

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



EUROPSKI REVIZORSKI SUD
CORTE DEI CONTI EUROPEA
EIROPAS REVĪZIJAS PALĀTA
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK
IL-QORTI EWROPEA TAL-AWDITURI
EUROPESE REKENKAMER
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY
TRIBUNAL DE CONTAS EUROPEU
CURTEA DE CONTURI EUROPEANĂ
EURÓPSKY DVOR AUDÍTOROV
EVROPSKO RAČUNSKO SODIŠČE
EUROOPAN TILINTARKASTUSTUOMIOISTUIN
EUROPEISKA REVISIONSRÄTTEN

Report on the annual accounts
of the Agency for Cooperation of Energy Regulators
for the financial year 2012

together with the Agency's replies

INTRODUCTION

1. The Agency for Cooperation of Energy Regulators (hereinafter “the Agency”, aka “ACER”), which is located in Ljubljana, was created by Regulation (EC) No 713/2009 of the European Parliament and of the Council¹. The Agency's main task is to assist National Regulatory Authorities in exercising, at Union level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action. Under the REMIT regulation², the Agency was given new additional responsibilities, together with national regulatory authorities, regarding the monitoring of the European wholesale energy market³.

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

2. 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 (where relevant) and an analysis of management representations.

STATEMENT OF ASSURANCE

3. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

¹ OJ L 211, 14.8.2009, p. 1.

² Regulation No 1227/2011 of the European Parliament and of the Council of 25 October 2011, OJ L 326, 8.12.2011, p. 1, which assigns an important role to the Agency in supervising trading in wholesale energy markets across Europe.

³ ***Annex II*** summarises the Agency's competences and activities. It is presented for information purposes.

- (a) the annual accounts of the Agency, which comprise the financial statements⁴ and the reports on the implementation of the budget⁵ for the financial year ended 31 December 2012, and
- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

4. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002⁶, the management is responsible for the preparation and fair presentation of the annual accounts of the Agency and the legality and regularity of the underlying transactions:

- (a) The management's responsibilities in respect of the Agency's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer⁷; making accounting estimates that are reasonable in the circumstances. The Director approves the annual accounts of the Agency after its accounting officer has prepared them on the basis of all available

⁴ These include the balance sheet and the economic outturn account, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁵ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

⁶ OJ L 357, 31.12.2002, p. 72.

⁷ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

information and established a note to accompany the accounts in which he declares, *inter alia*, that he has reasonable assurance that they present a true and fair view of the financial position of the Agency in all material respects.

- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

5. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council⁸ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Agency are free from material misstatement and the transactions underlying them are legal and regular.

6. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying

⁸ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the reasonableness of accounting estimates and the overall presentation of the accounts.

7. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Opinion on the reliability of the accounts

8. In the Court's opinion, the Agency's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

Opinion on the legality and regularity of the transactions underlying the accounts

9. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2012 are legal and regular in all material respects.

10. The comments which follow do not call the Court's opinions into question.

COMMENTS ON THE LEGALITY AND REGULARITY OF TRANSACTIONS

11. In order to cover higher school fees, the Agency grants staff whose children attend primary or secondary school a top up allowance in addition to the education allowances provided for in the Staff Regulations⁹. Total 2012 top up allowances amounted to some 23 000 euro. They are not covered by the Staff Regulations and are therefore irregular.

COMMENTS ON BUDGETARY MANAGEMENT

12. The Agency carried over committed appropriations under title II (Agency's building and associated costs) of its budget amounting to 1,7 million euro, representing 81 % of total committed title II appropriations. These carry-overs mainly relate to the implementation of the REMIT regulation which is ongoing. Since the implementation is linked to the Agency's operational activities, it should normally have been budgeted under title III.

13. In 2012, the Agency made 20 budget transfers of some 1 million euro and affecting 43 budget lines. This indicates weaknesses in budget planning.

OTHER COMMENTS

14. The Agency held 4,2 million euro in cash at the year end, including the 2011 budget surplus of 1,6 million euro which resulted from an excessive call for funds in 2011 and was recovered by the Commission in January 2013. This is not consistent with a rigorous treasury management.

15. The audited recruitment procedures revealed shortcomings affecting transparency and an equal treatment of candidates: questions for interviews and tests were not set before the examination of the applications. The

⁹ Article 3 of Annex VII provides for twice the basic allowance of 252,81 euro = 505,62 euro.

conditions for admission to written tests and interviews and for being included in the list of suitable candidates were not specified in sufficient detail and the measures taken to ensure the anonymity of candidates sitting written tests were inadequate.

FOLLOW-UP OF PREVIOUS YEAR'S COMMENTS

16. An overview of the corrective actions taken in response to the Court's previous year's comments is provided in **Annex I**.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 10 September 2013.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

Follow-up of previous year's comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	The high level of appropriations not used and of carry-overs as well as the low level of payments indicate shortcomings in budget planning and implementation and are at odds with the budgetary principle of annuality.	Ongoing
2011	There is room to improve the transparency of recruitment procedures. As an example, vacancy notices did not specify the maximum number of candidates to be put on a reserve list and made no reference to the possibility of appeal. Moreover the questions for written tests and interviews and their weightings were not prepared before the examination of the applications.	Ongoing
2011	In 2011 the Agency paid subsistence allowances amounting to 10 839 euro to seconded experts who were nationals of the State where the Agency is situated. This payment conflicts with the Rules on the Secondment of National Experts adopted by the Administrative Board of the Agency, which provide for the granting of such allowances only to temporary staff who are not nationals of the Member State where they are employed; such payments are irregular.	Completed

Agency for the Cooperation of Energy Regulators (Ljubljana)**Competences and activities**

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Article 114 (ex Article 95 TEC) and Article 194 of the Treaty on the Functioning of the European Union)</i></p>	<p>The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.</p> <p>In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States to:</p> <ul style="list-style-type: none"> (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks. <p>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve these objectives. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.</p>
<p>Competences of the Agency</p> <p><i>(As specified in Regulation (EC) No 713/2009 of the European Parliament and of the Council; Commission Regulation (EU) No 838/2010; Regulation (EU) No 1227/2011 of the European Parliament and of the Council)</i></p>	<p>Objectives</p> <p>The purpose of the Agency is to assist National Regulatory Authorities in exercising, at Union level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action.</p> <p>Tasks</p> <ul style="list-style-type: none"> – complement and coordinate the work of National Regulatory Authorities, – participate in the creation of European network rules, – take, under certain conditions, binding individual decisions on terms and conditions for access and operational security for cross-border infrastructure, – give advice on various energy-related issues to the European institutions, – monitor and report developments on the energy markets, – formulate a proposal to the EU Commission on the annual cross-border infrastructure compensation sum for the ITC mechanism, – cooperate with the national regulatory authorities, ESMA, competent financial authorities of the Member States and where appropriate with national competition authorities to monitor the wholesale energy markets, – assess the operation and transparency of different categories of market places and ways of trading, – make recommendations to the Commission as regards market rules, records of transactions, orders to trade, standards and procedures which could improve market integrity and the functioning of the internal market.
<p>Governance</p>	<p>Administrative Board</p> <p><i>Composition</i></p> <p>Two members appointed by the European Parliament, two members appointed by the Commission and five members appointed by the Council. Each member has an alternate.</p> <p><i>Tasks</i></p> <p>The Administrative Board adopts the Agency's annual programme and budget and monitors their implementation.</p> <p>Director</p> <p>Appointed by the Administrative Board after a favourable opinion from the Board of Regulators and on the basis of a list of candidates proposed by the Commission.</p>

	<p>Board of Regulators</p> <p><i>Composition</i></p> <p>A senior representative of the regulatory authorities from each Member State and one non-voting representative of the Commission. Each member has an alternated as nominated by the national regulatory authority from each Member State.</p> <p><i>Tasks</i></p> <ul style="list-style-type: none"> – the Board shall provide opinions to the Director on the opinions, recommendations and decisions that are considered for adoption, – provide guidance to the Director in the execution of its tasks, – deliver an opinion to the Administrative Board on the candidate to be appointed as Director, and – approve the work programme of the Agency. <p>External audit</p> <p>European Court of Auditors.</p> <p>Discharge authority</p> <p>European Parliament acting on a recommendation from the Council.</p>
<p>Resources made available to the Agency in 2012 (2011)</p>	<p>Budget 2012 (2011)</p> <p>7,2 (4,8) million euro</p> <p>Staff as at 31 December 2012 (2011)</p> <p>Posts listed in the establishment plan: 43 (40)</p> <p>Posts occupied on 31 December: 42 (39)</p> <p>Other staff: 14 (12)</p> <p>Total staff: 57 (39), of which assigned to:</p> <ul style="list-style-type: none"> – operational tasks: 34 (28) – administrative tasks: 23 (11)
<p>Products and services 2012</p>	<ul style="list-style-type: none"> – Two Framework guidelines (Electricity: FG on Balancing; Gas: FG on Interoperability). Public consultations organised as required under Article 10 of Regulation (EC) No 713/2009, including workshops. – Network codes <ul style="list-style-type: none"> (a) Three Reasoned Opinions on Network Codes (Electricity: Network Code for Requirements for Grid Connection Applicable to all Generators and Network Code on Capacity Allocation and Congestion Management; Gas: Network Code on Capacity Allocation Mechanism). (b) Two Qualified Recommendations on Network Codes (both on Gas Network Code on Capacity Allocation Mechanism). – Opinion on ENTSOG Work Programme for 2012. – Opinion on ENTSOG's 2011-2012 Winter Supply Outlook. – Opinion on ENTSOG's 2012 Summer Supply Outlook. – Opinion on ENTSOG's 2013 Annual Work Programme. – Opinion on ENTSO-E TYNDP 2012. – Opinion on the ENTSO-E Summer Outlook Report 2012 and Winter Review 2011/2012. – Opinion on ENTSO-E Annual Report 2011. – A Joint ACER-CEER Market Monitoring Report (Article 11 of Regulation (EC) No 713/2009) was issued on 29 November; a presentation took place in Brussels. – Recommendation on Article 2(1)(n) of the Commission proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (COM(2011) 656 final). – Recommendation on the Records of Transactions of Regulation (EU) No 1227/2011 (REMIT) was adopted. – Decision relating to the Registration Format Pursuant to Article 9(3) of Regulation (EU) No 1227/2011 was adopted. – Second edition of the Guidance on the application of the definitions listed in Article 2 of REMIT was issued on 28 September 2012.

	<ul style="list-style-type: none">- Successful conclusion of the three framework contracts regarding the implementation of REMIT.- The Regional Initiatives Status Review for 2011 was published in March.- Three On-line Gas Regional Initiatives (GRIs) and Four On-line Electricity Regional Initiatives (ERIs) quarterly reports were published.- Two new Agency Working Groups established (Implementation, Monitoring and Procedures Working Group (AIMPWG) and a Market Integrity and Transparency Working Group (AMITWG), and the Rules for the functioning of the Working Groups were updated.- On 14 March 2012 the Agency organised its Annual Conference “Making the Internal Energy Market a reality – which role for ACER?”; 220 participants attended.
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Source: Information provided by the Agency.

THE AGENCY'S REPLY

Para 11: In the absence of a European School in Slovenia and the need of a measure of social nature to pair the unequal working conditions (in line with Article 1(e) of the Staff Regulation) to which Agency staff is subject to, compared with staff working in other European Union institutions, where European Schools are available, the Administrative Board adopted decision AB n° 01/2011 of 11 February 2011 “on the support granted to ACER staff members in respect to kindergarten and school fees”. The maximum level of support granted to eligible staff members, in respect to each eligible child, does not exceed the level of fees paid for the European School in Brussels.

Para 12: The Agency has been advised by the Commission to use Title II for the REMIT project as most of the start-up costs relate to IT applications. The Agency has decided to use Title III for recording REMIT-related expenditure as from 2014 when the energy market monitoring by the Agency is expected to start.

Para 13: Upon a comprehensive assessment, the Agency has been fully aware, that the budget envisaged in the financial statement of REMIT, has turned out to be insufficient to develop a fully-effective IT system for the implementation of the Regulation (EU) 1227/2011. Therefore, the Agency tried, already in 2012, to identify where additional resources could be found in its budget to be dedicated to REMIT. As the budget of the Agency was already tight, only minor amounts could have been transferred from other budget lines. This exercise was carried out systematically and resulted in a high number of low-amount budget transfers.

Para 14: The €4.2m cash balance held in the Agency's bank account at year-end included the 2011 budgetary surplus of €1.6m paid back in January 2013, as the Agency received the request from the Commission only on 8 January 2013, the 2012 budgetary surplus of €0.6m to be paid back to the Commission when requested and the amount of €1.9m to settle the legal obligations entered into by the Agency before the year-end and which were carried forward into 2013. The Agency's cash management aims to ensure that funds are available to cover outstanding liabilities as they occur.

Para 15: The Agency is strictly following the interview and written test procedures as established in detail in the relevant Director decision 2012-17 on Guidelines on recruitment procedures and work of the Selection Committees on 20 March 2012, ensuring questions and assessment criteria are fixed before the start of the testing and interviews. In order to take account of the auditors comments The Agency agrees to revise the current procedure. The Agency considers that the anonymity of tests is not crucial for the overall objectivity of the selection procedure. The marking criteria to assess the test are established by the selection panel beforehand in order to assure the objective scoring of the written tests. Furthermore, some tests cannot be organised anonymously, since candidates are either requested to present their experience in the answer or they need to prepare a presentation which they deliver to the selection panel at the beginning of the interview.