

27 August 2020

European Chemicals Agency report on the follow-up to the 2018 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 2019, the Secretariat of the European Parliament Committee on Budgetary Control asked all EU Decentralised Agencies for a follow-up report to the 2018 budgetary discharge to be submitted by 31 August 2020.

The report presented in the Annex to this note provides an overview of the relevant observations and recommendations from the European Parliament Resolution of 14 May 2020¹ on discharge in respect of the implementation of the budget of ECHA for the financial year 2018, together with the measures ECHA has taken in light of these. For completeness, replies to the comment accompanying the Council's Recommendation² of 6 February 2020 on the discharge of the Agency for the financial year 2018 are included as well.

On 14 May 2020 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 2018: performance, financial management and control (2019/2098(DEC)). This resolution is a horizontal report containing recommendations and observations that accompanied the individual 2018 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 Chairing role of the EU Agencies' Network. ECHA has duly contributed to this report by providing information about its own actions and by coordinating the preparation of said report as the current Chair of the Network.

¹ https://www.europarl.europa.eu/doceo/document/TA-9-2020-0111_EN.pdf

² <https://data.consilium.europa.eu/doc/document/ST-5761-2020-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>3. Emphasises that the Agency is partly financed from the fees it receives from companies that request the registration of chemicals as required under Regulation (EC) No 1907/2006(3); notes that the fees applicable depend on the size of the companies and the volume of chemicals registered; notes that the Agency has identified that some 52 % of the companies had incorrectly declared their size, resulting in lower fees; stresses that this finding demonstrates the limitations of a system that relies excessively on self-declarations made by applicants; notes that the Agency has, over the years, invoiced fee corrections and administrative charges amounting to EUR 17,9 million and that the Agency has made considerable progress in recovering undue fee reductions and collecting overdue administrative charges; notes, however, that there is still a considerable verification workload ahead and that the remaining amount of necessary fee corrections was unknown at the end of 2018; urges the Agency to put in place similarly thorough ex-ante verifications to minimise the risk of fraudulent self-declarations; furthermore, urges the national enforcement authorities to enhance the verification systems used to check and publish the volumes of chemicals declared by the companies; calls on the Agency to report to the discharge authority on its efforts, and on the results achieved, to continue to reduce the considerable verification backlog and to implement the fee corrections and the recovery of unpaid fees; calls on the Commission to propose measures to resolve this situation in order to avoid fraud in declarations of the size of applicants</p>	<p>ECHA would like to point out that while reference is made to 'fraudulent' self-declarations, the high % of incorrect self-size-declarations is only partly due to economic incentives: it is rooted in the complexity of determining the company's status against the criteria of the EU SME definition. To address the latter, ECHA provided significant support and guidance to SMEs over time (including a guidance note for SMEs in REACH-IT in 2016) and the rate of incorrect self-declarations decreased from 80% in 2011 to 35% in 2019.</p> <p>ECHA has invested significant effort and resources to reduce the verification backlog and collect fee corrections, together with the corresponding administrative charges. The Agency has revised its approach to verifying the SME status by maintaining the current verification rate and gradually reducing the time taken between the receipt of a dossier from a company and the verification. The Agency aims to complete verifications of the 2018 registration deadline-related dossiers by the end of 2023, to perform the verification of at least 60 % of all SME registrants with registrations above 10 tonnes production or import volume per year, and to increase the effectiveness with a better targeted selection of checks (based on size and potential financial gains).</p> <p>ECHA notes that ex-ante size verification is carried out for industry submissions under the Biocidal Products Regulation (BPR).</p>	<p style="text-align: center;">On-going</p>

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	and to allow the Agency to plan its budget on a more stable basis;	For submissions under the REACH Regulation, ex-ante verifications would only be possible if the legislator amended the legal text in order to make financial documentation part of the initial completeness check of registration dossiers. Currently, this is not the case. This lack of explicit legal mandate to require the relevant documentation in advance of registration, together with the 21 days' timeline to assess the submitted registration, preclude putting in place a similar ex-ante verification.	
2.	5. Notes that the Agency has revenues coming from both fees and charges payable by industry and a balancing subsidy from the Union budget; notes with concern that, according to the Court's report, as the third registration deadline under Regulation (EC) No 1907/2006 expired in May 2018, income from fees and charges is expected to drop significantly from 2019 onwards; points out that there is a risk that relatively stable expenditure and much less predictable revenue may have a negative effect on the Agency's operations and budget implementation; stresses the necessity of putting in place a new, viable and thorough financing model , in relation to which, according to the Agency's reply, the Agency has initiated discussions with the Commission; calls on the Agency to keep the discharge authority updated on developments in this regard ;	Over the period 2007–2018, ECHA's REACH/CLP funding originated, on average, from fee income (70%) and an EU balancing subsidy (30%). However, following the third registration deadline in 2018, ECHA's REACH/CLP fee income has declined significantly and ECHA is increasingly reliant on the EU balancing subsidy to finance its operations. It is estimated that, in the coming years, ECHA's fee income/subsidy split could be fee income (40%) and EU balancing subsidy (60%). For ECHA's BPR activities, there is also significant volatility and uncertainty with respect to fee income. An additional challenge is the fact that ECHA is required to maintain a strict separation of funding between the regulations that it implements, resulting in inflexibility in budget management and less efficient administrative practices. ECHA has engaged proactively with the Commission services to work towards ensuring sustainable financing and overcoming the above-described challenges in its financing model. The discussions are on-going at present.	On-going

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3.	7. Notes that, despite the risks and constraints in some areas, the Agency reached 58 out of 69 of its key performance indicator targets; urges the Agency to strive to achieve 100 % fulfilment of its key performance indicators targets;	When assessing the 2019 annual accounts of ECHA, its Management Board considered that the overall performance and quality of the outputs was high. Despite the risks, constraints and unexpected developments in some areas, in 2019 ECHA achieved 34 out of the 53 performance estimates set in the Work Programme 2019. The 19 estimates not met relate mainly to input and output indicators. For input indicators, it is difficult for ECHA to predict industry intentions (e.g. received proposals for harmonised classification and labelling) and output-related indicators are often dependent on respective external input (e.g. for opinions of the Biocidal Products Committee for approval of active substances, depending on Member States' input). ECHA continues to strive to achieve 100% of its key performance indicator estimates.	On-going
4.	9. Notes that the Agency continues to share its internal audit capability with the European Global Navigation Satellite Systems Agency and closely collaborates with other agencies, including by way of sharing services in the context of an inter-agency network and by way of sharing resources through memoranda of understanding; commends this cooperation as an example for other agencies worth following; encourages the Agency to seek further and broader cooperation with the Union agencies; encourages the Agency to initiate discussions on the topic of resources-sharing on overlapping tasks among other agencies with similar activities;	ECHA cooperates closely with other EU decentralised agencies, in particular those working in the field of environment and human health protection (i.e. EFSA, EMA, ECDC, EEA) and has concluded memoranda of understanding and working arrangements with some agencies (EMA, EFSA, EU-OSHA, EASA). ECHA and EFSA, in particular, maintain regular contacts, which include strategic workshops at the senior management level. ECHA continued its strategic cooperation with EFSA on providing IT services (IUCLID-as-a service, delivered from the ECHA Cloud Services) for EFSA's work under the Plant Production Products regulation. This is a clear example where synergies with EFSA and ECHA's own legislations were found and as a result economies of scale were achieved by re-using existing IT platforms.	On-going

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		<p>ECHA and EFSA, by using links between the agencies in providing scientific opinions to policy makers, launched a successful joint selection procedure for a scientific officer profile that is relevant for both organisations. Time and resources were saved, and a joint reserve list was created that can be used by both agencies. In addition, ECHA and EFSA will jointly develop guidance to assess the risk to bees and other arthropod pollinators from the use of biocides.</p> <p>The cooperation with other agencies extends indeed not only to operational work. ECHA also shares its Internal Audit Capability with the GSA Agency and provided in 2019 support to the Consumers, Health, Agriculture and Food Executive Agency for data protection services. More broadly, ECHA's cooperation with peer Agencies takes place within the EU Agencies' Network (EUAN), of which ECHA holds the chairing role in 2020-2021. The EUAN provides a platform for coordination and knowledge sharing among agencies, resulting in closer cooperation in administrative matters and sharing of services, e.g. in the field of IT, procurement.</p>	
5.	<p>10. Observes from the Court's report that in a procurement procedure for a framework contract for the provision of IT infrastructure service, five companies presented tenders in a range from EUR 10 to 38,2 million and that the Agency awarded the framework contract for a value of EUR 30 million to the tenderer who had submitted a EUR 12 million offer; notes, however, that the significant difference between the value of the contract and the actual offer raises concerns in terms of sound financial management; notes, according to the Agency's reply, that it initially estimated the value in accordance with the Commission's Vade-mecum on Public Procurement; notes that the Agency selected the competitive procedure with negotiation to encourage the widest possible</p>	<p>ECHA notes that it is heavily dependent on in-house IT systems development and, procedurally, the Court has had no remarks on ECHA's IT procurement. ECHA regularly carries out market consultations and research to ensure that the Agency obtains best value for money from its procurement procedures. ECHA is also progressively using procedures that involve negotiation and has redesigned the quality and price contract award criteria to strengthen the selection of the most economically advantageous offers of IT contractors. Finally, ECHA also increasingly uses binding contract performance targets/indicators as a basis for contract award and aims, when technically suitable, for framework contracts with</p>	Done

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	competition in order to obtain best value for money; calls on the Agency to apply a rigorous system of financial management of IT contracts;	several contractors to ensure sufficient competition.	
6.	16. Calls on the Agency to report to the discharge authority on the measures taken to respond to the recommendations from the second review of Regulation (EC) No 1907/2006 and to ensure that registration dossiers are compliant;	ECHA, together with its Management Board, duly assessed the second REACH Review and has integrated all the arising actions incumbent on the Agency in its Programming Document (PD). The PD, per all actions and outputs per each activity, makes clear reference to the REACH Review actions and indicates how ECHA implements those (see PD 2020-2023 here). The results of ECHA's work are summarised in the Agency's Annual Report, which was submitted to the European Parliament on 29 April 2020 (see 2019 Annual Report here).	Done
7.	17. Calls for information to be provided on the state of preparations for a prototype database under Directive 2008/98/EC1, which is to be presented in early 2020;	ECHA has delivered, in early 2020, a prototype of the database of articles containing Substances of Very High Concern on the Candidate List. The prototype version in 2020 has been opened up to users for feedback and testing purposes, in order to involve the users closely in its development (e.g. also via an IT user group). In October 2020 ECHA will deliver the first official version of what is now called the SCIP database (database of S ubstance of C oncern in articles and P roducts), ready to receive formal notifications, already a few months before the legal duty to submit information kicks in on 5 January 2021.	Done
8.	18. Calls for details of the steps the Agency has taken in response to the Commission's Synthesis Report on the implementation of REACH, and the actions proposed to be taken by the Agency in that report;	Please see response to number 7 above.	On-going

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9.	21. Notes the publication of the Agency's vacancy notices on its website, on social media and on the EU Agencies Network's dedicated website, in order to publicise further such notices; calls on the Agency to publish vacancy notices on the website of the European Personnel Selection Office;	The Agency is currently reviewing its processes in order to publish future vacancy notices on the EPSO website, in addition to the other means of dissemination.	On-going
10.	30. Encourages the Agency to continue measuring the possible future decrease of part of its revenues resulting from the United Kingdom's decision to withdraw from the European Union; observes that the impact appears to remain limited, due to the fact that the registration requirement provided for in Regulation (EC) No 1907/2006 and which generated significant fee income has ended;	The possible detrimental impact on fee revenue from the United Kingdom's decision to withdraw from the European Union concerns the post-registration era with reduced fee income to ECHA overall. Hence, the UK's historical share of ECHA's fee income of c. 10% has reduced impact. However, if the UK companies wish to stay on the EU chemicals market, they are subject to the same fees, through an EU representative, as they would have been without the UK withdrawal.	Done
11.	31. Calls on the Agency to focus on disseminating the results of its research to the public, and to reach out to the public via social media and other media outlets;	With the new Communication Strategy (see Communication Strategy 2019-2023 here) the Agency is striving for more approachability in its communication by making the messages relevant, understandable and attractive to EU citizens. ECHA has increased proactive collaboration with mainstream media and the share of audio-visual communication, such as videos, infographics and online events has risen. As a result, ECHA's outreach on social media channels has expanded significantly. In 2019, the number of people following ECHA on Twitter increased 30%, on Facebook 15% and on LinkedIn 79%. By introducing a dedicated social media ambassador program for its staff, the Agency has increased its social media outreach considerably. Currently, more than 100 staff members are sharing ECHA's content via their own social media channels, reaching potentially over a million social media users and triggering over 11 000 visits to ECHA's websites.	Done

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12.	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 continue addressing the considerable verification backlog, as well as improving the process to recover the overdue administrative charges from companies who have declared the wrong size.	Please see response number 1 above.	On-going
13.	While acknowledging that the accuracy of the fee calculation is based on the verification of the declared volumes of chemicals, which is under the sole 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 in close cooperation with the Member States' authorities.	Please see response number 1 above.	On-going
14.	The Council is concerned about the risk of a mismatch between the Agency's expenditure and revenues that could arise from the expected drop in revenues from 2019 onwards. It invites the Agency to work with the Commission to explore the possibilities for a new financing model that would also reduce administrative burden and the lack of transparency of multiple financing strands.	Please see response number 2 above.	On-going

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15.	The Council regrets the Court's finding that the Agency is not fully complying with certain internal control standards and urges the Agency to take the appropriate measures to bring its controls in compliance with these standards in particular with regard to the identification of sensitive functions.	<p>ECHA recognises that certain members of staff are required to carry out functions involving a considerable amount of autonomy or executive power, implying a potential risk in that such powers may be misused for personal gain (financial or otherwise). The definition and management of such functions, defined as sensitive, form an important part of an organisation's internal control system aimed at preventing fraud and corruption and protecting the European Union's interests.</p> <p>Consequently, ECHA adopted a sensitive functions policy in November 2019. The policy sets out how such sensitive functions should be defined and managed, addressing situations where the risk of fraud, the misuse of funds or access to highly sensitive information for personal gain is present.</p>	Done
16.	The Council, whilst taking note of the Agency's reply and actions taken, encourages the Agency to further improve its public procurement procedures, including appropriate establishment of tender specifications, to ensure full compliance with the applicable rules and best value for money procurements.	The Court has had no remarks on ECHA's procurement concerning compliance or procedural aspects. Nonetheless, since 2018, ECHA has undertaken to regularly carry out preliminary market research and consultation to prepare the procurement procedures and their specifications to better align them with the given market and ensure that the Agency obtains best value for money in the changing markets. ECHA is subject to annual audits for its procurement procedures by the Court of Auditors and the ISO 9001 certification body. Furthermore, ECHA will consider validating its procurement processes also by obtaining external certification against the latest standards in the area of EU Public Procurement. For this purpose, ECHA has recently joined an interagency procurement led by EMA.	On-going