

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



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 European Agency for Cooperation of Energy Regulators
for the financial year 2011

together with the Agency's replies

INTRODUCTION

1. The European Agency for Cooperation of Energy Regulators (hereinafter "the Agency"), 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 is given new additional responsibilities, together with national regulatory authorities, regarding the monitoring of the European wholesale energy market³.
2. The Commission granted financial autonomy to the Agency on 8 March 2011. The audited period for the 2011 financial year therefore runs from 8 March to 31 December 2011.

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

¹ OJ L 211, 14.08.2009, 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.

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

STATEMENT OF ASSURANCE

4. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union, the Court has audited the annual accounts⁴ of the Agency, which comprise the “financial statements”⁵ and the “reports on the implementation of the budget”⁶ for the financial year ended 31 December 2011, and the legality and regularity of the transactions underlying those accounts.

The Management’s responsibility

5. As authorising officer, the Director implements the revenue and expenditure of the budget in accordance with the financial rules of the Agency, under his own responsibility and within the limits of the authorised appropriations⁷. The Director is responsible for putting in place⁸ the organisational structure and the internal management and control systems and procedures relevant for drawing up final accounts⁹ that are free from material misstatement, whether due to fraud or error, and for ensuring that the transactions underlying those accounts are legal and regular.

⁴ These accounts are accompanied by a report on the budgetary and financial management during the year which gives further information on budget implementation and management.

⁵ The financial statements 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.

⁶ The budget implementation reports comprise the budget outturn account and its annex.

⁷ Article 33 of Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72).

⁸ Article 38 of Regulation (EC, Euratom) No 2343/2002.

⁹ The rules concerning the presentation of the accounts and accounting by the Agencies are laid down in Chapters 1 and 2 of Title VII of Regulation (EC, Euratom) No 2343/2002 as last amended by Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.7.2008, p. 23) and are integrated as such in the Financial Regulation of the Agency.

The Auditor's responsibility

6. The Court's responsibility is to provide, on the basis of its audit, the European Parliament and the Council¹⁰ with a statement of assurance as to the reliability of the annual accounts of the Agency and the legality and regularity of the transactions underlying them.
7. The Court conducted 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 that the Court plans and performs the audit to obtain reasonable assurance as to whether the annual accounts of the Agency are free of material misstatement and the transactions underlying them are legal and regular.
8. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the transactions underlying them. The procedures are selected based 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 requirement of the legal framework of the European Union, whether due to fraud or error. In assessing those risks, the auditor considers internal controls relevant to the preparation and fair presentation of the accounts and supervisory and control systems implemented to ensure legality and regularity of underlying transactions, in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of accounting policies used and reasonableness of accounting estimates made, as well as evaluating the overall presentation of the accounts.
9. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for the opinions set out below.

¹⁰ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002.

Opinion on the reliability of the accounts

10. In the Court's opinion, the Agency's Annual Accounts¹¹ present fairly, in all material respects, its financial position as of 31 December 2011 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 officer¹².

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

11. In the Court's opinion, the transactions underlying the annual accounts of the Agency for the financial year ended 31 December 2011 are legal and regular in all material respects.

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

COMMENTS ON BUDGETARY AND FINANCIAL MANAGEMENT

13. The Agency's total budget amounted to 4,8 million euro, out of which 1,5 million euro (31 %) of appropriations were not committed. The amount was entirely paid back to the Commission. Appropriations amounting to 0,9 million euro (29 % of total appropriations) were carried forward to 2012. The carry-forward was particularly high for Title II (administrative expenditure) with 0,3 million euro (59 % of total Title II appropriations) and Title III (operational expenditure) with 0,4 million euro (59 % of Title III appropriations). The level of

¹¹ The Final Annual Accounts were drawn up on 19 June 2012 and received by the Court on 2 July 2012. The Final Annual Accounts, consolidated with those of the Commission, are published in the Official Journal of the European Union by 15 November of the following year. These can be found on the following website <http://eca.europa.eu> or <http://www.acer.europa.eu/>.

¹² The accounting rules adopted by the Commission's accounting officer are derived from International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, in their absence, International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

payments against commitments was also low with 41 % for Title II and 41 % also for Title III. 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.

OTHER COMMENTS

14. 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.

15. 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 agents who are not nationals of the Member State where they are employed; such payments are irregular.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 5 September 2012.

For the Court of Auditors



Manuel da SILVA CALDEIRA

Manuel da SILVA CALDEIRA
President

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 of 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, and - 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>Composition:</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>Tasks:</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>Composition:</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>Tasks:</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>Court of Auditors.</p> <p>Discharge Authority</p> <p>Parliament, acting on recommendation from the Council.</p>
<p>Resources made available to the Agency in 2011</p>	<p>Final Budget</p> <p>4,8 million euro</p> <p>Staff as at 31 December 2011</p> <p>Authorised: 40 Occupied: 39 Other posts: 12</p> <p>Total: 39 ,assigned to the following duties:</p> <ul style="list-style-type: none"> - operational tasks: 28 - administrative and support tasks: 11
<p>Products and services 2011</p>	<ul style="list-style-type: none"> - 5 Framework guidelines (Electricity: FG on Grid Connections, FG on Capacity Allocation and Congestion Management, and FG on System operations; Gas: FG on Capacity Allocation Mechanisms for the European Gas Transmission Network, FG on Gas Balancing in Transmission Systems). Public consultations organised as required ex art. 10 of Regulation (EC) No 713/2009, including workshops; - Opinion on ENTSO-E and ENTSGO Statutes, List of Members and Rules of Procedure; - Opinion on ENTSGO EU Wide Ten-Year Development Plan was adopted; - Opinion on ENTSO-E 2012 Work Programme was adopted; - Data requirements and indicators for monitoring ex art. 11 of Regulation (EC) No 713/2009; - Official opening (3 March 2011) and development of the Agency's website; - Two Agency Working groups established (Electricity and Gas WGs) and the Rules for the functioning of the Working groups were agreed; - The coordination role over the activities of the Regional initiatives was taken over from ERGEG; - New competence for the Agency was acquired via the Regulation on Energy Market Integrity and Transparency, which entered into force on 28 December 2011. Seminar on 28 November 2011. - Guidance on the application of the definitions listed in Article 2 of REMIT was issued on 20 December 2011. Establishment of a web platform for receiving notifications of delayed publication of inside information and suspected breaches of market abuse prohibition from market participants and persons professionally arranging transaction, respectively.

Source: Information provided by the Agency.

THE AGENCY'S REPLY

13. During its first operational year, ACER had to recruit most of its staff which represented a challenge and resulted in late occupancy of opened positions, which had a significant impact on the Agency's budget implementation rate. This also influenced the estimation of the procurement needs and led to a concentration of procurement procedures towards the end of the year, resulting in a high level of carry forwards to honour the signed legal and budgetary commitments. With most of the positions occupied at the beginning of 2012, ACER is now in a much better position to implement its assigned tasks and the corresponding budget.

14. ACER accepts the remarks of the Court and has already implemented corrective measures.

15. ACER accepts the preliminary finding and has already stopped the payments of allowances to Slovenian SNEs.

