



EUROPEAN
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Report on the annual accounts of the European Chemicals Agency (ECHA) for the financial year 2019,

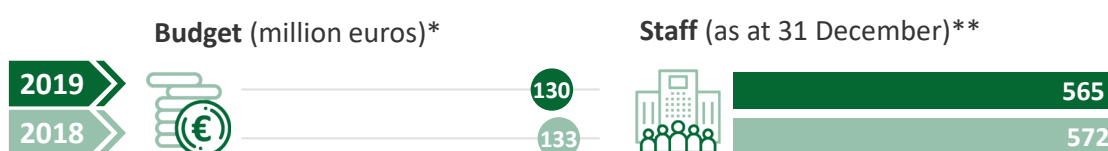
together with the Agency's reply

Introduction

01 The European Chemicals Agency (“the Agency”, or “ECHA”), which is located in Helsinki, was set up by Regulation (EC) No 1907/2006 of the European Parliament and of the Council¹. Its main tasks are to ensure a high level of protection of human health and the environment as well as the free movement of substances on the internal market while enhancing competitiveness and innovation. The Agency also promotes the development of alternative methods for the assessment of hazards relating to substances.

02 *Graph 1* presents key figures for the Agency².

Graph 1: Key figures for the Agency



* Budget figures are based on the total payment appropriations available during the financial year.

** “Staff” includes EU officials, EU temporary agents, EU contract staff and seconded national experts, but excludes interim workers and consultants.

Source: Consolidated annual accounts of the European Union for the financial year 2018 and Provisional consolidated annual accounts of the European Union Financial year 2019; Staff figures provided by the Agency.

Information in support of the statement of assurance

03 The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Agency’s supervisory and control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of information provided by the Agency’s management.

¹ OJ L 396, 30.12.2006, p. 1.

² More information on the Agency’s competences and activities is available on its website: www.ECHA.europa.eu.

The Court's statement of assurance provided to the European Parliament and the Council – Independent auditor's report

Opinion

04 We have audited:

- (a) the accounts of the Agency which comprise the financial statements³ and the reports on the implementation of the budget⁴ for the financial year ended 31 December 2019 and
 - (b) the legality and regularity of the transactions underlying those accounts,
- as required by Article 287 of the Treaty on the Functioning of the European Union (TFEU).

Reliability of the accounts

Opinion on the reliability of the accounts

05 In our opinion, the accounts of the Agency for the year ended 31 December 2019 present fairly, in all material respects, the financial position of the Agency at 31 December 2019, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. These are based on internationally accepted accounting standards for the public sector.

³ The financial statements comprise the balance sheet, the statement of financial performance, the cash flow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

⁴ The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

Legality and regularity of the transactions underlying the accounts

Revenue

Opinion on the legality and regularity of revenue underlying the accounts

06 In our opinion, revenue underlying the accounts for the year ended 31 December 2019 is legal and regular in all material respects.

Emphasis of matter

07 Without calling into question its opinions expressed on the reliability of the accounts and on the legality and regularity of revenue underlying the accounts, the Court would like to emphasise that the Agency is partly self-financed and receives a fee from every company requesting the registration of chemicals as required under the REACH Regulation⁵. The applicable fees depend on the size of the companies (micro, small, medium, large) and the volume of chemicals registered (different thresholds).

08 As laid down in the Implementing Regulation⁶, the Agency calculates and invoices the fees based on information provided by the companies at application. Under the Regulation, micro, small and medium-sized enterprises (SMEs) benefit from considerable fee reductions of up to 95 % of the standard fee. Since the first registrations in 2009, 26 % of the companies have claimed to be micro, small or medium size.

09 While not specified in the legislation as a core task, the Agency has put in a considerable effort into introducing ex post verifications of the company size declared by SMEs. Verifications carried out since 2011, and completed so far, indicate that 50 % of the SMEs had categorised their size incorrectly, resulting in lower fees⁷. The high percentage of wrong size rate is explained by both the economic incentive and the complexity of the SME definition and demonstrates the limitations of a system that relies excessively on self-declarations made by applicants.

10 In order to mitigate this situation, the Agency invoiced (and cashed) fee corrections (top-ups) and additional administrative charges amounting to 32,2 million euros following ex post verifications up until end-2019. However, there is still a considerable verification workload ahead and the remaining amount of necessary fee corrections was unknown at the end of 2019.

Payments

Opinion on the legality and regularity of payments underlying the accounts

11 In our opinion, the payments underlying the accounts for the year ended 31 December 2019 are legal and regular in all material respects.

Basis for opinions

12 We conducted our audit in accordance with the IFAC International Standards on Auditing (ISAs) and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions (ISSAIs). Our responsibilities under those standards are further described in the 'Auditor's responsibilities' section of our report. We are independent, in accordance with the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA Code) and with the ethical requirements that are relevant to our audit, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of management and those charged with governance

13 In accordance with Articles 310 to 325 of the TFEU and the Agency's Financial Regulation, management is responsible for preparing and presenting the Agency's accounts on the basis of internationally accepted accounting standards for the public sector and for the legality and regularity of the transactions underlying them. This includes the design, implementation and maintenance of internal controls relevant to the preparation and presentation of financial statements that are free from material misstatement, whether due to fraud or error. The Agency's management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the

⁵ Regulation (EC) No 1907/2006.

⁶ Commission Regulation (EC) No 340/2008 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, 17.4.2008, p. 6).

⁷ The wrong size rate varies between years, but shows a decreasing trend, starting with 80 % in 2011 and ending with 35 % in 2019.

official requirements which govern those statements. The Agency's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the Agency's accounts.

14 In preparing the accounts, the Agency's management is responsible for assessing the Agency's ability to continue as a going concern. It must disclose, as applicable, any matters affecting the Agency's status as a going concern, and use the going concern basis of accounting, unless management either intends to liquidate the entity or to cease operations, or has no realistic alternative but to do so.

15 Those charged with governance are responsible for overseeing the Agency's financial reporting process.

The auditor's responsibilities for the audit of the accounts and underlying transactions

16 Our objectives are to obtain reasonable assurance about whether the accounts of the Agency are free from material misstatement and the transactions underlying them are legal and regular, and to provide, on the basis of our audit, the European Parliament and the Council or the other respective discharge authorities with statements of assurance as to the reliability of the Agency's accounts and the legality and regularity of the transactions underlying them. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit will always detect a material misstatement or non-compliance when it exists. These can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these accounts.

17 For revenue, we verify subsidies received from the Commission or cooperating countries and assess the Agency's' procedures for collecting fees and other income, if any.

18 For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. This examination covers all categories of payments (including those made for the purchase of assets) other than advances at the point they are made. Advance payments are examined when the recipient of funds provides justification for their proper use and the Agency accepts the justification by clearing the advance payment, whether in the same year or later.

19 In accordance with the ISAs and ISSAIs, we exercise our professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the accounts and of material non-compliance of the underlying transactions with the requirements of the legal framework of the European Union, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement or non-compliance resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the overriding of internal controls.
- Obtain an understanding of internal controls relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls.
- Evaluate the appropriateness of the accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Agency's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the accounts or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause an entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the accounts, including the disclosures, and whether the accounts represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the Agency to express an opinion on the accounts and transactions underlying them. We are responsible for the direction, supervision and performance of the audit. We remain solely responsible for our audit opinion.
- Considered the audit work of the independent external auditor performed on the Agency's accounts as stipulated in Article 70(6) of the EU Financial Regulation, where applicable.

We communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that we identify during our audit. From

the matters on which we communicated with the Agency, we determine those matters that were of most significance in the audit of the accounts of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

20 The observations which follow do not call the Court's opinion into question.

Observations on internal controls

21 The tender specifications describe what a contracting authority is going to buy, the quality, and the price it is willing to pay. It is therefore essential that these specifications are comprehensive, clear and precise. In one audited procurement procedure, we found that the tender specifications did not allow tenderers to arrive at an unambiguous understanding of how to price a certain item in their financial offers. Because the offers were not comparable, the Agency decided to cancel and relaunch the procedure. This added extra time to the procedure and created a potential reputational risk to the Agency.

22 In both of the audited recruitment procedures, we found that the decision-making process was not sufficiently structured and exhaustive to provide for a clear, chronological trail showing when the documents had been approved and by whom. For example, in one of the procedures, the evidence collected showed that the selection committee had approved the reserve list only after the Executive Director had signed it off.

Follow-up of previous years' observations

23 An overview of the action taken in response to the Court's observations from previous years is provided in the **Annex**.

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg on 22 September 2020.

For the Court of Auditors

A handwritten signature in black ink, appearing to read 'k-H se', written in a cursive style.

Klaus-Heiner Lehne

President

Annex - Follow-up of previous years' observations

| Year | Court's observations | Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A) |
|------|---|--|
| 2014 | The expenditure for the implementation of the Regulation concerning biocidal products was partly financed by EU contributions to the Agency's budget and not by fees. | Ongoing |
| 2016 | Unlike most other agencies, ECHA's founding regulation does not explicitly require periodical external evaluations | Outstanding (Not under the Agency's control) |
| 2017 | The Agency's ex post verifications have demonstrated that more than half of the companies incorrectly declared their size, affecting fee calculations and the Agency's revenue significantly. There is an urgent need to speed up and finalise ex post verifications. | Ongoing |
| 2017 | Whenever errors are found, the Agency issues correcting invoices. However, the Agency seems to encounter difficulties in recovering the corrected fees. The Agency recorded a bad debt provision of 2,8 million euros in its 2017 accounts (i.e. 600 000 euros higher than at year-end 2016). | Ongoing |

| Year | Court's observations | Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A) |
|------|---|--|
| 2017 | The verification of volumes declared by the companies is under the responsibility of Member States' national enforcement authorities and the Agency has no enforcement powers. The Agency's ability to fulfil its mandate depends on the national authorities. However, about two thirds of companies did not update the registered information on the volumes of chemicals they are dealing with. This undermines the effective implementation of the REACH Regulation and also affects the accuracy of fee calculation. | Ongoing (Not under the Agency's control) |
| 2017 | The Agency publishes vacancy notices on its own website and on social media, but usually not on the website of the European Personnel Selection Office (EPSO). | Ongoing |
| 2018 | The Agency should adopt and implement a sensitive post policy. | Completed |
| 2018 | The Agency expects fees and charges to drop significantly from 2019 onwards. There is a risk that relatively stable levels of expenditure and much less predictable levels of revenue may have a negative effect on the Agency's operations and budget implementation. The Agency, together with the Commission and the budgetary authorities, should launch a discussion about a viable new financing model. | Ongoing |

| Year | Court's observations | Action taken to respond to Court's observations (Completed / Ongoing / Outstanding / N/A) |
|-------------|---|--|
| 2018 | Five companies presented tenders for a framework contract for the provision of IT infrastructure services. The significant difference between the value of the contract and the actual offers made poses a risk to sound financial management. The Agency should apply rigorous financial management to IT contracts. | N/A |

The Agency's reply

21. The Agency's procurement documents for the initial competition were in accordance with the standard Hansel templates and were considered to be clear and comprehensive. However, as the Agency could not completely rule out that one of the three tenderers may have misunderstood one item in the price catalogue, it decided to cancel and relaunch the procedure to attract more competition (among all Hansel suppliers) and ensure proportionality. The additional effort involved in relaunching the Hansel procedure was minimal, with no reputational consequence, compared to the potential detriment to the sole tenderer, who appeared to have misunderstood one item in the price catalogue, if excluded.

22. The Agency uses an electronic workflow system in which all Selection Committee decisions are approved, dated and recorded. This system provides a clear audit trail for each step in any selection process. With respect to the example provided, technical issues required an exceptional restart of the workflow at the conclusion of the selection. As an outcome of this audit finding, the Agency has altered its process to ensure that standard emails are sent to Selection Committee members after each meeting to record the meeting minutes and decisions taken by the Committee. Moreover, a step has been added to the process to ensure that, after each meeting, electronic approval flows are finalised before advancing in the selection.

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