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#### COVER NOTE

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| From:            | Mr Klaus-Heiner LEHNE, President of the European Court of Auditors  |
| date of receipt: | 28 November 2017  |
| To:              | Mr Märt KIVINE, President of the Council of the European Union  |
| Subject:         | Report on the annual accounts of the Agency for the Cooperation of Energy Regulators for the financial year 2016 together with the Agency's reply |

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Delegations will find attached the European Court of Auditors' report on the annual accounts of the Agency for the Cooperation of Energy Regulators for the financial year 2016.

This report is accompanied by the Agency's reply and will shortly be published in the *Official Journal of the European Union*.

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Encl.: Report on the annual accounts of the Agency for the Cooperation of Energy Regulators for the financial year 2016 together with the Agency's reply.<sup>1</sup>

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<sup>1</sup> In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.



EUROPEAN  
COURT  
OF AUDITORS

Report on the annual accounts  
of the Agency for the Cooperation of Energy Regulators  
for the financial year 2016  
together with the Agency's reply

## **INTRODUCTION**

1. The Agency for the 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 Council<sup>1</sup>. 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 regulation<sup>2</sup>, the Agency was given additional responsibilities, together with national regulatory authorities, regarding the monitoring of the European wholesale energy market.
2. **Table 1** presents key figures for the Agency<sup>3</sup>.

**TABLE 1: KEY FIGURES FOR THE AGENCY**

|  | <b>2015</b> | <b>2016</b> |
|--|-------------|-------------|
| Budget (million euro)                      | 11,3        | 15,9        |
| Total staff as at 31 December <sup>4</sup> | 80          | 103         |

*Source:* budget published in OJ.

## **INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE**

3. 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

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<sup>1</sup> OJ L 211, 14.8.2009, p. 1.

<sup>2</sup> Regulation No 1227/2011 of the European Parliament and of the Council (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.

<sup>3</sup> More information on the Agency’s competences and activities is available on its website: [www.acer.europa.eu](http://www.acer.europa.eu).

<sup>4</sup> Staff includes officials, temporary and contract staff and seconded national experts.

control systems. This is supplemented by evidence provided by the work of other auditors and an analysis of management representations.

## **OPINION**

4. We have audited:

- (a) the accounts of the Agency which comprise the financial statements<sup>5</sup> and the reports on the implementation of the budget<sup>6</sup> for the financial year ended 31 December 2016, 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*

5. In our opinion, the accounts of the Agency for the year ended 31 December 2016 present fairly, in all material respects, the financial position of the Agency at 31 December 2016, 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.

### ***Legality and regularity of the transactions underlying the accounts***

#### **Revenue**

#### *Opinion on the legality and regularity of revenue underlying the accounts*

6. In our opinion, revenue underlying the accounts for the year ended 31 December 2016 is legal and regular in all material respects.

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<sup>5</sup> The financial statements comprise the balance sheet, the statement of financial performance, the cashflow statement, the statement of changes in net assets and a summary of significant accounting policies and other explanatory notes.

<sup>6</sup> The reports on implementation of the budget comprise the reports which aggregate all budgetary operations and the explanatory notes.

**Payments***Opinion on the legality and regularity of payments underlying the accounts*

7. In our opinion, payments underlying the accounts for the year ended 31 December 2016 are legal and regular in all material respects.

***Responsibilities of management and those charged with governance***

8. In accordance with Articles 310 to 325 of the TFEU and the Agency's Financial Regulation, management is responsible for the preparation and presentation of the 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 responsibility 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. Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them. The Agency's management bears the ultimate responsibility for the legality and regularity of the transactions underlying the accounts.

9. In preparing the accounts, management is responsible for assessing the Agency's 'ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

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

***Auditor's responsibilities for the audit of the accounts and underlying transactions***

11. 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 other respective discharge authorities with a statement of assurance as to the reliability of the 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.

12. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and the regularity of the transactions underlying them. The procedures selected depend on the auditor's judgment, including an assessment of 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. In making those risk assessments, internal controls relevant to the preparation and fair presentation of the accounts and legality and regularity of underlying transactions, is considered 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 internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the accounts.

13. For revenue, we verify the subsidy received from the Commission and assess the Agency's procedures for collecting fees and other income, if any.

14. For expenditure, we examine payment transactions when expenditure has been incurred, recorded and accepted. 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.

15. In preparing this report and Statement of Assurance, we considered the audit work of the independent external auditor performed on the Agency's accounts as stipulated in Article 208(4) of the EU Financial Regulation<sup>7</sup>.

16. The comments which follow do not call the Court's opinion into question.

### **COMMENTS ON INTERNAL CONTROLS**

17. In its audit report dated May 2016, the Commission's Internal Audit Service (IAS) highlighted a strong need to clarify roles and responsibilities and to analyse workload in the

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<sup>7</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

procurement cell in order to achieve more efficient processes and procedures. It also concluded that procurement planning and monitoring needs to be significantly improved. The Agency and IAS agreed on a plan to take corrective action.

### **COMMENTS ON BUDGETARY MANAGEMENT**

18. The Agency carried over 4,9 million euro, i.e. 86 % of committed appropriations for Title III operational expenditure (2015: 1,4 million euro, i.e. 59 %). As was the case in previous years, carry-overs mainly relate to the implementation of the REMIT Regulation on wholesale energy market integrity and transparency<sup>8</sup> with 4,7 million euro in 2016 (2015: 1,1 million euro). For Title II administrative expenditure the Agency carried over 1 million euro, i.e. 38 % of committed appropriations (2015: 0,8 million euro, i.e. 35 %).

19. The increasing level of carry overs is a matter of concern and in contradiction with the budgetary principle of annuality. It is directly linked to a concentration of procurement procedures finalised and contracts signed late in the year, leading to deliveries and/or payments in the following year. In 2016, 98 out of 299 contracts were signed in November and December (5 976 122,47 euro or 40 % of the total value of contracts concluded in 2016). The Agency may consider introducing differentiated budget appropriations to better reflect the multi annual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments.

### **FOLLOW-UP OF PREVIOUS YEARS' COMMENTS**

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

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<sup>8</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council (OJ L 326, 8.12.2011, p. 1–16).

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA,  
Member of the Court of Auditors, in Luxembourg at its meeting of 12 September 2017.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

AnnexFollow-up of previous years' comments

| Year        | Court's comments  | Status of corrective action<br>(Completed / Ongoing / Outstanding / N/A) |
|-------------|---|--|
| <b>2014</b> | According to the Seat Agreement between the Agency and the Slovenian government a European School will be established in Slovenia. However, more than four years after the agreement no European School has been set up.  | <b>Outstanding</b>   |
| <b>2015</b> | The Agency carried over 1,36 million euro, i.e. 59 % of its committed appropriations for Title III operational expenditure (2014: 1,57 million euro, i.e. 62 %). These carry-overs were mainly related to the implementation of REMIT (1,1 million euro), a complex operational activity on wholesale energy market integrity and transparency of a multiannual nature. The Agency also carried over 0,79 million euro, i.e. 35 % (2014: 0,98 million euro, i.e. 41 %) of committed appropriations for Title II administrative expenditure, mainly related to studies and services not yet delivered in 2015. | <b>N/A</b>   |

### THE AGENCY'S REPLY

18. The Agency successfully implemented the actions, as mutually agreed with IAS. Out of the 6 recommendations, 2 very important and 3 important have already been closed. The Agency plans to close the last recommendation by October 2017.

19. The Agency acknowledges the high level of carried over funds resulting from the multiannual nature of REMIT-related investments, which do not fit well with the budgetary principle of annuality. The high level of carryovers is due to the timing of the annual contractual cycle which was established in 2013, when a substantial additional budget for the REMIT project was received by the Agency at the end of the year. However, it shall be noted that the commitment appropriation for the financial year 2016 under the budget Chapter of REMIT expenditure was implemented at the maximum 100% level. The Agency will analyse the implementation of differentiated budget appropriations for Title III.

20. The Agency considers introducing differentiated budget appropriations for Title III better to reflect the multi annual nature of some of its operations, especially in the area of REMIT, provided that there is stability and predictability in the financial resources provided to the Agency.