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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:	4 November 2016
To:	Mr Peter KAZIMIR, 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 2015 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 2015.

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 2015 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 2015  
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>2</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>3</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>4</sup>.

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

	<b>2014</b>	<b>2015</b>
Budget (million euro)	10,9	11,3
Total staff as at 31 December <sup>5</sup>	72	80

*Source:* data provided by the Agency.

## **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>2</sup> OJ L 211, 14.8.2009, p. 1.

<sup>3</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>4</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>5</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.

#### **STATEMENT OF ASSURANCE**

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

- (a) the annual accounts of the Agency, which comprise the financial statements<sup>6</sup> and the reports on the implementation of the budget<sup>7</sup> for the financial year ended 31 December 2015, and
- (b) the legality and regularity of the transactions underlying those accounts.

#### ***The management's responsibility***

5. 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<sup>8</sup>:

- (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 officer<sup>9</sup>; 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 information and established a note to accompany the accounts in which he declares, inter alia,

<sup>6</sup> These include the balance sheet and the statement of financial performance, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

<sup>7</sup> These comprise the budgetary outturn account and the annex to the budgetary outturn account.

<sup>8</sup> Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

<sup>9</sup> 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.

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***

6. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council<sup>10</sup> 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.

7. 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 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. In preparing this report and Statement of Assurance, the Court

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<sup>10</sup> Article 107 of Regulation (EU) No 1271/2013.

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>11</sup>.

8. 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**

9. In the Court's opinion, the Agency's annual accounts present fairly, in all material respects, its financial position as at 31 December 2015 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**

10. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2015 are legal and regular in all material respects.

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

### **COMMENTS ON BUDGETARY MANAGEMENT**

12. 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.

### **FOLLOW-UP OF PREVIOUS YEAR'S COMMENTS**

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

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<sup>11</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

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 13 September 2016.

*For the Court of Auditors*

(s) 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)
<b>2014</b>	<p>The Agency carried over 1,57 million euro, i.e. 62 %, of committed appropriations for title III operational expenditure (2013: 3,1 million euro, i.e. 91 %). These carry-overs were mainly related to the implementation of REMIT, a complex multi-annual operational activity for which the Implementing Regulation was only adopted on 17 December 2014<sup>1</sup>. The Agency also carried over 0,98 million euro, i.e. 41 % (2013: 1,9 million euro, i.e. 56 %), of committed appropriations for title II administrative expenditure, mainly related to studies for the implementation of REMIT and annual contracts renewed towards the year end.</p>	<b>N/A</b>
<b>2014</b>	<p>In October 2013, through a budget amendment, the Agency received an additional 3 million euro in appropriations to implement REMIT, which it carried over to 2014. However, according to the Implementing Regulation the REMIT framework will only become operational in October 2015. Part of the funds was spent in 2014 on preparation for the implementation of REMIT. At the end of 2014, the Agency made two pre-financing payments amounting to 1,56 million euro for contracts on REMIT-related services to be provided in the period 2015 to 2017, thereby avoiding an automatic return to the Commission of the unused funds<sup>2</sup>. Although this will allow the Agency to finance its future REMIT-related activities, this is in contradiction with the budgetary principle of annuality.</p> <p>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.</p>	<b>N/A</b>
<b>2014</b>		<b>Outstanding</b>

<sup>1</sup> Commission Implementing Regulation (EU) No 1348/2014 (OJ L 363, 18.12.2014, p. 121).

<sup>2</sup> Article 13 of the EU Financial Regulation stipulates that amounts can be carried over for one financial year only.



### THE AGENCY'S REPLY

13. The Agency acknowledges the identified level of appropriations carried over, due to open commitments at year-end, mainly streaming from the long-term nature of the REMIT project implementation. Given the persistent uncertainty on the annual budgetary allocation to the Agency, it is difficult to reconcile the principle of annuality with the inevitable multi-annual nature of the REMIT project.