

Revision of the Decision on the transfer of a proportion of fees to Member States

59th Meeting of the Management Board 24-25 September 2020

Proposal

The Management Board (MB) is invited to adopt a revised Decision on the financial arrangements for the transfer of a proportion of fees to Member States.

The proposal was prepared and agreed by the Management Board Subgroup on Finance, Audit and Risks. After adoption at Management Board level, the Draft Decision will be submitted for the opinion of the European Commission. The entry into force of the revised decision is foreseen for 1 January 2021.

Background

In line with the REACH Regulation¹, a part of the fees collected under the Commission's Fee Regulation is to be transferred to the Member States Competent Authorities (MSCAs) in compensation for undertaking certain REACH tasks.

According to the Fee Regulation², the Management Board (MB) shall, following a favourable opinion of the Commission, set the amounts for each of the tasks and the maximum proportion of the fees and charges to be transferred to the MSCAs, as well as the arrangements necessary for the transfer.

In line with the Fee Regulation, the MB, having obtained a favourable opinion from the European Commission, adopted a decision laying down the arrangements and scale of this fee transfer³ in 2009. This decision was subsequently revised on four occasions, the last time being in 2017⁴.

During its meeting of 19-20 March 2020, the Management Board (MB) noted that a review of the 2017 Decision on the Transfer of Fees to Member States was scheduled for 2020, and would be prepared by its Subgroup on Finance, Audit and Risks (FAR)⁵. The Secretariat presented an approach for the revision at the FAR Subgroup meeting of 11 June 2020, where the Subgroup agreed to the proposed approach for revision. The Secretariat prepared, on this basis, the draft revised Decision (in Annex), which the Subgroup reviewed in its meeting of 4 September 2020. The proposal was supported, with minor additions proposed⁶, which the Secretariat implemented.

¹ Article 74(4).

² Having regard to Commission Regulation (EC) No 340/2008 of 16 April 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).

³ Document MB/20/2009.

⁴ MB/36/2017 final.

⁵ MB/13/2020.

⁶ In particular, related to the deletion of the United Kingdom from Annex I, the addition of a reference to the MFF 2021-2027 and the deletion of a reference to transitional measures under REACH Articles 135-137.

Rationale

The Secretariat analysed the key elements of the Decision, taking into consideration the experience of the operation of the system in the last three years, as well as ECHA's resource outlook. On this basis, the Secretariat proposed that no major changes are required with respect to the main elements of the decision. For example, no changes are proposed in the calculation of man-days, the remuneration of MSCAs based on correction coefficients, the fee transfer modalities for authorisation applications and the maximum proportion of fees and charges to be reimbursed. The main changes proposed, therefore, concern the maximum amount of fees and charges to be reimbursed and the process for the future review of the Decision.

The FAR Subgroup discussed the proposal on 11 June 2020 and agreed with the approach proposed by the Secretariat. At the same time, SG members requested the Secretariat to strive, in the future, for continuous simplification of the transfer of fees system. The Secretariat presented the revised draft Decision to the MB SG FAR meeting on 4 September 2020, where Members expressed their support thereto.

Key elements of the 2020 revision

Calculation of man-days

Transfers for substance evaluation: The transfer of fee for substance evaluation has gradually been reduced from 75 to 65 man-days from 2015 to 2017 and has remained at this level. The analysis of the time recorded in recent years suggests that it should not be reduced further.

It is to be noted that the Decision foresees the possibility of a specific agreement between ECHA and the evaluating Member State for a proportional reduction of the payment in the case of the evaluation of a group of structurally similar substances. It is now proposed that the same arrangements are made possible in cases where the substance is placed on The Community Rolling Action Plan (CoRAP), due to new information becoming available after the conclusion of a previous substance evaluation (Article 2).

Transfers for restrictions work of RAC/ SEAC rapporteurs: An analysis of the rapporteurs' time-sheets, and feedback from the Committee Chairs with respect to the applicability of the system, suggest that 25 man-days for the Risk Assessment Committee (RAC) and 30 man-days for the Socio-economic Analysis Committee (SEAC) remain appropriate. This reflects the balance between the work required due to the complexity of restriction dossiers and the efficiencies gained over time.

Fee transfer for Applications for Authorisation (AfA)

Based on the workload involved for the rapporteurs and the Secretariat, a 25 per cent proportion of the size-neutral fee is proposed to continue to be transferred, and shared equally, by the rapporteurs of RAC and SEAC. The remaining 75 per cent proportion of the size-neutral fee is proposed to continue to be retained by ECHA. The Secretariat does not propose to adapt the current modalities which appear to work well and, in addition, Member States have not raised any issues with their operation.

Cost of an ECHA man-day

In the absence of validated cost data from the MSCAs, the average cost of a working day in ECHA is used as a proxy for the costs of the MSCA. This approach was directly implementable and it respects the guidance given by the Court of Auditors and the Commission's Internal Audit Service to similar agencies. The average cost of a working day in ECHA (c. EUR 600) is, therefore, proposed to remain as a proxy for the cost of the MSCA.

Scale of payments

The remuneration for each country's MSCA is based on the country correction coefficients published annually by the European Commission. These correction coefficients take into consideration cost-of-living differences in various EU countries and integrate them into the remuneration of EU staff. In order to evaluate such differences in living conditions, differences in purchasing power are considered as a statistically reliable and computable indicator. The

remuneration for each country's MSCA is proposed to remain based on the country correction coefficients published annually by the European Commission. This means that the rates will continue to be technically updated by the Secretariat annually (when the Commission publishes its update).

Maximum proportion of fees and charges to be reimbursed

Taking account of ECHA's uncertain financial outlook, it is proposed to maintain the current maximum proportions, as follows:

- 5 per cent of the registration fee revenue for the conclusion of a substance evaluation procedure by a MSCA or rapporteur work done in the RAC and the SEAC in the context of a restriction proposal
- 25 per cent of the application specific base fees related to authorisation applications and reviews for rapporteur work done in the RAC and the SEAC in the context of an authorisation application
- In any event, the total amounts transferred within the above two categories should not exceed EUR 1.5m per year. The proposal is based on a projection of ECHA's estimated fee income and overall expenditure levels.

Review/revision of the decision

It is to be noted that the present review of the Decision takes place after the final REACH registration deadline. While there were peaks in the fee income corresponding to the previous deadlines in the past, it is expected that ECHA's fee income will be more stable in the future. On the other hand, it is also to be noted that ECHA's fee income is expected to decrease and remains challenging to predict, as evidenced by recent independent studies.

The proposed change also allows ECHA to move to a less frequent review of the Transfer of Fees decision, which provides better predictability and reduces the administrative burden. The Secretariat would report to the MB Subgroup FAR annually on the evolution of the level of transfers and the Subgroup FAR could, on this basis, propose revisions to the MB, if appropriate. The decision would not, therefore, have a fixed review and revision time in the future.

Alternative option

The Management Board could decide not to revise its Decision. This is, however, not recommended as the currently applicable Decision will expire at end-2020.

Drawback

The potential drawback of the proposal could be seen to be its financial impact due to the uncertainty related to ECHA's overall resource outlook. It is to be noted, in particular, that ECHA's fee income is anticipated to continue to decline and remain challenging to predict. This drawback will be mitigated by the close monitoring of the application of the Decision, as well as ECHA's fee income development. Subject to the evolution of these factors, the MB, via its Subgroup FAR, will be in a position to amend the Decision, if deemed appropriate.

Attachment:

- Annex: Draft revised MB decision on the financial arrangements for the transfer of a proportion of fees to Member States.

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