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#### COVER NOTE

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From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	30 October 2014
To:	Mr Linas LINKEVICIUS, President of the Council of the European Union
Subject:	Report on the annual accounts of the Agency for Cooperation of Energy Regulators for the financial year 2013 together with the Agency's replies

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Delegations will find attached the European Court of Auditors' report on the annual accounts of the Agency for Cooperation of Energy Regulators for the financial year 2013.

This report is accompanied by the Agency's replies 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 Cooperation of Energy Regulators for the financial year 2013 together with the Agency's replies.<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/>.

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



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EUROPEISKA REVISIONSRÄTTEN

Report on the annual accounts  
of the Agency for Cooperation of Energy Regulators  
for the financial year 2013

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 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 new additional responsibilities, together with national regulatory authorities, regarding the monitoring of the European wholesale energy market<sup>3</sup>.

## **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:

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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 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.

<sup>3</sup> ***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 statements<sup>4</sup> and the reports on the implementation of the budget<sup>5</sup> for the financial year ended 31 December 2013, and
- (b) the legality and regularity of the transactions underlying those accounts.

*The management's responsibility*

4. 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>6</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>7</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

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<sup>4</sup> 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.

<sup>5</sup> These comprise the budgetary outturn account and the annex to the budgetary outturn account.

<sup>6</sup> Articles 39 and 50 of Commission Delegated Regulation (EU) No 1271/2013 (OJ L 328, 7.12.2013, p. 42).

<sup>7</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.

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 Council<sup>8</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.

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 transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor

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<sup>8</sup> Article 107 of Regulation (EU) No 1271/2013.

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 2013 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 2013 are legal and regular in all material respects.

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

**COMMENTS ON BUDGETARY MANAGEMENT**

11. The Agency carried over 1,9 million euro or 56 % of total committed title II appropriations (Agency's building and associated costs), mainly related to the implementation of the REMIT regulation. This is an operational, multiannual activity and should have been budgeted under title III, a shortcoming which was rectified in subsequent commitment appropriations.

12. In addition, the Agency carried over 3,1 million euro or 91 % of total committed title III appropriations, also related to the implementation of the REMIT regulation. The exceptionally high rate of carry-over for title III is mainly due to some 3 million euro in additional funding received through an amended budget approved on 31 October 2013.

### **OTHER COMMENTS**

13. The Agency held 5,5 million euro in cash at year-end, which included some 3 million euro relating to the late budget amendment (see paragraph 12). Nevertheless, average cash balances during the year were significantly higher than justified by operational requirements.

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

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

This Report was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 8 July 2014.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA  
*President*

ANNEX I**Follow-up of previous years' comments**

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2011</b>	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.	<b>Completed</b>
<b>2011</b>	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.	<b>Completed</b>
<b>2012</b>	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 Regulations <sup>1</sup> . Total 2012 top up allowances amounted to some 23 000 euro. They are not covered by the Staff Regulations and are therefore irregular.	<b>Completed</b>



Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
<b>2012</b>	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.	<b>Completed</b>
<b>2012</b>	In 2012, the Agency made 20 budget transfers of some 1 million euro and affecting 43 budget lines. This indicates weaknesses in budget planning.	<b>Completed</b>
<b>2012</b>	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.	<b>Ongoing</b>
<b>2012</b>	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 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.	<b>Ongoing</b>

<sup>1</sup> \_\_\_Article 3 of Annex VII provides for twice the basic allowance of 252,81 euro = 505,62 euro.

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

<p><b>Areas of Union competence deriving from the Treaty</b></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"> <li>(a) ensure the functioning of the energy market;</li> <li>(b) ensure security of energy supply in the Union;</li> <li>(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and</li> <li>(d) promote the interconnection of energy networks.</li> </ul> <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><b>Competences of the Agency</b></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><b>Objectives</b></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><b>Tasks</b></p> <ul style="list-style-type: none"> <li>– To complement and coordinate the work of National Regulatory Authorities,</li> <li>– to participate in the creation of European network rules,</li> <li>– to take, under certain conditions, binding individual decisions on terms and conditions for access and operational security for cross-border infrastructure,</li> <li>– to give advice on various energy-related issues to the European institutions,</li> <li>– to monitor and report developments on the energy markets,</li> <li>– to formulate a proposal to the Commission on the annual cross-border infrastructure compensation sum for the ITC mechanism,</li> <li>– to 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,</li> <li>– to assess the operation and transparency of different categories of market places and ways of trading,</li> <li>– to 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,</li> <li>– to assist the NRAs in assessing the consistent application of the Projects of Common Interests (PCIs) identification criteria/Cost-Benefit Analysis (CBA) methodology, in evaluating their cross border relevance within a region and in presenting such an assessment to the Regional Groups,</li> <li>– to provide an opinion on the draft regional lists of the electricity and gas PCIs and on the consistent application of the criteria and the cost-benefit analysis across regions,</li> <li>– to provide an opinion to the Commission and the Member States on the methodologies for a harmonised energy system-wide CBA at Union-wide level proposed by the ENTSOs,</li> <li>– to monitor the implementation of PCIs,</li> <li>– to facilitate the sharing of good practices and provide recommendations on incentives and</li> </ul>

	<p>common methodology to evaluate the incurred higher risks of investments in electricity and gas transmission.</p>
<b>Governance</b>	<p><b>Administrative Board</b></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 work programme and the budget. It ensures that the Agency carries out its mission and performs the tasks assigned to it in accordance with the Agency Regulation.</p> <p><b>Director</b></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><b>Board of Regulators</b></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 alternate, nominated by the national regulatory authority from each Member State.</p> <p><i>Tasks</i></p> <ul style="list-style-type: none"> <li>– the Board provides opinions to the Director on the opinions, recommendations and decisions that are considered for adoption,</li> <li>– provides guidance to the Director in the execution of its tasks,</li> <li>– delivers an opinion to the Administrative Board on the candidate to be appointed as Director, and</li> <li>– approves the work programme of the Agency.</li> </ul> <p><b>External audit</b></p> <p>European Court of Auditors.</p> <p><b>Discharge authority</b></p> <p>European Parliament acting on a recommendation from the Council.</p>
<b>Resources made available to the Agency in 2013 (2012)</b>	<p><b>Budget 2013 (2012)</b></p> <p>11,9 (7,2) million euro</p> <p><b>Staff as at 31 December 2013 (2012)</b></p> <p>Posts listed in the establishment plan: 49 (43)</p> <p>Posts occupied on 31 December: 49 (42)</p> <p>Other staff: 20 (14)</p> <p>Total staff: 69 (57), of which assigned to:</p> <ul style="list-style-type: none"> <li>– operational tasks: 41 (34)</li> <li>– administrative tasks: 28 (23)</li> </ul>
<b>Products and services 2013</b>	<ul style="list-style-type: none"> <li>– One Framework Guideline (Gas: FG on rules regarding harmonised transmission tariff structures). Public consultations organised as required under Article 10 of Regulation (EC) No 713/2009, including workshop.</li> <li>– Network codes <ul style="list-style-type: none"> <li>(a) Seven Reasoned Opinions on Network Codes (Electricity: Network Code on Forward Capacity Allocation, Network Code on System Operations, Network Code on Operational Planning and Scheduling, Network Code on Load Frequency Control and Reserve, Network Code on Demand Connection; Gas: Network Code on Balancing and Network Code on Interoperability and Data Exchange).</li> </ul> </li> </ul>

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- (b) Four Qualified Recommendations on Network Codes (all in Electricity: Network Code for Requirements for Grid Connection Applicable to all Generators, Network Code on Capacity Allocation and Congestion Management, Network Code on Operational Security and Network Code on Operational Planning and Scheduling).
  - (c) Three Recommendations (Electricity: Network Code on Demand Connection, Network Code on Load Frequency Control and Reserves; Gas: Network Code on Gas Balancing of Transmission Networks).
  - Opinion on ENTSO-E Work Programme for 2013.
  - Opinion on ENTSO-E Work Programme for 2014.
  - Opinion on Capacity Market for the ITRE Committee of the European Parliament.
  - Opinion on the ENTSO-E Winter Outlook Report 2012/2013 and Summer Review 2012.
  - Opinion on whether long run average incremental costs are suitable for the assessment of infrastructure costs to be used in the inter-transmission system operator (TSO) compensation mechanism.
  - Opinion on the ENTSO-E R&D Roadmap 2013-2022 and implementation Plan 2014-2016.
  - Opinion on ENTSO-E Annual Report 2012.
  - Opinion on ENTSO-E Summer Outlook Report 2013 and Winter Review 2012/2013.
  - Opinion on the ENTSO-E Manual of Procedures (Transparency Platform).
  - Opinion on ENTSG 2011 Annual Report.
  - Opinion on ENTSG 2013 Work Programme.
  - Opinion on 2012/2013 Gas Winter Supply Outlook.
  - Opinion on Gas Regional Investment Plans (GRIPS) 2011(12) - 2020(21).
  - Opinion on Gas Summer Supply Outlook.
  - Opinion on ENTSG 2012 Annual Report.
  - Opinion on Gas TYNDP 2013-2022.
  - Opinion on the format, defined by ENTSG, which can be used to download data from the transparency platform (Regulation 715/2009, Annex I, 3.1.1.(1) (e)).
  - Opinion on ENTSG 2014 Work Programme.
  - Opinion on the consistent application of the criteria and the CBA methodology for submitted projects across regions and evaluation of their European added value.
  - Guidance on Development of Network Code amendment proposal on Incremental and New Capacity (Gas).
  - Update of the 2nd edition of the Guidance on the REMIT application, 3<sup>rd</sup> edition of the guidance on the application of REMIT definitions, and update of Q&A paper.
  - Recommendation on New Regulatory Framework for Inter-TSO Compensation.
  - Recommendation to the European Commission on the Records of Transactions (balancing market contracts and transportation contracts).
  - Recommendation regarding Cross-border Cost Allocation Requests submitted in the framework of the first Union list of electricity and gas projects of common interest.
  - Annual Report on REMIT activities.
  - ITC monitoring report 2012.
  - Report on Capacity Remuneration Mechanisms and the Internal Electricity Market.
  - Report on ENTSO-E and ENTSG implementation of the tasks in Article 8(1), (2) and (3) of Regulation 714/2009 and Article 8(1), (2) and (3) of Regulation 715/2009 respectively.
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- High-Level Conclusions of an Internal Workshop (with concerned NRAs) on Loop flows.
  - A Joint ACER-CEER Market Monitoring Report (Article 11 of Regulation (EC) No 713/2009) was issued on 28 November; a presentation took place in Brussels.
  - The Regional Initiatives Status Review for 2012 was published in February.
  - Four On-line Gas Regional Initiatives (GRIs) and Four On-line Electricity Regional Initiatives (ERIs) quarterly reports were published.
  - On 17 May the Agency organised its Annual Conference "Energy Markets: 2014 and beyond"; 200 participants attended.
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*Source:* Annex provided by the Agency.

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