

26 July 2018

European Chemicals Agency report on the follow-up to the 2016 budgetary discharge

Article 110 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 2017, the Secretariat of the European Parliament Committee on Budgetary Control asked all EU Decentralised Agencies for a follow-up report to the 2016 budgetary discharge to be submitted by 28 August 2018.

The report presented in the Annex to this note provides an overview of the relevant observations and recommendations from the European Parliament Resolution of 18 April 2018¹ on discharge in respect of the implementation of the budget of ECHA for the financial year 2016, together with the measures ECHA has taken in light of these. For completeness, replies to the comment accompanying the Council's Recommendation² of 20 February 2018 on the discharge of the Agency for the financial year 2016 are included as well.

On 18 April 2018 the European Parliament adopted also the resolution: "Discharge 2016: Performance, financial management and control of EU agencies (2017/2179(DEC))". This resolution is a horizontal report containing recommendations and observations that accompanied the individual 2016 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 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0143+0+DOC+XML+V0//EN&language=EN>

² <http://data.consilium.europa.eu/doc/document/ST-5941-2018-ADD-1/en/pdf>

26 July 2018

Annex

	Observation of the Discharge Authority	Response and measures taken by the Agency	Status/Reference
1.	3. Points out that in 2016, the fees and charges collected covered 46 % of the Agency's expenditure including for the first time a high proportion of fees from authorisation applications; calls in this respect for safeguards to be built into the Agency's work so that it can remain independent vis-à-vis the industry, and, in particular, to retain a critical, independent attitude towards industry's own research;	The REACH Regulation and the Fee Regulation foresee that industry pays a fee to ECHA for the registrations of chemical substances and applications for authorisation, among others. The purpose of the fee is to cover the costs of the handling of the registration or application and in particular on the scientific work to provide the opinions. It is linked with the "polluter pays" principle enshrined in EU law. The fee is set by the Commission, not ECHA, and paid upfront, irrespective of the outcome of the scientific assessment. Thus the payment of the fee does not have an effect on the independence of the Agency's work and in particular on the independence of the members of ECHA's scientific committees and ECHA's staff who are working on the opinions. Furthermore, the committee members and ECHA staff involved in the opinion making are assessed to ensure that they do not have a conflict of interest.	Done
2.	9. Notes from the Agency's reply that the highest carry-over amounts stem from multi-annual IT development projects and rapporteur contracts for substance evaluation which entail a statutory 12-month period starting from the adoption of the Community rolling action plan in March; notes that for the latter, the Agency has already created a differentiated budget line for 2017, which will reduce the nominal carry-over rate for 2017 and beyond; notes that for IT expenditure, the Agency will also consider the possibility of using differentiated budget lines going forward; calls on the Agency to report to the discharge authority on any decision taken on that matter;	During the year 2017, ECHA has re-evaluated the possible benefits of using differentiated budget lines for IT development projects. In principle, the use of differentiated lines could reduce the amounts carried over to some degree. However, this would increase the administrative burden related to the budget management as the commitment appropriations and payment appropriations would have to be budgeted separately for each year. Furthermore, usually these projects do not go beyond the year N+1 and thus it is not evident whether using differentiated appropriations would be justified as required by the Financial Regulation of the Agency ³ .	Done

³ ECHA Financial Regulation Art. 11(1) "The budget of the Agency shall contain non-differentiated appropriations and, where justified by operational needs, differentiated appropriations. Differentiated appropriations shall consist of commitment appropriations and payment appropriations". - https://echa.europa.eu/documents/10162/13611/echa_financial_regulation_en.pdf

		<p>The benefit of a differentiated line would be limited also considering that the amounts carried over for these projects have been executed to a high degree.</p> <p>However, ECHA will analyse the planned IT projects, as well as other areas, where the use of differentiated budget lines could be used to reduce the amounts carried over, and consider introducing differentiated budget lines, where this is aligned with the operational needs.</p>	
3.	<p>26. Expresses the need to establish an independent disclosure, advice and referral body with sufficient budgetary resources, in order to help whistleblowers use the right channels to disclose their information on possible irregularities affecting the financial interests of the Union, while protecting their confidentiality and offering needed support and advice</p>	<p>In line with the Commission's Guidelines on Whistleblowing (SEC(2012)679 final of 6 December 2012), ECHA has in place guidelines for whistleblowing, adopted by its Management Board, after consultation of OLAF. ECHA staff is informed about these guidelines on ECHA's intranet pages and this information includes a comprehensive description on what to do in case of suspected fraud. ECHA has also appointed three contact points on ethics, which are available to help whistleblowers.</p>	Done
4.	<p>27. Notes that in 2016 the Agency received 85 requests for access to which the Agency granted a full access to 11 requests, 23 requests were granted only partial access and for six requests the access to documents were refused; calls on the Agency to ensure that these requests are addressed in the proper spirit of openness and transparency, and treated accordingly;</p>	<p>ECHA addresses all requests for access in the spirit of openness and transparency, while ensuring that the personal data and commercial interests of the data owners stay protected. ECHA's website provides an easily accessible description and contact point for all requests for access and ECHA also reports on the evolution of the number of cases handled.</p>	Done
5.	<p>29. Notes that in 2016 an audit on "Operations under the Biocidal Products Regulation in ECHA" was conducted by the Commission's Internal Audit Service (IAS); notes furthermore that as a result, the IAS issued three "important" and no "very important" nor "critical" recommendations; acknowledges the fact that the Agency developed an action plan in response to the issued recommendations; calls on the Agency to report to the discharge authority on the implementation of this action plan;</p>	<p>The IAS assessed the progress made in implementing the open recommendations stemming from the BPR audit in 2017 and concluded that all three recommendations included in the original report have been adequately and effectively implemented. The Agency's Management Board is regularly informed on the progress made with the implementation of Audit Action Plans.</p>	Done

6.	<p>32. Notes with satisfaction that the Agency works on improving the impact measurement as part of the work on the multi-annual section of its programming document 2019-2021; notes moreover that the Agency is introducing an increasing number of indicators in order to better measure its performance and impact; notes moreover that the Network of EU Agencies is jointly developing an EU decentralised agencies performance framework; calls on the Agency to report to the discharge authority on the implementation of these indicators;</p>	<p>ECHA reports on its progress in reaching its performance and impact indicators in its Consolidated Annual Activity Report (CAAR), including the General Report. Additional outcome/impact assessments for specific activities are carried out through ex-post evaluations. In 2017, ECHA introduced efficiency performance indicators to its key activities and improved the workload KPIs, in order to improve the oversight of each activity from output, resources, performance and efficiency point of view.</p> <p>The overall performance management system of ECHA is currently under review, in conjunction with the new strategic planning period 2019-23, which will result in updated strategic objectives and measures of success.</p>	Done
7.	<p>33. Acknowledges the fact that the Court of Auditors' report states that, 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; notes however from the Agency's reply that the Commission commissioned an external performance evaluation study in 2016 and that the consultant's report has already been published on the Commission's website; calls on the Commission to include the mandatory periodical evaluation in any future proposal for a revision of the Agency's founding regulation; calls on the Agency to facilitate, on a voluntary basis, any and all such external evaluations, particularly by the Court of Auditors, until such time as the requisite legislation is put in place;</p>	<p>The founding regulation of ECHA (REACH Regulation, article 117(4)) foresees that the Commission shall review every 5 years the progress in reaching its objectives. This review (REACH Review) was, during both reviews so far, supported by the external evaluation of ECHA, performed by an independent external contractor (PWC, Deloitte) commissioned by the Commission to prepare a study. ECHA actively supported the preparation of these studies by cooperation with the contractors, providing documentation, facilitating interviews with its staff and key stakeholders.</p> <p>Similarly, ECHA cooperates with and provides active support to the independent external auditor and the Court of Auditors, when auditing its accounts.</p> <p>ECHA will continue to support all external evaluations.</p>	Done
8.	<p>35. Notes from the Court of Auditors' report that the Agency's budget is partly financed by fees from Union economic operators; observes that the amount of fees fluctuates every year depending on the volume of registrations of substances; notes that a future decrease of the Agency's revenue resulting from the United Kingdom's decision to leave the Union is possible; calls on the Agency to report to the discharge authority on the mitigating measures that may be adopted;</p>	<p>ECHA is closely monitoring the fee income fluctuations and reports regularly to its Management Board and the Commission services. The same applies for the broader policy developments related to the establishment of the Union's next Multi-annual Financial Framework and the United Kingdom's decision to leave the Union.</p> <p>As regards mitigation measures for a shortfall in fee income, ECHA is in ongoing discussions with the Commission services to find the most suitable mechanism that will allow the Agency to effectively and</p>	On-going

		<p>efficiently execute its mandate. The tools discussed in this context range from the establishment of a reserve fund to cover for temporary fee shortfalls, over increased flexibility between the budget allocated to under the EU Regulations managed by ECHA, to a solution where the fees would be transferred to the Commission services, which in turn would provide the Agency a subsidy covering the expenditure in full.</p> <p>ECHA discusses with the Commission also adaptations to the fee structure with a view to ensuring a sustainable financing of the tasks under EU chemicals regulation. The Agency welcomes the European Parliament's initiatives in support of finding suitable mechanisms to achieve this goal.</p>	
9.	<p>36. Notes that the United Kingdom's decision to leave the Union also poses operational risks for the Agency since the Union chemicals legislation which the Agency manages (REACH, BPR, CLP and PIC Regulations) are also internal market regulatory laws; notes that reducing the jurisdiction to which these regulations apply to EU-27 will create an additional workload for providing advice and assistance to the United Kingdom's companies which will be in a 'third country' as well as a transitional workload caused by transferring regulatory work from the United Kingdom to the EU-27; notes that as all regulatory processes are IT-supported, the Agency's IT tools will require re-tooling; notes moreover that the potential loss of United Kingdom citizens currently employed as experts will also have an operational impact; calls on the Agency to proactively plan and prepare for any and all such potential losses; calls on the Agency to work in close cooperation with the Commission regarding the negotiations relating to the United Kingdom's decision to leave the Union in order to be sufficiently prepared to minimize any negative operational or financial impact that may occur;</p>	<p>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. ECHA has appointed a senior manager to be responsible for cooperating with the Commission and coordinating the agency's preparation both in terms of human and financial resources and operational implications. ECHA provides in-depth reporting to the relevant Commission services on its preparedness for the UK withdrawal, and makes it a priority to inform duty-holders, Member States' authorities, staff members and contractual partners of the possible implications of the UK withdrawal. ECHA has published a dedicated website for this purpose under https://echa.europa.eu/uk-withdrawal-from-the-eu</p>	On-going
10.	<p>As last year, and while acknowledging the multiannual operational nature of the Agency's activities and projects, <i>the Council</i> regrets that a very high level of commitment appropriations was carried over to 2017. It calls on the Agency to continue improving its financial</p>	See answer to observation No 2 above	On-going

	<p>programming, monitoring of the budget implementation, and further increasing the use of differentiated budget appropriations, in order to reduce the level of commitments carried over to the following financial year to the minimum strictly necessary, in line with the budgetary principle of annuality.</p>		
11.	<p>In addition, <i>the Council invites the Agency, in consideration of the nature of its revenues, to take due account of the possible future decrease of part of these revenues resulting from the United Kingdom's decision to leave the EU.</i></p>	<p>ECHA is working with the Commission to prepare for a potential decrease in fee income resulting from the United Kingdom's decision to leave the EU. These steps are outlined in response to observation nr. 8. Similarly, ECHA is working internally and with the Commission to monitor the development of the future MFF and prepare for a potential decrease in subsidy after 2020.</p>	On-going