

ECA Special Report 22/2020: Future of EU agencies – Potential for more flexibility and cooperation

60th Meeting of the Management Board 16-17 December 2020

Key messages

The Management Board (MB) is invited to take note of the recently-published Special Report of the European Court of Auditors (ECA) on the "*Future of EU agencies – Potential for more flexibility and cooperation*". This is the ECA's first horizontal assessment of the conditions put in place by the EU to support all EU Agencies (not only ECHA) in the delivery of policy for the benefit of citizens. The report will be discussed in the MB Subgroup Finance, Audit and Risk in its meeting of 9 December 2020.

Overall, the audit identified a need for more flexibility in the set-up, functioning and possible winding-up of Agencies. The main recommendations are summarised in Annex 2, including the observations pertaining specifically to ECHA.

Background and rationale

The European Court of Auditors published the "*Special report 22/2020: Future of EU agencies – Potential for more flexibility and cooperation*" on 22 October 2020.

Having previously focused on the performance of individual Agencies, this is the ECA's first horizontal assessment of the conditions put in place by the EU to support *all* EU Agencies in the delivery of policy for the benefit of citizens and, specifically, examines the cooperation between the Commission and Agencies.

The audit concluded that Agencies are increasingly important in the delivery of EU policies and that the lack of flexibility in the set-up, life cycle and operation of Agencies does not allow full exploitation of their potential. The auditors also found that insufficient support from Member States, industry, Commission, or other Agencies prevents some Agencies from fully performing their role. The ECA recommends that the Commission and the Agencies evaluate more carefully the coherence of Agencies over their lifetime, and adjust resources accordingly; that they assess inefficiencies in the area of governance and improve performance reporting to focus not only on agencies' activities but also on their important contribution to policy implementation; and that they facilitate agencies' efforts to cooperate as centres of expertise and networking.

The findings of the ECA are relevant to all Agencies, including ECHA, as they demonstrate that the interaction between any Agency and the relevant Commission services and Member States is crucial for the success of policy implementation. For the challenges identified, the report proposes improvements and also points out that overlaps between Agencies' mandates provide opportunity for synergies, better coordination and increased input to EU policies.

Cooperation with the EU Agencies Network (EUAN)

It is recalled that ECHA is currently chairing the EU Agencies Network. As this was the first time that the ECA carried out an audit concerning all Agencies, ECHA was closely involved in working with the ECA to steer the process to a timely and sound conclusion, with due respect to the role and responsibility of individual agencies, as well as that of the EUAN coordination.

The EUAN has identified a number of areas where the joint experience and expertise of Agencies and Joint Undertakings may prove useful for the legislator in the implementation of the recommendations. These include the assessment preceding the creation of new Agencies, where the EUAN may bring its expertise to bear in analysing possible mandate overlaps, or assisting in

the start-up phase of newly-established Agencies, where the hands-on experience of the EUAN members can bring tangible practical benefits and thus savings.

It is to be noted that many agencies and the Commission provided written replies to the observations, which are attached to the special report. The Commission in particular elaborated at high level on the governance of agencies, including the role of the MB in the programming of activities. As coordinating agency of the Network, ECHA facilitated the reply at aggregated EUAN level and abstained from detailed formal individual comments, which were nevertheless provided informally to the Court – and also discussed in an informal setting between ECHA senior managers and the lead auditors.

ECHA-specific observations

The ECHA-specific observations provide useful input to ECHA, the Commission and the co-legislator about the improvements that may be explored to enhance ECHA's ability to contribute to EU priorities. These insights are provided at a point in time when the Commission has just announced its Chemicals Strategy for Sustainability, which aims to make the regulatory framework more predictable, coherent and stronger. The Commission also announced that it foresees a new '*founding regulation*' for ECHA (2023), as well as proposals to strengthen its governance and increase the sustainability of its financing model¹.

A number of the ECHA-specific observations are directly related to the way REACH and BPR are designed to function, with specific roles foreseen for ECHA, the Commission and Member States. These observations may be considered in the wider reflection on the development of the regulatory framework for safer chemicals. Other observations refer to the difficulty of forecasting ECHA's fee income and the lack of recurrent fees, which are well-known issues already identified by ECHA, the ECA, the European Parliament as well as the Commission.

One observation pertains to the perceived lack of cooperation between ECHA and the European Food Safety Authority (EFSA) and, in particular, the lack of information-sharing when addressing the same substances. When working on the same substances, under different regulatory frameworks, ECHA and EFSA regularly share information to the extent possible and the Commission's proposals around a 'one substance, one assessment' principle are intended to increase the consistency of the regulatory processes and their outcomes. In addition, it is to be noted that ECHA and EFSA cooperate closely and maintain regular contacts, which include strategic workshops at the senior management level. Furthermore, ECHA provides IT services (IUCLID-as-a service, delivered from the ECHA Cloud Services) for EFSA's work under the Plant Production Products regulation and ECHA also engages in joint procurements and recruitments with EFSA. Finally, based on ECA's 'big data experiment' (analysis performed in 2018-2019), it is observed that ECHA's visibility in the media is limited compared to similar agencies (for example, Europol and Frontex get >20 times more attention, EFSA 8 times).

Attachments:

- Annex 1: [ECA Special Report 22/2020: Future of EU agencies – Potential for more flexibility and cooperation](#)
- Annex 2: Recommendations for all agencies and observations relevant for ECHA

For questions: Shay.Omalley@echa.europa.eu with copy to mb-secretariat@echa.europa.eu

¹ Chemicals Strategy for Sustainability COM(2020) 667 final and its Annex (Action Plan)

Annex 2 - Recommendations for all agencies and observations relevant for ECHA

I. Recommendations for all agencies and the commission
Recommendation 1 – Ensure the relevance, coherence and flexibility of the set-up of agencies
The Commission should: (a) increase the use of cross-cutting evaluations of agencies in the context of the Commission’s fitness checks of the different policy areas. Evaluation results should be used to identify synergies and possible changes, including mergers, and, where appropriate, to prepare legislative proposals in response to changing needs; (b) prepare any proposals for new agencies in line with the Better Regulation Agenda, including the consultations provided for therein. The Commission should demonstrate the relevance and coherence of proposed new bodies vis-à-vis existing bodies, taking into account any reservations expressed by the Regulatory Scrutiny Board.
Recommendation 2 – Allocate resources to agencies in a more flexible manner
The agencies should: (a) more thoroughly justify their need for resources before each new MFF period, making effective use of their single programming documents and taking account of priorities, possible synergies and economies of scale.
The Commission should: (b) assess and compare, before each MFF period the requests for resources from all agencies, and propose to allocate resources (increase, decrease and/or redeploy) to agencies by focusing on the priorities and the most pressing needs; (c) timely review agencies’ requests to align resources with evolving needs to allow greater flexibility in budgetary planning.
Recommendation 3 – Improve governance and reporting on performance
The agencies should:

(a) improve the way they report on performance in practice by linking more clearly their performance with their contribution to EU policies.

The Commission should:

(b) monitor the implementation of the revised Commission guidelines (C (2020)2297) on the performance information to be provided by agencies for external scrutiny by the European Parliament, the Council and EU citizens, thereby shifting the focus from reporting on output and activities to contributions to EU policy;

(c) propose that the legislator review the size of management boards where needed to improve the efficiency of the decision-making process.

Recommendation 4 – Strengthen the role of agencies as centres for sharing expertise and networking

The **agencies** should:

(a) cooperate more closely with each other to identify good practices on performance, synergies and economies of scale, particularly in shared policy areas.

The Commission should:

(b) monitor that Member States deliver on their legal and political commitments to provide EU agencies with the necessary information, experts and support for the enforcement of agency decisions and policy implementation; and where these commitments are not sufficiently covered by the legal framework, propose that the legislator clearly spell out Member States' obligations;

(c) ensure that the technical expertise and other potential of agencies are consistently used to support policy preparation and implementation also at international level and with non-EU partners.

II. Observations relevant for ECHA

36. ECHA faces particular challenges because it has no recurrent revenue and its **fee income** is difficult to forecast.

Box 11 After more than a decade, ECHA is still operating in a context of limited powers

ECHA has faced a number of challenges to fulfil its mandate to promote the use of safe chemicals.

- o The registration system is based on industry submissions (see Box 14).

- o During the first decade of its existence (2008-2017), ECHA prioritised registration over analysis of the data provided about the declared chemical substances. As many substances have not yet been evaluated in detail, it is still unclear whether they are harmful or not. ECHA's strategic plan for 2019-2023 offers a new and more ambitious approach to identifying substances that need to be regulated.

- o A recent judgment by the CJEU General Court annulled a Commission decision authorising the use of a certain substance on the basis of an opinion from ECHA's scientific committees, on the grounds that there had been insufficient analysis of less harmful alternatives.
- o Member States have exclusive competence for enforcing the obligation on companies to register chemicals with ECHA under the REACH Regulation. ECHA has only a coordinating role.
- o ECHA's annual targets for opinions on the approval of active substances in biocides are missed year after year because Member States delay the delivery of their assessment reports.
- o The financial and administrative framework in which ECHA operates is more complex than for other agencies, as ECHA has three separate budgets (and staffing plans) under three different regulations, each with a different partner DG. This further limits ECHA's flexibility to deal with fluctuations in workload.

Box 13 ECHA and EFSA – similar work, not enough cooperation

ECHA and EFSA often deal with the same substances, but there is little information exchange between the two agencies. The systems used by companies to register chemicals with ECHA and submit information electronically are not linked or connected with the EFSA systems.

At EFSA, the procedures for submitting applications and the required information vary widely. There are specific rules in each area for drawing up applications. EFSA has developed guidance documents to help with applications, but there is little cooperation with ECHA in this regard.

In 2017, the two agencies signed a new memorandum of understanding (replacing the previous one, from 2009) on closer cooperation between them.

Box 14 ECHA's experience shows the weaknesses of a system based on industry submissions

o ECHA is responsible for the mandatory registration or authorisation of chemicals in the EU, based on submissions by industry. After ECHA staff have made formal completeness checks of the information provided in a self declaration, the company receives a REACH registration number allowing it to market its chemicals. It can keep this registration number even if it is subsequently shown to have provided incorrect or incomplete information. This arrangement reduces the company's incentive to provide updates or additional information. A recent study²⁴ has shown that at least 30 % of all registrations could be non-compliant.

o A Commission staff working document on the REACH evaluation stated that "the lack of compliance of companies with their registration obligations is hampering the identification of substances of concern and the consequent ability of authorities to protect the public and the environment". ECHA and the Commission have adopted a joint action plan to address the lack of compliance in registration files. Content checks will be stepped up and the focus will be shifted towards substance analysis.