

23 August 2019

European Chemicals Agency report on the follow-up to the 2017 budgetary discharge

Article 107 of the European Chemicals Agency's (ECHA's) Financial Regulation foresees that

- (1) *the Executive Director shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council; and that*
- (2) *at the request of the European Parliament or the Council, the Executive Director shall report on the measures taken in the light of those observations and comments. The Executive Director shall send a copy thereof to the Commission and the Court of Auditors.*

For the discharge 2018, the Secretariat of the European Parliament Committee on Budgetary Control asked all EU Decentralised Agencies for a follow-up report to the 2017 budgetary discharge to be submitted by 26 August 2019.

The report presented in the Annex to this note provides an overview of the relevant observations and recommendations from the European Parliament Resolution of 26 March 2019¹ on discharge in respect of the implementation of the budget of ECHA for the financial year 2017, together with the measures ECHA has taken in light of these. For completeness, replies to the comment accompanying the Council's Recommendation² of 31 January 2019 on the discharge of the Agency for the financial year 2017 are included as well.

On 26 March 2019 the European Parliament adopted also the resolution on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2017: performance, financial management and control (2018/2210(DEC)). This resolution is a horizontal report containing recommendations and observations that accompanied the individual 2017 discharge reports for each of the Agencies and Joint Undertakings. The follow-up actions to these recommendations where a collective response was identified by the Agencies Network will be presented in a separate paper being prepared by the Agency holding the Chairmanship of the EU Agencies' Network. ECHA has contributed to this report.

¹ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0264_EN.html

² <https://data.consilium.europa.eu/doc/document/ST-5825-2019-ADD-1/en/pdf>

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Annex

	Observation of the Discharge Authority	Response and measures taken by the Agency	Status/Reference
1.	<p>2. Emphasises that the Agency is partly self-financed and receives fees from companies requesting the registration of chemicals as required under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation; notes that the applicable fees depend on the size of the companies and the volume of chemicals registered; according to the Court's report, since the first registrations in 2009, some 30 % of the companies claimed to be micro companies or small or medium- size enterprises (SMEs); notes with concern however that, thanks to the Agency's effective system of ex-post verifications, the Agency identified that some 55 % of the micro companies and SMEs had categorised their size incorrectly resulting in lower fees; endorses the measures taken by the Agency to have invoiced particularly high fee corrections amounting to EUR 16,4 million; furthermore, urges the national enforcement authorities to enhance the verification systems of the volumes declared by the companies, and to fully and effectively implement the Strategies and minimum criteria for enforcement of Chemical Regulations framework; calls on the Agency to report to the discharge authority on its efforts, and on the achieved results, to reduce the considerable verification backlog and to implement the fee corrections;</p>	<p>At end-February 2019, ECHA had verified all SME registrants from the years 2008-2012 and, following a prioritisation approach, 48% of SME registrants from the years 2013-2015.</p> <p>Despite the fact that the Agency is not resourced to perform extensive ex-post verification of the SME status, ECHA is set to maintain the current verification rate in the future and gradually reduce the time gap between dossier submission and the start of the SME verification from the current 5, to 3 years on average by 2029.</p> <p>ECHA has committed to complete the verifications of the 2018 deadline related SME registrants by end of 2023. The Secretariat will perform the verification of 60 % of all SME registrants with registrations above 10 tonnes. SME registrants will be verified in batches to maximise efficiency. In addition, the effectiveness of the activity will be increased due to the targeted selection of registrants for verification.</p> <p>ECHA made considerable progress in recovering undue fee reductions and collecting overdue administrative charges in 2018. As of 31 December 2018, the amount to be recovered stood at 2,9 million euros (vs 4,7 million in 2017). ECHA recorded a related bad debt provision of 1,4 million euros in its 2018 accounts (vs 2,8 million euros in 2017).</p>	<p>On-going</p>

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2.	<p>4. Notes with concern that according to the Court's report, as the third registration deadline for chemicals under the REACH Regulation expires in 2018, income from fees and charges is expected to drop from 2019 onwards and the Agency will become more reliant on the Union budget to finance its operations; takes note, however, that according to the Agency's reply, it has made alternative proposals to the Commission and that the Commission committed itself to assess alternatives to ensure the financing of the Agency;</p> <p>calls on the Agency to keep the discharge authority updated on the developments in this regard;</p>	<p>ECHA continues to closely monitor the fee income fluctuations and reports regularly to its Management Board and the Commission services. In addition, ECHA has procured a consultancy study to improve its fee-forecasting activity. The results of this study, however, confirmed that due to the randomness of the fee inflows, statistically estimated values cannot have a satisfactory level of accuracy.</p> <p>As regards mitigation measures for a shortfall in fee income, ECHA continues its discussions with the Commission services to find the most suitable mechanism that will allow the Agency to effectively and efficiently execute its mandate in the long-term.</p> <p>It is to be noted that the sustainable long-term resourcing of ECHA under the future Multiannual Financial Framework (MFF) needs to be addressed at policy level, to ensure the proper functioning of the internal market for chemicals and protect people and the environment from toxic effects of chemicals. ECHA stands ready to engage in a dialogue with the Commission and the budgetary authority to prepare for the next MFF.</p>	<p>On-going</p>

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3.	<p>7. Acknowledges that the Agency uses Key Performance Indicators (KPIs) and furthermore introduced new efficiency performance indicators and improved the workload KPIs in order to enhance the oversight of each activity from output, resources, performance and efficiency point of view; takes note that the Agency uses certain budgetary rates as KPIs in order to enhance its budget management; invites the Agency to develop more outcome and impact focused KPIs assessing the added value provided by the Agency's activities in its revision of the overall performance management system; calls on the Agency to report to the discharge authority on the progress made in this regard;</p>	<p>The Agency reworked its performance management model during 2018 for the Work Programme 2019 with a view to demonstrate better impact and outcome of its work. The Work Programme 2019, as part of ECHA's Programming Document 2019-2022, indicates now the type of indicator (impact, outcome, output, input) and does no longer use the same type of indicators for different work but contains KPIs that suit the respective business process.</p> <p>Furthermore, for ECHA's three strategic priorities, the multi-annual programming is underpinned by an impact oriented qualitative and quantitative performance management model. For the quantitative measurement for progress made towards clarifying the substances that require further regulatory attention because of their intrinsic properties, the Agency will establish a baseline during 2019 against which future progress can be monitored and communicated. The results of the revised performance management model will be duly reported in ECHA's General Report/Consolidated Annual Activity Report.</p>	Done/on-going
4.	<p>12. According to the Court's report, unlike most other agencies, the Agency's founding regulation does not explicitly require periodical external evaluations of its activities, which are key elements to assess performance; encourages the Agency to undertake an external evaluation at least every five years;</p>	<p>Pursuant to Article 117(4) of ECHA's founding Regulation, the Commission shall review the REACH Regulation every 5 years. This includes an evaluation of ECHA which has since 2007 been undertaken twice by the Commission with the support of an independent external contractor (PWC and Deloitte).</p> <p>ECHA actively supports these reviews through cooperation with the external contractors, providing documentation, facilitating interviews with its staff and key stakeholders.</p>	Done

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5.	<p>19. Notes that the Commission's Internal Audit Service (IAS) carried out a risk assessment and prepared the IAS strategic audit plan for 2018-2020 and furthermore, conducted preliminary interviews for an audit on conflicts of interest and ethics in October 2017; calls on the Agency to report to the discharge authority on the outcome of that audit and any respective actions taken as a response to the recommendations;</p>	<p>In its audit report of 2 August 2018 the IAS makes four audit recommendations (see link for details) and ECHA made an action plan of which, by mid-2019, all actions had been implemented.</p> <p>The main recommendations were implemented by a revision of ECHA's already robust Conflict of Interest policy (adopted by the Management Board on 25 February 2019). Members of the European Parliament ENVI and CONT committees were informed of the new policy on 20 March 2019 (D(2019)0564).</p> <p>The main improvements include i.a.:</p> <ul style="list-style-type: none"> • The eligibility criteria applicable to key positions in ECHA were further strengthened: <ul style="list-style-type: none"> ○ scope extended to include all ECHA managers and chairmen of committees; ○ financial exclusion criterion lowered; ○ membership of permanent scientific advisory boards of chemical companies or interest groups also leads to exclusion; • Existing restrictions were clarified and summarised in a clear overview of allowable and non-allowable interests (see annex 1 of the policy); • The template for annual declarations of interest has been revised, e.g. the definition of "close family members" was extended to include also other relatives under the care of the members of the household besides spouse/partner and dependent children. • Different risk levels for the interests declared with standard criteria and mitigating measures were introduced as well as ex-post controls. 	<p>Done</p>

		<p>In addition, ECHA has invited all Member State competent authorities it collaborates with to sign a Memorandum of Understanding with the Agency on conflict of interest avoidance.</p> <p>Finally, revised procedures and practical arrangements for the appointment of the Chairman, two other members of the Board of Appeal of ECHA, their alternates and additional members and their alternates between the ECHA Secretariat, the Board of Appeal, the Management Board and the Commission services aim to further clarify the roles and responsibilities of the different actors in the procedure.</p>	
6.	While welcoming the progress made by the Agency through ex-post verifications to check the claimed size of smaller companies, the Council urges the Agency to rapidly address the considerable verification backlog and to improve the process to recover the administrative charges invoiced to companies who have declared the wrong size.	See reply to point 1.	On-going
7.	While acknowledging that the accuracy of the fee calculation is based on the verification of the declared volumes of chemicals, which is under the solely responsibility of Member States' national enforcement authorities, the Council encourages the Agency to continue its efforts to ensure the collection of the appropriate level of fee income.	See reply to point 1.	On-going

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8.	<p>The Council is concerned about the mismatch between the Agency's expenditures and revenues, as well as the expected drop in revenues from 2019 onwards. It calls on the Agency to take corrective measures to reduce administrative expenditure. In addition, the Council invites the Agency to continue measuring the possible future decrease of part of its revenues resulting from the withdrawal of the United Kingdom from the EU.</p>	<p>ECHA's revenues consist of fees and charges and balancing EU subsidies. The main regulation that ECHA implements (REACH) was designed to include three distinct registration deadlines (in 2010, 2013 and 2018) which generated major fee income to the Agency. These deadlines are now passed implying a lower level of overall fee income in the future. The legislative authority did not design ECHA to be fully fee financed and the original legislative financial statement for REACH already foresaw an increase in the required EU subsidy following the last registration year of 2018. ECHA works in close cooperation with the Commission to be sufficiently prepared to minimize any negative impact that may occur due to the United Kingdom's decision to leave the Union. This includes the necessary adjustment of forecasting its income from fees, which is duly reflected in the (balancing) subsidy request submitted to the budgetary authority.</p> <p>The impact resulting from the withdrawal of the UK from the EU appears to remain limited, as the events foreseen in the legislation generating significant fee income (registration deadlines under REACH) are over. In the course of 2019, UK economic operators already took action to transfer their regulatory assets from the UK to EU27/EEA-based operators to remain legally on the market after the withdrawal. The fees associated with this transfer already materialised (EUR 1.3 million by end of June 2019 vs. a total REACH fee budget in 2019 of EUR 37.6 million).</p>	On-going
9.	<p>Furthermore, the Council encourages the Agency to ensure proper transparency and publicity of its vacancy notices, while avoiding unjustified costs.</p>	<p>ECHA publishes its vacancy notices on its website, on social media and on the EU Agencies Network's dedicated site.</p>	Done