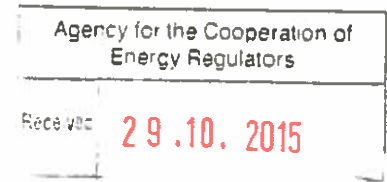




COUR DES  
COMPTES  
EUROPÉENNE

**Vítor Caldeira**  
Président

Luxembourg, le 22 OCT. 2015  
SCC064374FR01-15PP.doc



ACER-IN-2015-1234

Monsieur le Président,

Conformément aux dispositions du règlement (UE, Euratom) n° 966/2012 du Parlement européen et du Conseil du 25 octobre 2012 relatif aux règles financières applicables au budget général de l'Union et abrogeant le règlement (CE, Euratom) n° 1605/2002 du Conseil, j'ai l'honneur de vous communiquer ci-joint un exemplaire, dans toutes les langues officielles de l'Union européenne, du rapport de la Cour des comptes sur les comptes annuels de l'Agence de coopération des régulateurs de l'énergie relatifs à l'exercice 2014.

Ce rapport est accompagné des réponses de l'Agence et fera l'objet d'une publication au Journal officiel de l'Union européenne.

Veuillez agréer, Monsieur le Président, l'expression de ma très haute considération.

Vítor CALDEIRA

Monsieur Razvan Eugen NICOLESCU  
Président du Conseil d'administration  
de l'Agence de coopération des  
régulateurs de l'énergie

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EUROPEAN  
COURT  
OF AUDITORS

**Report on the annual accounts  
of the Agency for the Cooperation of Energy Regulators  
for the financial year 2014  
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 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 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:

- (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 2014, 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> ***Annex II*** summarises the Agency's competences and activities. It is presented for information purposes.

<sup>4</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.

- (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 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

<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.

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

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 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 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>9</sup>.

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 2014 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.

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<sup>9</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

**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 2014 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 1,57 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>10</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.

12. 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>11</sup>. Although this will allow the Agency to finance its future REMIT-related activities, this is in contradiction with the budgetary principle of annuality.

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<sup>10</sup> Commission Implementing Regulation (EU) No 1348/2014 (OJ L 363, 18.12.2014, p. 121).

<sup>11</sup> Article 13 of the EU Financial Regulation stipulates that amounts can be carried over for one financial year only.

### OTHER COMMENTS

13. 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.

### FOLLOW-UP OF PREVIOUS YEARS' COMMENTS

14. An overview of the corrective actions taken in response to the Court's comments from the 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 September 2015.

*For the Court of Auditors*



Vitor Manuel da SILVA CALDEIRA

*President*

Annex IFollow-up of previous years' comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2012	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.	Completed
2012	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.	Completed
2013	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.	Completed
2013	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.	N/A
2013	The Agency held 5,5 million euro in cash at year-end, which included some 3 million euro relating to the late budget amendment. Nevertheless, average cash balances during the year were significantly higher than justified by operational requirements.	Completed



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

<p><b>Areas of Union competence deriving from the Treaty</b> (Article 114 (ex Article 95 TEC) and Article 194 of the Treaty on the Functioning of the European Union)</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> (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)</p> <p>Regulation (EU) No 347/2013 of the European Parliament and</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>- Complement and coordinate the work of National Regulatory Authorities,</li> <li>- participate in the creation of European network rules,</li> <li>- take, under certain conditions, binding individual decisions on terms and conditions for access and operational security for cross border infrastructure,</li> <li>- give advice on various energy-related issues to the European institutions,</li> <li>- monitor and report on developments in the energy markets,</li> <li>- formulate a proposal to the EU Commission on the annual cross-border infrastructure compensation sum for the ITC mechanism,</li> <li>- participate in the process for the selection of Projects of Common Interest (PCIs), including by issuing opinions on the consistent application of the selection criteria and of the cost-benefit analysis across regions, and</li> </ul>

<p><i>the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulation (EC) No 713/2009 and (EC) No 715/2009</i></p>	<p>monitor the implementation of PCIs,</p> <ul style="list-style-type: none"> <li>- take decisions on investment requests for PCIs, including on cross-border cost allocation, if the relevant national regulatory authorities for energy fail to reach an agreement,</li> <li>- monitor trading on EU wholesale energy markets to detect and prevent market abuse, in cooperation with national regulatory authorities for energy, ESMA, the competent financial authorities of the Member States and, where appropriate, national competition authorities,</li> <li>- assess the operation and transparency of different categories of market places and ways of trading,</li> <li>- 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> </ul>
<p><b>Governance</b></p>	<p><b>Administrative Board</b></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><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>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 alternate nominated by the national regulatory authority of each Member State.</p> <p>Tasks:</p> <p>The Board</p> <ul style="list-style-type: none"> <li>- provides opinions to the Director on many of 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,</li> <li>- approves the work programme of the Agency.</li> </ul> <p><b>External audit</b></p>

	<p>Court of Auditors.</p> <p><b>Discharge Authority</b></p> <p>European Parliament acting on a recommendation from the Council.</p>
<p><b>Resources made available to the Agency in 2014 (2013)</b></p>	<p><b>Final Budget 2014</b></p> <p>10,88 (11,9) million euro</p> <p><b>Staff as at 31 December 2014</b></p> <p>Posts listed in the establishment plan: 54 (49)</p> <p>Posts occupied on 31 December: 52 (49)</p> <p>Other staff: 18 (20)</p> <p>Total staff: 72 (69), of which assigned to:</p> <ul style="list-style-type: none"> <li>– operational tasks: 48 (41)</li> <li>– administrative tasks: 24 (28)</li> </ul>
<p><b>Products and services 2014</b></p>	<p>(a) Network codes: Two Opinions on Network Codes (Electricity: Network Code on High Voltage Direct Current Connections and DC-connected power park modules and Network Code on Electricity Balancing). Three Recommendations on Network Codes (Electricity: Network Code on Forward Capacity Allocation and Network Code on HVDC and DC-connected power park modules; and Gas: Network Code on Interoperability and Data Exchange Rules).</p> <p>(b) Nineteen Opinions related to ENTSOs: ENTSO-E Guideline for Cost Benefit Analysis of Grid Development Projects (CBA); Opinion on ENTSG's Winter Supply Outlook 2013/14; Opinion on the Proposal for Operation of the ENTSO-E Central Information Transparency Platform; Opinion on the ENTSG Cost-Benefit Analysis Methodology (CBA); Opinion on the ENTSO-E Winter Outlook Report 2013/14 and Summer Review 2013; Opinion on the Statutes and Rules of Procedure on the basis of the proposed amendments to the Articles of Association of ENTSG; Opinion on the National Ten-Year Electricity Network Development Plans pursuant to Article 8(11) of Regulation (EC) No 714/2009 - (TYNDP); Opinion on the Appropriate Range of Transmission Charges paid by Electricity Producers; Opinion on the Annual Report 2013 of ENTSG; Opinion on the ENTSO-E Implementation Plan 2015-2017 of the R&amp;D Roadmap 2013-2022; Opinion on the ENTSO-E Annual Report 2013; Opinion on ENTSG's Summer Supply Outlook 2014; Opinion on the ENTSO-E Summer Outlook Report 2014 and Winter Review 2013/2014; Opinion on the Implementation of Investments in Electricity Transmission Networks; Opinion on the ENTSO-E Incidents Classification Scale – Methodology 2014; Opinion on the ENTSG's 2015 Annual Work Programme; Opinion on ENTSG's Winter Supply Outlook 2014/15; Opinion on the draft ENTSO-E Work Programme 2014 through December 2015; Opinion on the draft ENTSO-E SOAF (Scenario Outlook and Adequacy Forecast) 2014-2030.</p> <p>(c) One decision on the investment request including cross-border cost allocation for the Gas Interconnection Poland-Lithuania Project of Common Interest No 8.5 (GIPL).</p>

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	<p>(d) REMIT-related documents: Mechanisms for sharing information; Market Monitoring Handbook; Requirements for the registration of Registered Reporting Mechanisms (RRMs); Transaction Reporting User Manual; Manual of procedures, standards and electronic formats for the reporting of data; List of Organised Market Places.</p> <p>(e) A Joint ACER-CEER Market Monitoring Report (Article 11 of Regulation (EC) No 713/2009) released on 22 October, public presentation in Brussels.</p> <p>(f) The (Annual) Regional Initiative Status Review for 2013 published in January. Two on-line Gas Regional initiative (GRI) and two on-line Electricity Regional Initiative (ERI) progress reports also published.</p> <p>(g) Agency's 3rd Annual Conference "REMITage: The age of REMIT?" in Ljubljana on 10 June 2014, with around 200 participants, and concurrent publication of the Agency's 2nd annual REMIT Report.</p>
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*Source:* Annex provided by the Agency.

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### THE AGENCY'S REPLY

11. The Agency had requested the necessary funds to implement REMIT in its draft budget for 2013, adopted by its Administrative Board in March 2012. However, these funds were initially not assigned to the Agency in the 2013 EU budget and only made available through a transfer of 2,989 million euro from DG ENER in October 2013, resulting in an amendment of the Agency's budget on 31 October 2013. Despite this late amendment, the Agency successfully managed to commit it against the awarded, REMIT-related contracts. The adoption of the Commission Implementing Regulation for REMIT was expected for January but delayed until December 2014 and the Agency had to put on hold the part of the project that could only progress once the Implementing Regulation entered into force.

12. The Agency notes that the multi-annual nature of the REMIT project might be incompatible with the principle of budget annuality, especially given the delays in making funds available and in the adoption of the REMIT Implementing Acts (see above).

Under these circumstances, the Agency did its best to ensure the proper and effective implementation of REMIT, by committing the received amended budget before the end of the year 2013 towards the required investment in infrastructure to host the Agency's REMIT Information System (ARIS) and the fees for the operating licences, thus preparing for launching the operations once the Implementing Acts entered into force (expected beginning of 2014). The Agency is using non-differentiated appropriations for its commitments and payments, therefore the 2013 committed appropriations could either be used before the end of 2014 or cancelled.

The mentioned delays required the Agency to amend some contracts in order to postpone the delivery of the contracted services and not to cancel the funds received via the 2013 budget amendment. The use of pre-financing payments backed-up by bank guarantees was found to be the best solution to ensure the future implementation of REMIT.

The Agency is currently analysing the possibility of using differentiated appropriation in the future in order to minimise the level of carry-overs.

13. The establishment of a European School in Ljubljana has been discussed several times with the Ministry of Foreign Affairs and the Ministry of Education. The Agency has been recently informed that the Slovenian Government is assessing the necessary legal amendments and arrangements in order to find the optimal solution. Until now, adequate schooling has been provided to the children of Agency's staff through the public and private educational establishments.