in due time of any event which might significantly affect the implementation of the action or the interests of the Union.

3. Participants shall implement the action and shall take all necessary and reasonable measures to that end. They shall have the appropriate resources as and when needed for carrying out the action. Where it is necessary for the implementation of the action, they may call upon third parties, including subcontractors, to carry out work under the action. Participants shall retain responsibility towards the Commission and towards the other participants for the work carried out.

4. The award of subcontracts for carrying out certain elements of the action shall be limited to the cases provided for in the grant agreement and to duly justified cases that could not be clearly foreseen at the time of entry into force of the grant agreement.

5. Third parties other than subcontractors may carry out work under the action under the conditions laid down in the grant agreement. The third party and the work to be carried out by it shall be identified in the grant agreement.

Costs incurred by those third parties may be deemed eligible if the third party meets all the following conditions:

(a) it would be eligible for funding if it were a participant;

(b) it is an affiliated entity or has a legal link to a participant implying a collaboration not limited to the action;

(c) it is identified in the grant agreement;

(d) it abides by the rules applicable to the participant under the grant agreement with regard to eligibility of costs and control of expenditure.

6. Participants shall comply with national legislation, regulations and ethical rules in the countries where the action will be carried out. Where appropriate, participants shall seek the approval of the relevant national or local ethics committees prior to the start of the action.

(*) Regulation (EU, Euratom) No 966/2012 of the European parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1)

(**) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).";

(8) Article 33 is replaced by the following:

"Article 33

Staff costs

"Eligible staff costs shall cover only the actual hours worked by the persons directly carrying out the work under the action.

Staff costs of SME owners and natural persons not receiving a salary may be reimbursed on the basis of unit costs.";

(9) Article 39 is replaced by the following:

"Article 39

Appointment of independent and highly qualified experts

For the appointment of independent and highly qualified experts referred to in Article 18, Article 28(2) and Article 38, the provisions set out in Article 40 of Regulation (EU) No 1290/2013 (*) shall apply by analogy.

(*) Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006 (OJ L 347, 20.12.2013, p. 81).";

(10) in Article 41, point (d) is replaced by the following:

"(d) changes to the deadline date referred to in Article 25;";

(11) in Article 42, paragraph 2 is replaced by the following:

"2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 (*) shall apply.

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OL 55, 28.2.2011, p. 13).".

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*.

Done at Brussels,

For the Council
The President