



2017/2167(DEC)

25.1.2018

DRAFT REPORT

on discharge in respect of the implementation of the budget of the European
Chemicals Agency for the financial year 2016
(2017/2167(DEC))

Committee on Budgetary Control

Rapporteur: Bart Staes

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1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on discharge in respect of the implementation of the budget of the European Chemicals Agency for the financial year 2016 (2017/2167(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Chemicals Agency for the financial year 2016,
- having regard to the Court of Auditors' report on the annual accounts of the European Chemicals Agency for the financial year 2016, together with the Agency's reply¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2016, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of ... February 2018 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2016 (00000/2018 – C8-0000/2018),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002³, and in particular Article 208 thereof,
- having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC⁴, and in particular Article 97 thereof,
- having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁵, and in particular Article 108 thereof,
- having regard to Rule 94 of and Annex IV to its Rules of Procedure,

¹ OJ C 417, 6.12.2017, p. 98.

² OJ C 417, 6.12.2017, p. 98.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 396, 30.12.2006, p. 1.

⁵ OJ L 328, 7.12.2013, p. 42.

- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0000/2018),
- 1. Grants the Executive Director of the European Chemicals Agency discharge in respect of the implementation of the Agency's budget for the financial year 2016 / Postpones its decision on granting the Executive Director of the European Chemicals Agency discharge in respect of the implementation of the Agency's budget for the financial year 2016;
- 2. Sets out its observations in the resolution below;
- 3. Instructs its President to forward this decision, and the resolution forming an integral part of it, to the Executive Director of the European Chemicals Agency, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the closure of the accounts of the European Chemicals Agency for the financial year 2016
(2017/2167(DEC))**

The European Parliament,

- having regard to the final annual accounts of the European Chemicals Agency for the financial year 2016,
- having regard to the Court of Auditors' report on the annual accounts of the European Chemicals Agency for the financial year 2016, together with the Agency's reply¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2016, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of ... February 2018 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2016 (00000/2018 – C8-0000/2018),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002³, and in particular Article 208 thereof,
- having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC⁴, and in particular Article 97 thereof,
- having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁵, and in particular Article 108 thereof,
- having regard to Rule 94 of and Annex IV to its Rules of Procedure,

¹ OJ C 417, 6.12.2017, p. 98.

² OJ C 417, 6.12.2017, p. 98.

³ OJ L 298, 26.10.2012, p. 1.

⁴ OJ L 396, 30.12.2006, p. 1.

⁵ OJ L 328, 7.12.2013, p. 42.

- having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0000/2018),
- 1. Approves the closure of the accounts of the European Chemicals Agency for the financial year 2016 / Postpones the closure of the accounts of the European Chemicals Agency for the financial year 2016;
- 2. Instructs its President to forward this decision to the Executive Director of the European Chemicals Agency, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the *Official Journal of the European Union* (L series).

3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Chemicals Agency for the financial year 2016

(2017/2167(DEC))

The European Parliament,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Chemicals Agency for the financial year 2016,
 - having regard to Rule 94 of and Annex IV to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0000/2018),
- A. whereas in the context of the discharge procedure, the discharge authority stresses the particular importance of further strengthening the democratic legitimacy of the Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources;
- B. whereas, according to its statement of revenue and expenditure¹, the final budget of the European Chemicals Agency ("the Agency") for the financial year 2016 was EUR 110 840 957, representing a decrease of 7,82 % compared to 2015;
- C. whereas the Agency received Union subsidies of EUR 60 937 000, representing a significant increase of EUR 55 903 000 due mainly to the implementation of the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), Biocidal Products and Prior Informed Consent (PIC) Regulations;
- D. whereas the Court of Auditors in its report on the annual accounts of the Agency for the financial year 2016 ("the Court of Auditors' report"), has stated that it has obtained reasonable assurances that the Agency's annual accounts are reliable and that the underlying transactions are legal and regular;

Budget and financial management

1. Notes that budget monitoring efforts during the financial year 2016 resulted in a budget implementation rate of 97 %, representing a decrease of 1,48 %; notes moreover that the payment appropriations execution rate was 86 %, representing a decrease of 1,84 % in comparison to the previous year;
2. 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; acknowledges that managing the annual budget was more challenging for the Agency than in previous years, as the magnitude of the fee-based financing was difficult to foresee, particularly for the biocide applications; notes that, as a result, a considerable amount of the initially-foreseen Union subsidy financing was not

¹ OJ C 443, 29.11.2016, p21

necessary due to more favourable fee income receipts and a slight downward revision of the expenditure; calls on the Agency to report to the discharge authority on the measures taken to face this challenge in the coming years;

Transfers

3. Notes that the Agency made in total 23 transfers amounting to EUR 816 000; notes with satisfaction that the level and nature of transfers in 2016 have remained within the limits of financial rules;

Commitments and carry-overs

4. Notes from the Court of Auditors' report that carry-overs of committed appropriations remained high for Title III (REACH operational expenditure) at EUR 10 100 000, i.e. 39 % (2015: EUR 7 300 000, i.e. 32 %) and are even higher for Title IV (biocides operational expenditure) at EUR 1 300 000, i.e. 68 % (2015: EUR 1 500 000, i.e. 74 %); draws attention to the Court of Auditors' comment advising the Agency to consider increasing the use of differentiated budget appropriations to better reflect the multi-annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments;
5. 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;
6. Notes that carry-overs may often be partly or fully justified by the multiannual nature of the agencies' operational programmes, do not necessarily indicate weaknesses in budget planning and implementation and are not always at odds with the budgetary principle of annuality, in particular if they are planned in advance and communicated to the Court of Auditors;

Procurement and staff policy

7. Notes that the recruitment target of the Agency was achieved with 98 % of posts filled at the end of 2016 for REACH/CLP (classification, labelling and packaging of substances and mixtures) and PIC (export and import of hazardous chemicals);
8. Observes from the establishment plan that 455 temporary posts (out of 465 authorised under the Union budget) were occupied on 31 December 2016, compared to 467 in 2015;
9. Notes that out of 590 (full time equivalents) members of staff in 2016 the Agency was employing nine seconded national experts, 101 contract staff, three interim staff and 22 consultants;

10. Notes with appreciation that by the number of posts occupied on 31 December 2016 gender balance has been met since the ratio is 53 % female to 47 % male;
11. Notes with satisfaction that in comparison with the 2015 benchmarking exercise at the Agency, there was an increased percentage of operational staff and a decreased percentage of administrative support staff, in line with the Commission benchmarking results;
12. Notes that in 2016 the Agency signed 630 contracts, out of which 423 contracts were under framework contracts and 207 contracts as a result of new tendering procedures; notes that the 26 contracts included in the latter category were signed as a result of exceptional negotiated procedures based on the relevant rules of the Financial Regulation; notes with satisfaction that the annual list of contractors is published by the Agency on its website by 30 June of each year for the previous year;
13. Notes that on average the Agency's staff was on sick leave for 7,9 days in 2016; observes with some concern that the number of days spent per member of staff on well-being activities in 2016 has been less than one day; notes that the Agency did not name different well-being activities put in place in 2016 as requested by the discharge authority;
14. Notes with satisfaction that the Agency operates a network of confidential counsellors which consists of colleagues from different units of the Agency that were trained to deal informally with conflicts at work and cases of alleged harassment;
15. Notes with satisfaction that in 2016 the confidential counsellors reported two cases involving perceived elements of harassment, which were dealt with under the framework of the informal procedure and that no formal procedure was opened and, hence, no cases were brought before the court;
16. Notes that the Agency uses one official vehicle to provide transportation to the executive director while exercising his or her official functions but does not allow for their private use;

Prevention and management of conflicts of interests, transparency and democracy

17. Notes with satisfaction that the Agency, in line with the discharge authority's recommendation from 2014, has included in its 2016 annual report a separate chapter on transparency, accountability and integrity;
18. Notes with satisfaction that under the Agency's transparency policy, major improvements were made available to the public in 2016, including completely newly designed Agency's dissemination portal and a microsite for informing consumers about chemicals;
19. Notes that, on the basis of its procedure for prevention and management of potential conflicts of interest, the Agency has implemented an approach which involves a systematic check for potential conflicts before assigning tasks to members of staff; notes furthermore that, once they take up their function, all members of the Agency's bodies have their annual declaration of interest reviewed by their respective chair and

published on the Agency's website;

20. Acknowledges that, when leaving the Agency, members of staff have to sign a declaration related to post-employment duties; notes that out of the 22 members of staff who left the Agency in 2016, in only one of these cases, the Agency saw it necessary to impose specific conditions before authorising the new employment;
21. Notes that the Agency adopted the guidelines for whistleblowers in June 2015; notes that the Agency's internal control systems are designed with fraud prevention embedded, with emphasis on risky areas such as financial transactions, procurement and selections; notes that the Agency's updated anti-fraud strategy was adopted in December 2016 with a focus on developing a widespread anti-fraud culture in the Agency; notes with satisfaction that actions implemented during 2016 include a mandatory online training on prevention of conflicts of interest and an all-staff training by the European Anti-Fraud Office (OLAF) on fraud prevention;
22. 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;

Performance-based budgeting

23. Welcomes the three main achievements and successes identified by the Agency in 2016, namely:
 - significant efforts made to support in particular small and medium-sized enterprises (SMEs) through adequate IT-tools and multi-lingual guidance in light of the 3rd REACH registration deadline and a new free cloud-based service for SMEs starting from 2017;
 - upgraded dissemination portal providing access to gathered data in three levels of detail, ensuring it is easy to understand by the general public as well as by more specialised technical-scientific readers;
 - publishing the second five-year report on the operation of the REACH/CLP containing commitments to further improvements as well as recommendations to the Commission and Member State competent authorities; this report contributed to the Commission's preparatory studies for the REFIT evaluation of REACH;

Internal audit

24. 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 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;
25. Notes that the assurance audits on "Follow-up to dossier evaluation", "Expert groups in ECHA" as well as "Appeal proceedings before the Board of Appeal" were carried out

by the Agency's Internal Audit Capability (IAC); notes that the audits resulted in two "very important" and several "important" recommendations; acknowledges that the action plans developed by the Agency's management to respond to the recommendations of the IAC were considered by the IAC as adequate;

Performance

26. Notes that in December 2016 the Agency started together with the European Food Safety Authority (EFSA) to draft guidance in identifying chemicals with endocrine disrupting properties;
27. 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;
28. 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 website;

Other comments

29. 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;
30. 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 United Kingdoms' 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;
31. Notes with satisfaction that the Agency has been monitoring CO₂ emissions, uses teleconference services to cut the unnecessary travels, reduces the size and improves efficiency of new building by setting required minimum energy efficiency and building standards, reduces paper consumption with new efficient printers, roll-out of IT such as

EasySign and use of Sharepoint, replaces lamps in underground car part with energy efficient lamps, encourages recycling to ensure a cost-effective and environment-friendly working place and is committed to further reduce or offset CO₂ emissions;

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32. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of ... 2018¹ on the performance, financial management and control of the agencies.

¹ Texts adopted, P8_TA-PROV(2018)0000.