



Helsinki, 12 September 2008  
Doc: **MB/53/2008**

**9<sup>th</sup> MEETING OF THE MANAGEMENT BOARD**

**24-25 SEPTEMBER 2008**

**Helsinki**

<b>Concerns:</b>	<b>Financial Regulation revision</b>
<b>Agenda Point:</b>	<b>8</b>
<b>Action requested:</b>	<b>For adoption</b>

## **Background**

According to the article 99 of the REACH Regulation (EC) No 1907/2006, the financial rules ("Financial Regulation") applicable to the Agency shall be adopted by the Management Board, after the European Commission has been consulted.

As already explained to the Management Board at its meeting in December 2007, ECHA had the intention to base its financial rules on the new framework Financial Regulation for Agencies which had long been under preparation. However, due to several delays in the adoption process, ECHA had to adopt the earlier version to become financially independent as from 1 January 2008. The revised framework Financial Regulation has finally been adopted by the European Commission on 9 July 2008<sup>1</sup> and following this, a new version for ECHA's financial rules has been prepared based on this text.

ECHA has consulted the European Commission on the only derogation that is deemed necessary in article 58 concerning the payment delays on invoiced fees (letter to Mr. Romero, Director General of DG BUDG dated 13 May 2008, Annex 1). The reply received from Mr. Romero on this proposed derogation was positive, referring to the fact that the Commission had already explicitly approved this derogation in the Fee Regulation. As no other derogations were requested, no Commission decision on ECHA's Financial Regulation would be necessary.

## **Requested action**

Following the receipt of the formal opinion of the Commission to the proposed Financial Regulation (letter from Mr. Romero dated 4 September 2008, Annex 2), the Management Board is hereby requested to adopt the Agency's revised Financial Regulation in Annex 3.

## **Point for information**

As an information point and as a follow-up to the June Management Board meeting on the issue of establishing a reserve fund, the DG Enterprise of the Commission has written a note to Mr. Romero of DG BUDG proposing the creation of such a reserve fund together with a draft text to be added to the Financial Regulation of ECHA. However, until now there has been no reaction from the DG BUDG to this proposal.

Annex 1. Letter to Mr Romero, Director General of DG BUDG, dated 13 May 2008

Annex 2. Letter from Mr Romero dated 4 September 2008

Annex 3. Revised Financial Regulation

---

<sup>1</sup> Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (EC, Euratom), OJ L 181, 10.07.2008, p. 23



Helsinki, 13-05-2008  
TH/AB D(2008) 1340

Mr Luis Romero Requena  
Director-General for Budget  
European Commission  
1049 Brussels  
Belgium

**Subject: Revenue from Fees and Charges based on the REACH Regulation**

Dear Mr Romero,

The European Chemicals Agency (ECHA) was established on 1 June 2007, the date when REACH Regulation No 1907/2006 entered into force. ECHA became financially independent on 1<sup>st</sup> January 2008.

In order to achieve the financial independence, ECHA has adopted on 17 December 2007 its Financial Regulation which, due to urgent need and delay in the adoption of the proposed revised Framework Financial Regulation for Community bodies, is based on the Commission Regulation 2343/2002.

The objective of REACH is to ensure a high level of protection of human health and the environment, including the promotion of alternative methods for assessment of hazards of substances, as well as the free circulation of substances on the internal market while enhancing competitiveness and innovation. REACH requires that chemical substances in various forms, manufactured in or imported to EU in annual quantities of more than 1 tonne per company have to be registered with ECHA as from 1 June 2008.

When the registration starts on 1 June 2008 it is estimated that about 500 to 1000 registrations will come in during the first week of June 2008. The total revenue from fees and charges for 2008 is budgeted at € 3.8 million.

The current provisions in force in ECHA's Financial Regulation require that ECHA establishes a separate recovery order for each incoming fee payment. In view of the estimated high number of transactions, this requirement becomes unmanageable. Therefore, I kindly ask for the possibility to apply Article 59 as of 1 June 2008 as follows:

*Section 6*  
*Specific provisions applicable to fees and charges*  
*Article 59*

Where the Community body collects fees and charges referred to in Article 5(a), the following shall apply:

- a) An overall provisional estimate of such fees and charges shall be made at the beginning of each financial year.
- b) Where fees and charges are entirely determined by legislation or decisions of the management board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Community body's entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in the Community body's report on budgetary and financial management.
- c) Where the Community body uses a separate invoicing system, the accounting officer shall regularly and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.
- d) As a general rule the Community body shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety.  
If, by way of exception, a service has been provided without prior payment of the corresponding charge or fee, Sections 3, 4 and 5 of this Chapter shall apply.

I would like to emphasize that the wording for the above Article 59 is copied as such from the Commission's proposed revised Framework Financial Regulation. I trust that you understand that for ECHA, it is crucial to be able to abstain from issuing individual recovery orders given the sheer high number of these transactions.

The ECHA's Financial Regulation in force will be revised as soon as the proposed new Framework Financial Regulation for Community bodies under Article 185(1) in the general Financial Regulation has been adopted by the Commission. As pre-information, to meet the requirements of ECHA's basic act, we will formally ask for the inclusion of a 2. paragraph to Article 58 as follows:

*Section 5*  
*Recovery*

*Article 58*

1. The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, provided that the following two conditions are met:
  - (a) the debtor undertakes to pay interest at the rate specified in Article 86 of Regulation (EC, Euratom) No 2342/2002 for the entire additional period allowed, starting from the date set in the debit note;

(b) in order to safeguard the rights of the Community body, the debtor provides a financial guarantee covering both the principal sum and the interest.

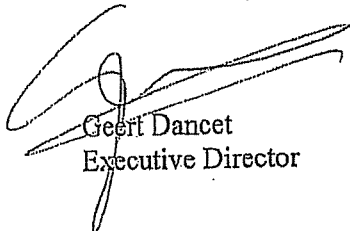
*2. The first paragraph shall not apply when additional time for payment is granted in accordance with the provisions of the Commission Regulation ('Fee Regulation') foreseen in Article 74(1) of the REACH Regulation.*

The added 2. paragraph of Article 58 will be included in the updated Financial Regulation of ECHA as such as presented above.

I would very much appreciate your quick response to our request, especially as we – as a new agency with its own income – are at a critical point concerning the establishment of the necessary procedures and the preparations for receiving the registrations starting as from 1 June 2008.

I would like to thank you for your kind understanding in this regard.

Yours sincerely,



Geert Dancet  
Executive Director

Cc: H. Zourek, Director-General, DG Enterprise



EUROPEAN COMMISSION  
Budget

Central Financial Service  
Financial regulations

Brussels, September 04, 2008  
BUDG/DI/AM/D(2008) 58011

NOTE TO THE ATTENTION OF  
G. DANCET, EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY

Subject: Your note D(2008)205 dated 25 August 2008

Following the adoption of the revised framework Financial Regulation<sup>1</sup> (FFR) for agencies last July, my services have examined ECHA's request to confirm that the draft financial regulation can be adopted without a Commission decision.

1. The adding of a definition of 'fees and charges' in Article 2 by referring to ECHA's constituent instrument is legally sound and does not depart from the FFR provisions.
2. The new paragraph 2 in Article 58, which provides that the second delay for payment foreseen in the Fee Regulation<sup>2</sup> is not subject to the payment of interest and provision of a financial guarantee by the debtor, strictly mirrors ECHA's Fee Regulation. As such, it has already been explicitly accepted by the Commission and does not require a new Commission decision.

As a consequence, the draft Financial Regulation of ECHA can be submitted to the Management Board for its adoption.

(signed)

Luis ROMERO REQUENA

Copy: H. Heider (ECHA); A. M. Caeiros (SJ), J. Grunwald (SJ), A. Bartels (ENTR); P. Taverne (BUDG)

<sup>1</sup> Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

<sup>2</sup> Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), OJ L 107 of 17 April 2008, p.6.