



**CONSOLIDATED ANNUAL ACTIVITY REPORT ('CAAR')<sup>1</sup>**  
**OF**  
**THE AGENCY FOR THE COOPERATION OF ENERGY**  
**REGULATORS ('ACER')**

**2018**



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<sup>1</sup> Pursuant to FR No 2018/1046, FFR No 1271/2013 - Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 70 of Regulation (EU, Euratom) No 2018/10462 of the European Parliament and of the Council.

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*Working towards a single energy market  
to the benefit of all EU consumers*

## ADMINISTRATIVE BOARD'S ANALYSIS AND ASSESSMENT

The Administrative Board has examined the Agency's 2018 Annual Activity Report and notes that:

- The Agency aligned its policies and operational achievements with the EU priorities in the field of energy in line with ACER 2018 work programme: the completion of the internal energy market and the monitoring of trading in the wholesale energy markets of the Union remained at the heart of the Agency's objectives;
- the challenges faced by the Agency related to the completion of the internal energy market, including delivering the benefits to EU energy consumers, are correctly identified and the operational achievements contributing to the implementation of the EU energy policy priorities are convincingly presented;
- the Agency largely met its objectives through prioritisation and redeployment of staff , to overcome the difficulties encountered due to resource constraints and the need to allocate resources for peaks of unpredictable workload, especially when called to replace NRAs in the adoption of decisions requesting high-level expertise;
- resource constraints had an impact on the extent to which the Agency was able to contribute to the completion of the internal energy market to the benefit of energy consumers and the competitiveness of the Union, since some of the Agency's work could not been done to the extent which would be desirable;
- the Agency's key achievements for the year 2018 were:
  - a) the publication of the Annual Market Monitoring Report on the remaining barriers to the Internal Energy Market;
  - b) the successful shift of the Agency's work to accompanying and monitoring the implementation of the already adopted network codes in electricity and gas;
  - c) the oversight and implementation of Network Codes;
  - d) the implementation of the regulation on wholesale energy market integrity and transparency (REMIT) with:
    - i. an increasing number of alerts being transmitted to NRAs for further investigation;
    - ii. the conclusion of a substantial number of preliminary initial assessments of potential market abuse cases (the Agency prioritises the market monitoring of cross-border trading activities);
    - iii. the improvement of data quality, by providing updates of guidance documents on data reporting.
- the Agency reached a high level rate of execution for commitment appropriations;
- the key performance indicator targets were largely met, with the exception of a few indicators concerning the improvement of REMIT data quality due to the lack of sufficient resources and

staff satisfaction. The crucial issue of staff satisfaction was discussed in details with the Administrative Board. The Agency has adopted an ambitious action plan with measures to be implemented under the close monitoring of the Administrative Board, so as to ensure that an engaging and , attractive working environment is established;

- the Director has provided a clear declaration of assurance;
- controls and supervisory checks performed in 2018 provided no evidence of significant or repetitive errors in reporting by Agency departments, budget execution, human resources management or KPI implementation;
- monitoring reviews showed no instances of inadequate or ineffective controls that could expose the Agency to key risks;

It concluded that:

The Agency has successfully implemented the 2018 work programme. The available resources allocated to the activities described in the report were used for their intended purpose in accordance with sound financial management principles.

For the Administrative Board:

Dr Romana Jordan,

*The Chair*

## INTRODUCTION: THE AGENCY IN BRIEF (Objectives & Key Achievements)

### THE INITIAL MISSION

The Agency for the Cooperation of Energy Regulators (ACER) was established as part of the new institutional framework defined by the Third Energy Package to support the completion of the Internal Energy Market and to fill the regulatory gap emerging in this process due to the mainly national competences of National Regulatory Authorities.

In its initial period, the Agency focused its effort on tasks related to the development of common market and network operation rules — through the preparation of Framework Guidelines, the evaluation of the Network Codes drafted by the European Networks of Transmission System Operators (ENTSOs) and, more recently, the promotion of their (early) implementation — and to the planning of the development of European energy networks — with its opinions on the 10-year network development plans (TYNDPs). Since the Network Codes and Guidelines entered into force, the Agency has been monitoring their implementation and effects. This complements the more general monitoring of developments in the Internal Energy Market, which the Agency has been performing since 2012, with the publication of annual Market Monitoring Reports.

### AN EXPANDING ROLE

New important responsibilities were assigned to the Agency at the end of 2011 by the Regulation on wholesale energy market integrity and transparency (REMIT). REMIT aims to increase transparency of wholesale energy markets and to promote their integrity by introducing explicit prohibitions of market-abusive behaviour and envisaging the establishment of a new, sector-specific, monitoring framework to detect and deter market manipulation and insider trading. In this respect, the Agency was tasked with collecting data related to all wholesale energy market transactions, irrespective of where they are concluded (on organised markets, through other trading venues or over the counter) and of the type of product traded (for physical delivery or financial settlement) and to all orders to trade, as well as fundamental data describing the physical state of the electricity and gas systems. It was also tasked with conducting an initial assessment and analysis of transactions and orders to trade in wholesale energy products to identify suspicious events, which are then notified to NRAs, which are responsible for investigation and enforcement.

The monitoring framework introduced by REMIT is unprecedented worldwide in terms of its geographical and product scope, and its implementation has posed a formidable challenge for

the Agency, NRAs, market participants - which have to report trade data - and other stakeholders — which are responsible for reporting fundamental data. Following the entry into force of the REMIT Implementing Acts in January 2015, the new monitoring framework with its reporting obligations went live in October 2015.

With the information available, the Agency is set to detect instances of possible market manipulation, attempted market manipulation and trading based on inside information. However, the Agency's ability to do so depends on the availability of expert staff and financial resources, in an area — wholesale energy market monitoring — which is very different from the original focus of the Agency's activities (according to the Third Energy Package).

In 2013, Regulation (EU) No 347/2013 on Guidelines for trans-European energy infrastructure ("TEN-E Regulation") introduced a new framework for the development of critical energy infrastructure — projects of common interest (PCIs) — setting out a role for the Agency in the process for identifying and monitoring PCIs and in assisting NRAs in dealing with investment requests submitted by PCI promoters, including for cross-border cost allocation. While the new tasks assigned to the Agency by the TEN-E Regulation are in an area - energy network development planning - on which the Agency had already been working on the basis of the provisions of the Third Energy Package (e.g. the opinions on the TYNDPs), these new tasks have added substantially to the workload of the Agency.

Regulation (EU) No 2017/1938 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, which applies from 1 November 2017, also added a number of new tasks to the Agency.

Finally, with the entry into force of the Network Codes and Guidelines envisaged, as secondary legislation, by the Third Energy Package, the Agency was assigned additional important tasks and responsibilities in supporting the coordination of NRAs and the harmonisation of Internal Energy Market rules, including by stepping in when NRAs are unable to reach an agreement on binding subsidiarity instruments (the so-called "terms and conditions or methodologies").

#### **A CHALLENGING FUTURE**

The Agency operates in a challenging and rapidly changing environment. Its mission has been significantly expanded over the last years and is again being modified with the entry into force of the legislative acts of the 'Clean Energy for All Europeans' Package.



## INSTITUTIONAL FRAMEWORK

From an institutional point of view, the Agency is accountable to the discharge authority (the European Parliament) and works closely with the European Commission's Directorate-General (DG) for Energy. The regularity of its accounts is subject to supervision by the European Court of Auditors.

## MISSION STATEMENT

The European Union Agency for the Cooperation of Energy Regulators fosters a fully integrated and well-functioning Internal Energy Market, where electricity and gas are traded and supplied according to the highest integrity and transparency standards, and EU consumers benefit from a wider choice, fair prices and greater protection. In this way, the Agency also contributes to the security of energy supply in the EU. For this purpose, we work with European Institutions, NRAs and stakeholders.

## OBJECTIVES IN A WIDER CONTEXT

The Agency contributes to the European Commission's **"Energy Union and Climate"** priorities: the completion of the internal energy market and the security of energy supply, for both of which rules for efficient market functioning, energy market integrity and transparency, and the strengthening of the energy infrastructure are key components.

When it comes to its regulatory activities, the Agency is an independent EU body; however together with the Commission's Directorate General for Energy, it has a decisive role for the implementation of the Energy Union, in particular its energy security and internal energy dimension and thereby contributes to **"a Union that Protects, Empowers and Defends"**.

## AGENCY OBJECTIVES

### ➤ **Objective 1: Contribute to the completion of the Internal Energy Market and monitor its functioning**

Supporting the integration of the electricity and gas markets in the European Union was the main role assigned to the Agency by its founding Regulation and other provisions in the Third Energy Package. While significant progress has been achieved and tangible benefits



are being delivered to EU energy consumers, this remains an ongoing process that entails the following:

- Contributing to the implementation of the provisions in the adopted Network Codes and Guidelines. This includes a variety of specific tasks assigned to the Agency by these legal provisions that are instrumental to the integration and well-functioning of the internal electricity and gas markets. It also includes deciding on binding tertiary instruments (on so-called “terms and conditions or methodologies”) when NRAs fail to agree or upon their joint request;
- Monitoring developments in the Internal Energy Market, the implementation of the Network Codes and Guidelines and their effects. These monitoring activities may result in recommendations for amending Network Codes or Guidelines or for other regulatory interventions, which may require the involvement of the Agency.

➤ **Objective 2: Contribute to the Infrastructure Challenge**

The TEN-E Regulation introduced a new framework aimed at promoting the development of PCIs, i.e. infrastructure projects that are particularly beneficial in supporting a more integrated European energy market. As one of the many players involved, the Agency aims to contribute to the infrastructure challenge in line with its legal mandate. This entails the following:

- Assessing the cost-benefit analysis methodologies developed by the ENTSOs;
- Providing opinions on the draft PCI lists, in particular on the consistent application of the cost-benefit analysis and the selection criteria;
- Annual monitoring of the progress of the implementation of the PCIs
- Taking decisions, when it is called to do so, on investment requests and cross-border cost allocation submitted by PCI promoters.

PCI lists are adopted every two years. Ten-Year National Development Plans (TYNDPs), which are also developed every two years, but at present in different years for the electricity and gas sector, serve as the basis for the PCI lists. Investment requests may be submitted by promoters of PCIs included in the lists. Therefore, the TYNDP/PCI identification/investment request process runs over two years, repeating itself every two years. The Agency is crucially involved in all the stages of this process.

The Agency strives to enable efficient infrastructure investments to take place, with a particular focus on investments of cross-border relevance. Such investments should help

further integrate the Internal Energy Market, as well as to increase security of supply. In particular, they should contribute to the elimination of the so-called energy islands.

➤ **Objective 3: Increased integrity and transparency of wholesale energy markets**

A well-functioning pan-European energy market demands that energy is traded according to the highest transparency and integrity standards, so that prices reflect the fundamentals of demand and supply. This is also a major contributor to security of energy supply. REMIT aims at establishing the conditions for this to happen. Therefore, its effective implementation constitutes an integral part of the creation of an efficient Internal Energy Market, of promoting security of energy supply and, thus, of the Energy Union's strategy. REMIT introduced a new, unprecedented, sector-specific market-monitoring framework to detect market abuse in European wholesale energy markets, thus deterring such behaviour.

The Agency aims to ensure that REMIT is fully implemented so that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.

➤ **Objective 4: Contribute to address longer-term regulatory challenges**

The Conclusions Paper "Energy Regulation: A Bridge to 2025", issued in September 2014, presented the European energy regulators' conclusions on the challenges facing the electricity and gas sectors over the following decade and provided recommendations on the appropriate regulatory response within the framework of the Europe's Internal Energy Market. The Conclusions Paper covered a wide range of aspects related to: the gas and electricity sectors, including: the changing face of electricity generation in the European Union; the changing role of Distribution System Operators; consumer empowerment and protection; and retail markets. The document also included a chapter on the governance of the process for the development of the internal European gas and electricity markets.

The 'Clean Energy for All Europeans' Package addresses many of the challenges identified in the Conclusions Paper. Once the new legislation is enacted, an enhanced framework to deal with the future challenges will be in place, in which the Agency will play an enhanced role.

The Commission has recently indicated its intention to develop proposals for the recast of the gas sector legislation in the Third Energy Package. The Agency will aim to contribute to the development of these proposals by providing an assessment of the opportunities for enhancing the gas sector regulation and market design, based on its ongoing monitoring activities.

## **THE AGENCY'S KEY ACHIEVEMENTS IN 2018**

### **ELECTRICITY SECTOR:**

#### **First decision on an exemption request for an interconnector**

The Agency took its first ever decision on an exemption request for an interconnector project (the Aquind decision). This decision contributed to clarify the links between Regulation (EC) 714/2009 (which foresees the possibility for exemptions under certain conditions) and the TEN-E Regulation (which enhances the possibility for third-party project promoters to benefit from the regulated regime). The request for exemption was rejected.

#### **Market Monitoring Report**

The Wholesale Electricity volume of the Market Monitoring Report, which continues to be the flagship report of the Agency, contributed to shape the final outcome of the Clean Energy Package discussions.

#### **Implementation of the Target Model for the Internal Electricity Market**

All the Agency's decisions on the terms and conditions or methodologies adopted under the Guideline on Capacity Allocation and Congestion Management implementation framework (including the Decision on the Intraday cross-zonal gate opening and gate closure times and the Decision on the Algorithms for Day-ahead and Intraday) crucially contributed to the implementation of the target model for the Internal Electricity Market.

### **GAS SECTOR:**

#### **Gas Transmission Tariffs reports**

For the first time, the Agency issued reports on the consultation documents on national gas transmission tariff structures, based on the Network Code on Harmonised Gas

Transmission Tariff Structures. This involved a significant amount of work of a complex and technical nature over a limited amount of time. Although the reports are non-binding, they are read with great interest by NRAs and stakeholders. By the end of 2018, the Agency had issued 9 reports, while at least a further 14 reports are expected to be issued in 2019.

## **REGULATION ON WHOLESALE MARKET MONITORING AND INTEGRITY (REMIT):**

### **Collecting millions of records of transactions per day under resource constraints**

The Agency collects EU wholesale energy market data for assessing and monitoring wholesale energy markets. During 2018, the Agency collected, on average, 2.4 million records of transactions and orders to trade per day (73 million records per month), which increased to around 3 million records of transactions and orders to trade per day towards the end of the year. The data collected is not only used by the Agency for its wholesale energy market surveillance activities and its monitoring of the Internal Energy market, but also by NRAs for their market monitoring at national and regional level. The increase in data collection exceeded all expectations and was due to increasing market liquidity following the implementation of network codes (e.g. the launch of the Cross-Border Intra-Day – XBID - platform) and market developments such as the increased use of algorithmic trading especially in intraday and day-ahead electricity markets. The Agency managed to handle such an increase in the number of records reported despite the severe limitation in its financial and human resources.

### **Delivering on market monitoring despite resource constraints**

Given the persistent and severe limitation in its human and financial resources, the Agency had to define strict priorities for its implementation of market surveillance under REMIT. The Agency has therefore decided to focus its market surveillance activities on cross-border trading, as this is where it has a unique advantage vis-à-vis NRAs.

During 2018, the automated market surveillance screening of the data collected triggered around 8,000 alerts per month, of which 1,000 were classified as “high-intensity” alerts that were manually assessed by surveillance experts of the Agency. The results, i.e. potential breaches of REMIT, were shared with NRAs for their follow up, as they are responsible for investigation and enforcement under REMIT<sup>2</sup>. In several instances the Agency followed the

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<sup>2</sup> Significant advances by NRAs were registered in the field of REMIT investigations in 2018, with five sanctions being imposed for market abuse totalling more than EUR 5 million in fines. Several other decisions and sanctions were applied for breaches of Articles 8 and 9 of REMIT.

shared alerts up by providing a preliminary initial assessment kick-starting the investigation of the relevant national regulatory authority.

In addition, the Agency received in 2018 over a hundred suspicious transactions reports from market participants, organised market places and other stakeholders. The Agency assessed these reports in order to complement them with further information and to securely notify them to the appropriate NRA(s) for their further follow up.

### **Ensuring consistency in the implementation of REMIT across the Union**

In 2018, the Agency provided further guidance to NRAs on the application of market manipulation in REMIT through the Guidance Note on cross-zonal transmission capacity hoarding in wholesale electricity markets.

## **TASKS DEPRIORITISED OR NOT EXECUTED DUE TO LACK OF RESOURCES**

The following tasks were deprioritised - cancelled, postponed or in part combined with other tasks - due to the limitation in available human resources:

### **ELECTRICITY:**

- The internal monitoring reports on G-charge and on the use of congestion revenues were cancelled (there is no legal obligation regarding the publication of these reports and the frequency of the monitoring exercise).

### **GAS:**

- A number of Network Codes implementation monitoring activities were postponed.
- The Gas Regional Initiatives Status Review Report was not published (the report is not a legal obligation).

### **ELECTRICITY AND GAS:**

- The retail chapter of the Market Monitoring Report was considerably reduced in scope.

### **MARKET INTEGRITY AND TRANSPARENCY:**

- The review of the REMIT operations and rulebook, in particular with regard to the review of the electronic formats for data collection (XML schemas), was limited to some minimum activities in 2018 (notably the publication of the evaluation of responses on

the Public Consultation on the revision of electronic formats for transaction data, fundamental data and inside information reporting at the end of 2018, the publication of only one updated REMIT Q&A paper during 2018 and the publication of an Open Letter on inside information disclosure) and otherwise postponed to 2019;

- Improvement of the market participant registration format pursuant to Article 9(3) of REMIT and improvements of the Agency's IT solution CEREMP were postponed to 2019 or even beyond, depending on the available financial resources;
- The handling of sample transaction data requests by market participants from the Agency's REMIT Information System in order to verify completeness, accuracy and timeliness of data submission to the Agency to facilitate market participants' compliance with Article 11(2) of the Implementing Regulation were postponed to 2019 or even beyond, depending on the available financial resources.
- Cooperation with NRAs, ESMA, competent national financial market authorities and other authorities and with supervisory authorities, international organisations and the administrations of third countries remained at the previous level of cooperation.

The following activities cannot currently be delivered and the Agency cannot currently fulfil its mandate under REMIT due to insufficient human and financial resources:

- collection of EMIR<sup>3</sup> data and of additional data on emission allowances (Article 10(3) of REMIT) for market monitoring purposes;
- establishment of data sharing mechanisms with national financial market authorities, national competition authorities and other relevant authorities (Article 10(1) of REMIT);
- publication of aggregated REMIT information for transparency reasons according to Article 12(2) of REMIT, including making the commercially non-sensitive trade database for scientific purposes.

Moreover, the available human resources for market surveillance tasks were insufficient to fulfil appropriately the mandate of the Agency. As a result:

- the market monitoring activities were necessarily scaled down to what could be provided given the resources available. More specifically, in 2018 market monitoring focussed on cross-border trading aspects as NRAs could not cover this themselves as they do not have and cannot have an EU-wide vision of wholesale energy trading;
- the development of additional "bespoke alerts", which are used to screen the EU wholesale markets and detect anomalous instances of trading behaviour, were significantly slowed down.

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<sup>3</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1–59).

Furthermore, the Agency is responsible for ensuring that NRAs and other relevant authorities carry out their tasks under REMIT in a coordinated and consistent way. In this context, the Agency introduced case prioritisation in order to determine which of the received cases should be given priority in being notified to relevant regulators. Cases where there was the risk of an inconsistent application of the REMIT provisions were assigned high priority. Case prioritisation assisted in managing the growing backlog of cases for which consistency assessments cannot be performed due to the lack of human resources.



## FOREWORD BY THE DIRECTOR OF THE AGENCY

I am pleased to present the 2018 Consolidated Annual Activity Report (CAAR) of the Agency for the Cooperation of Energy Regulators, which describes the activities performed by the Agency and the extent to which it met the objectives set out in its Work Programme. Last year's CAAR was supposed to be the last one that I presented, as my term as Director was expiring on 15 September 2018. However, the process for the selection of the next Director did not result in any new appointment and I was asked to remain in office on an ad interim basis.

The regulatory part of this CAAR is structured along the lines of the Agency's programming document in terms of activities and deliverables, while the administrative part and the related annexes contain the information the Agency is required to report in line with the template for the CAAR for decentralised agencies.

2018 was another crucial year for the Agency and its future as the negotiations between the European Parliament and the Council on the Clean Energy Package legislation drew to an end. This legislation includes the recast of the Agency's founding Regulation, where the new text assigns significant additional responsibilities to the Agency. This is the case both in new areas – such as, for example, bidding zone review, European resource adequacy assessment, cross-border participation in capacity remuneration mechanisms and risk preparedness – and by transferring directly to the Agency the competence to decide on EU-wide “terms and conditions or methodologies”, the detailed technical rules for the implementation of the electricity guidelines (on Capacity Allocation and Congestion Management, on Forward Capacity Allocation, on System Operation and on Balancing).

Until now, the decisions on “terms and conditions or methodologies” were referred to the Agency only when the competent national regulatory authorities failed to reach an agreement or upon their joint request. And, in fact, an increasing number of the most technical or contentious terms and conditions or methodologies were already adopted by the Agency: one in 2016, five in 2017, eight in 2018 and already four in the first four months of 2019. These decisions, together with the monitoring of the developments in the market and the implementation of network codes, have been the main focus of the Agency in the electricity sector in 2018.

The Agency was also called to adopt an individual decision on the exemption request for a cross-border electricity interconnector between France and Great Britain, following the failure of the respective national regulatory authorities to agree. In its decision, the Agency confirmed the important principle of the supremacy of the regulatory regime for energy infrastructure and the need to safeguard the interest of EU consumers. The Agency decision was appealed

before the Agency's Board of Appeal, which upheld it, and now both the Agency's decision and the Board of Appeal's ruling have been appealed to the General Court of the European Union.

Monitoring market developments and network code implementation remained a priority also in the gas sector, where, in 2018, the Agency started to review the national consultation documents for the new "reference price methodologies" for the setting of transmission tariffs, as required by the Network Code on harmonised transmission tariff structures in gas. By the end of the year, the Agency had issued nine reports on national consultation documents, assessing their consistency with the criteria prescribed by the network code.

In the wholesale market surveillance area, the Agency, having achieved a sufficient level of quality of the transaction data reported under REMIT, was finally able in 2018 to start notifying suspicious instances of market abuse to national regulatory authorities, for investigation and enforcement. Over time, the number of records of transactions reported to the Agency significantly increased. When the reporting obligations came into effect in October 2015, the Agency used to receive approx. 1 million records per day. In 2018, daily reporting reached 2 million on average, but it exceeded 3 million by the end of the year. At the moment, the Agency is collecting more than 80 million records of transactions, including orders to trade, per month. The Agency's automated screening identifies around 8-10,000 anomalous events (triggered alerts), i.e. instances which, while not necessarily in breach of the REMIT provisions, appear to require further attention. Given the limited resources of the Agency, both in terms of expert analysts and of funds for further developing the automated screening platform, the Agency is currently able to manually assess only a fraction of the identified anomalous events, in the order of 1000 per month. Such an assessment results in around 70 notifications of anomalous events to national regulators each month. With a more adequate level of resources, which the Agency has been requesting for many years, the implementation of REMIT could be more effective, with all anomalous events assessed, thus ensuring proper surveillance of wholesale energy trading in Europe. This is, I believe, what REMIT tasked the Agency to do, and it is unfortunate that the Agency has so far not been put in a position to deliver fully on this legislative mandate.

Over the last year, the number of enforcement actions by national authorities against market participants for abusive conduct have increased, with total fines amounting to around EUR 5.4 million in 2018. Two observations are in order here. On the one side, it is clear that while the majority of market participants adhere to adequate integrity and transparency standards, there are clear benefits in maintaining an effective surveillance framework in place, as evidenced by the enforcement actions taken by national authorities. On the other side, while the above-mentioned fines are typically paid into national budgets, their level, even at this early stage of

the implementation of REMIT, has already reached the same order of magnitude of the Agency's resource gap. This confirms the validity of investing EU taxpayers' money in effective market surveillance, also in monetary terms, and not only in terms of deterring market abuse and of providing confidence to consumers that the prices they pay are reflective of the market fundamentals and are not distorted by abusive behaviour.

The brief description provided above, which only highlights some of the main achievements of the Agency in 2018, should be sufficient to illustrate the extent to which its scope has expanded over time. This however has not been matched by an equivalent increase in the available resources. The inconsistency between its legislative mandate and the allocated resources has been plaguing the Agency for years, and is likely to get worse in the near future. In my forward to last year's Annual Activity Report, I indicated the kind of benefits that a well-functioning energy market can bring to EU energy consumers. In this foreword, I have highlighted the benefits, including in monetary terms, that more effective market surveillance could bring. It is therefore unfortunate that other deserving priorities in the EU budget prevent the Agency from being properly financed and staffed, and the energy sector from reaping the full benefits of liberalisation and of a competitive market.

With the growing number of complex and contentious decisions taken by the Agency, the number of appeals has also increased. The need to defend its decisions in front of the Board of Appeal or the General Court, or to defend the rulings of the Board of Appeal in front of the General Court, put additional strain on the Agency's resources, especially considering that the appellants typically use law firms to litigate their cases, while the Agency cannot afford such support. However, it is undisputable that the possibility of judicial or quasi-judicial review of regulatory decision is an essential part of modern and proper regulation. The issue is rather again one of resources on the Agency's side. However, what I find regrettable is that some of these appeals have been lodged by national regulatory authorities which had participated in forming the Agency's decision. In fact, all the decisions appealed so far were adopted following a favourable opinion of the Board of Regulators, which is based on a large (two-third) majority of its members, who represent national regulators. Therefore, while the legal right of all those affected, including national regulatory authorities, to appeal an Agency's decision is, again, undisputable, the very governance of the Agency, with the key role of national regulatory authorities in the decision-making process, might suggest that national regulatory authorities should accept the democratic deliberation process in the Board of Regulators, even when they dissent from it, and do not seek to overturn the Agency's decision, to which the Board of Regulators has contributed, by resorting to the judicial review.

As far as the administrative management of the Agency is concerned, the legality and consistency of the Agency's 2018 financial operations were confirmed by the European Court

of Auditors, which did not formulate any comment on the way in which the Agency has been run. In 2018 the Agency also achieved all its budget implementation targets.

In 2018, the Internal Audit Service (IAS) performed an audit on IT Security in the Agency and Information Security in the "REMIT" domain. The audit resulted in eight recommendations, none of which was marked as critical or very important. Moreover, the critical recommendation formulated by the IAS in 2017 following the HRM audit was downgraded in 2018 to 'very important'.

As in previous year, I take the opportunity of this Foreword to express my sincere gratitude to my colleagues in the Agency for their effort, commitment and, in many cases, pure enthusiasm.

The significant amount of work which the Agency delivered in 2018, as in previous years, would have not been possible without the staunch support of the national regulatory authorities through their contributions to the Agency's Working Groups, and, at statutory level, in the Board of Regulators.

The Administrative Board, with members appointed by the Institutions, is in charge of ensuring that the Agency carries out its mission and performs the tasks assigned to it by legislation. I am grateful to the Board's members for their confidence in me and their support, especially at difficult times.

As in previous years, we involved stakeholders in much of what we do, through public consultations, workshops and other similar events. I would like to take this opportunity to commend them on their engagement, contribution and support.

I am also extremely grateful to the European Parliament, most notably its Committee on Industry, Research and Energy. They have been the Agency's closest ally over these years. I have to devote a special word of thanks to Morten Helveg Petersen, MEP, the European Parliament's rapporteur for the recast of the Agency's founding Regulation. His relentless dedication to enhancing the regulatory framework of the Internal Energy Market and the role of the Agency was key in bringing the political negotiations on this piece of legislation to a successful conclusion, where the Agency has been given a stronger mandate commensurate to the higher ambitions posed on this Market.

I would also like to thank the Directorate-General for Energy of the European Commission for the very constructive cooperation at technical level, which has been instrumental in achieving many of the advances in the energy market integration process.

To conclude, I can only repeat what I already stressed last year. It has been a great honour for me to have had the opportunity to serve as Director of the Agency since its establishment, an opportunity for which I am extremely grateful. I wish the Agency, my colleagues and my

successor all the best for a future in which they are called to take on an even more relevant and challenging role.

Ljubljana, 13 June 2019

Alberto Pototschnig, Director ad interim

## PART I: REGULATORY ACHIEVEMENTS IN 2018<sup>4</sup>

### STATEMENT BY CLARA POLETTI, CHAIR OF THE BOARD OF REGULATORS (BoR)

The effective functioning of the Internal Energy Market across Europe, to the benefit of EU consumers, is at the heart of the Agency's mission and objectives. To that end, the Agency plays a critical role in identifying the remaining barriers to competition at wholesale and retail levels, in supporting the development and implementation of Network Codes (NCs) and Guidelines (GLs), in providing support on infrastructure related issues, and in actively monitoring the integrity and transparency of wholesale energy markets. The contribution of the 28 NRAs in the Agency's Board of Regulators, Working Groups and Task Forces is fundamental to the Agency's success in delivering its tasks and to the achievement of our common objectives.

In 2018, the Agency published the seventh Market Monitoring Report (MMR), which analysed market performance in 2017. The latest edition of the MMR showed that household gas and electricity prices have decreased for a second year in a row, but are still higher than in 2008. The MMR also revealed that there are high levels of price convergence in the gas wholesale market, which indicates that current market design is working. The report found a more efficient use of existing commercial cross-border capacities in the electricity wholesale markets. However, discrimination of cross-border exchanges remains a challenge and therefore remains a priority area in order to deliver an effective internal energy market. The MMR in part relies on substantive data input of the NRAs.

A crucial step towards ensuring healthy markets across Europe is the full implementation of NCs and GLs. In 2018, the Agency, the European Commission, ENTSO-E and ENTSO-G, continued to cooperate in the Network Code Implementation and Monitoring Group for high-level strategic coordination on implementation issues. The Agency also facilitated stakeholder involvement through the European Stakeholder Committees and the Gas Network Codes Functionality Platform. NRAs undertake a substantial amount of implementation work, as under their current mandate they are required to take decisions on proposals submitted by all TSOs and/or all NEMOs on certain terms and conditions under the NCs and GLs. However, in 2018, the Agency took seven such decisions at the request of NRAs.

The Agency continued to carry out its various tasks relating to European cross-border infrastructure development. Through the Agency's Task Forces, Working Groups,

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<sup>4</sup> The independent section on regulatory activities as per Article 15(4) of Regulation (EC) No 713/2009.

Coordination Groups and the BoR, NRAs have been fully involved in each of the Agency's reports and acts considered for adoption, as well as in the work to ensure market integrity and transparency.

A fundamental objective of the Agency and NRAs is to have energy traded according to the highest standards of transparency and integrity, so that prices reflect the fundamentals of demand and supply. Regulation (EU) No 1227/2011 (REMIT) introduces a comprehensive monitoring framework for wholesale markets, aimed at detecting and deterring market abuse. The Agency monitors the market, while NRAs have the competence to investigate cases of market abuse and impose penalties. The Agency provides non-binding guidance on the application of REMIT (pursuant to its Article 16(1)) to ensure NRAs carry out their tasks under this regulation in a coordinated and consistent way. Since 2015, the Agency has also kept a regular channel of communication to stakeholders for guidance on the application of REMIT and transaction reporting through the issuance of the REMIT Quarterly. Because of the Agency's work, and cooperation with NRAs, several NRAs imposed penalties on market players in 2018.

Overall, the Agency has delivered on its Work Programme by fulfilling its duties and delivering its objectives, despite insufficient human resources and budget constraints. Such constraints continue to pose a risk to the timely delivery of the Agency's tasks, a reprioritisation of objectives, and reducing the scope of some reports and opinions. This is particularly impending after the increase of responsibilities of the Agency resulting from the Clean Energy for all Europeans legislation (CEP).

Indeed, activities of the Agency and NRAs do not remain static over time, but evolve due to changes in European energy policy. Last year marked a critical point in the evolution of European energy policy, as the negotiations on the CEP reached their concluding stages, resulting in more competences and responsibilities for the Agency. Aside from related short-term implementation challenges, European energy regulators will also face challenges emerging from the transition of the energy system due to decarbonisation. In 2018, the European Commission launched a discussion on the role of gases in the decarbonisation of the EU's energy sector and on potential measures for upgrading the EU internal gas market and aligning the gas market regulatory framework to the new electricity market design. In order to contribute to this debate, we have started discussions in the BoR on future challenges and kicked-off the development of a paper, which will focus on regulatory challenges emerging from the transition of the energy system due to decarbonisation. There will be a particular focus on regulatory challenges and actions to take with regard to the internal gas market and energy sector-coupling issues.



Increased collaboration is key to meeting the challenges mentioned above and to contributing to the ambitious goal of the Agency to deliver a truly integrated EU energy market that works for all European energy consumers. It is therefore an honour to have been elected as Chair of the Agency's Board of Regulators in January 2019. I would like to use this opportunity to thank Garrett Blaney for his achievements as the Chair of the Board of Regulators over the past year.

Ljubljana, 16 May 2019

## A. (POST-) COMPLETION OF THE INTERNAL ENERGY MARKET

### ELECTRICITY NETWORK CODES

In 2018 the work of the Agency focused on accompanying and monitoring the implementation of Network Codes. More specifically, during 2018, the Agency worked on the following deliverables (for which the achievements are listed in the respective tables):

| Task   | Preparation for and monitoring of the implementation of the adopted Network Codes and Guidelines   |
|--|--|
| Legal basis                                    | Article 6(6) of Regulation (EC) No 713/2009; Article 9(1) of Regulation (EC) No 714/2009; Article 7(2) of Regulation (EC) No 713/2009  |
| Work Programme objective for 2018              | <p>Specific objectives:</p> <ul style="list-style-type: none"> <li>(a) Timely identification of and reporting on delays in and barriers to the implementation of the Network Codes and Guidelines.</li> <li>(b) Providing opinions on ENTSO-E's plan for the monitoring of the implementation of the adopted Network Codes and Guidelines;</li> <li>(c) Providing opinions and requirements on ENTSO-E and other entity's reports related to implementation monitoring;</li> <li>(d) Determination of a list of relevant information to be communicated by ENTSO-E to the Agency for the purpose of its monitoring activities pursuant to the adopted Network Codes and Guidelines;</li> <li>(e) Providing recommendations to assist NRAs and market players in implementing the Network Codes and Guidelines, where necessary.</li> </ul>   |
| Performance indicators and targets (deadlines) | <p>Continue delivering the implementation monitoring reports and necessary recommendations.</p> <p>The timely delivery of the opinions on ENTSO-E's implementation monitoring plan, of the lists of required information for monitoring the implementation of the adopted Network Codes and Guidelines, and of opinions and requirements on ENTSO-E's and other entities' reports related to implementation monitoring.</p>  |
| Achievement against target                     | <p>In 2018 the Agency issued the following implementation monitoring reports in electricity:</p> <ul style="list-style-type: none"> <li>(a) <a href="#">First implementation monitoring report for Guideline on Forward Capacity Allocation and Guideline on Capacity Allocation and congestion Management</a>;</li> <li>(b) <a href="#">First implementation monitoring report</a> on Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection and Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules;</li> <li>(c) The Agency liaised closely with ENTSO-E concerning ENTSO-E's updated common incident classification scale submitted on 1 August 2018 and for which the Agency issued an <a href="#">opinion</a> on 9 January 2019.</li> </ul> |

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|  | (d) Based on the proposal by all TSOs for the Coordinated Security Assessment Methodology (CSAM) of 1 August 2018, the Agency prepared a set of data/indicators to be monitored in accordance with Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation. The set of data/indicators was first coordinated with NRAs and then sent to ENTSO-E on 1 October 2018 for further coordination, which shall result in a formal data request by the Agency in 2019. |
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| <b>Task</b>                                    | <b>Recommendations to assist NRAs and market players in sharing good practices, where necessary</b>   |
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| Legal basis                                    | Article 7(2) of Regulation 713/2009   |
| Work Programme objective for 2018              | To provide guidance to NRAs, TSOs or market participants on how to implement specific requirements of the Network Codes or Guidelines or of Regulation (EC) No 714/2009 so that they contribute to non-discrimination, effective competition and the efficient functioning of the market. |
| Performance indicators and targets (deadlines) | Timely adoption of the recommendation enabling the addressees to take it into account within their respective processes.  |
| Achievement against target                     | The Agency did not issue any recommendations regarding this issue in 2018.  |

| <b>Task</b>                                    | <b>Investigation of the reasons when TSOs, NEMOs or other entities fail to submit terms and conditions or methodologies for the approval by NRAs, pursuant to the adopted Guidelines and reporting to the Commission</b>  |
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| Legal basis                                    | Article 9(4) of Commission Regulation (EU) 2015/1222, Article 4(4) of Commission Regulation (EU) 2016/1719, Article 4(7) of Commission Regulation (EU) 2017/2195 and Article 5(9) of Commission Regulation (EU) 2017/1485   |
| Work Programme objective for 2018              | To prevent significant delays in the implementation of the CACM Guideline and to facilitate further development in case of failures on TSOs or NEMOs side.  |
| Performance indicators and targets (deadlines) | Timely identification of the failure and communication to the European Commission. Timely delivery of the report on the reasons for failure.  |
| Achievement against target                     | <p>In 2018, the Agency investigated the following cases of failures of submission by TSOs, NEMOs or other entities of terms and conditions or methodologies for approval by NRAs:</p> <ul style="list-style-type: none"> <li>Common proposal by all Nordic TSOs for the determination of LFC blocks in accordance with Article 141(2) of Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation;</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>• Common methodologies by all Core TSOs for a coordinated redispatching and countertrading and for redispatching and countertrading cost sharing by 17 March 2018</li> <li>• Common methodologies by all SEE TSOs for coordinated redispatching and countertrading and for redispatching and countertrading cost sharing by 17 March 2018.</li> <li>• Common methodology by all Baltic TSOs for redispatching and countertrading cost sharing by 17 March 2018.</li> <li>• Common methodologies by all Italy North TSOs for coordinated redispatching and countertrading and for redispatching and countertrading cost sharing by 17 March 2018.</li> </ul> |
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| <b>Task</b>                                    | <b>Assistance to NRAs for the approval of the terms and conditions or methodologies developed by TSOs, NEMOs or other entities pursuant to the adopted Guidelines</b>  |
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| Legal basis                                    | Article 7 and 8 of Regulation 713/2009   |
| Work Programme objective for 2018              | To provide a framework for the coordination of NRAs and to facilitate the reaching of an agreement among the involved NRAs on whether to approve, reject or require amendments to the proposed terms and conditions or methodologies.  |
| Performance indicators and targets (deadlines) | Effective support and coordination of NRAs in taking decisions on the proposed terms and conditions or methodologies within the deadlines specified by the relevant Guidelines.<br>Timely delivery of any Agency's opinion.  |
| Achievement against target                     | <p>In 2018, the Agency followed the discussions and procedures for the approval by NRAs at European level and in some regions in order to be informed about the process and to understand possible reasons for disagreement for the cases where the decisions would be referred to the Agency. In some cases, where the Agency was concerned about the European interest, it also provided its view and informal input to the NRAs to be taken into account in their decisions.</p> <p>Based on the request by the Finnish regulatory authority of 19 January 2018, the Agency issued on 19 April 2018 its <a href="#">Opinion on the application of Article 5 and Article 141(2) of Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation</a>.</p> |

| <b>Task</b> | <b>Coordination of implementation projects established pursuant to the Network Codes and Guidelines and, where relevant, pursuant to the early implementation process</b> |
|-------------|---|
| Legal basis | Adopted Network Codes and Guidelines.   |

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| Work Programme objective for 2018              | To facilitate the implementation of projects and ensure their timely completion, as well as the involvement of stakeholders within the implementation process.   |
| Performance indicators and targets (deadlines) | Completion of specific implementation projects within the deadlines established by the relevant Network Codes and Guidelines.  |
| Achievement against target                     | <p>In 2018, the Agency assisted TSOs and NRAs in the coordination of the following implementation projects:</p> <ul style="list-style-type: none"> <li>• Facilitating the implementation of single day-ahead and intraday coupling. In this context, the Agency also dedicated efforts to solving practical implementation problems, related to multi-NEMO arrangements, cost sharing and reporting, as well as improvements of governance of market coupling operation function. In 2018, the single intraday coupling was implemented on many bidding zone borders in the EU. Further extensions are expected in the following years. Furthermore, the single day-ahead coupling has also been extended to some new borders and activities have been performed to facilitate further extensions and completion of single day-ahead coupling.</li> <li>• Key organisational requirements, roles and responsibilities in relation to data exchange related to operational security in accordance with Article 40(6) of Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation;</li> <li>• Methodology for building the common grid models in accordance with Article 67(1) and Article 70 of Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation;</li> <li>• Methodology for coordinating operational security analysis in accordance with Article 75 of Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation;</li> <li>• Methodologies, conditions and values included in the synchronous area operational agreements in accordance with Article 118 of Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation.</li> </ul> |

| Task   | Facilitation of stakeholder involvement, as required by the adopted Network Codes and relevant Guidelines   |
|--|---|
| Legal basis                                    | Adopted Network Codes and Guidelines. For example, in Commission Regulation (EU) 2015/1222, this task is specified in Article 11.                           |
| Work Programme objective for 2018              | To involve stakeholders within the implementation of the Network Codes and Guidelines and monitor their operation and effect on the Internal Energy Market. |
| Performance indicators and targets (deadlines) | Good level of stakeholder satisfaction and support to the implementation process of the Network Codes and Guidelines.                                       |

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| Achievement against target | The Agency, together with ENTSO-E, continued to organise the European Stakeholder Committees, which were established to inform and consult stakeholders about the requirements in the Guidelines/Network Codes during the implementation period. The Agency and ENTSO-E co-organise regular meetings to identify problems and propose improvements to the Guidelines/Network Codes. There are three Stakeholder Committees: on Grid Connection, on Market and on System Operation, and a Balancing Stakeholders Group. |
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| Task   | <b>Review of the requests for amendments to the adopted Network Codes and Guidelines from interested persons and, where appropriate, based on these requests or upon the Agency's own initiative, preparation of the amendment proposals for the European Commission</b>  |
|--|---|
| Legal basis                                    | Article 7 of Regulation (EC) No 714/2009.   |
| Work Programme objective for 2018              | To improve the requirements and procedures (both technical and governance) for faster implementation and better functioning of Internal Energy Market.  |
| Performance indicators and targets (deadlines) | General level of satisfaction and support of stakeholders and regulators to the proposed amendments of the Network Codes and Guidelines.  |
| Achievement against target                     | <p>In 2018 three Expert Groups were established under the Grid Connection European Stakeholder Committee in order to look into requirements and issues concerning pump-storage hydro power generation modules, identification of storage devices and mixed customer sites with generation, demand and storage, and definition of system users. Stakeholders are likely to request amendments of existing Network Codes on grid connection based on the findings of these three Expert Groups in 2019.</p> <p>The Agency has not yet started the process for amendments of the market related network codes and guidelines since it considers that it would be more useful to do so following the finalisation of the Clean Energy Package. Therefore, the amendment of these guidelines is expected to start in 2019.</p> |

| Task                              | <b>Performance of the specific obligations of the Agency pursuant to the adopted Network Codes and Guidelines</b>   |
|-----------------------------------|---|
| Legal basis                       | Adopted Network Codes and Guidelines.   |
| Work Programme objective for 2018 | To fulfil in a timely manner the Agency's specific obligations pursuant to Network Codes and Guidelines, with the aim of improving transparency and reporting, facilitate cooperation, etc. |
| Performance indicators and        | Timely delivery of the following obligations:   |

|                                       |   |
|---------------------------------------|---|
| <p>targets<br/>(deadlines)</p>        | <ul style="list-style-type: none"> <li>(a) Reporting on different aspects of the Network Codes and Guidelines beyond implementation monitoring (e.g. report on the efficiency of bidding zones pursuant to Commission Regulation (EU) 2015/1222).</li> <li>(b) Monitoring the development of aspects of the Network Codes and Guidelines, as well as entities having obligations pursuant to the Network Codes and Guidelines (e.g. monitoring of NEMO's progress in establishing and performing single day-ahead or intraday coupling and providing reports and recommendations to European Commission pursuant to Article 7 of Commission Regulation (EU) 2015/1222).</li> <li>(c) Overseeing processes and entities' obligations pursuant to the Network Codes and Guidelines (e.g. coordination of monitoring activities of entity or entities performing the Market Coupling Operator (MCO) functions pursuant to Article 82 of Commission Regulation (EU) 2015/1222).</li> <li>(d) Publishing of reports and other documents to be developed pursuant to the Network Codes and Guidelines.</li> <li>(e) Requesting specific actions from different entities pursuant to the Network Codes and Guidelines (e.g. the Agency may request ENTSO-E to draft the technical report on bidding zones and TSOs to launch the review of bidding zones).</li> <li>(f) Maintaining different registers on its website pursuant to the adopted Network Codes and Guidelines (e.g. the Agency needs to maintain a list of designated NEMOs, their status and where they operate pursuant to Article 4 of Commission Regulation (EU) 2015/1222 and a register of all the derogations from grid connection network codes that NRAs have granted or refused).</li> <li>(g) Report on the monitoring of progress in establishing and performing single day-ahead and intraday coupling.</li> <li>(h) Reporting on TSOs', NEMOs' or other entities' failure to submit terms and conditions or methodologies for the approval by NRAs pursuant to the adopted Network Codes and relevant Guidelines.</li> </ul> |
| <p>Achievement<br/>against target</p> | <ul style="list-style-type: none"> <li>(a) The Agency issued a <a href="#">report on the efficiency of existing bidding zones</a>, which was included in the Electricity Wholesale Market Volume of the Agency's Market Monitoring Report. In October 2018 ENTSO-E also issued the first official technical report on bidding zones.</li> <li>(b) The Agency monitored the progress of NEMOs in their tasks of implementing the single day-ahead and intraday coupling as well as the progress of TSOs in their task for coordinated capacity calculation and coordination of redispatching and countertrading. The report on this monitoring is provided in the <a href="#">FCA and CACM implementation monitoring report</a>. The Agency regularly informed the European Commission on progress and in case of delays in implementation.</li> <li>(c) The Agency monitored the progress of NEMOs in establishing the Market Coupling Operator (MCO) function for the single day-ahead or intraday coupling. The Agency regularly informed the European Commission with regard to the progress and in case of delays in implementation.</li> <li>(d) The Agency published the <a href="#">report on the costs of establishing, amending and operating single day-ahead coupling (SDAC) and single intraday coupling (SIDC)</a>.</li> </ul>   |



|  |   |
|--|---|
|  | <p>(e) The Agency requested ENTSO-E to draft a new technical report on bidding zones pursuant to Article 34 of the CACM Regulation. Further, the Agency provided ENTSO-E with the list of required information for monitoring related to the guideline on electricity balancing.</p> <p>(f) The Agency significantly revised its website related to electricity market network codes. In the new pages, the Agency maintains all the information related to the implementation of market related network codes, including all the proposals for terms and conditions and methodologies, their approval procedures, relevant reports, documents and an up-to-date list of designated and operating NEMOs.</p> <p>(g) The Agency issued a new <a href="#">report on the implementation of FCA and CACM Guideline</a>. This report provides information on the progress in establishing and performing single day-ahead and intraday coupling.</p> |
|--|---|

| Task   | Monitoring of the effect of Network Codes and relevant Guidelines on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market |
|--|---|
| Legal basis                                    | Article 6(6) of Regulation (EC) No 713/2009; Article 9(1) of Regulation (EC) No 714/2009; Article 7(2) of Regulation (EC) No 713/2009.  |
| Work Programme objective for 2018              | Timely identification and reporting on barriers to market integration as well as on the effect of Network Codes and Guidelines on non-discrimination, effective competition and the efficient functioning of the market.                                |
| Performance indicators and targets (deadlines) | Delivery of the second monitoring report (Target date: Q4 2018) and timely delivery of any relevant recommendations.  |
| Achievement against target                     | The Agency monitored the effect of market related network codes and guidelines within the <a href="#">Electricity Wholesale Market volume of the Agency's Market Monitoring Report</a> .  |

## GAS NETWORK CODES

The gas Network Codes have gone through the full cycle of development and adoption, and all reached the process of implementation at national level and implementation monitoring at European level. The focus in 2018 was on the Balancing Network Code, and the Agency published its third Report providing a quantitative assessment for a newly selected group of balancing regimes. The Agency also prepared and undertook its tasks foreseen in Article 27 of Commission Regulation (EU) 2017/460, resulting in nine Agency Reports published in 2018, and completed its duties pursuant Article 34(1) and published a Report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators.

More specifically, during 2018, the Agency worked on the following deliverables (for which the achievements are listed in the respective tables):

| Task   | <b>Review of the requests for amendments to the adopted Network Codes from interested persons and, where appropriate, based on these requests or the Agency's own initiative, preparation of the amendment proposals for the European Commission</b>     |
|--|--|
| Legal basis                                    | Article 7 of Regulation (EC) No 715/2009   |
| Work Programme objective for 2018              | To collect sensible requests and ensure stakeholder involvement in the process.  |
| Performance indicators and targets (deadlines) | Amendments, public consultations preceding amendments run in a timely and efficient manner.<br>As established by Article 7 of Regulation (EC) No 715/2009, no specific deadlines are laid down.  |
| Achievement against target                     | No formal amendment requests were received and no amendments were proposed on the Agency's own initiative.<br><br>An informal review of possible amendments of the Network Codes was conducted in Spring 2018 at the request of the European Commission. |

| Task   | <b>Implementation of the Network Code on Harmonised Transmission Tariff Structures and methodology reviews</b>  |
|--|---|
| Legal basis                                    | Articles 34 and 36 of Commission Regulation (EU) 2017/460.  |
| Work Programme objective for 2018              | Check the implementation by ENTSOG of the Chapter VIII of the Tariff Network Code on Publication Requirements (Articles 29 and 30) and propose improvements.<br><br>Other tasks relate to the preparation of the report on the allowed/target revenue based on Article 34 Tariff Network Code.  |
| Performance indicators and targets (deadlines) | Checking the Implementation report of ENTSOG: Q1/2018.<br>Report on Allowed Revenues published in Q4/2018 (before the legal deadline of 6 April 2019).  |
| Achievement against target                     | On 30 October 2018, the Agency published <a href="#">its Report on the methodologies and parameters used to determine the allowed or target revenue of gas transmission system operators</a> , following Article 34 of the Network Code on Tariffs.<br><br>The Agency reviewed the Article 30 publication requirements within the <a href="#">Report of the Agency on Allowed Revenues</a> .<br><br>Following a posting on the <a href="#">Functionality Platform</a> and thanks to advancing national implementation processes, progress was achieved regarding the fulfilment of the requirements specified in the Article 29 of the Network Code. This article prescribes the need to publish information before the annual yearly capacity auction. |

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|  | Due to the ongoing reporting on the national tariff consultations, the Agency expects further progress regarding the fulfilment of the publication requirements of Article 30. |
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| Task   | <b>Implementation Monitoring Report updates for the Network Code on Capacity Allocation Mechanisms (with a view on incremental capacity and other amended provisions), Balancing, Interoperability and Data Exchange</b>   |
|--|--|
| Legal basis                                    | Article 9 of (EC) Regulation (EC) No 715/2009  |
| Work Programme objective for 2018              | To provide the reports. Involve ENTSG, TSOs and NRAs in this process, in particular asking them to contribute to data collection, and looking forward whether the Booking platforms implement the necessary IT changes for the incremental capacity process. To provide practical recommendations.   |
| Performance indicators and targets (deadlines) | Implementation monitoring report. Q4/2018.<br>The incremental processes close its first full cycle in July 2019. The reporting will take place once the cycle has been completed.  |
| Achievement against target                     | <a href="#">The Report on the implementation of the Balancing Network Code</a> (Third edition published in August 2018).<br><br>No implementation report on capacity issues was issued in 2018, given that the previous Implementation Monitoring Report indicated that implementation was proceeding well. Laggard countries, like Romania and Bulgaria, received targeted support from the Agency. |

| Task   | <b>Fifth Agency's Report on monitoring of congestion at interconnection points</b>   |
|--|--|
| Legal basis                                    | Point 2.2.1.2 in Annex I to the Commission's Decision of 24 August 2012 (Guidelines for Congestion Management Procedures (CMP)).   |
| Work Programme objective for 2018              | To provide the Report on congestion at interconnection points according to the criteria specific in the Guidelines for Congestion Management Procedures.<br><br>Data consistency and quality, to be addressed with ENTSG where relevant. |
| Performance indicators and targets (deadlines) | Timely delivery of the report.<br>Target date: 1 June 2018   |
| Achievement against target                     | In May 2018 the Agency published <a href="#">The Fifth Report on congestion at interconnection points</a> .  |

| Task   | Follow-up reporting of reviewing obligations as set out in the Network Codes on Balancing, Capacity Allocation Mechanisms and harmonised transmission Tariff structures  |
|--|--|
| Legal basis                                    | <p>Tasks foreseen in</p> <ul style="list-style-type: none"> <li>• Article 27(2) of Commission Regulation (EU) 2017/460</li> <li>• Article 20(3) of Commission Regulation (EU) No. 2017/459</li> <li>• Article 38(4) of Commission Regulation (EU) No. 2017/459</li> <li>• Article 46(4) of Commission Regulation (EU) No. 312/2014</li> </ul>  |
| Work Programme objective for 2018              | <p>Screen the compliance of national tariff consultation documents with the Tariff Network Code.</p> <p>Provide an opinion on the ENTSOG template for the main terms and conditions in the gas transport contracts for bundled capacity products</p> <p>Collecting comprehensive data on the status and application of conditional capacities, in cooperation with ENTSOG where relevant and prepare reporting pursuant to Article 38(4) of the Capacity Allocation Mechanisms NC.</p>   |
| Performance indicators and targets (deadlines) | <p>The Agency's review process on national tariff consultation documents is triggered by the starting date of these consultations. The Agency has two months to react after the closure of these consultations and publish a Report. The Agency has published 9 Reports in 2018.</p> <p>The Agency published its Opinion on the ENTSOG template before the legal deadline of 6 October 2018.</p> <p>Data collection for the conditional capacity report was finalised in 2018. The Report will be published by the foreseen legal deadline of 6 April 2019.</p>  |
| Achievement against target                     | <p>The following Agency's reports were published between July and December 2018:</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for the Netherlands</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Sweden</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Northern Ireland</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Romania</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Denmark</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Poland (National network)</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Poland (SGT)</u></a>;</p> <p><a href="#"><u>Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Portugal</u></a>;</p> |

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|  | <p><a href="#">Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Slovenia".</a></p> <p>On 1 October 2018 the Agency published its <a href="#">Opinion on the draft template for the main terms and conditions in the gas transport contracts for bundled capacity products</a> proposed by ENTSOG.</p> <p>In 2018 the Agency collected comprehensive data on the status and application of conditional capacities. The Agency's <a href="#">Workshop on Conditional capacities</a> was held on 4 December 2018 in Brussels.</p> |
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| Task   | Work on data collection tools to improve monitoring of the Network Codes and assessing their effectiveness in the internal market, including work on data quality, testing of indicators designed to assess Network Codes and designing the tariff indicators               |
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| Legal basis                                    | Article 9 of Regulation (EC) No 715/2009  |
| Work Programme objective for 2018              | To find joint solutions with ENTSOG.  |
| Performance indicators and targets (deadlines) | Improved reports supported by effective data collection tools and good data quality.<br>Established effects monitoring indicators.  |
| Achievement against target                     | Meetings were held with ENTSOG to discuss ways to improve data collection tools and how to improve data sourcing. The Agency worked on the Data Agreement with ENTSOG.<br><br>In the absence of sufficient budget, there was no progress on improvement of IT developments. |

| Task   | Recommendations and cross-border decisions to assist NRAs   |
|--|---|
| Legal basis                                    | Articles 7 and 8 of the Agency Regulation   |
| Work Programme objective for 2018              | Reaching the implementation targets by offering specific advice to NRAs or taking decision where the joint agreement could not be reached.  |
| Performance indicators and targets (deadlines) | The spreading of best regulatory practices across the EU.<br>Providing decisions, recommendations as required by the legislation.   |
| Achievement against target                     | On 16 October 2018 the Agency published <a href="#">a Decision</a> establishing GSA as the booking platform to be used at Mallnow interconnection point (IP) and the 'GCP' virtual interconnection point (VIP) on both sides of the German-Polish border. The decision was appealed and annulled by the Board of Appeal in February 2019. |

| Task   | Facilitation of the stakeholder involvement, as required, pursuant to the adopted Network Codes and Guidelines   |
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| Legal basis                                    | Article 10 of the Agency Regulation.   |
| Work Programme objective for 2018              | Contribute to the completion of the Internal Energy Market and monitoring of its functioning.  |
| Performance indicators and targets (deadlines) | Ongoing dialogue on the regulatory framework aiming at improvements on a national or EU level.   |
| Achievement against target                     | <p>On the joint Agency–ENTSOG <a href="#">Gas Network Codes Functionality Platform</a> all relevant parties could notify implementation and operational issues related to the gas Network Codes and Guidelines in force.</p> <p>The Joint Functionality Platform became effectively active in 2018; out of 10 issues notified, the Agency together with ENTSOG closed 6 issues and 2 issues were almost finalised in 2018.</p> |

## GAS REGIONAL INITIATIVE

Since its formal establishment in March 2011, the Agency has been coordinating the Gas Regional Initiative ('GRI') and monitoring the implementation of regional and cross-regional projects developed in the GRI framework. In 2018, the GRI South South-East region was co-chaired by ERU, the Czech NRA, and a Co-Chair from the Energy Community, the Serbian NRA AERS.

| Task   | Coordination and monitoring of activities for the implementation of Network Codes  |
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| Legal basis                                    | <p>Several articles on regional cooperation in Regulations (EC) No 713/2009 and (EC) No 715/2009</p> <p>Article 6 of Regulation (EC) No 715/2009</p>   |
| Work Programme objective for 2018              | To foster the effective implementation of Network Codes and promote regional market integration.   |
| Performance indicators and targets (deadlines) | Provided in the regional Work Plans.   |
| Achievement against target                     | <p>Meetings were organised successfully to disseminate knowledge across and between the different regions (South-South East, South, Baltic) of the GRI. The Agency strives to ensure that best practices are spread and promoted, for instance on regional market integration.</p> |

| Task   | Continued greater involvement in the SSE region  |
|--|--|
| Legal basis                                    | Several articles on regional cooperation in Regulations (EC) No 713/2009 and (EC) No 715/2009  |
| Work Programme objective for 2018              | The Agency aimed specifically to support the GRI SSE region in order to improve its catching up with Network Code implementation.<br><br>The objective was to improve compliance with the Network Codes and capability to integrate their national markets into the internal market. |
| Performance indicators and targets (deadlines) | Improved scores of the GRI SSE Member States in the NC implementation monitoring reports.  |
| Achievement against target                     | Workshops and other forms of hands-on knowledge transfer and support took place, both from more experienced NRAs and from the Agency, to the NRAs in the South-South East region.  |

## CROSS-SECTOR ISSUES (ELECTRICITY AND GAS)

### MONITORING OF THE INTERNAL MARKETS IN ELECTRICITY AND NATURAL GAS

Article 11 of the Agency Regulation specifies that the Agency shall monitor the internal market for electricity and natural gas, and, in particular, retail prices of electricity and natural gas, access to networks (including the access of electricity produced from renewable energy sources) and compliance with consumer rights as laid down in the Third Energy Package. This activity was carried out in cooperation with the European Commission, NRAs and, with respect to the inclusion of Contracting Parties of the Energy Community with regard to some gas wholesale and retail market aspects, the Energy Community Secretariat.

| Task                              | Seventh Market Monitoring Report  |
|-----------------------------------|---|
| Legal basis                       | Articles 11(1) and (2) of Regulation (EC) No 713/2009<br><br>Article 6(6) of Regulation (EC) No 713/2009; Article 9(1) of Regulation (EC) No 714/2009; Article 9(1) of Regulation (EC) No 715/2009; Network Codes and Guidelines<br><br>Article 7(3) of Regulation (EU) No 1227/2011  |
| Work Programme objective for 2018 | The Market Monitoring Report provides an in-depth analysis of barriers to integration and gives recommendations to the European Parliament and Commission on how to remove them.<br><br>In 2018 the report was expected to cover retail prices in electricity and natural gas, barriers to entry, wholesale market integration (for gas also including the Gas Target Model Metrics), consumer welfare benefits or losses as a result of market integration (or lack thereof), access to networks (including for electricity produced or gas sourced from renewable energy sources) and assess market effects of those Network Codes and relevant Guidelines that are in force and for which a sufficiently long data time series |



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|  | <p>is available, and compliance with consumer rights (including protection and enforcement of consumer rights). The report aimed to cover the operation of different categories of market places and ways of trading. Lastly, the report was also to assess the effect the (implemented) network codes have on the market integration process and the functioning of the Internal Energy Market. For this purpose, the specific data collecting provisions in the relevant Network Codes and Guidelines was to be considered.</p> <p>Due to the limited resources available to the Agency, the Retail Markets Volume was to be limited to the presentation of the trends in retail prices, of the structure of prices paid by energy consumers in EU capital cities and of the mark-ups earned by electricity and gas suppliers. The other Volumes were at risk of being reduced in scope.</p> |
| Performance indicators and targets (deadlines) | <p>Timely completion of the Annual Market Monitoring Report.</p> <p>Expected completion date: November 2018 (with some Volumes possibly delivered earlier).</p> <p>Positive feedback by the European Parliament, the European Commission and stakeholders on the Market Monitoring Report, including the possibility of a survey following the publication and presentation of the report.</p>   |
| Achievement against target                     | <p>The Market Monitoring Report was published according to schedule in line with the set objectives.</p>   |

## TSO COOPERATION

Pursuant to Article 6 of Regulation (EC) No 713/2009, the tasks related to TSO cooperation consist in formulating opinions on draft annual work programmes, draft Community-wide TYNDPs and other relevant ENTSO documents (e.g. annual summer and winter supply outlooks); monitoring ENTSSOs' task execution; monitoring progress in new interconnector projects, implementation of TYNDPs; and regional cooperation of TSOs. The Agency also monitors the implementation of the inter-TSO compensation mechanism pursuant to Article 1(4) of part A of the Annex to Commission Regulation (EU) No 838/2010.

## ELECTRICITY

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| <b>Tasks</b> | <p><b>Opinion on the ENTSO-E electricity Union-wide TYNDP 2018 ;</b></p> <p><b>Opinions on ENTSO-E's annual Summer and Winter supply outlooks;</b></p> <p><b>Report on monitoring the implementation of the electricity Union-wide TYNDP and the progress as regards the implementation of projects to create new interconnector capacity;</b></p> <p><b>Opinion on the electricity national ten-year network development plans to assess their consistency with the Union-wide network development plan and (if appropriate) recommendations to amend the national ten-year network development plans or the Union-wide network development plan;</b></p> |
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|  | <p><b>Annual monitoring report on the implementation and management of the inter-TSO compensation fund;</b></p> <p><b>Opinions on ENTSO-E's annual work programme 2019 and ENTSO-E's annual report 2017;</b></p> <p><b>Opinions on potential updates to ENTSO-E's common network operation tools and common incidents classification scale;</b></p> <p><b>Opinion on ENTSO-E's research and development plan;</b></p> <p><b>Opinion on ENTSO-E's recommendations relating to the coordination of technical cooperation between the Union and third-country transmission system operators.</b></p>  |
| Legal basis                                    | <p>Article 1(4) of Annex Part A, Commission Regulation (EU) No 838/2010</p> <p>Articles 6(3)(b) and 6(4) of Regulation (EC) No 713/2009 in conjunction with Articles 8(3)(d) and 8(3)(e) of Regulation (EC) No 714/2009</p> <p>Article 6(3)(b) of Regulation (EC) No 713/2009 in conjunction with Article 8(3)(f) of Regulation (EC) No 714/2009</p> <p>Article 6(3)(b) of Regulation (EC) No 713/2009 in conjunction with Article 8(3)(a) of Regulation (EC) No 714/2009</p> <p>Article 6(3)(b) of Regulation (EC) No 713/2009 in conjunction with Article 8(3)(a) of Regulation (EC) No 714/2009</p> <p>Article 8(11) of Regulation (EC) No 714/2009</p> <p>Article 6(3)(b) of Regulation (EC) No 713/2009 in conjunction with Article 8(3)(c) of Regulation (EC) No 714/2009</p> <p>Articles 6(7) and 6(8) of Regulation (EC) No 713/2009</p> <p>Articles 6(3)(b) and 6(4) of Regulation (EC) No 713/2009 in conjunction with Articles 8(3)(b) and 8(10) of Regulation (EC) No 714/2009</p> |
| Work Programme objective for 2018              | Monitoring of ITC and issue opinions.  |
| Performance indicators and targets (deadlines) | <p>Timely delivery and quality of the documents.</p> <p>Monitoring report on 2017 ITC implementation: October 2018.</p> <p>Opinion on ENTSO-E's Work Programme and TYNDP: within two months after receipt of the document by ENTSO-E if considered non-compliant.</p> <p>Opinion on ENTSO-E's other documents: after receipt of the document by ENTSO-E.</p>   |
| Achievement against target                     | <p>The Agency adopted and published the following deliverables:</p> <p><a href="#">Report to the European Commission on the implementation of the ITC mechanism in 2017</a>. Due to the prioritisation of available resources, the Report's scope was reduced in line with the Agency's Work Programme.</p> <p><a href="#">Opinion ENTSO-E's annual report 2017</a>;</p> <p><a href="#">Opinions on ENTSO-E's annual Summer and Winter supply outlooks</a>;</p> <p><a href="#">Opinion on ENTSO-E's annual work programme 2019</a>;</p> <p><a href="#">Opinion on the ENTSO-E's updated Opinion on the ENTSO-E's updated Common Incident Classification Scale</a>;</p>   |

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|  | Due to the late submission of the 2018 TYNDP, the TYNDP-related Opinions were postponed to 2019. |
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## GAS

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| <b>Tasks</b>                                   | <p><b>Opinion on ENTSOG's draft Ten Year Network Development Plan 2018;</b></p> <p><b>Opinions on ENTSOG's annual Summer and Winter supply outlooks;</b></p> <p><b>Report on monitoring the implementation of the Union-wide TYNDP and the progress as regards the implementation of projects to create new interconnector capacity;</b></p> <p><b>Reviews and recommendations on national ten-year network development plans to assess their consistency with the Union-wide network development plan and (if appropriate) recommendations to amend the national ten-year network development plans or the Union-wide network development plan;</b></p> <p><b>Opinions on ENTSOG's annual work programme 2019 and ENTSOG's annual report 2017;</b></p> <p><b>Opinion on ENTSOG's common network operation tools including a common incidents classification scale;</b></p> <p><b>Opinion on ENTSOG's research and development plan;</b></p> <p><b>Opinion on ENTSOG's recommendations relating to the coordination of technical cooperation between Union and third-country transmission system operators.</b></p> |
| Legal basis                                    | <p>For all deliverables: Article 6(3)(b) Regulation (EC) No 713/2009.</p> <p>For Work Programme and TYNDP: Article 6(4) Regulation (EC) 713/2009 and Article 9(2) Regulation (EC) No 715/2009.</p> <p>For Opinions on ENTSOG's common network operation tools including a common incidents classification scale and research plans: Article 8(3)(a) of Regulation (EC) No 715/2009.</p>   |
| Work Programme objective for 2018              | <p>Upon receipt of ENTSOG's 2019 Work Programme, the Agency aimed to deliver its opinion within two months from the day of receipt.</p> <p>Other opinions were to be provided upon receipt from ENTSOG of the relevant documents, within a reasonable time (usually two to three months), if they were not already covered by the opinion(s) on ENTSOG's Annual Work Programme and Annual Report.</p>   |
| Performance indicators and targets (deadlines) | <p>Timely delivery of the reports and opinions.</p> <p>Opinion on ENTSOG's Work Programme and TYNDP: within two months after receipt of the document by ENTSOG if considered non-compliant.</p>   |
| Achievement against target                     | The Agency adopted and published the following deliverables envisaged in its 2018 annual Work Programme:  |

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|  | <ul style="list-style-type: none"> <li>• <a href="#">Opinion on ENTSOG's annual summer supply outlook;</a></li> <li>• <a href="#">Opinion on the review of national network development plans to assess their consistency with the EU ten-year network development plan on 18 October 2018;</a></li> <li>• <a href="#">Opinion on ENTSOG's annual report 2017 on 2 October 2018;</a></li> <li>• <a href="#">Opinion on ENTSOG and ENTSOE draft TYNDP Scenario Report on 18 October 2018.</a></li> </ul> <p>The Agency also worked on a number of deliverables that were eventually adopted in 2019:</p> <ul style="list-style-type: none"> <li>• <a href="#">Opinion on ENTSOG's annual work programme 2019;</a></li> <li>• <a href="#">Opinions on ENTSOG's annual winter supply outlook;</a></li> <li>• <a href="#">Opinion on the implementation of the EU gas ten-year network development plan;</a></li> <li>• <a href="#">Opinion on ENTSOG's common network operation tools including a common incidents classification scale</a></li> <li>• <a href="#">Opinion on ENTSOG's recommendations relating to the coordination of technical cooperation between Union and third-country transmission system operators</a></li> </ul> <p>ENTSOG's draft Ten Year Network Development Plan 2018 was not submitted to the Agency in 2018. It is expected to be submitted to the Agency for its Opinion in Q2 2019.</p> |
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## B. Tasks to safeguard the security of gas supply

The tasks assigned to the Agency under Regulation (EU) No 2017/1938 concerning measures to safeguard the security of gas supply refer to taking decisions on CBCA, to issuing opinions on exemption requests, to issuing opinions on the elements of coordinated decisions, to the participation in consultations as pertaining to the establishment of permanent bi-directional capacity at interconnection points, as well as to participation in the Gas Coordination Group.

| Task                              | <p><b>Decisions covering the cross-border cost allocation if the Commission decision requires bi-directional capacity</b></p> <p><b>Opinions on proposals or exemption requests for permanent bi-directional capacity</b></p> <p><b>Opinions on the elements of the coordinated decisions, taking into account any possible objection</b></p> |
|-----------------------------------|---|
| Legal basis                       | Regulation (EU) No 2017/1938  |
| Work Programme objective for 2018 | Specific objective for decisions on CBCA: deliver the decision on CBCA within three months from the day of receipt of the decision from the Commission (with a possible extension of two months in case additional information is needed).  |

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|  | <p>Specific objective for opinions on consultation documents: to be provided if appropriate, within four months from the date of receipt of the consultation document.</p> <p>Specific objective for opinions on the elements of coordinated decisions: deliver the decision within three months from the date of receipt of the coordinated decision.</p> |
| Performance indicators and targets (deadlines) | Timely delivery of the decisions and opinions  |
| Achievement against target                     | In 2018 no decisions or consultation documents were submitted to the Agency for its opinion.   |

## C. GUIDELINES FOR TRANS-EUROPEAN ENERGY INFRASTRUCTURE

The TEN-E Regulation assigned various tasks to the Agency in the field of infrastructure development. In light of Article 13 of Regulation (EU) No 347/2013 which stipulates that Member States and NRAs shall ensure that appropriate incentives are granted to projects of common interest in instances where the promoter(s) of the project incur higher risks for the development, construction, operation or maintenance of the infrastructure, compared to the risks normally incurred by a comparable project, the Agency carried out and published in October 2018 its first '[Summary report on project-specific risk-based incentives](#)'. The report summarises the findings of the Agency's monitoring of practices in application of Article 13 of Regulation (EU) No 347/2013 since 2013.

### ELECTRICITY AND GAS

| Task   | Annual consolidated report on progress of projects of common interest and (if appropriate) recommendations to facilitate the implementation and overcome delays/difficulties in PCI implementation   |
|--|--|
| Legal basis                                    | Article 5(5) of Regulation (EU) No 347/2013  |
| Work Programme objective for 2018              | <p>The consolidated reports follow the submission by project promoters of annual reports for each project of common interest to the competent authority, and either to the Agency or, for projects falling under the categories set out in Annex II.3 and 4 of Regulation (EU) No 347/2013, to the relevant group.</p> <p>Specific objective: provide feedback on the progress of projects of common interest and, if appropriate, provide recommendations to facilitate their implementation and overcome difficulties.</p> |
| Performance indicators and targets (deadlines) | <p>Timely delivery of the report (by 30 June 2018).</p> <p>Upon the receipt of the submissions from project promoters, the Agency was to deliver its consolidated report within 3 months from the day of receipt.</p>  |

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| Achievement against target | In July the Agency adopted its <a href="#">annual consolidated report on the progress of PCIs</a> . |
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## D. ACTIVITIES SUBJECT TO SPECIFIC CONDITIONS

The tasks listed in this section were performed at the request of certain parties, as specified in the Third Package or in the TEN-E Regulation, or triggered by certain external events. When necessary, additional resources were reallocated during the year from other activities. The referral of tasks to the Agency at unpredictable moments, along with the ensuing obligation to produce pre-specified deliverables within tight schedules, posed a considerable challenge to the Agency, a small organisation having to deal with highly demanding workload peaks at irregular intervals.

| Task   | Decision on terms and conditions and operational security of cross-border interconnectors and on exemptions   |
|--|---|
| Legal basis                                    | Article 8 Regulation (EC) No 713/2009; Article 17 of Regulation (EC) No 714/2009; Article 36(4) of Directive 2009/73/EC for decisions on exemptions   |
| Work Programme objective for 2018              | <p>For cross-border infrastructure, the Agency decides upon those regulatory issues which fall within the competence of NRAs, including terms and conditions for access and operational security, (a) in cases in which the competent national regulatory authorities have not been able to reach an agreement within a period of 6 months from when the case was referred to the last of those regulatory authorities or (b) upon a joint request from the competent national regulatory authorities. The competent national regulatory authorities may jointly request that the period be extended by a period of up to 6 months. When preparing its decision, the Agency consults the national regulatory authorities and the transmission system operators concerned and is informed of the proposals and observations of all the transmission system operators concerned.</p> <p>Specific objective: provide support to the NRAs in the regulatory approval process and conclude this process by issuing a decision.</p> |
| Performance indicators and targets (deadlines) | Delivery of a decision within 6 months from the date of referral to the Agency (subject to a possible extension).   |
| Achievement against target                     | <p>In 2018 the Agency became competent to decide and decided on the following regulatory issues that fall within the competence of national regulatory authorities in accordance with Article 8 of Regulation (EC) No 713/2009:</p> <p>In electricity:</p> <ul style="list-style-type: none"> <li>• <a href="#">Decision on the exemption request for the Aquind's interconnector project</a>;</li> </ul>   |

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|  | <ul style="list-style-type: none"> <li>• <a href="#"><u>Decision on the request of the regulatory authorities of Greece and Italy to extend the period for reaching an agreement on the amended proposal for complementary regional intraday auctions in the capacity calculation region Greece-Italy;</u></a></li> <li>• <a href="#"><u>Decision on the request of the regulatory authorities of Austria, France, Italy and Slovenia to extend the period for reaching an agreement on the amended proposal for complementary regional intraday auctions in the capacity calculation region Italy North;</u></a></li> <li>• <a href="#"><u>Decision on the request of all regulatory authorities to extend the period for reaching an agreement on the proposal for the single methodology for pricing intraday cross-zonal capacity;</u></a></li> <li>• <a href="#"><u>Decision on the request of the regulatory authorities of Denmark, Germany, Poland and Sweden to extend the period for reaching an agreement on the proposal for the common coordinated capacity calculation methodology in the capacity calculation region Hansa;</u></a></li> <li>• <a href="#"><u>Decision on all transmission system operators' proposal for intraday cross-zonal gate opening and intraday cross-zonal gate closure times;</u></a></li> <li>• <a href="#"><u>Decision on the all NEMOs' proposal on da-ahead and intraday algorithms;</u></a></li> <li>• <a href="#"><u>Decision on the request of the regulatory authorities of Estonia, Finland, Latvia, Lithuania, Poland and Sweden to extend the period for reaching an agreement on the amended proposal for the methodology for calculating cross-zonal capacity in the capacity calculation region Baltic;</u></a></li> <li>• <a href="#"><u>Decision on the Core capacity calculation region transmission system operators' proposal for fallback procedures.</u></a></li> </ul> <p>The Agency also worked on a number of decisions which were referred to it in 2018 but adopted in 2019:</p> <ul style="list-style-type: none"> <li>• <a href="#"><u>Decision on intraday cross-zonal capacity pricing methodology;</u></a></li> <li>• <a href="#"><u>Decision on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies (referred to the Agency in 2018 and adopted in 2019);</u></a></li> <li>• <a href="#"><u>Decision on the electricity transmission system operators' proposal for amendments of the determination of capacity calculation regions (referred to the Agency in 2018 and adopted in 2019).</u></a></li> </ul> <p>In gas:</p> <ul style="list-style-type: none"> <li>• Regarding the CAM incremental capacity procedure, a decision is expected in 2019.</li> </ul> |
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| Task   | Decisions on investment requests including on cross-border cost allocation  |
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| Legal basis                                    | Article 12(6) of Regulation (EU) No 347/2013  |
| Work Programme objective for 2018              | To provide support to the NRAs in the regulatory approval process and conclude this process by issuing a decision.  |
| Performance indicators and targets (deadlines) | Delivery of a decision within three months from the date of referral to the Agency (subject to a possible extension).   |
| Achievement against target                     | No investment requests were referred to the Agency in 2018.<br>In May 2018 the Agency published the <a href="#">third edition of its Summary Report on CBCA decisions</a> . |

| Task   | Peer reviews upon request by an NRA or the Commission pursuant to Article 7(4) of Regulation (EC) No 713/2009  |
|--|--|
| Legal basis                                    | Article 7(4) and (5) of Regulation (EC) No 713/2009  |
| Work Programme objective for 2018              | To provide a fact-based opinion and, in cases of lack of compliance with the Opinion, within four month from the date of its adoption, of an information report regarding lack of compliance to the Commission and the Member State concerned. |
| Performance indicators and targets (deadlines) | Delivery of the Opinion within four months from the request and submitting the information report regarding lack of compliance to the Commission and the Member State Concerned (if applicable) within a reasonable time.                      |
| Achievement against target                     | In 2018 no requests for peer reviews were received by the Agency in gas.   |

| Task   | Opinions on the application of Union energy legislation upon request by an NRA pursuant to Article 7(6) of Regulation (EC) No 713/2009 |
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| Legal basis                                    | Article 7(6) of Regulation (EC) No 713/2009  |
| Work Programme objective for 2018              | Opinion to support NRAs in the application of the legal provisions at issue.   |
| Performance indicators and targets (deadlines) | Timely delivery of the opinion.  |
| Achievement against target                     | In 2018 no requests were received by the Agency pursuant to Article 7(6) of Regulation (EC) No 713/2009.                               |



| <b>Task</b>                                    | <b>Opinions on preliminary decisions by NRAs on TSO certification when requested by the Commission</b>           |
|--|--|
| Legal basis                                    | Article 9(2) of Regulation (EC) No 713/2009<br>Article 3(1) of Regulations (EC) No 714/2009 and (EC) No 715/2009 |
| Work Programme objective for 2018              | To provide support to the TSO certification process.   |
| Performance indicators and targets (deadlines) | Timely delivery of the opinion to the Commission.  |
| Achievement against target                     | In 2018 no requests for opinions were received by the Agency.  |

| <b>Task</b>                                    | <b>Opinions and recommendations in the areas of its competence, upon request by the European Parliament, the Council or the European Commission</b>          |
|--|--|
| Legal basis                                    | Article 5 of Regulation (EC) No 713/2009   |
| Work Programme objective for 2018              | To provide support and advice to the European Parliament, the Council and the European Commission, by delivering the requested opinions and recommendations. |
| Performance indicators and targets (deadlines) | Timely delivery of the opinions and recommendations.   |
| Achievement against target                     | In 2018 no requests were received by the Agency.   |

## **E. OPINIONS AND RECOMMENDATIONS ON AGENCY'S OWN INITIATIVE**

| <b>Task</b>                       | <b>Opinion on ENTSO-E's and/or ENTSG's methodologies for cost-benefit analysis (CBA), if updated</b>  |
|-----------------------------------|---|
| Legal basis                       | Article 11 of Regulation (EU) No 347/2013   |
| Work Programme objective for 2018 | The CBA methodologies were approved in February 2015 by the Commission and published by ENTSO-E and ENTSG on their websites. The methodologies are to be updated and improved regularly.<br>Specific objective: updated and improved CBA methodology/ies. |

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| Performance indicators and targets (deadlines) | Timely delivery of ad hoc requests for CBA methodology updates and improvements.          |
| Achievement against target                     | In 2018 no updates to the CBA methodologies were submitted to the Agency for its opinion. |

| Task   | Opinions and recommendations in the areas of its competence, to the European Parliament, the Council and the European Commission                                   |
|--|--|
| Legal basis                                    | Article 5 of Regulation (EC) No 713/2009   |
| Work Programme objective for 2018              | Further to enhance the cooperation between NRAs and the effectiveness of the regulatory action at EU level.  |
| Performance indicators and targets (deadlines) | Timely delivery of a recommendation.   |
| Achievement against target                     | In 2018 the Agency did not issue any opinion or recommendation in the areas of its competence to the European Parliament, the Council and the European Commission. |

## F. WHOLESALE MARKET MONITORING: REMIT

Overall, REMIT has been successfully implemented and is operational, however the full implementation of the REMIT operational activities depends on the Agency being assigned the required additional staff.

To monitor wholesale energy markets in the most efficient and effective manner, the Agency analyses the trading and fundamental data in three steps:

- first, an automatic screening of the REMIT data performed by a dedicated IT tool (i.e. SMARTS) on the basis of predefined 'alerts' to detect anomalous instances;
- second, the manual assessment of the automatically identified anomalous instances by a surveillance expert to validate the alert including the checking of the correctness of the data and possible false positives;
- subsequently, on the basis of a market surveillance strategy agreed between the Agency and NRAs, a preliminary initial assessment of anomalous instances to identify suspicious practices that may amount to market abuse.

This analysis inevitably has to be performed by highly qualified surveillance experts, who have to cover trading in all 28 Member States, in energy commodity markets and in energy derivatives, on organised markets and over the counter. Therefore, a wide range of expertise is required.

Given the persistent and severe limitation in its human and financial resources, the Agency has been obliged to deprioritise (cancel, postpone or in part combine with other tasks listed below) some tasks originally foreseen in the 2018 Work Programme, in line with the available human resources (see “Tasks deprioritised or not executed due to lack of human resources”).

In 2018 the Agency implemented the following REMIT-related activities and produced the following deliverables (for which the achievements are listed in the respective tables):

| Task   | Market monitoring of trading activity in wholesale energy markets  |
|--|--|
| Legal basis                                    | Article 7 and 8 of Reg. (EU) 1227/2011   |
| Work Programme objective for 2018              | <p>Market Monitoring of the data collected according to Article 8 of Regulation (EU) 1227/2011.</p> <p>Increased integrity and transparency of wholesale energy markets.</p> <p>Detection of abusive practices and creating a deterrent effect.</p> <p>Multi-annual objective: Increased integrity and transparency of wholesale energy markets</p> <p>Manually assess triggered alerts that could point to a potential market abuse and disseminate them with NRAs in a secure way.</p> <p>Preliminary Initial Assessments of potential market abuse cases.</p>   |
| Performance indicators and targets (deadlines) | 100% of the prioritised cross-border triggered alerts preliminarily assessed and disseminated with NRAs in a secure way.   |
| Achievement against target                     | <p>2018 marked the first full year of successful screening of REMIT trading and order data, i.e. on average 2.4 million per day and 73 million records per month. This resulted in the triggering of 8,000 alerts per month, of which 1,000 were identified as high intensity triggered alerts which were manually assessed and the results were shared with NRAs in a secure way on a monthly basis. For this purpose, the existing secure infrastructure (CMT) was enhanced and a range of procedures between the Agency and NRAs have been put in place and tested with NRAs. Moreover, the alerts were triggered based on a methodology agreed with the NRAs and included a range of bespoke alerts, which the Agency developed and tested internally. The Agency prioritises the market monitoring of cross-border trading activities, as the Agency is in a unique position in having an EU-wide visibility of wholesale energy markets.</p> |

|  |   |
|--|---|
|  | Lastly, the Agency shared with several NRAs five Preliminary Initial Assessments of potential market abuse cases. |
|--|---|

| Task   | Review of the REMIT operations and rulebook  |
|--|--|
| Legal basis                                    | Articles 1(3), 7, 8 and 16 of Regulation (EU) No 1227/2011 and Articles 3(2), 5(2), 10(3) and 11(1) of Commission Implementing Regulation (EU) No 1348/2014  |
| Work Programme objective for 2018              | <p>The Agency planned to undertake a review of the REMIT operations and rulebook in the light of the experience of data collection during 2016 and 2017.</p> <p>A possible result of the review was the formulation of proposals to the European Commission for technical updates of REMIT, pursuant to Article 6 of REMIT, or of the REMIT Implementing Regulation, the drafting of recommendations.</p>  |
| Performance indicators and targets (deadlines) | Outputs delivered by end 2018.   |
| Achievement against target                     | <p>In the light of a lack of resources, in 2018 the Agency was able to perform only a very limited review of the REMIT operations and rulebook, focusing mainly on improving data quality, by providing updates of guidance documents on data reporting. Therefore, expected outputs were limited to additional sets of frequently asked questions (FAQs) on transaction reporting as well as limited updates of the REMIT Reporting User Manual.</p> <p>More specifically:</p> <ul style="list-style-type: none"> <li>• <a href="#">The Transaction Reporting User Manual</a> was updated in 2018 with regard to its newly added Annex VI - Additional information on how to correctly report the Delivery point or zone;</li> <li>• <a href="#">The Manual of Procedures on transaction and fundamental data reporting</a> was updated in 2018 with regard to its newly added Annex IX - List of LNG facilities subject to reporting according to REMIT;</li> <li>• <a href="#">The Public Consultation on the revision of electronic formats for transaction data, fundamental data and inside information reporting</a> was evaluated by 8 December 2018 and the evaluation document was published on the ACER website.</li> <li>• <a href="#">FAQs on transaction reporting</a> were updated once in 2018, but <a href="#">FAQs on collection of fundamental data and inside information collection</a> were not updated in 2018.</li> <li>• <a href="#">The Requirements for the Registered Reporting Mechanisms</a> were not updated in 2018, but their technical documentation was;</li> <li>• No formulation of proposals to the European Commission for technical updates of REMIT, pursuant to Article 6 of REMIT, nor of the REMIT Implementing Regulation, nor recommendations were provided in 2018;</li> <li>• No material update of the <a href="#">fourth edition of ACER Guidance</a> was provided in 2018;</li> </ul> |

|  |  |
|--|--|
|  | In addition, an <a href="#">Open Letter on inside information disclosure and the use of inside information Platforms</a> was published on 30 May 2018 and work on an update of the 4 <sup>th</sup> edition of ACER Guidance on the application of REMIT has started which is supposed to possibly lead to a limited update of the ACER Guidance in this respect during 2019. |
|--|--|

| Task   | REMIT Information Management and operation of the Agency's REMIT information systems   |
|--|--|
| Legal basis                                    | Articles 7-10 and 12 of Regulation (EU) No 1227/2011   |
| Work Programme objective for 2018              | To collect, analyse and provide high-quality REMIT data for monitoring purposes of the Agency, NRAs and other relevant authorities.<br>To operate the Agency's REMIT Information Systems operationally reliable.   |
| Performance indicators and targets (deadlines) | Continuous work on improving REMIT data quality measured by the number of yearly internal REMIT data quality reports;<br>99% system availability.<br>0 breaches of the security system with a data leakage involved.   |
| Achievement against target                     | <p>The risk to operational reliability for reasons of budgetary constraints highlighted in the <a href="#">Annual Activity Report for 2017</a> materialised in 2018 with several unplanned system unavailabilities of the Agency's Business Intelligence Tools for market monitoring and REMIT data analytics. However, overall system availability of the Agency's REMIT Information System (ARIS) remained at 99% and above during 2018. No breaches of the security system, involving data leakage, occurred in 2018. The risks to operational reliability further increased during 2018 for reasons of budgetary constraints.</p> <p>REMIT data were provided for market-monitoring purposes. Data quality of reported data further improved following the publication of a <a href="#">2nd Open Letter on REMIT transaction-reporting data quality</a> on 19 July 2018, but data quality improvement will remain an ongoing objective for the Agency. Due to the Agency's human resources constraints, despite the close cooperation between the MIT and MSC Departments on this topic and the increasing human resources dedicated to this activity by the MIT Department, the focus on data quality remains mainly on Organised Market Place data and less on bilateral contracts and fundamental data. In 2018 the Agency was able to complete comprehensive data quality audits of 5 Organised Market Places, and gave specific feedback to various Registered Reporting Mechanisms and Organised Market Places. The Agency closely collaborated and informed the NRAs by providing detailed analysis of Market Participant activity and timeliness of reporting.</p> |

| Task        | Market conduct coordination of NRAs and other relevant authorities |
|-------------|--|
| Legal basis | Article 16(1) of Reg. (EU) 1227/2011                               |

|  |   |
|--|---|
| Work Programme objective for 2018              | <p>To foster regulatory convergence and to avoid regulatory arbitrage resulting from different regulatory practices under REMIT.</p> <p>To aim at ensuring that NRAs and other relevant authorities carry out their tasks under REMIT in a coordinated and consistent way, including the update of the Agency's guidance on the application of REMIT definitions and coordination of NRAs' investigation activities on cross-border market abuse instances.</p>   |
| Performance indicators and targets (deadlines) | 0% chance of not notifying priority cases <sup>5</sup> to the relevant authorities.   |
| Achievement against target                     | <p>During 2018, the Agency assessed in 102 instances the need to notify and/or involve additional regulatory authorities (including financial authorities) in potential cases of market abuse. The Agency notified all priority cases to the relevant authorities, which was particularly challenging given the lack of appropriate resources and the increasing number of cases per case-handler.</p> <p>With the aim of ensuring that NRAs carry out their tasks under REMIT in a coordinated and consistent way, the Agency was in contact with NRAs on more than 800 instances. More than 700 documents on REMIT breach investigations were shared between the Agency and NRAs. With the same aim, in 2018, the Agency also published a <a href="#">Guidance Note on the application of Article 5 REMIT on the prohibition of market manipulation through transmission capacity hoarding in wholesale electricity markets</a>.</p> <p>Significant advances by NRAs were registered in the field of REMIT investigations in 2018, with five sanctions being imposed for market abuse totalling more than EUR 5 million in fines. Several other decisions and sanctions were applied for breaches of Articles 8 and 9 of REMIT.</p> |

|  |  |
|--|--|
| <b>Task</b>                                    | <b>Cooperation with NRAs, ESMA, competent national financial market authorities and other authorities and with supervisory authorities, international organisations and the administrations of third countries</b>   |
| Legal basis                                    | Articles 1(3), 10 and 16 of Regulation (EU) 1227/2011  |
| Work Programme objective for 2018              | <p>Development of a common understanding on REMIT policy matters with NRAs and promotion of best practices for the application of REMIT.</p> <p>Cooperation with other relevant authorities on REMIT-related matters.</p>  |
| Performance indicators and targets (deadlines) | <p>Publication of REMIT Q&amp;As as required.</p> <p>Promotion of best practices for the implementation of REMIT.</p> <p>Conclusion of memoranda of understanding (MoUs) with additional relevant authorities and implementation of the MoUs in practice through regular meetings with the relevant authorities.</p> |

<sup>5</sup> Priority cases include cases with a higher risk of inconsistent application of REMIT provisions by NRAs (e.g. because more than one NRAs has investigatory and sanctioning powers in a case), and if there is high likelihood for the creation of a cross-border investigatory group.

|                            |   |
|----------------------------|---|
| Achievement against target | <p>Concerning cooperation with NRAs, in 2018 there were four meetings of the ACER Market Integrity and Transparency Working Group and discussion of REMIT Q&amp;As in five REMIT Policy Task Force meetings. Only one updated <a href="#">REMIT Q&amp;A document</a> was published on 22 October 2018.</p> <p>The cooperation with other relevant authorities was de-prioritised in 2018 due to the Agency's lack of resources. No additional MoUs for REMIT purposes were entered into in 2018. The cooperation with ESMA took place on an <i>ad-hoc</i> basis with no bilateral meetings in 2018. There was no interaction with national competition authorities in 2018. Interaction with competent authorities from third countries was limited to the minimum necessary.</p> |
|----------------------------|---|

| Task   | Annual Report on the Agency activities under REMIT   |
|--|--|
| Legal basis                                    | Article 7(3) of Regulation (EU) 1227/2011  |
| Work Programme objective for 2018              | <p>The Agency submits at least on an annual basis a Report to the Commission on its activities under REMIT.</p> <p>In order to streamline the use of human resources, the REMIT Annual Report was to be replaced by the reports of the 'REMIT Quarterly'. In addition, a consistent proportion of the issues to be dealt with in the report was to be included in the Agency's Market Monitoring Report.</p> <p>Specific objectives:</p> <p>To assess the operation and transparency of different categories of market places and ways of trading and, if necessary, make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market.</p> <p>Evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency.</p> <p>Provide recommendations for potential reviews of REMIT, in particular according to Article 6 of REMIT, in view of potential needs to align REMIT definitions with new relevant Union legislation in the fields of financial services and energy, or in view of new developments on wholesale energy markets or of REMIT implementing acts.</p> |
| Performance indicators and targets (deadlines) | Quarterly publications of the REMIT Quarterly.   |
| Achievement against target                     | Publication of the 'REMIT Quarterly' newsletter on a quarterly basis instead of an annual REMIT report.  |

## PART II (a): MANAGEMENT

### 2.1 ADMINISTRATIVE BOARD

The Administrative Board (AB) is the governing body of the Agency. It is charged with the appointment of the main bodies of the Agency, including the Director, and with exercising budgetary powers. Following the approval of the Board of Regulators (BoR), the AB also adopts the work programme of the Agency for the coming year. It also plays a central role in establishing the budget, including the drafting of the financial rules applicable to the Agency. Apart from its budgetary powers, the AB ensures that the Agency carries out its mission and performs the tasks assigned to it in accordance with the Agency Regulation.

#### COMPOSITION

The AB comprises nine members, each with an alternate. Two members and their alternates are appointed by the European Parliament, five members and their alternates are appointed by the Council and two members and their alternates are appointed by the European Commission. The composition of the AB from January 2018 onwards was as follows:

| EUROPEAN PARLIAMENT      |                           |
|--------------------------|---------------------------|
| MEMBER                   | ALTERNATE                 |
| Ms Edit HERCZOG          | Ms Britta THOMSEN         |
| Dr Romana JORDAN         | Prof Uwe LEPRICH          |
| COUNCIL                  |                           |
| MEMBER                   | ALTERNATE                 |
| Mr Martin HANSEN         | Mr Pal KOVACS             |
| Mr Edmund HOSKER         | Mr L'ubomír KUCHTA        |
| Dr Jochen PENKER         | Mr Paweł PIKUS            |
| Mr Jurijs SPIRIDONOVŠ    | Mr Georgios SHAMMAS       |
| Mr Michele THIOLLIÈRE    | Mr Diego VAZQUEZ TEIJEIRA |
| EUROPEAN COMMISSION      |                           |
| MEMBER                   | ALTERNATE                 |
| Ms Agnieszka KAZMIERCZAK | Ms Anne MONTAGNON         |
| Mr Dominique RISTORI     | Mr Florian ERMACORA       |

Dr Jordan and Mr Penker are serving as Chair and Vice-Chair, respectively, for a period of two years from January 2018.



## DECISIONS AND OPINIONS

The AB met 6 times in 2018, on 6 February, 3 May, 7-8 June, 23 July, 6 September and 13 December. It adopted the following 19 decisions:

| No | Decision   |    | Adoption   |
|----|--|----|------------|
| 1  | Opt-out GIPs on Commission's decision on the employment of Contract Staff                    |    | 06/02/2018 |
| 2  | Appointment of No. 2 Reporting Officer - Annual Appraisal of the Director - Year 2018        |    | 06/02/2018 |
| 3  | Appointment of BoR alternate - Mr McGowan (CRU)  | *  | 22/02/2018 |
| 4  | Estimate of Revenues and Expenditures including the Establishment Plan - Year 2019           | ** | 28/03/2018 |
| 5  | Support on Kindergarten and School fees  |    | 07/06/2018 |
| 6  | Mission Guide  |    | 07/06/2018 |
| 7  | Temporary Occupation of Management Posts   |    | 07/06/2018 |
| 8  | Framework for Learning and Development   |    | 07/06/2018 |
| 9  | Whistleblowing   |    | 07/06/2018 |
| 10 | Participation of Alternates  |    | 06/09/2018 |
| 11 | Function of Adviser  |    | 06/09/2018 |
| 12 | Middle Management  |    | 06/09/2018 |
| 13 | Outside Activities   |    | 06/09/2018 |
| 14 | Appointment of No 2 Members and No 1 Alternate Member of the Board of Regulators (DUR-OFGEM) | *  | 12/09/2018 |
| 15 | Transfer of Appropriations - Year 2018   | ** | 19/10/2018 |
| 16 | Outside Activities and Post-Employment Obligations   |    | 13/12/2018 |
| 17 | Internal Control Framework   |    | 13/12/2018 |
| 18 | Budget and Establishment Plan - Year 2019  |    | 13/12/2018 |
| 19 | Appointment of No 1 Member and No 1 Alternate Member of the Board of Regulators (CREG)       | *  | 17/12/2018 |

\*Adopted by the Chair acting under the authority delegated by the AB pursuant to decision AB 05bis/2010 of 21 September 2010.

\*\*Adopted by written procedure following the Chair's declaring the urgency of the situation.

The AB also adopted 1 opinion in 2018:

|   |  |           |
|---|--|-----------|
| 1 | Opinion on the final accounts of the Agency for the Cooperation of Energy Regulators – Year 2017 | 7/06/2018 |
|---|--|-----------|

## **RISK AND CONTROL ISSUES DISCUSSED**

The AB discussed a number of risks and control issues. The implementation of REMIT remained the Agency's main challenge in 2018, due to the gap between the minimum allocation of human resources that the Agency considers necessary to meet REMIT objectives and the staffing allocation under the EU budget.

Ineffective application of REMIT, even if due to reasons beyond the Agency's control, creates a reputational risk for the Agency (in addition to the economic damage suffered by taxpayers due to the negative effects on markets), and more generally for the Union. Human resource constraints at the Agency, even beyond REMIT, remained a major concern in 2018, especially since an increasing number of important decisions were referred to the Agency by NRAs. The Agency adopted measures to reduce risks by attempting to raise the awareness of EU institutions, NRAs and stakeholders of the benefits of the proper implementation of REMIT, by adopting practical solutions and through the implementation of internal security measures.

Furthermore, with a view to appointing the next Director of the Agency, and due to the unsuccessful closure of the selection procedure launched in the course of the year 2017, the Administrative Board appointed the outgoing Director, Mr Alberto Pototschnig, as Director *ad interim* to ensure continuity of service in a particularly crucial period for the Agency in light of the negotiations over the year 2018 for the recast Agency's Regulation.

## **2.2 MAJOR DEVELOPMENTS**

2018 was a pivotal year in the evolution of the European Internal Energy Market, as the negotiations on the Clean Energy for All Europeans legislation (Clean Energy Package) – proposed by the European Commission in November 2016 – reached its final stages. The new framework has strengthened and reinforced the Agency's responsibilities in a series of areas, which are crucial for the operation of the Internal Energy Market. Throughout 2018, the Agency continued to build on its constructive dialogue with the EU Institutions. The Agency's main concern is to ensure that the new responsibilities and tasks it is given are matched by an adequate level of additional resources. It is most unfortunate that, once again, the additional resources envisaged for the Agency in the Legal and Financial Statement of the Clean Energy Package fall far short of what the Agency would require properly to implement its extended mandate. It is therefore most likely that the risks highlighted in the previous section will persist in the future.

In 2018, the European Commission started to consider the future role of gases in the decarbonisation of the EU's energy sector and potential measures for upgrading the EU internal gas market, including the alignment of the gas market regulatory framework with the new

electricity market design as resulting the Clean Energy Package. In order to contribute to this debate, the Director and the Agency's BoR have launched a reflection on the future of the gas sector in the transition of the energy system due to decarbonisation, with a particular focus on the regulatory challenges and actions to take with regard to the internal gas market and energy sector coupling issues. The aim is to present the conclusion of this reflection in a Paper which is planned to be published in October 2019.

Another legislative initiative of interest to the Agency was the amendment to the Gas Directive, proposed by the European Commission in late 2017. The amendment aims to ensure that the rules governing the EU's internal gas market apply to gas transmission lines between a Member State and a third country.

On 16 May 2018, the Agency's Director and Chair of the BoR presented the Agency's activities and current and future challenges to the European Parliament' Committee for Transport, Research and Energy (ITRE). On 9 October 2018, the Agency presented to the ITRE Committee the main findings of its annual report on the results of monitoring the internal electricity and natural gas markets in 2017. The annual market monitoring report (MMR) consists of four volumes, covering electricity wholesale markets, gas wholesale markets, electricity and gas retail markets, and consumer protection and empowerment. A public event was organised to launch the MMR on 22 October in Brussels.

European Commission Vice-President Maroš Šefčovič visited the Agency on 25 April 2018, as part of his second Energy Union tour. He discussed the latest developments in the Agency's work towards a single, well-functioning and transparent energy market in Europe with the Agency's Director and Heads of Departments.

In July 2018, a public debriefing was held through which interested stakeholders were informed of the work of the Agency and the activities of the BoR in particular. In general, the Agency has extensively engaged stakeholders in its activities, including through public consultations, workshops and conferences.

The Agency held its Seventh Annual Conference on 5 July 2018 in Brdo pri Kranju, Slovenia, focusing on the theme 'An Energy Union for All Europeans'.

The Agency also organised, with the support of the Slovenian Ministry of Foreign Affairs, the Second Energy Market Integrity and Transparency Forum, on 6 and 7 September 2018. Furthermore, the Agency participated in the Seventh World Forum on Energy Regulation where key stakeholders, regulators and policy-makers engage in discussions on challenges faced around the world in the energy sector and benefit from best-practice sharing.

As regards important internal developments within the Agency's BoR, the former Chair of the BoR, Mr Garrett Blaney stepped down on 23 December 2018 and Ms Poletti (ARERA, Italy) succeeded him as of 23 January 2019 for a term of office of two-and-a-half years.

## **2.3 BUDGETARY AND FINANCIAL MANAGEMENT AND OTHER ADMINISTRATIVE TASKS**

### **2.3.1 BUDGETARY AND FINANCIAL MANAGEMENT**

The Agency's budget for the financial year that ended on 31 December 2018 was funded by a subsidy from the general EU budget amounting to EUR 13 562 000. In addition, an amount of EUR 4 197.11 was recognised under fund source C4 as assigned revenue stemming from recovered overpaid amounts. No agreement was reached regarding contributions to the Agency from EFTA countries.

During the 2018 financial year, the Agency implemented 99.26% of its commitment appropriations. EUR 2 648 235.82 was carried over into 2019 to cover legal obligations that were pending at year-end.

Appropriations not used at the end of the financial year 2018 amounted to EUR 192 025.30. These comprised:

- unused 2018 appropriations amounting to EUR 104 996.22 (with EUR 100 799.11 stemming from fund source C1 and EUR 4 191.11 from fund source C4);
- cancelled appropriations carried over from 2017 amounting to EUR 86 926.17;
- exchange rate differences amounting to positive EUR 102.91.

The above amounts will be returned to the European Commission during the course of 2019.

A number of budgetary transfers were made in the 2018 financial year to reallocate resources from areas where budgetary savings were identified towards areas where a resource shortage emerged, to ensure the achievement of the Agency's annual objectives. Seven lots of budgetary transfers were approved within and between headings, including one exceeding the 10% limit, and approved by the Agency's Administrative Board.

The Agency ensured timely payment of its suppliers and therefore was not required to pay any interest for late payment.

Detailed information on budget implementation by fund source is presented in Annex II.

| Task   | Budget implementation and audit  |
|--|--|
| Work Programme objectives for 2018             | <p><u>Budget Implementation</u></p> <p>The Agency has been constantly improving its financial management and budget implementation processes. In order to increase efficiency, the Agency outsourced its accounting services to the Commission as from October 2017.</p> <p>A number of policies and procedures have been introduced and followed to ensure effective budget management. The Agency is using e-invoicing and a paperless workflow, which proved in the following years to have added to the efficiency of its financial management.</p> <p>In the past years, the annual results from budget implementation have been steadily improving, reaching 99.26% of the commitment appropriations and 79.73% of the payment appropriations in 2018.</p> <p>In 2019, the Agency will strive to keep the implementation rates above its targets of 95% for commitments and 75% for payments.</p> <p><u>Audit</u></p> <p>Since its establishment, the Agency has not received any critical recommendations from the internal and external auditors on its accounts and its budgetary and financial management.</p> <p>Furthermore, all recommendations from previous years have been implemented as planned, reported in a timely manner and approved by the respective authority. As a result, the Agency has been granted a discharge for all years for which the discharge procedure has been closed.</p> <p>The objectives for 2018 were as follows;</p> <ul style="list-style-type: none"> <li>• Apply current accounting standards and rules in order to draw accurate financial statements that present a fair view of the Agency's financial performance and position and receive an unqualified audit opinion.</li> <li>• Implement, in a timely manner, the recommendations from the Internal Audit Service (IAS), the European Court of Auditors (ECA) and the external audit firm.</li> <li>• Coordinate the budget planning, consumption forecast, budget reviews and transfer of appropriations aiming at achieving higher budget implementation rates.</li> <li>• Ensure proper assets management in order to safeguard the property of the Agency and minimise fraud.</li> <li>• Ensure proper treasury management through the availability of liquidity to cover the Agency's obligations towards its suppliers and on-time execution of payments.</li> <li>• Provide specific training and support to financial actors to ensure a smooth workflow within the financial circuits.</li> </ul> |
| Performance indicators and targets (deadlines) | <ul style="list-style-type: none"> <li>• Provisional accounts prepared and presented by 1 March 2018, final accounts by 1 July 2018.</li> <li>• Unqualified opinion from ECA by 30 June 2018.</li> </ul>   |

|                            |  |
|----------------------------|--|
|                            | <ul style="list-style-type: none"> <li>• Minimum 95% budget implementation for commitment appropriation and 75% for payment appropriation by 31 December 2018.</li> <li>• Fixed assets impairment check by end of November 2018.</li> <li>• Replenished bank account balance.</li> <li>• Presentation of financial matters delivered by end of June 2018.</li> </ul> |
| Achievement against target | All targets were successfully achieved. For the financial year 2018 the Agency not only received an unqualified opinion on its accounts from ECA, but also a clean report with no findings.  |

### 2.3.2. PROCUREMENT AND FACILITY MANAGEMENT

| Task   | Procurement and facility management   |
|--|---|
| Work Programme objectives for 2018             | <ul style="list-style-type: none"> <li>• Further improve the effectiveness and efficiency of the procurement processes and implement measures to streamline and optimise the procurement processes for the implementation of the work programme.</li> <li>• Manage the Agency's premises in line with the evolving needs of the Agency, including, whenever necessary, the expansion of the occupancy of the office surface and the necessary fitting-out works and procurement of equipment to ensure smooth continuation of the Agency's work.</li> <li>• Ensure the security in the Agency's premises, in line with the Agency's security policy.</li> </ul> |
| Performance indicators and targets (deadlines) | <p>At least 90% implementation of the adopted 2018 Procurement Plan.</p> <p>The Agency's premises managed in line with the Agency's facility management plan and within the allocated budget by the end of 2018.</p>  |
| Achievement against target                     | <p>Taking into account the adopted 2018 Procurement Plan (with 57 procurement procedures planned), the implementation rate of the adopted 2018 Procurement Plan was 117% (67 procurement procedures completed by the end of 2018).</p> <p>The Agency successfully completed negotiations for renting an additional floor. The new rental agreement for 5 years resulted in renting additional 692.80 m<sup>2</sup>. All preparatory work for renting the new floor and the related fitting out works were finalised by the end of 2018.</p>   |

In addition to the adopted annual procurement plan and the report on its implementation, the Agency prepares annual statistics, which are reported to the European Court of Auditors and Internal Audit Service. These statistics are also used by the management of the Agency to analyse the workload in procurement. The statistics include all procurement procedures listed in the annual procurement plan, which are of a more strategic nature and relate to the core business of the Agency, as well as procurement procedures for services and goods needed for the daily functioning of the Agency. The number, type and value of all procurement procedures concluded in 2018 are presented below.

**1) Operational**

| Type of procedure                              | Number of procedures | Value of contracts in EUR | Total amount committed in EUR |
|--|----------------------|---------------------------|-------------------------------|
| Negotiated – value below € 1,000               | 12                   | 7,026.17                  | 7,026.17                      |
| Negotiated – very low value – direct contract  | 28                   | 132,081.45                | 132,081.45                    |
| Negotiated - low value – direct contract       | 1                    | 30,000.00                 | 30,000.00                     |
| Negotiated - low value - FWC                   | 1                    | 60,000.00                 | Not applicable.               |
| Negotiated - middle value - FWC                | 0                    | 0.00                      | 0.00                          |
| Negotiated (point 11.1(h)(i) of Annex I to FR) | 1                    | 40,600.00                 | 40,600.00                     |
| Negotiated (point 11.1(g) of Annex I to FR)    | 0                    | 0.00                      | Not applicable.               |
| Open – FWC (concluded in 2018)                 | 3                    | 6,000,000.00              | Not applicable.               |
| Specific contracts, following FWC              | 19                   | 2,035,449.96              | 2,035,449.96                  |
| Order forms following FWC                      | 89                   | 197,650.27                | 197,650.27                    |
| <b>TOTAL</b>                                   | <b>154</b>           | <b>8,502,807.85</b>       | <b>2,442,807.85</b>           |

**2) Administrative**

| Type of procedure                              | Number of procedures | Value of contracts in EUR | Total amount committed in EUR |
|--|----------------------|---------------------------|-------------------------------|
| Negotiated – value below € 1,000               | 20                   | 11,579.51                 | 11,579.51                     |
| Negotiated – very low value – direct contract  | 18                   | 87,400.77                 | 72,400.77                     |
| Negotiated - low value – direct contract       | 0                    | 0.00                      | 0.00                          |
| Negotiated - low value - FWC                   | 1                    | 42,000.00                 | Not applicable.               |
| Negotiated - middle value - FWC                | 1                    | 144,000.00                | 0.00                          |
| Negotiated (point 11.1(h)(i) of Annex I to FR) | 0                    | 0.00                      | Not applicable.               |
| Negotiated (point 11.1(g) of Annex I to FR)    | 1                    | 794,378.78                | Not applicable.               |

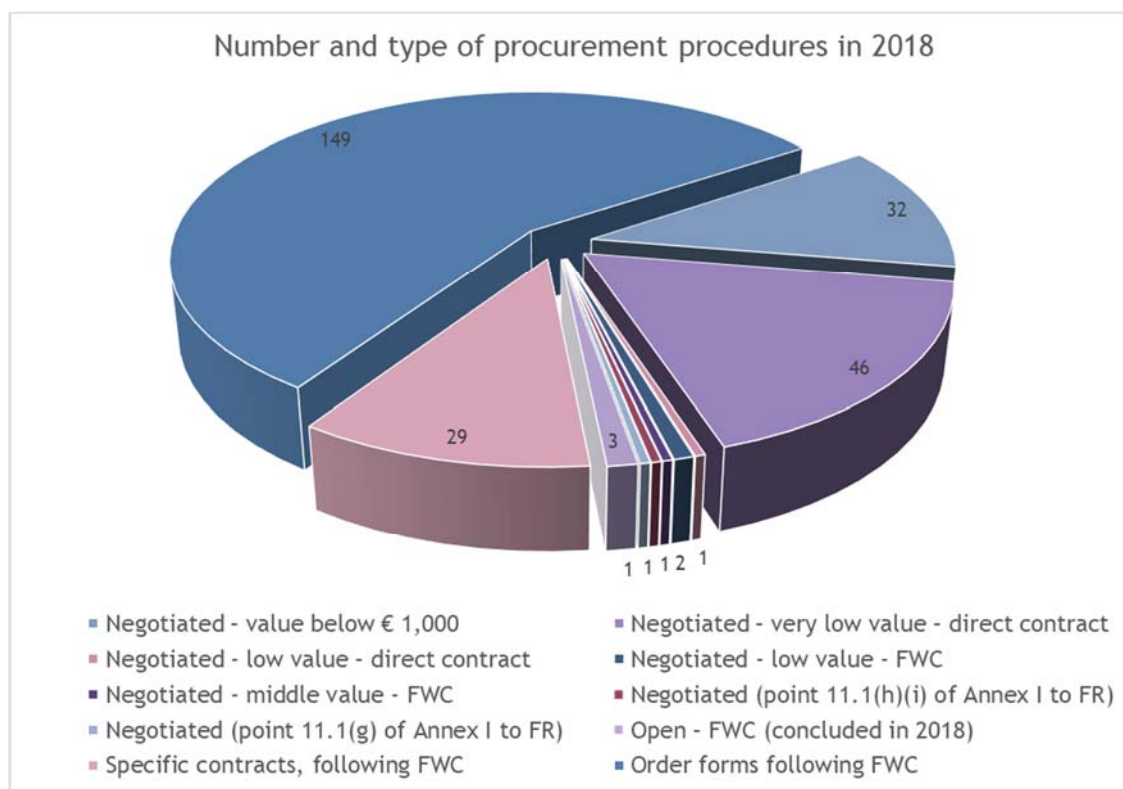
|  |            |                     |                        |
|--|------------|---------------------|------------------------|
| <b>Open – FWC (concluded in 2018)</b>    | <b>0</b>   | <b>0.00</b>         | <b>Not applicable.</b> |
| <b>Specific contracts, following FWC</b> | <b>10</b>  | <b>953,533.17</b>   | <b>942,597.17</b>      |
| <b>Order forms following FWC</b>         | <b>60</b>  | <b>345,723.71</b>   | <b>345,723.71</b>      |
| <b>TOTAL</b>                             | <b>111</b> | <b>2,378,615.94</b> | <b>1,372,301.16</b>    |

**3) Total (operational and administrative)**

| <b>Type of procedure</b>                              | <b>Number of procedures</b> | <b>Value of contracts in EUR</b> | <b>Total amount committed in EUR</b> |
|---|-----------------------------|----------------------------------|--------------------------------------|
| <b>Negotiated – value below € 1,000</b>               | <b>32</b>                   | <b>18,605.68</b>                 | <b>18,605.68</b>                     |
| <b>Negotiated – very low value – direct contract</b>  | <b>46</b>                   | <b>219,482.22</b>                | <b>204,482.22</b>                    |
| <b>Negotiated - low value – direct contract</b>       | <b>1</b>                    | <b>30,000.00</b>                 | <b>30,000.00</b>                     |
| <b>Negotiated - low value - FWC</b>                   | <b>2</b>                    | <b>102,000.00</b>                | <b>Not applicable.</b>               |
| <b>Negotiated - middle value - FWC</b>                | <b>1</b>                    | <b>144,000.00</b>                | <b>Not applicable.</b>               |
| <b>Negotiated (point 11.1(h)(i) of Annex I to FR)</b> | <b>1</b>                    | <b>40,600.00</b>                 | <b>40,600.00</b>                     |
| <b>Negotiated (point 11.1(g) of Annex I to FR)</b>    | <b>1</b>                    | <b>794,378.78</b>                | <b>Not applicable.</b>               |
| <b>Open – FWC (concluded in 2018)</b>                 | <b>3</b>                    | <b>6,000,000.00</b>              | <b>Not applicable.</b>               |
| <b>Specific contracts, following FWC</b>              | <b>29</b>                   | <b>2,988,983.13</b>              | <b>2,978,047.13</b>                  |
| <b>Order forms following FWC</b>                      | <b>149</b>                  | <b>543,373.98</b>                | <b>543,373.98</b>                    |
| <b>TOTAL</b>  | <b>265</b>                  | <b>10,881,423.79</b>             | <b>3,815,109.01</b>                  |



The following graph shows the number of procurement procedures of each type concluded in 2018.



### 2.3.3 ICT INFRASTRUCTURE

| Task                               | ICT development   |
|------------------------------------|---|
| Work Programme objectives for 2018 | <p>The IT Team's main goal in 2018 was to continue and further enhance the alignment of the IT services with the Agency's strategic goals and objectives, which was initiated in 2016 following the results of the ICT governance study and the new Agency's ICT Strategy of 2016-2018.</p> <p>For this reason, the expected coordination between the Agency's different IT Teams should have been achieved together with the fine-tuning of all procedures related to the ICT governance and the transition into a service-based organisation.</p> <p>In addition, the necessary IT contracts that enable the implementation of the Agency's evolving needs for development of applications, automation and services should have been put in place.</p> <p>Furthermore, the IT Team should have ensured that there is the necessary ICT overarching infrastructure covering multiple units/departments, ensuring (cross-departmental) synergies and a unified IT environment.</p> <p>The specific objectives for 2018 were as follows:</p> <ul style="list-style-type: none"> <li>To ensure the fine-tuning of ICT governance procedures and that the expected coordination between the different IT teams is in place.</li> </ul> |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• To achieve the necessary service orientation by having in place the right procedures and rules (Information Technology Infrastructure Library - ITIL - based) and adapting the IT Team's members work profiles to this.</li> <li>• To acquire and further develop applications and services to cover the Agency departments' needs and to maintain or renew the existing ones. The IT Team shall collect and assess business requirements and contribute to their implementation to support the efficient functioning of the Agency.</li> <li>• To put in place the necessary ICT overarching infrastructure, covering multiple units/departments, and ensuring (cross-departmental) synergies in a unified IT environment.</li> <li>• To ensure high-level IT support services to enable the Agency's staff to perform their tasks effectively.</li> </ul>   |
| Performance indicators and targets (deadlines) | <ol style="list-style-type: none"> <li>1. Rules and procedures of ITIL-based service management to be fully functional by Q1 2018.</li> <li>2. External ICT services and support to be fully in place by Q3 2018 and IT Team's members work profiles adapted accordingly.</li> <li>3. The needed IT application and services to be developed, maintained and fine-tuned under the necessary IT development contracts during the whole of 2018.</li> <li>4. Successful and timely completion of the tasks included in the 2018 IT Action Plan by Q4 2018.</li> <li>5. 85% of staff satisfied or very satisfied with the IT services on the basis of an annual satisfaction survey by Q4 2018.</li> </ol>  |
| Achievement against target                     | <ol style="list-style-type: none"> <li>1. The IT Service Catalogue was approved. The evaluation of the IT Service Management Tool was concluded. Preparation of ITIL processes in ongoing.</li> <li>2. Two consultancy contracts were signed in Q1 2018 to facilitate the activities.</li> <li>3. All IT applications and services were maintained and fine-tuned/revised accordingly during 2018. To that end, fine-tuning and addressing security enhancements in the Agency's core applications (HR, Financial Tool) have been performed. Rollout of Skype for Business pilot to facilitate easier communication within the Agency and reduce costs of web-based conferencing and collaboration have been implemented (awaiting finalisation of security assessment for its use in production). A Disaster Recovery site at the European Union Intellectual Property Office (EUIPO) in Alicante has been established to ensure business continuity of the Agency's critical infrastructure. Security improvements in cooperation with CERT-EU to enhance Email &amp; Active Directory security have been put in place. ICT improvements regarding the network connectivity and data storage have been applied.</li> <li>4. The IT action plan for 2018 was successfully implemented.</li> <li>5. 96.7% of staff was satisfied or very satisfied with the IT services on the basis of an annual satisfaction survey by Q4 2018.</li> </ol> |

## 2.4 HUMAN RESOURCES MANAGEMENT

On 31 December 2018, the Agency's workforce was composed of 119 members: 64 Temporary Agents (52 Administrators and 12 Assistants), 22 Contract Agents, 4 Seconded National Experts, 15 trainees and 14 interim agents.

The organisational chart and the Agency's Establishment Plan are presented in Annex III and Annex IV, respectively.

Along with the revision and improvement of internal human resources (HR) processes, guidelines and templates, the Agency adopted the following AB Decisions and Director's Decisions (DDs):

- Decision AB No 1/2018 Opt-out Implementing Provision on Contract Staff;
- Decision AB No 5/2018 Support for Kindergarten and School Fees;
- Decision AB No 7/2018 Temporary Occupation of Management Posts;
- Decision AB No 8/2018 Framework for Learning and Development;
- Decision AB No 9/2018 Guidelines for Whistleblowing;
- Decision AB No 10/2018 Function of Adviser;
- Decision AB No 12/2018 Middle Management;
- Decision AB No 16/2018 Outside Activities;
- Director's Decision 2018-01 Repealing Team Leaders as Reporting Officer;
- Director's Decision 2018-08 Guidelines on Teleworking;
- Director's Decision 2018-15 Repealing Certain Decisions;
- Director's Decision 2018-31 Appointing the Agency's Ethic Correspondent;
- Director's Decision 2018-22 Guidelines on Conflict of Interest in Selection and Reclassification Procedures.

In 2017, the Internal Audit Service (IAS) performed an audit on the HRM function of the Agency, in line with the Strategic Audit Plan for the period 2017-2019. After the receipt of the Agency's comments, the IAS prepared the Final Audit Report, which contained five recommendations: one critical, two very important and two important. After the receipt of the IAS recommendations, the Agency prepared an Action Plan for their implementation, which has been implemented in various stages in 2018.

The deliverables submitted to IAS in the different quarters (Q) of 2018 were the following:

- Q1 – Guidelines and training on setting SMART objectives;
- Q1 – Info paper on the HRM Team back-up system;
- Q2 – Administrative Notice on guideline on the management of disciplinary and fraud issues;
- Q3 – Practical guideline on conflict of interest in selection and reclassification;

Q3 – Recruitment area: revised Standard Operating Procedure (SoP), improved quality of the documentation;

Q3 – Mapping of HR processes;

Q3 – Revise Rules of Procedure of the Staff Committee;

Q3 – Improve the HRM intranet page;

Q4 – Establishment of the function of Ethics Correspondent;

Q4 – Guidelines and presentation on Appraisal and Reclassification;

Q4 – Appraisal and Reclassification area: revised Standard Operating Procedure (SoP), improved quality of the documentation

Q4 – Risk assessment of document management related to HR files.

In January 2019, IAS' Critical recommendation on recruitment and management of conflicts of interest was downgraded to Very Important, based on the reported implemented actions.

In January 2018, the Agency signed a revised service level agreement (SLA) with the Directorate-General for Human Resources and Security for the provision of services related to the HRM function.

Moreover, the Agency has been following up on the implementation of the HR personnel database system of the European Commission (SYSPER), with the aim of simplifying and streamlining the management of data (staff repository, analytics) related to the Agency's workforce.

The Agency carried out a benchmarking exercise for 2018 in line with the provisions of Article 29(3) of the Framework Financial Regulation. The snapshot for the benchmarking exercise was taken on 31 December 2018. As prescribed by the methodology for agency job screening, it focused on the ratio of jobs in the area of administrative support and coordination, neutral and operational categories.

In line with the methodology, the following posts were included in the screening exercise:

- all establishment plan posts (irrespective of whether they were occupied, vacant or unused job quotas);
- other types of statutory links or contracts when occupied by a jobholder: contract agents, seconded national experts and trainees;
- jobs occupied by interim staff.

The following is a breakdown, based on the above-mentioned three job type categories, of the 119 total positions in the Agency (including 3 vacant Temporary Agent posts), as of 31 December 2018:

- 1) administrative support and coordination - 22 positions, accounting for 18.49% of the total number of posts;
- 2) operational - 87 positions, accounting for 73.11% of the total number of posts;
- 3) neutral - 10 positions, accounting for 8.40% of the total number of posts.

The benchmarking exercise results are presented in Annex VI.

| Task   | Human resources management  |
|--|---|
| Work Programme objectives for 2018             | <ul style="list-style-type: none"> <li>• To recruit additional resources in line with the Agency's updated Establishment Plan and replace departing staff members in an efficient and timely manner.</li> <li>• To design, implement, and complete the Annual performance appraisal exercise in 2018, in line with the new Implementing Rules.</li> <li>• To develop an action plan following the IAS recommendations and implement it.</li> <li>• To ensure that staff members are offered appropriate training opportunities aimed to improve their skills and competencies.</li> <li>• To consider the possible use of the Commission HR Tools, when available.</li> <li>• To receive positive evaluation results from the ECA.</li> <li>• To plan the implementation of the Competence Framework.</li> </ul>  |
| Performance indicators and targets (deadlines) | <ul style="list-style-type: none"> <li>• Average length of recruitment procedure: 4 months (including the one-month period of publication of the Vacancy Notice).</li> <li>• Minimum 95% occupancy rate of TA posts in the establishment plan by the end of 2018.</li> <li>• 100% of the eligible Agency's staff subject to performance appraisal to undergo evaluation in the 2017 exercise in line with the new Implementing Rules by end of June 2018.</li> <li>• Minimum of 75% attendance at in-house organised trainings.</li> <li>• No critical or very important recommendations received from ECA audit in 2018.</li> <li>• Continued gradual revision of job descriptions in light of the Competency Framework. 50% of job descriptions to be revised by the end of 2018.</li> <li>• New Vacancy Notices aligned with the competencies and skills required for the positions advertised.</li> </ul> |
| Achievement against target                     | <ul style="list-style-type: none"> <li>• Average duration of selection procedures by end of 2018 is 4 months (taking into consideration 4 selection procedures, which were published end of 2017 and finalised in 2018).</li> <li>• Occupancy rate for TA posts in establishment plan was 95.5% (64 posts occupied out of 67).</li> <li>• All staff members participated in the annual appraisal exercise.</li> <li>• Attendance at in-house trainings by end of Q4 is 93.35%</li> <li>• No critical or very important recommendations received from ECA audit in 2018.</li> </ul>  |

## 2.5 ASSESSMENT BY MANAGEMENT

In 2018, the Agency continued to implement effective policies, management tools, and monitoring and control procedures, aiming to ensure the achievement of its objectives by employing its human and financial resources efficiently.

The Agency continued to execute the long-standing *ex-ante* and *ex-post* control procedures, with a commitment to improve the efficiency and effectiveness of organisational processes.

The *ex ante* controls performed encompass the entire system of controls and checks regarding operational, procurement and financial activities.

An extensive *ex-ante* control system for every low-, medium- and high-value procurement procedure is in place. *Ex-post* control is performed annually by the Court of Auditors on a sample of at least four procurement procedures. Each year, the Agency carries out an additional *ex-post* control of at least one high-value procurement procedure not covered by the Court of Auditors.

The *ex-ante* controls on financial transactions involve the use of standard check-lists on financial transactions and the strict application of the 'four-eye' principle.

A paperless workflow in the Accrual-based Accounting System (ABAC) was adopted in 2015. A paperless workflow of carry-overs, implemented at the end of the 2016 financial year, contributes to the improvement of the process and the traceability of documentation and helps keep financial transactions compliant with applicable rules.

Revised guidelines on financial circuits and segregation of duties at the Agency were adopted in 2018. The guidelines define specific roles and responsibilities for all those taking part in the financial circuit.

The rate of commitment appropriations improved in 2018: 99.26% compared to 98.72% in 2017.

*Ex-ante* and *ex-post* controls were further executed by using check-lists, consistent implementation of operational guidelines, and regular and structured reporting to management. Strict management supervision is performed through regular reviews, at management meetings, of Work Programme implementation, the annual procurement plan and the degree of implementation of key performance indicators (KPIs) and of the risk management process.

Controls and supervisory checks performed in 2018 provided no evidence of significant or repetitive errors in reporting by Agency departments, budget execution, human resources management or KPI implementation. Monitoring reviews showed no instances of inadequate or ineffective controls that could expose the Agency to key risks.

Based on the results achieved in 2018 (both financial and operational) and the additional assurance provided by external and internal audits, it can be concluded that the control environment established by the Agency works as intended and provides reasonable assurance of achievement of objectives and the legality and regularity of activities and underlying transactions.

## **2.6 BUDGET IMPLEMENTATION TASKS ENTRUSTED TO OTHER SERVICES AND ENTITIES**

No budget implementation tasks were entrusted to other services or entities. The treasury and accounting services were outsourced to the Directorate General for Budget with effect from 1 October 2017.

## **2.7 ASSESSMENT OF AUDIT RESULTS DURING THE REPORTING YEAR**

### **2.7.1 INTERNAL AUDIT SERVICE**

The IAS conducted a full risk assessment and IT risk assessment in February 2016, which resulted in a new strategic audit plan for the Agency for the period 2017-2019 and formulated the audit topics for the next planning period.

In 2017, the IAS performed an audit on the HRM function of the Agency, in line with the Strategic Audit Plan for the period 2017-2019. The objective of the audit was to assess the adequacy of the design and the effectiveness of the internal control system related to human resources management in the Agency. The Final Audit Report contains five recommendations, which have been accepted by the Agency: one critical, two very important and two important.

In 2018, the IAS performed an audit on IT Security in the Agency and Information Security in the "REMIT" domain, in line with the Strategic Audit Plan for the period 2017-2019. The objective of the audit was to assess the adequacy of the design and the effectiveness of the implementation of the management and control systems put in place by the Agency for its IT security arrangements across the entire Agency and for the information security related to the 'REMIT' domain. The audit focused on the IT controls covered by the overall information security policy and the specific information security framework for the REMIT domain (REMIT information security policy including policies for specific domains, such as asset management, user access management, physical security, etc.).

The Final Audit Report contains eight important recommendations, which have been accepted by the Agency. The Agency established the Action Plan to address all the recommendations, which has been agreed with the IAS. The implementation of the Action Plan will begin in 2019.

## **2.7.2 EUROPEAN COURT OF AUDITORS**

### **AUDIT OF THE 2017 ANNUAL ACCOUNTS**

The European Court of Auditors (ECA) audited the 2017 annual accounts of the Agency in March 2018. The audit included analytical audit procedures, direct testing of transactions and an assessment of the key controls of the Agency's supervisory and control systems, aiming to confirm the legality and regularity of the transactions underlying the Agency's accounts.

### **OPINION ON THE RELIABILITY OF THE ACCOUNTS**

According to ECA, the Agency's annual accounts accurately depicted, in all material respects, its financial position at 31 December 2017, the results of its operations and its cash flow for the year, 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 TRANSACTIONS**

In the opinion of the ECA, the transactions underlying the annual accounts for the 2017 financial year were legal and standard in all material respects.

The ECA made five comments, which did not call its opinion into question, regarding the delay in the re-validation of the accounting systems, the absence of a disaster recovery site for REMIT data, the absence of a formal analysis of the Brexit impact on the Agency, the partial publication of vacancy notices on EPSO, and delays in the introduction of the electronic tools for all phases of the procurement procedures. All the comments were addressed by the Agency in its replies for the 2017 ECA's annual report.

The 2017 accounts were audited in March 2018 by an external audit firm engaged by the Agency in accordance with the provisions of Article 70 of the Financial Regulation<sup>6</sup>. The external auditors audited the annual accounts (balance sheet at 31 December 2017 and the financial performance statement, the cash flow statement, the statement of changes in net assets and the notes attached to the financial accounts) and the budget implementation report (budget outturn account and annexes to the budget outturn account). The final audit report did not contain any findings or recommendations reflected in the ECA's opinion of the final accounts.

### **AUDIT OF THE 2018 ANNUAL ACCOUNTS**

The ECA together with Baker Tilly audited the Agency's 2018 annual accounts. There were no preliminary findings reported from both audits.

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<sup>6</sup> Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012.



## **2.8 FOLLOW-UP OF RECOMMENDATIONS AND ACTION PLANS FOR AUDITS**

### **2.8.1 RECOMMENDATIONS ISSUED BY THE IAS**

Following the IAS audit and with regard to ‘critical’ and ‘very important’ weaknesses, the IAS provided recommendations in the area of recruitment and management of conflicts of interests, as well as appraisal and reclassification exercises. These recommendations were fully implemented in 2018 and reported to the IAS. Closure of these recommendations is expected in 2019, after the follow-up audit in April 2019.

After the audit fieldwork, the Agency took actions in line with the Action Plan agreed with the IAS. Further corrective measures were identified and included in an Action Plan, with adequate and reliable actions, target dates, and an assessment of their impact. In the next period, the IAS will periodically assess the level of implementation of these actions by the Agency, based on which it may be able to close the recommendations made.

The measures already undertaken and planned address the weaknesses identified as critical and very important through (1) development of practical conflict of interest guidelines for staff, related to the processes of selection and recruitment and to appraisal and reclassification, and (2) development of internal guidelines on the management of disciplinary and fraud issues, in order to complement existing internal rules. Furthermore, the Agency has already partially (3) updated its current rules and policies (including current templates) with regard to selection and recruitment of staff and (4) has established Standard Operating Procedures in the identified areas. The planned measures will also involve (5) the performance of a risk assessment of the document management related to HR files and determining mitigating measures in case of identified gaps, a process that is already running at the Agency in the context of the final phase of the preparation of SYSPER2, the information system aiming to integrate all human resource management functions in the Agency. Finally, the Agency will be (6) performing the Competency Framework exercise, establishing the core competencies and further revising the job descriptions of staff members and their roles and responsibilities.

### **FOLLOW-UP ON PREVIOUS RECOMMENDATIONS (2016 AUDIT - THE IAS RISK ASSESSMENT)**

The IAS risk assessment audit was carried out in February 2016 and covered all Agency processes. This audit visit was the basis for setting up the Agency’s IAS Strategic Audit Plan 2017-2019, identifying the Agency’s key risks and proposing topics for forthcoming IAS audits. The following high-risk processes were identified during the full risk assessment:

- document management;

- business continuity;
- monitoring of Network Code (NC) implementation;
- REMIT market surveillance and
- IT governance.

The Agency's follow-up to the recommendations in 2018 was as follows:

- The implementation of the document management policy in the Agency (adopted by Director's Decision 2016-13 of 22 June 2016 on adopting the document management policy of the Agency for the Cooperation of Energy Regulators) was ongoing, in accordance with the Action Plan of the Inter-Departmental Working Group on Document Management (IDMWG). All the deliverables planned for 2018 have been completed: the drafting of the Agency's Document Management Manual and the establishment of a central records repository tool (by upgrading the current tool). Creation of files by the departments, in accordance with the Agency's Filing and Retention Plan and necessary training to staff were delivered.

The Agency also performed, via contracted services, an assessment of the effectiveness and efficiency of its document management practices, as well as of the level of compliance with best practices and standards in the area of document management.

Following the assessment results, the advice of the IDMWG and a consultation with the Management Team, the Agency decided to apply for the HAN-ARES, the document management system of the European Commission. In this respect, preparations were ongoing in 2018: the Action Plan for the ARES migration for 2019 was approved by the management team, the draft Director's Decision on the appointment of a Document Management Officer was prepared and ready to be approved in 2019, the planning of the budget for the migration and annual fees was completed, etc. The kick-off meeting for the signing of the Memorandum of Understanding will be called by the Secretariat-General of the Commission in 2019.

- The Agency managed successfully to set up a specific framework contract for business continuity, and is actively engaged with other EU and international institutions and bodies in a network to ensure business continuity. Following a procurement procedure for services, a training and awareness campaign was completed by Q1 2018. It included a multi-level training programme for management, team leaders and staff members. All training material is available: revised documentation was made available on the Agency intranet to all the staff members. A second cycle of training within the awareness campaign was completed in Q1 2019.

A business continuity exercise was performed in January 2018 and a new one took place in March 2019. The new exercise helped to address the gaps and opportunities for improvement in the area of business continuity. Observers from other EU Institutions participated in order to provide a critical review.

A revision of the Business Continuity (BC) Plan has been drafted for the approval of the Director. According to the BC Plan, maintenance, together with extended testing, will be performed again at the end of 2019.

In addition, the Agency is establishing in 2019 a system of Duty Officers in order to strengthen the business continuity capabilities of the Agency and further to involve and engage all the staff in the business continuity processes.

All the tasks performed will be presented in the update of the Action Plan for 2019.

- In electricity, the Agency continued to monitor the effects of the implementation of the CACM guideline market-related Network Codes (i.e. Capacity Allocation and Congestion Management - CACM, Forward Capacity Allocation - FCA and Balancing) through the same annual cycle in four phases:
  - Methodology phase: on the basis of a well-reasoned and consulted methodology (including indicators), the relevant required data are identified;
  - Data processing: collection and assessing of data and sharing the preliminary results with NRAs;
  - Drafting phase: reporting the findings, debating the conclusions with NRAs and formulating recommendations; and
  - Publication phase: preparing the design version of the figures and tables, and proof-reading the report and preparing the public presentation of the results.

A similar approach was used as regards the actions related to the monitoring of the implementation of Network Codes in gas. All actions envisaged by the legal deadlines for 2018 were successfully executed, without major issues.

- Regarding the REMIT Market Surveillance process, the most recent version of the REMIT data quality policy was adopted on 17 July 2017 and has been applied ever since. Data quality has improved, but will remain an ongoing task for the Agency. Two Open Letters on data quality were published on 16 February 2017 and on 19 July 2018 which contributed to the improvement of REMIT data quality. The 3rd Open Letter will be published in Q2-Q3 2019. The focus on data quality assurance activities remains mainly on standard contracts and bilateral contracts, including non-standard contracts.

The Agency organised two training sessions for its staff regarding the use of SMARTS in 2017. In addition to the trainings, the Market Surveillance and Conduct (MSC)

Department staff benefited in 2018 from an in-depth two-day training about how energy is traded in different trading places and designs with a constant focus on REMIT market abuse provisions.

After restructuring the Market Monitoring Department on 15 November 2016, the existing processes and documentations carried out by the two REMIT departments (i.e., the MSC Department and the Market Integrity and Transparency (MIT) Department) needed to be revised. The necessary revision of the MSC Department's Manual of Procedures started before summer 2017 and was completed and adopted in January 2018. The necessary revision of the MIT Department's Manual of Procedures started in the first half of 2017 and was completed and adopted in July 2017.

Moreover, two technical documents were further developed in 2018 for the MSC Department: the Alerts Manual and the Screening Methodology document.

- Regarding IT governance, the coordination meetings between the IT Teams' Team Leaders continued to take place in 2018, as described in the Action Plan. The results have been very encouraging so far.

An IT service manager was recruited in 2018 and additional staff are planned to be recruited for the Administration IT Team in 2019, subject to availability of budget and Establishment Plan posts.

## **FOLLOW-UP ON EARLIER RECOMMENDATIONS (2015 AUDIT)**

The 2015 IAS audit on procurement processes resulted in six recommendations (four important and two very important). In 2017, all recommendations were reported to the IAS. The two very important recommendations and one important recommendation were completed and they were proposed for closure. The three remaining important recommendations were fully implemented and reported to the IAS. All six recommendations were closed by the IAS in 2018.

### **2.8.2 RECOMMENDATIONS ISSUED BY THE ECA**

The ECA issued a positive opinion on the reliability of the 2017 accounts and on the legality and regularity of the transactions underlying the accounts. Its report contained five comments (see section 2.7.2 above) that were addressed in the Agency's replies for ECA's 2018 annual report.

The Agency indicated in its reply: (i) that the re-validation of the accounting services was performed by the Commission as part of the outsourced services; (ii) that due to the lack of financial resources, the REMIT disaster recovery site was not re-established, after it had to be closed in 2017; (iii) that a formal Brexit impact analysis was performed early in 2018; (iv) that, due to the limited financial resources available to the Agency, only four of the nine open

vacancies were published on the EPSO website, for which translation in all EU official languages is required, with the remaining five being published on the Agency's website, as these operational posts were of interest to candidates already working in the sector that typically follow the Agency's activities; and (v) that the Agency started in 2018 to implement the e-tendering IT tool for procurement with the e-submission implemented in the second half of 2018 and e-invoicing to be implemented in the course of 2019. The validation of the accounting systems and the BREXIT impact analysis were performed during 2018 and the related recommendations were closed.

## **FOLLOW-UP ON EARLIER RECOMMENDATIONS**

In 2018 positive developments were registered concerning the 2014 recommendation on the establishment of a European School. The General Interest File of the European School Ljubljana was approved in December 2017 by the Board of Governors of the European Schools. The Dossier of Conformity was submitted by the Ministry of Education, Science and Culture in January 2018 and in April 2018 it was adopted by the Board of Governors of the European Schools. On 18 January 2018, the Government of the Republic of Slovenia adopted the Decision to establish the European School Ljubljana within the School Centre Ljubljana, as planned. This decision provided the legal basis for further activities. The Minister of Education, Science and Sports adopted a decision on the enrolment procedure, fees and some other aspects in January 2018. The School launched its website with basic information and the announcement of the enrolment of pupils in February 2018. It recruited a Head teacher in February 2018. The call for teachers was launched in April 2018. The School is operational as of September 2018 for the grades P1 and P2. Grades P3 to P5 are to be opened for the school year 2019/2020. The Board of Governors of European Schools voted the accreditation of the European School Ljubljana in April 2019.

Regarding ECA's comment from 2016 on the improvement of procurement planning and monitoring recommended by the IAS, the Agency has fully implemented the Action Plan agreed with the IAS and the comment has been closed.

In response to ECA's comment from 2016 on the introducing of differentiated budget appropriations, the Agency replied that given the persistent uncertainty of the annual budgetary allocation to the Agency it is difficult to employ a differentiated appropriations method on its operational budget title.

## **2.9 FOLLOW-UP ON OBSERVATIONS FROM THE DISCHARGE AUTHORITY**

The Agency duly informed the discharge authority on progress achieved in the fields requested in the discharge report and acted upon the recommendations received.

Most notably, in its discharge decision in respect of the Agency's budget implementation for the financial year 2017, the discharge authority noted with satisfaction that budget monitoring efforts during the financial year 2017 resulted in a higher implementation rate of 98.72%. It also noted that the payment appropriations execution rate was at 75.81%, representing an increase of 15.87% compared to the previous year.

For 2016 the discharge authority had noted that the high share of cancelled carry-overs (9.8 %) could be considered to be a sign of inaccurate budget planning. The Agency acted on this recommendation: in the discharge report for 2017, published in 2019, the discharge authority noted that from 2016 to 2017 carry-overs decreased by a notable 7.77%.

## 2.10 TRANSPARENCY AND INTEGRITY

In 2018 the Agency continued to implement its comprehensive policy for the prevention and management of conflicts of interest, including provisions related to staff (with stricter requirements for management), its boards, working groups and task forces. The Agency thus collected the annual declarations of interest of its management staff (Director and Heads of Department), of AB members and alternates, of BoR members and alternates, and of members and alternates of the Board of Appeal (BoA), as well as of the chairs and vice-chairs of the Agency's working groups and of the convenors of the Agency's task forces. The declarations were reviewed in accordance with the policy and published on the Agency's website together with the CVs of the persons in question.

In January 2018, in an effort further to increase transparency, the Agency introduced a register of the meetings of the Director with external stakeholders published on the Agency's website, in line with recommendations from the European Ombudsman and similar practices in the European Commission.

In June 2018 the Agency's AB adopted new Guidelines on Whistleblowing, repealing the previous guidelines from 2014.

In September 2018, following the appointment of Alberto Pototschnig as Director ad interim, the AB adopted a decision granting permission to the Director ad interim to engage in outside activities for the period 16 September 2018 – 15 September 2019. The decision is in line with Commission decision C (2018) 4048 of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the service.

In December 2018, the AB adopted a decision on the adoption by analogy of the Commission Decision on outside activities and assignments and on occupational activities after leaving the Service.

Under Article 16 of the Staff Regulations, after leaving the service, staff members continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. Any former staff member who intends to engage in an occupational activity within two years of leaving the service must inform his/her former institution accordingly so that it can take an appropriate decision in this respect and, where necessary, forbid an activity or grant approval subject to appropriate restrictions. In 2018 no restrictions were imposed following the notifications received on occupational activities to be pursued by staff members leaving the Agency.

The third paragraph of Article 16 of the Staff Regulations stipulates that, in principle, the Appointing Authority will prohibit former senior staff, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their last three years in the service. The fourth paragraph of Article 16 of the Staff Regulations requires each institution, in compliance with Regulation (EC) No 45/20011 of the European Parliament and of the Council, to publish annually information on the implementation of the third paragraph, including a list of the cases assessed. No senior staff members left the Agency in 2018, hence no cases of senior staff were assessed.

In November 2018 the Agency adopted a Director's Decision on the appointment of an Ethics Correspondent, whose role is that of contributing to making the ethical principles, standards, rules and obligations on ethics and conduct, as well as the relevant procedures, more transparent and easier to understand, by serving as the focal and first contact point for all conduct- and ethics-related issues for Agency's services, staff members and other persons working for the Agency.

## **PART II (b): EXTERNAL EVALUATIONS (*where applicable*)**

Not applicable.

## **PART III: ASSESSMENT OF THE EFFECTIVENESS OF INTERNAL CONTROL SYSTEMS**

### **3.1 RISK MANAGEMENT**

#### **OVERALL MANAGEMENT OF RISK**

The Agency managed its risks at various levels, ranging from standard risks, addressed through internal control standards, to risks related to specific tasks, monitored at department level. Critical risks, potentially affecting the Agency's main objectives, were assessed at Agency level.

As in previous years, the Agency's management monitored the achievement of the 2018 Work Programme objectives through the Agency's KPIs using the Agency's 'traffic light' system (see Annex I). Most KPIs usually remain the same from year to year to ensure consistency in comparisons, but the targets to be achieved in the year in question are set on an annual basis. However in 2018, following a recommendation from the European Commission contained in the Opinion on the Agency's Programming Document, the Agency reduced the number of KPIs from over 30 to 12. The KPIs were discussed on a quarterly basis at coordination and management meetings. Specific attention was paid to objectives for which related KPIs identified delays or underperformance, and measures were identified to address such issues.

Besides the standard monitoring of the implementation of the annual Work Programme, additional processes were used to monitor the human and financial resources situation, in particular concerning budget implementation (e.g. monthly implementation reports discussed at management meetings).

The activities and tasks envisaged in the 2018 annual Work Programme were planned on the basis of the draft budget approved by the AB in late 2017. As the Agency was not assigned all the resources necessary to implement its Work Programme fully, in early 2018 the Agency revised its annual Work Programme and matched the envisaged activities with the available human resources.

### **RISK REGISTER: CRITICAL RISKS IN 2018**

In parallel with the preparation of its Programming Document, the Agency ran its annual risk assessment exercise covering operational, legal and administrative areas of activity. Risks are assessed in relation to specific activities at department level (some activities being inter-departmental). A risk register of critical risks is compiled on the basis of the assessment of the likelihood and potential impact of individual risks, including the Agency's response to the risks.

As a result of the exercise, the management identified risks considered to be both likely and with a potentially significant impact on Agency activities. The identified risks concerned the implementation of REMIT due to the considerable divergence between the minimum allocation of human resources which the Agency considers necessary to meet the objectives of REMIT and the staffing allocation voted in the EU Budget. The activities subject to critical risks concerned the operation of the Centralised European register of energy market participants (CEREMP) and the Agency's REMIT Information System (ARIS) and the market monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation.

Despite the mitigating measures adopted by the Agency, the above risks materialised (see section on "tasks deprioritised or not executed due to lack of resources" in the introduction.



## OTHER ISSUES

While no cases of fraud were detected, the Agency continued to raise awareness among staff of anti-fraud issues. The Agency also performed a fraud risk assessment exercise in 2018, resulting in the identification of three risk areas:

- Leak of information;
- Tampering with information;
- Conflict of interest.

Specific mitigating measures, as well as target dates and responsible actors to address the three residual risks were defined and were included in the Action Plan as part of a new Anti-Fraud Strategy adopted in 2019. The Strategy also defines further fraud prevention and detection measures that will enhance the anti-fraud system of the Agency.

In 2018 specific attention was also paid to data protection in relation to collection, processing and management of information. The data protection requirements and procedures within the Agency were screened and a revision of shortcomings was done in order to prepare for compliance with the Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

### 3.2 COMPLIANCE AND EFFECTIVENESS OF INTERNAL CONTROL STANDARDS

Since 2011, in line with its growth, the Agency has progressively developed and implemented a series of internal measures to ensure that its activities are effectively controlled and that they provide reasonable assurance with regard to the achievement of its objectives.

This is ensured, in particular, by the established internal control system<sup>7</sup>, which aims to provide assurance of the effectiveness and efficiency of operational activities, to meet all legal and regulatory requirements, and to ensure that financial and management reporting is reliable and that assets and information are safeguarded.

Until December 2018 the Agency applied the Internal Control Standards as defined by the European Commission, before the revision based on the framework of the Committee of Sponsoring Organizations of the Treadway Commission (COSO)<sup>8</sup>. The framework consisted of 16 Internal Control Standards that defined the control environment of the Agency with the aim

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<sup>7</sup> Established by the AB with Decision AB No 08/2011 on the Adoption of Internal Control Standards and revised by AB decision No 10/2012.

<sup>8</sup> The full text of the Internal Control-Integrated Framework of the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is available at [www.coso.org](http://www.coso.org).

of supporting sound decision-making by taking into account risks in the achievement of objectives and, where necessary, reducing them to acceptable levels.

The 16 Internal Control Standards were structured around the following six major 'building blocks':

1. mission and values
2. human resources
3. planning and risk management process
4. operations and control activities
5. information and financial reporting
6. evaluation and audit.

Following the Commission's revision of its Internal Control Framework<sup>9</sup> in 2017, and in view of aligning the Agency's internal control system to the international and EU standards and to develop the most effective internal control environment, the Agency revised and adopted its own Internal Control Framework in December 2018.

The new framework<sup>10</sup> replaced the internal control standards with internal control principles that are structured in five components, which form the Agency's internal control system as of January 2019, namely:

1. Control Environment
2. Risk Assessment
3. Control Activities
4. Information and Communication
5. Monitoring Activities

The implementation of the principles is monitored via indicators that help to assess the level of compliance and effectiveness of the internal control measures. The assessment will be done in 2019 and reported in the next Consolidated Annual Activity report in 2020.

The control activities performed, together with measures of improvement taken in 2018, are presented below.

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<sup>9</sup> Communication to the Commission: Revision of the Internal Control Framework, C (2017) 2373 of 17.04.2017.

<sup>10</sup> Decision No. 17/2018 of the Administrative Board of the Agency for the Cooperation of Energy Regulators 13 December 2018 on the adoption of the Internal Control Framework of the Agency for the Cooperation of Energy Regulators.

## ICS 2: ETHICAL AND ORGANISATIONAL VALUES

In 2018, the Agency enhanced the visibility of its mission, vision and values which were set in 2017, by highlighting them in the electronic (Agency's intranet, website) and printed (posters, leaflets) media.

Moreover, in 2018 the Agency continued to implement its ethics and integrity policies such as the policy on the prevention and management of conflicts of interest, along with its anti-fraud and whistle-blowing policies. In order to strengthen its policies and procedures in this respect, the Agency has established Guidelines on prevention and management of conflicts of interest concerning staff members involved in selection, recruitment or reclassification procedures<sup>11</sup>.

In order to detect and investigate serious concerns about fraud, corruption or other serious wrongdoing, and to take appropriate actions to protect its assets, integrity and reputation, the Agency adopted internal rules on whistleblowing<sup>12</sup>.

Furthermore, in 2018 the Agency appointed<sup>13</sup> an Ethics Correspondent, whose role is to contribute to the making of the ethical principles, standards, rules and obligations, as well as the relevant procedures, more transparent and easier to understand for Agency' staff. The Ethics Correspondent acts in confidence by serving as the focal contact point for all ethics-related issues for Agency's services, their staff and other persons working for the Agency.

## ICS 3: STAFF ALLOCATION AND MOBILITY

All temporary staff selection procedures in 2018 were launched in accordance with the model Decision on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union (CEOS). These rules define a consistent policy for temporary staff in the Agency with a view to facilitating staff mobility both within the Agency and between EU decentralised agencies.

## ICS 4: STAFF EVALUATION AND DEVELOPMENT

In 2018, the Agency implemented the AB's Decisions<sup>14</sup> on the general implementing provisions governing the procedure for annual appraisal of temporary and contract staff of the Agency.

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<sup>11</sup> Decision 2018-22 of the Director of the Agency for the Cooperation of Energy Regulators of 27 September 2018 adopting guidelines on prevention and management of conflicts of interest concerning staff members involved in selection, recruitment or reclassification procedures.

<sup>12</sup> Decision No. 09/2018 of the Administrative Board of the Agency for the Cooperation of Energy Regulators 7 June 2018 establishing the guidelines on whistleblowing and repealing Decision No 14/2014.

<sup>13</sup> Decision 2018-31 of the Director of the Agency for the Cooperation of Energy Regulators of 12 November 2018 appointing the Ethics Correspondent.

<sup>14</sup> Decision AB n 23/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 December 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff;

The appraisal system is designed to provide regular and structured feedback to improve performance and contribute to future career development. It describes roles and responsibilities, timelines and the expected outcomes of the annual performance appraisal exercise, and introduces a new qualitative approach to individual assessment.

At the beginning of 2018, the Agency undertook an internal analysis of the needs related to learning and development activities, which aimed to conduct an individual gap analysis of staff needs in order to plan and implement the learning activities for 2018, which were successfully implemented.

## ICS 7: OPERATIONAL STRUCTURE, AND ICS 8: PROCESSES AND PROCEDURES

In 2018 the Agency has applied to migrate to the document management system of the European Commission: HAN-ARES. The new system will provide a more advanced document management system for the Agency, which offer efficiency gains and security enhancements that cannot be developed by the Agency on its own, without a very significant demand on its resources and budget.

Furthermore, in 2018, the Agency, via contracted services, has performed a security risk assessment of all its data systems in view of assessing the integrity and security of data and identify possible risks. The risks were addressed in an Action Plan, which will be implemented in the course of 2019.

The process of drafting the Standard Operating Procedures (SOPs) has continued in 2018

Based on the approved methodology, all the processes of the Agency were mapped into categories (high-level processes) and groups (business processes). Within the groups Support Processes and Management Processes, several SOP's were defined.

The ICT policy reflects the Agency's current practices and needs with a view to striking a balance between reasonable flexibility for users and prioritising business needs, while maintaining a fast, efficient, professional and secure ICT user support and overall IT environment. The ICT Steering

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Decision AB n 22/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 December 2015 laying down general provisions for implementing Article 87(1) of the Conditions of Employment of Other Servants of the European Union and implementing the first paragraph of Article 44 of the Staff Regulations;

Decision AB no 07/2016 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 4 April 2016 laying down general implementing provisions regarding Article 54 of the Conditions of Employment of Other Servants of the European Union;

Decision AB no 06/2016 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 4 April 2016 laying down general implementing provisions regarding Article 87(3) of the Conditions of Employment of Other Servants of the European Union.

Committee met regularly in 2018 in order to monitor and follow the implementation of the adopted ICT policy.

## ICS 11: DOCUMENT MANAGEMENT

In 2018 the Agency has implemented all the new functionalities of its internal document management tool (filing, retention, access rights management). Moreover, the Agency made the preparations for a future migration to the document management system of the European Commission: HAN-ARES. The new system will provide a secure, robust and efficient document management system and will ensure full compliance with the document management best practices, standards and regulations.

The migration project is expected to start in Q2 2019, by initiative of the Secretariat-General of the Commission that is leading the project. An Action Plan for the migration has been approved by the management and the related budget needs have been planned.

## ICS 12: INFORMATION AND COMMUNICATION

As in previous years, in 2018, the Agency made use of a feedback tool in its opinions, recommendations and publications available to stakeholders, interested parties and the general public. The tool allows stakeholders to rate the relevance and quality of the Agency's deliverables and provide feedback. In 2018 the Agency performed a review of the results of the feedback tool for documents published by the Agency since 2015, when the tool was introduced, with a breakdown by type of document. A total of 102 feedback forms were completed rendering 562 responses in total, indicating that by and large the Agency's documents and acts are considered useful to stakeholders (83% considered the documents somewhat useful, useful or very useful).

## ICS 15: ASSESSMENT OF INTERNAL CONTROL SYSTEM

A general assessment of the effectiveness of the internal control system was conducted on the basis of the guidance issued in 2014 to assess the state of play and degree of compliance of the 16 internal control standards with the minimum requirements. In 2018, the following areas were identified and the control environment strengthened:

- IT governance and security - further implementation of information security policy, measures to improve IT governance;
- document management - further implementation of the document management policy and enhancement of the document management system.

Further efforts will be made in the areas of internal and external communication and in the development of the operational processes and procedures by defining and developing the Standard Operating Procedures for the Agency.

## CONCLUSION

In 2018, the Agency continued to implement a comprehensive internal control and performance and results-oriented management system, including risk management and ensuring a proportional approach to compliance, on the one hand, and effectiveness of internal procedures and systems, on the other. According to the assessment of internal control standards implementation, the Agency complied with the minimum requirements underlying each control standard. The specific actions implemented and the controls introduced under each of the prioritised standards in 2018 proved to function efficiently and contributed to the Agency's commitment to continuous improvement. In addition to the positive results achieved in previous years, no significant or material weaknesses in the Agency's internal control standards were found in 2018. The annual review of the internal control standards and the risk assessment exercise provide reasonable assurance that the Agency is achieving its objectives.

## PART IV: MANAGEMENT ASSURANCE

### 4.1 REVIEW OF THE ELEMENTS SUPPORTING ASSURANCE

The building blocks of assurance, as described in Part II and Part III, underpin the reasonable assurance provided by authorising officers in their declaration of assurance in the CAAR. The reliability of the information contained in this report is supported by the following building blocks of assurance.

#### BUILDING BLOCK 1: ASSESSMENT BY MANAGEMENT

As presented in the preceding sections, the Agency developed and implemented a comprehensive set of procedures and tools to prepare, manage, control and monitor the implementation of its Work Programme and its human and financial resources.

These procedures encompass *ex ante* and *ex post* controls, planning, monitoring and reporting tools, control procedures performed by staff, and assurance provided by internal and external audits, as well as evaluations of the Agency's activities.

The Agency also analyses major weaknesses, if any, in achieving its short-term objectives, the reputational risks, any significant weaknesses in the control system and recurrent errors. These weaknesses might involve the use of resources, sound financial management and the legality and regularity of transactions. The significance of a weakness is judged on the basis of:

- the nature and scope of the weakness;
- the duration of the weakness;
- the existence of mitigating controls which reduce the impact of the weakness; and
- the existence of effective corrective measures (action plans and financial corrections).

In 2018, no significant weaknesses requiring special attention, resources or actions were found. Based on the facts presented in the preceding sections, and in the light of the opinion expressed by the European Court of Auditors on the reliability of the accounts and the legality and regularity of the transactions underlying the accounts, it is safe to say that the Agency has established a working environment where risks are appropriately managed and where the internal control system works effectively and contributes to the achievement of the objectives.

This conclusion takes account of the Agency's concerted efforts to maintain a high level of effectiveness in its internal control environment, which entails constant assessment and strengthening of existing controls (considering cost-effectiveness and estimated added value against the additional cost incurred by the Agency) to maintain full compliance with the requirements of ICS 16 and to ensure it will continue to achieve the objectives in its Work Programmes in years to come.

## REGISTER OF EXCEPTIONS AND PROCEDURAL INCIDENTS

Since 2011, the Agency has had a procedure in place to register exceptions, which guarantees that all instances of overriding controls or deviations from established processes and procedures are documented in exception reports and are justified, duly approved before action is taken and logged centrally.

In 2018, the following exceptions to established processes and procedures or procedural incidents were registered:

Following an internal check a procedural incident was identified and registered with regards to individual commitments under specific contracts implementing a Framework Contract ACER/OP/ADMN/ 10/2014/01 which were authorised for a top-up in 2016 without a prior amendment to the specific contract. For the amounts paid above the ceiling of the specific contracts, the service was delivered based on the contract, to which end there were no legal implications resulting from the incident. Due to low value of transactions, the incident had a minor impact on the budget but as a mitigating measure the commitment workflow of the Agency will be revised and reinforced in order to avoid the repetition of similar shortcomings in the future.

In 2018 an exception was registered regarding a renewal of contract of employment of a staff member of the Agency. The contract of employment of the staff member concerned took effect on 1 December 2012 and was to be extended for an indefinite period before 1 December 2017. However, in December 2017 it became evident that the contract expired on 30 November 2017 and the renewal was not signed by the parties beforehand, due to a technical error in the preparation of documents. Given that the non-renewal in time was due to a technical error, the contract was authorised for extension in December 2017 for an indefinite period. This exception was entered in the Register of exceptions in 2018.

## BUILDING BLOCK 2: RESULTS OF AUDITS AND EXTERNAL EVALUATIONS DURING THE REPORTING YEAR

In 2018, the Agency received no critical recommendations from internal or external auditors. Furthermore, as provided in Part III above, all recommendations from previous years were implemented as planned, reported in a timely manner and approved by the relevant authority.

The Agency confirms that, on the basis of its thorough assessments of the observations made by the IAS in its Audit report, and following the Action Plan already put in place and being implemented, it can conclude that reasonable protection of the financial and reputational interests of the Agency is in place.

The Agency appreciates and acknowledges the efforts of the IAS to assess the quality of the control systems put in place and recognises the identified aspects in the area of information security where improvements are necessary. However, due to the classification of the



recommendations and in view of the fact that no very important nor critical recommendations were issued, the Director does not see reasons to express a reservation on the regularity and legality of the security processes. The Director has reasonable assurance that, overall, suitable controls are in place and working as intended, and that risks are being properly monitored and mitigated, and necessary improvements detected by the auditors are being implemented in accordance with the Action Plan, as accepted by the IAS. Therefore, the Director, in his capacity as Authorising Officer, intends to sign the Declaration of Assurance without any reservation.

The Agency's management has reasonable assurance that the resources assigned to the activities described in the Annual Activity Report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place provide the necessary guarantees concerning the legality and regularity of the underlying transactions. This reasonable assurance is based on:

- own judgment and the information available from the management supervision activities;
- the results of the self-assessment; and
- the observations of the IAS following the audits performed in the reporting period and the Action Plan adopted and currently implemented in cooperation with the IAS.

### **BUILDING BLOCK 3: FOLLOW-UP ON RESERVATIONS FROM PREVIOUS YEARS**

The authorising officer's declaration of assurance in the 2017 Annual Activity Report did not contain any reservations.

### **BUILDING BLOCK 4: ASSURANCE RECEIVED FROM OTHER AUTHORISING OFFICERS IN CASES OF CROSSED SUB-DELEGATIONS**

No budget implementation tasks were entrusted to other services or entities, thus minimising the risk requiring assurance.

#### **4.2 RESERVATIONS (*if applicable*)**

No reservations have been made in the current Annual Activity Report.

#### **4.3 OVERALL CONCLUSIONS ON ASSURANCE (*where applicable*)**

Not applicable.

## PART V: DECLARATION OF ASSURANCE

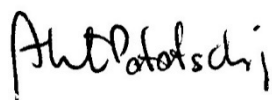
I, the undersigned Director *ad interim* of the Agency for the Cooperation of Energy Regulators, in my capacity as authorising officer,

Declare that the information contained in this report gives a true and fair view and state that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place provide the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgment and on the information at my disposal, such as the results of the self-assessment, *ex post* controls, the observations of the Internal Audit Service and the lessons learnt from Court of Auditors reports from past years.

I hereby confirm that I am not aware of anything not reported here which could harm the interests of the Agency.

Ljubljana, 13 June 2019







A handwritten signature in black ink, appearing to read 'Alberto Pototschnig', with a stylized, cursive script.

Alberto Pototschnig


## Annexes

### ANNEX I: REPORTING ON KPIS





#### TRAFFIC LIGHTS (VISUAL STATE OF PLAY) — LEGEND

|   |   |   |  |  |   |
|---|---|---|--|--|---|
|  |  |  |   |                 |  |
| KPI is fulfilled and task completed   | KPI is fulfilled and task completed with a small delay/issue                      | On track, no problems envisaged (used for Q1, Q2 and Q3)                          | Slight delay or issue that still needs to be addressed but the KPI is expected to be fulfilled, possibly with a slight delay | Problem or delay due to external factors (e.g. not received on time from ENTSOs or the Commission) | Actual or expected problem or delay, KPI not achieved or lagging behind             |


#### STAFF SATISFACTION

| Task                                  | Staff engagement /satisfaction  |
|---------------------------------------|---|
| Objectives and deadlines (indicative) | To assess, on a regular basis, staff's engagement and satisfaction with working at the Agency in order to address shortcomings.<br>Review to be performed every 2 years.  |
| <b>KPI 1</b>                          | <b>2/3 of participating staff satisfied or highly satisfied with the employment conditions at the Agency.</b>   |
| 2018 result                           | <p>The Staff engagement survey was launched on 12 March 2018 and remained open until 28 March 2018. The overall participation rate was 76% (67% in 2015). Following the analysis the overall satisfaction was at 57%.</p> <p>The Agency adopted an Action Plan to address the issues raised, which includes 30 actions and covers the areas of internal processes, staff matters, internal communication, leadership and external communication.</p> <p>The reporting on the implementation of the Action Plan is presented every three months at a general staff meeting. 23 out of the 30 actions were implemented by 20 May 2019, and the other 7 actions were on-going.</p>  |


## **BUDGET IMPLEMENTATION AND AUDIT**

| <b>Task</b>  | <b>Budget Implementation and Audit</b>   |
|--------------|--|
| Objectives   | <p>To achieve a high level of budget implementation for both commitment and payment appropriations.</p> <p>To receive a positive opinion from the European Court of Auditors and implement its recommendations.</p>  |
| <b>KPI 2</b> | <b>At least 95% execution of commitment appropriations</b>   |
| 2018 result  | <p>At the end of the year, the implementation rate of commitments reached 99.26%. </p>  |
| <b>KPI 3</b> | <b>Minimum 75% execution of payment appropriations.</b>  |
| 2018 result  | <p>At the end of the year, the implementation rate of payments reached 79.73%. </p>   |
| <b>KPI 4</b> | <b>Cancellation of payment appropriations below 5%.</b>  |
| 2018 result  | <p>At the end of the year, the implementation rate of carried over payment appropriations reached 97.14%. </p>  |
| <b>KPI 5</b> | <b>Non-qualified opinion received from ECA and 75% of its recommendations implemented in line with the Agency's Action Plan.</b>   |
| 2018 result  | <p>The Agency's audit report on its 2017 accounts received from the external audit firm contained no findings. The report from the European Court of Auditors (ECA) was also received, official replies and their translations to the findings were sent to ECA. The replies referred to the comments made on the validation of the accounting system (validation of the systems performed by DG BUDG, final report received), the disaster recovery site for REMIT operations, BREXIT impact analysis (analysis performed in early 2018), publication of vacancies on EPSO's website (limited financial resources, only seven vacancies were published on EPSO), use of Commission's IT solution for e-tendering (usage of the e-solution started in 2018), and the implementation of the action plan agreed with IAS for the area of HR.</p> <p>The Agency obtained an unqualified opinion from ECA on the 2017 accounts, receiving five comments which were fully implemented and closed in 2018. One finding from 2014 and one finding from 2015 were closed in 2018. One finding from 2017 is on-going. The implementation of all ECA recommendations according to the Agency's Action Plan is 85%. </p> |

## **ELECTRICITY NETWORK CODES, OPINIONS, RECOMMENDATIONS, DECISIONS AND REPORTS**


| <b>Task</b>                           | <b>Timely adoption of the Agency Acts in the Electricity sector foreseen in the Work Programme and in the regulations relevant for the Agency</b>  |
|---------------------------------------|--|
| Objectives and deadlines (indicative) | Timely and effective Network Codes implementation, as well as adoption of Electricity-related opinions and recommendations, including terms and conditions and methodologies, PCIs, etc.<br><br>Various deadlines (depending on the act in question and the legal requirements). |
| <b>KPI 6</b>                          | <b>90% of opinions, reviews, recommendations and reports delivered on time.</b>  |
| 2018 results                          | All the Agency's acts in the Electricity sector were issued on time.    |

## **GAS NETWORK CODES, OPINIONS, RECOMMENDATIONS, DECISIONS AND REPORTS**


| <b>Task</b>                           | <b>Timely adoption of the Agency Acts in the Gas sector foreseen in the Work Programme and in the regulations relevant for the Agency</b>  |
|---------------------------------------|--|
| Objectives and deadlines (indicative) | Timely and effective Network Codes implementation, as well as adoption of Gas-related opinions and recommendations, including terms and conditions and methodologies, PCIs, etc.<br><br>Various deadlines (depending on the act in question and the legal requirements). |
| <b>KPI 7</b>                          | <b>90% of opinions, reviews, recommendations and reports delivered on time.</b>  |
| 2018 results                          | 14 deliverables in the Gas sector were delivered on time, only the Balansys decision was delayed.   |


## **CROSS-SECTOR ISSUES (ELECTRICITY AND GAS)**



| <b>Tasks</b>                          | <b>Annual Market Monitoring Report</b>  |
|---------------------------------------|---|
| Objectives and deadlines (indicative) | Objective: timely preparation of a high quality Annual Market Monitoring Report (and of its constituent volumes, published separately). More specifically: the report is to provide in-depth analysis of barriers to the integration of the Internal Energy Market and give recommendations to the European Parliament and Commission on how to remove them.<br><br>Expected completion date: November. |

|              |  |
|--------------|--|
| <b>KPI 8</b> | <b>Positive feedback on the report based on an online survey (70% satisfied or very satisfied).</b>  |
| 2018 results | <ul style="list-style-type: none"> <li>- Electricity Wholesale Market Volume: published on 22 October</li> <li>- Gas Wholesale Market Volume: published on 3 October</li> <li>- Gas &amp; Electricity Retail Market Volume: published on 3 October</li> <li>- Consumer Empowerment Volume: published on 22 October</li> </ul> <p>Downloads: 1131, Unique downloads: 940</p> <p>The Gas Wholesale Market Volume and the Electricity Wholesale Market Volume (for which responses were received) were considered very useful by 71% of respondents and somewhat useful by 28.5%.</p>  |

### **WHOLESALE MARKET MONITORING – REMIT**

| <b>Task</b>                           | <b>REMIT Information Management and operation and further enhancements of the Agency's REMIT Information Systems whilst ensuring operational reliability</b>  |
|---------------------------------------|---|
| Objectives and deadlines (indicative) | <p>To collect, analyse and provide high-quality REMIT data for monitoring purposes of the Agency, NRAs and other relevant authorities.</p> <p>To operate the Agency's REMIT Information Systems operationally reliable.</p>   |
| <b>KPI 9</b>                          | <b>Continuous work on improving REMIT data quality measured by the number of yearly internal REMIT data quality reports.</b>  |
| 2018 results                          | <p>This remains work in progress; the lack of resources at Agency level to perform data quality activities hampered the completion of this task. However, in 2018 the Agency made significant progress, also due to the increased engagement of the NRAs.</p>  |
| <b>KPI 10</b>                         | <p><b>99% system availability</b></p> <p><b>AND</b></p> <p><b>0 breaches of the security system with a data leakage involved.</b></p>   |

|              |  |
|--------------|--|
| 2018 results | <p>Whilst overall ARIS system availability was more than 99%, the ARIS Business Intelligence components were temporarily unavailable for several days due to the lack of a backup capacity; a consequence of the lack of financial resources in 2018 and in previous years. In addition, when transitioning to a new IT provider in 2018, the Agency faced delays in the transitioning from the previous IT providers to the new System Integrator and had to put contingency measures in place aiming to ensure the continuity of services (Central Service Desk, provision of digital certificates).</p> <p>There were 0 breaches of the security system with a data leakage involved.</p>  |
|--------------|--|

|                                       |   |
|---------------------------------------|---|
| <b>Task</b>                           | <b>Market monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation, in cooperation with NRAs, on the basis of data collected in connection with the REMIT implementing acts. Ensure that NRAs and other relevant authorities apply market manipulation provisions under REMIT in a coordinated and consistent way.</b>  |
| Objectives and deadlines (indicative) | <p>Market Monitoring of the data collected according to Article 8 of REMIT. Increased integrity and transparency of wholesale energy markets. Detection of abusive practices under REMIT.</p> <p>Aim to ensure that NRAs and other relevant authorities carry out their tasks under REMIT in a coordinated and consistent way and coordinate investigations of alleged cross-border market abuse instances as required.</p>   |
| <b>KPI 11</b>                         | <b>100% of the cross-border triggered alerts preliminarily assessed and disseminated to NRAs in a secure way.</b>   |
| 2018 results                          | <p>The Agency lacks the required resources to perform appropriately this task pursuant to Article 7 of REMIT. Therefore the Agency had to resort to prioritisation in the manual assessment of triggered alerts (with only a fraction of these being manually assessed), Moreover, the level of data quality requires further improvement.</p> <p>The sharing of manually assessed triggered alerts with NRAs on a monthly basis is ongoing and stable. The alerts triggering on cross-border trading is a priority for the Agency, although overall market monitoring activities go beyond it.</p>  |
| <b>KPI 12</b>                         | <b>0% chance of not notifying priority cases to the relevant authorities.</b>   |
| 2018 results                          | <p>KPI achieved.</p>   |

## ANNEX II: FINANCIAL MANAGEMENT STATISTICS

### BUDGET OUTTURN ACCOUNT

The budget outturn account shows, on a cash basis, the actual amounts cashed as income and the amount of cash consumed to honour commitment payments. It also shows the amounts of unused and cancelled appropriations.

|  | 31 December 2018<br>EUR | 31 December 2017<br>EUR |
|--|-------------------------|-------------------------|
| <b>INCOME</b>                                  |                         |                         |
| Commission subsidy                             | 13,562,000.00           | 13,272,160.00           |
| Other income — assigned revenue                | 4,197.11                | 979.96                  |
| <b>TOTAL INCOME</b>                            | <b>13,566,197.11</b>    | <b>13,273,139.96</b>    |
| <b>EXPENSES</b>                                |                         |                         |
| <b>Expenditure related to agency employees</b> |                         |                         |
| — Title I                                      |                         |                         |
| Payments                                       | 8,276,185.31            | 7,581,058.75            |
| Carry-forwards and carry-overs                 | 176,001.37              | 220,818.59              |
| <b>Agency premises and associated expenses</b> |                         |                         |
| — Title II                                     |                         |                         |
| Payments                                       | 1,806,814.46            | 1,856,977.02            |
| Carry-forwards and carry-overs                 | 950,114.56              | 967,597.77              |
| <b>Operational expenditure — Title III</b>     |                         |                         |
| Payments                                       | 729,965.30              | 624,076.94              |
| Carry-forwards and carry-overs                 | 1,522,119.89            | 1,851,498.83            |
| <b>TOTAL EXPENSES</b>                          | <b>13,461,200.89</b>    | <b>13,102,027.90</b>    |
| Total appropriations not utilised              | 104,996.22              | 171,112.06              |
| <b>BUDGET OUTTURN BEFORE SPECIAL ITEMS</b>     | <b>104,996.22</b>       | <b>171,112.06</b>       |
| Cancelled carry-overs                          | 86,926.17               | 122,606.52              |
| Exchange rate differences                      | 102.91                  | -60.90                  |
| <b>BUDGET OUTTURN</b>                          | <b>192,025.30</b>       | <b>293,657.68</b>       |



## BUDGET IMPLEMENTATION

The following tables show detailed budget implementation by budget title and individual budget line — fund source C1 (also see headings for C4 and C8).

### BUDGET IMPLEMENTATION APPROPRIATION FUND SOURCE C1

31 December 2018  
EUR

#### TITLE 1

|                             |              |
|-----------------------------|--------------|
| Budget                      | 8,482,640.00 |
| Committed                   | 8,452,186.68 |
| Paid                        | 8,276,185.31 |
| Carry-forwards              | 176,001.37   |
| Carry-overs                 | 0.00         |
| Total expenditure           | 8,452,186.68 |
| Appropriations not utilised | 30,453.32    |
| Executed                    | 99.64%       |

#### TITLE 2

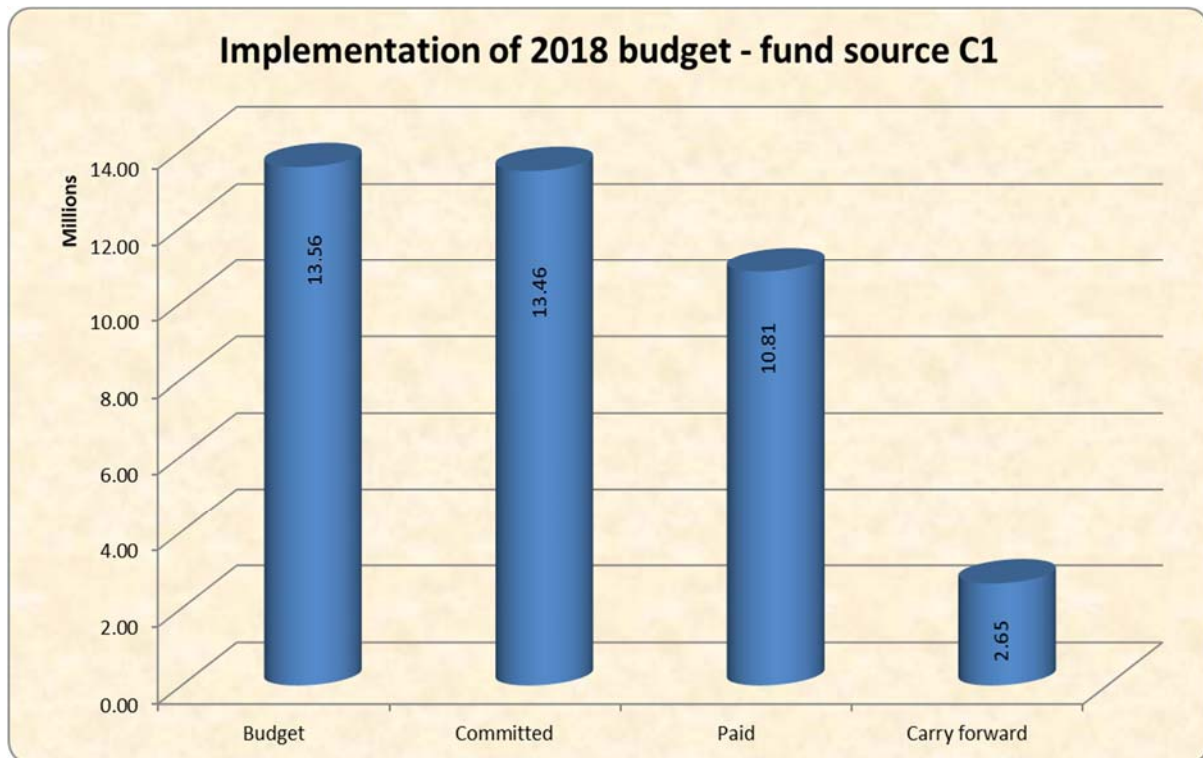
|                             |              |
|-----------------------------|--------------|
| Budget                      | 2,803,952.00 |
| Committed                   | 2,756,929.02 |
| Paid                        | 1,806,814.46 |
| Carry-forwards              | 950,114.56   |
| Carry-overs                 | 0.00         |
| Total expenditure           | 2,756,929.02 |
| Appropriations not utilised | 47,022.98    |
| Executed                    | 98.32%       |

#### TITLE 3

|                             |              |
|-----------------------------|--------------|
| Budget                      | 2,275,408.00 |
| Committed                   | 2,252,085.19 |
| Paid                        | 729,965.30   |
| Carry-forwards              | 1,522,119.89 |
| Carry-overs                 | 0.00         |
| Total expenditure           | 2,252,085.19 |
| Appropriations not utilised | 23,322.81    |
| Executed                    | 98.98%       |

#### TOTAL

|                             |               |
|-----------------------------|---------------|
| Budget                      | 13,562,000.00 |
| Committed                   | 13,461,200.89 |
| Paid                        | 10,812,965.07 |
| Carry-forwards              | 2,648,235.82  |
| Carry-overs                 | 0.00          |
| Total expenditure           | 13,461,200.89 |
| Appropriations not utilised | 100,799.11    |
| Executed                    | 99.26%        |



#### **BUDGET IMPLEMENTATION CURRENT YEAR FUND SOURCE C4**

**31 December 2018  
EUR**

##### **TITLE 1**

|                             |          |
|-----------------------------|----------|
| Budget                      | 2,629.18 |
| Appropriations not utilised | 2,629.18 |
| Executed                    | 0.00%    |

##### **TITLE 2**

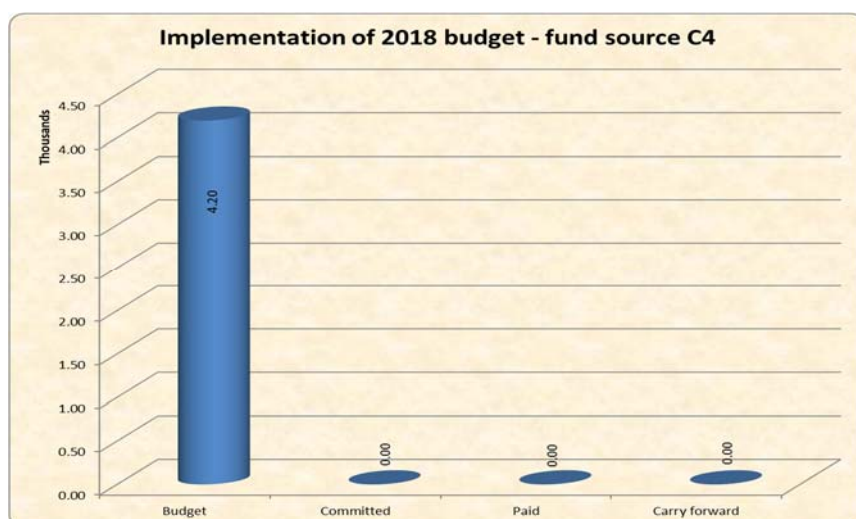
|                             |        |
|-----------------------------|--------|
| Budget                      | 653.00 |
| Appropriations not utilised | 653.00 |
| Executed                    | 0.00%  |

##### **TITLE 3**

|                             |        |
|-----------------------------|--------|
| Budget                      | 914.93 |
| Appropriations not utilised | 914.93 |
| Executed                    | 0.00%  |

##### **TOTAL**

|                             |          |
|-----------------------------|----------|
| Budget                      | 4,197.11 |
| Appropriations not utilised | 4,197.11 |
| Executed                    | 0.00%    |



## BUDGET IMPLEMENTATION — FUND SOURCE C8

**31 December 2018**  
**EUR**

### TITLE 1

|                          |            |
|--------------------------|------------|
| Budget                   | 220,818.59 |
| Committed                | 213,990.15 |
| Paid                     | 213,990.15 |
| Total expenditure        | 213,990.15 |
| Cancelled carry-forwards | 6,828.44   |
| Executed                 | 96.91%     |

### TITLE 2

|                          |            |
|--------------------------|------------|
| Budget                   | 967,597.77 |
| Committed                | 925,163.97 |
| Paid                     | 925,163.97 |
| Total expenditure        | 925,163.97 |
| Cancelled carry-forwards | 42,433.80  |
| Executed                 | 95.61%     |

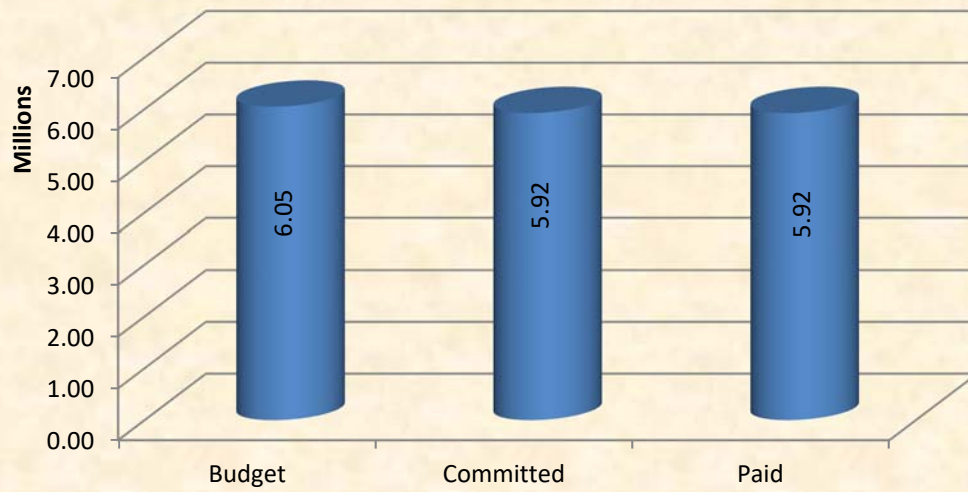
### TITLE 3

|                          |              |
|--------------------------|--------------|
| Budget                   | 1,851,498.83 |
| Committed                | 1,813,834.90 |
| Paid                     | 1,813,834.90 |
| Total expenditure        | 1,813,834.90 |
| Cancelled carry-forwards | 37,663.93    |
| Executed                 | 97.97%       |

### TOTAL

|                          |               |
|--------------------------|---------------|
| Budget                   | 3,039,915.19  |
| Committed                | 2,952,989.02  |
| Paid                     | 2,952,989.02  |
| Total expenditure        | 2,952,989.02  |
| Cancelled carry-forwards | 86,926.17     |
| Executed                 | <b>97.14%</b> |

### Implementation of 2017 budget - fund source C8



## ANNEX III: ORGANISATIONAL CHART



## ANNEX IV: ESTABLISHMENT PLAN

The Agency's establishment plan for 2018-2019 is presented below:

| Category and grade | Establishment plan in voted EU Budget 2018 |           | Modifications in 2018 in application of flexibility rule <sup>15</sup> |     | Posts filled as at 31 December 2018 |           | Establishment plan in voted EU Budget 2019 |           |
|--------------------|--|-----------|--|-----|-------------------------------------|-----------|--|-----------|
|                    | Officials                                  | TAs       | Officials  | TAs | Officials                           | TAs       | Officials                                  | TAs       |
| AD 16              |  |           |  |     |                                     |           |  |           |
| AD 15              |  | 1         |  |     |                                     | 1         |  | 1         |
| AD 14              |  |           |  |     |                                     |           |  |           |
| AD 13              |  |           |  |     |                                     |           |  | 1         |
| AD 12              |  | 4         |  |     |                                     | 4         |  | 3         |
| AD 11              |  | 5         |  |     |                                     | 1         |  | 5         |
| AD 10              |  |           |  |     |                                     | 2         |  | 1         |
| AD 9               |  | 5         |  |     |                                     | 7         |  | 6         |
| AD 8               |  | 11        |  |     |                                     | 8         |  | 10        |
| AD 7               |  | 8         |  |     |                                     | 6         |  | 7         |
| AD 6               |  | 10        |  |     |                                     | 13        |  | 12        |
| AD 5               |  | 11        |  |     |                                     | 10        |  | 9         |
| <b>Total AD</b>    |  | <b>55</b> |  |     |                                     | <b>52</b> |  | <b>55</b> |
| AST 11             |  |           |  |     |                                     |           |  |           |
| AST 10             |  |           |  |     |                                     |           |  |           |
| AST 9              |  |           |  |     |                                     |           |  |           |
| AST 8              |  |           |  |     |                                     |           |  |           |
| AST 7              |  |           |  |     |                                     |           |  |           |
| AST 6              |  | 1         |  |     |                                     |           |  | 1         |

<sup>15</sup> In line with Article 38(1) of the Framework Financial Regulation, the Administrative Board may, under certain conditions, modify the establishment plan by up to 10% of posts authorised.

|                         |  |           |  |  |  |           |  |           |
|-------------------------|--|-----------|--|--|--|-----------|--|-----------|
| AST 5                   |  | 2         |  |  |  | 2         |  | 2         |
| AST 4                   |  | 4         |  |  |  | 3         |  | 6         |
| AST 3                   |  | 5         |  |  |  | 7         |  | 3         |
| AST 2                   |  |           |  |  |  |           |  |           |
| AST 1                   |  |           |  |  |  |           |  |           |
| <b>Total<br/>AST</b>    |  | <b>12</b> |  |  |  | <b>12</b> |  | <b>12</b> |
| AST/SC6                 |  |           |  |  |  |           |  |           |
| AST/SC5                 |  |           |  |  |  |           |  |           |
| AST/SC4                 |  |           |  |  |  |           |  |           |
| AST/SC3                 |  |           |  |  |  |           |  |           |
| AST/SC2                 |  |           |  |  |  |           |  |           |
| AST/SC1                 |  |           |  |  |  |           |  |           |
| <b>Total<br/>AST/SC</b> |  | <b>12</b> |  |  |  | <b>12</b> |  | <b>12</b> |
| <b>TOTAL</b>            |  | <b>67</b> |  |  |  | <b>64</b> |  | <b>67</b> |

## ANNEX V: HUMAN AND FINANCIAL RESOURCES BY ACTIVITY

### Gender and geographical balance

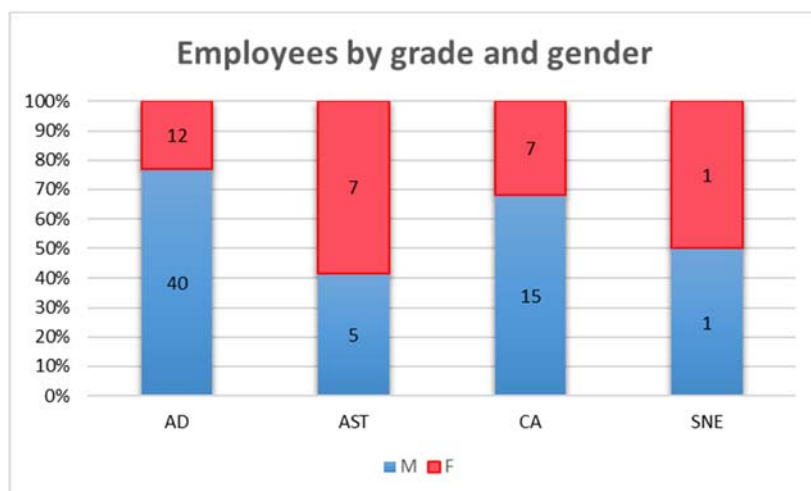
#### 1) Gender balance

In accordance with Article 1d of the Staff Regulations and Articles 12(1) and 82(1) of the CEOS, the Agency applies an equal opportunities policy regarding its staff, adopting measures and taking actions to promote equal opportunities for men and women. Its objectives in this area can be broken down into several types of measures such as those designed to:

- ensure that no gender discrimination occurs in recruitment, training and career development paths;
- reconcile personal and working life (e.g. implementing provisions on teleworking were adopted under Decision AB No 21/2012);
- raise awareness of gender equality issues; and
- protect personal dignity in the workplace.

In its discharge report for 2017, the Discharge Authority regretted the gender imbalance within the Agency's senior management members, with 5 out of 6 being male, 1 being female and asked the Agency to take measures ensuring better gender balance within its senior management. The Agency takes good note of the comment of the Discharge Authority: the Agency has increased its efforts to make its vacancy notices widely accessible and ensures that no gender discrimination occurs in its selection procedures, which are fully based on experience and merit, and in its appraisal and reclassification processes, which are fully based on performance. Therefore, the current gender composition of the Agency's staff, including of its senior management, is the result of the gender composition of the candidates applying for positions at the Agency and of their performance in the selection procedures. It should however be noted that the chairpersons of two of the three Agency's boards (Administrative Board, Board of Regulators and Board of Appeal) are female.

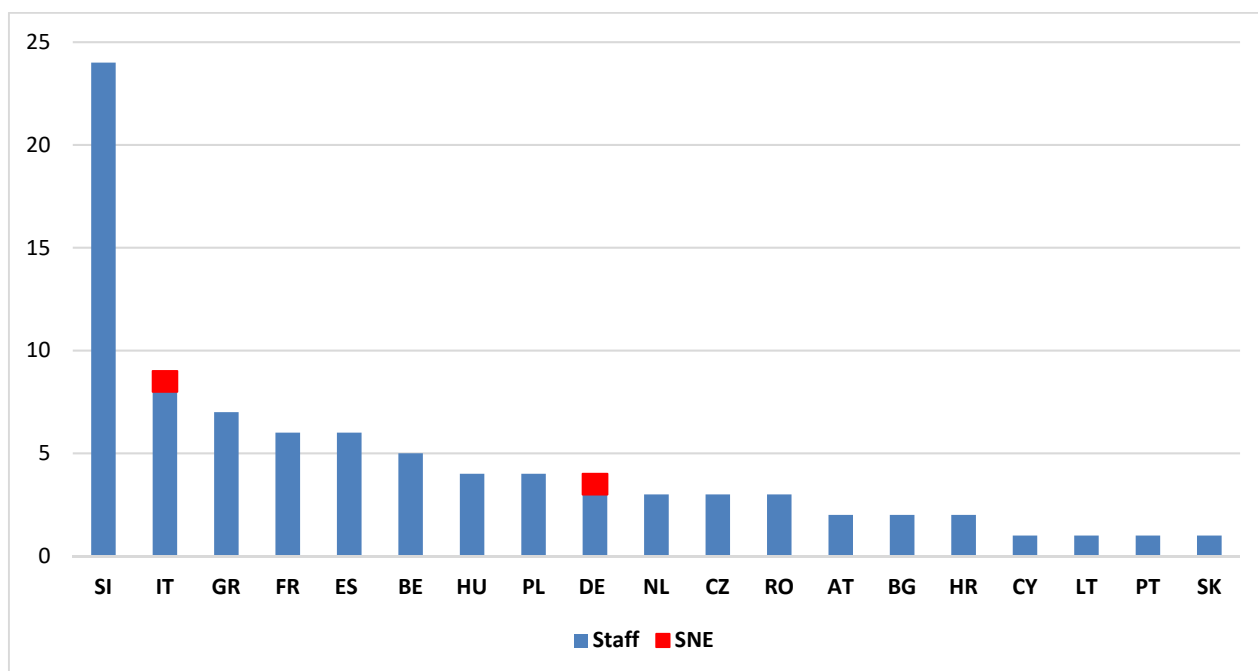
The graph below represents an overview of the Agency's staff (including temporary staff, contract staff and seconded national experts - SNEs) by grade and gender as of 1 January 2019.





## 2) Geographical balance

The graph below represents an overview of the Agency's staff (temporary staff, contract staff and seconded national experts - SNEs) by country of origin on 1 January 2019.



## ANNEX VI: RESULTS OF THE 2018 JOB-SCREENING EXERCISE

| Job Type (sub) category                          | Year 2017 (total number) | Year 2017 (%) | Year 2018  | Year 2018 (%) |
|--|--------------------------|---------------|------------|---------------|
| <b>Administrative support and coordination</b>   | <b>21</b>                | <b>17.95%</b> | <b>22</b>  | <b>18.49%</b> |
| <i>Administrative support</i>                    | 13                       | 11.11%        | 14         | 11.76%        |
| <i>Coordination</i>                              | 8                        | 6.84%         | 8          | 6.72%         |
| <b>Operational</b>                               | <b>88</b>                | <b>75.21%</b> | <b>87</b>  | <b>73.11%</b> |
| <i>Top level operational coordination</i>        | 14                       | 11.97%        | 12         | 10.08%        |
| <i>Programme management &amp; implementation</i> |                          |               |            |               |
| <i>Evaluation &amp; impact assessment</i>        |                          |               |            |               |
| <i>General operation</i>                         | 74                       | 63.25%        | 75         | 63.03%        |
| <b>Neutral</b>                                   | <b>8</b>                 | <b>6.84%</b>  | <b>10</b>  | <b>8.40%</b>  |
| <i>Finance/control</i>                           | 8                        | 6.84%         | 10         | 8.40%         |
| <i>Linguistic</i>                                |                          |               |            |               |
| <b>Total:</b>                                    | <b>117</b>               | <b>100%</b>   | <b>119</b> | <b>100%</b>   |

## ANNEX VII: FINAL FINANCIAL ACCOUNTS

## BALANCE SHEET

EUR '000

|   | Note | 31.12.2018     | 31.12.2017   |
|---|------|----------------|--------------|
| <b>NON-CURRENT ASSETS</b>                                 |      |                |              |
| <i>Intangible assets</i>                                  | 2.1  | 1 272          | 2 545        |
| <i>Property, plant and equipment</i>                      | 2.2  | 278            | 389          |
|   |      | <b>1 550</b>   | <b>2 934</b> |
| <b>CURRENT ASSETS</b>                                     |      |                |              |
| <i>Pre-financing</i>                                      | 2.3  | –              | 160          |
| <i>Exchange receivables and non-exchange recoverables</i> | 2.4  | 3 060          | 3 555        |
| <i>Cash and cash equivalents</i>                          | 2.5  | 0              | 2            |
|   |      | <b>3 060</b>   | <b>3 717</b> |
| <b>TOTAL ASSETS</b>                                       |      | <b>4 610</b>   | <b>6 651</b> |
| <b>CURRENT LIABILITIES</b>                                |      |                |              |
| <i>Payables</i>   | 2.6  | (201)          | (306)        |
| <i>Accrued charges</i>                                    | 2.7  | (1 097)        | (571)        |
|   |      | <b>(1 298)</b> | <b>(877)</b> |
| <b>TOTAL LIABILITIES</b>                                  |      | <b>(1 298)</b> | <b>(877)</b> |
| <b>NET ASSETS</b>   |      | <b>3 312</b>   | <b>5 774</b> |
| <i>Accumulated surplus</i>                                |      | 5 774          | 10 568       |
| <i>Economic result of the year</i>                        |      | (2 462)        | (4 795)      |
| <b>NET ASSETS</b>   |      | <b>3 312</b>   | <b>5 774</b> |

## STATEMENT OF FINANCIAL PERFORMANCE

EUR '000

|   | Note | 2018            | 2017            |
|---|------|-----------------|-----------------|
| <b>REVENUE</b>                                |      |                 |                 |
| <b>Revenue from non-exchange transactions</b> |      |                 |                 |
| <i>Funds from the Commission</i>              | 3.1  | 13 370          | 12 979          |
|   |      | <b>13 370</b>   | <b>12 979</b>   |
| <b>Revenue from exchange transactions</b>     |      |                 |                 |
| <i>Other exchange revenue</i>                 | 3.2  | 100             | 2               |
|   |      | <b>100</b>      | <b>2</b>        |
| <b>Total Revenue</b>                          |      | <b>13 470</b>   | <b>12 980</b>   |
| <b>EXPENSES</b>                               |      |                 |                 |
| <i>Operating costs</i>                        | 3.3  | (3 111)         | (6 128)         |
| <i>Staff costs</i>                            | 3.4  | (7 500)         | (6 920)         |
| <i>Finance costs</i>                          |      | 11              | (11)            |
| <i>Other expenses</i>                         | 3.5  | (5 333)         | (4 715)         |
| <b>Total Expenses</b>                         |      | <b>(15 932)</b> | <b>(17 775)</b> |
| <b>ECONOMIC RESULT OF THE YEAR</b>            |      | <b>(2 462)</b>  | <b>(4 795)</b>  |

CASHFLOW STATEMENT<sup>16</sup>

EUR '000

|   | Note | 2018       | 2017         |
|---|------|------------|--------------|
| <i>Economic result of the year</i>  |      | (2 462)    | (4 795)      |
| <b>Operating activities</b>   |      |            |              |
| <i>Depreciation and amortization</i>  |      | 1 413      | 1 487        |
| <i>(Increase)/decrease in pre-financing</i>                                       |      | 160        | 465          |
| <i>(Increase)/decrease in exchange receivables and non-exchange recoverables</i>  |      | 495        | 2 507        |
| <i>Increase/(decrease) in payables</i>  |      | (105)      | (271)        |
| <i>Increase/(decrease) in accrued charges</i>                                     |      | 525        | (26)         |
| <b>Investing activities</b>   |      |            |              |
| <i>(Increase)/decrease in intangible assets and property, plant and equipment</i> |      | (28)       | (167)        |
| <b>NET CASHFLOW</b>   |      | <b>(2)</b> | <b>(800)</b> |
| <i>Net increase/(decrease) in cash and cash equivalents</i>                       |      | (2)        | (800)        |
| <i>Cash and cash equivalents at the beginning of the year</i>                     | 2.5  | 2          | 802          |
| <i>Cash and cash equivalents at year-end</i>                                      | 2.5  | 0          | 2            |

## STATEMENT OF CHANGES IN NET ASSETS

EUR '000

|   | Accumulated Surplus/(Deficit) | Economic result of the year | Net Assets    |
|---|-------------------------------|-----------------------------|---------------|
| <b>BALANCE AS AT 31.12.2016</b>               | <b>9 049</b>                  | <b>1 519</b>                | <b>10 568</b> |
| <i>Allocation of the 2016 economic result</i> | 1 519                         | (1 519)                     | –             |
| <i>Economic result of the year</i>            | –                             | (4 795)                     | (4 795)       |
| <b>BALANCE AS AT 31.12.2017</b>               | <b>10 568</b>                 | <b>(4 795)</b>              | <b>5 774</b>  |
| <i>Allocation of the 2017 economic result</i> | (4 795)                       | 4 795                       | –             |
| <i>Economic result of the year</i>            | –                             | (2 462)                     | (2 462)       |
| <b>BALANCE AS AT 31.12.2018</b>               | <b>5 774</b>                  | <b>(2 462)</b>              | <b>3 312</b>  |

<sup>16</sup> Following the appointment of the Accounting Officer of the Commission as the Accounting Officer of the Agency, the treasury of ACER was integrated into the Commission's treasury system. Because of this, the Agency does not have any bank accounts of its own except for an imprest account. All payments and receipts are processed via the Commission's treasury system and registered on intercompany accounts which are presented under the heading exchange receivables.

## NOTES TO THE FINANCIAL STATEMENTS

### 1. SIGNIFICANT ACCOUNTING POLICIES

#### 1.1. ACCOUNTING PRINCIPLES

The objective of financial statements is to provide information about the financial position, performance and cashflows of an entity that is useful to a wide range of users.

The overall considerations (or accounting principles) to be followed when preparing the financial statements are laid down in EU Accounting Rule 1 'Financial Statements' and are the same as those described in IPSAS 1: fair presentation, accrual basis, going concern, consistency of presentation, materiality, aggregation, offsetting and comparative information. The qualitative characteristics of financial reporting are relevance, faithful representation (reliability), understandability, timeliness, comparability and verifiability.

#### 1.2. BASIS OF PREPARATION

##### 1.2.1. Reporting period

Financial statements are presented annually. The accounting year begins on 1 January and ends on 31 December.

##### 1.2.2. Currency and basis for conversion

The annual accounts are presented in thousands of euros, the euro being the EU's functional and reporting currency. Foreign currency transactions are translated into euros using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of foreign currency transactions and from the re-translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the statement of financial performance. Different conversion methods apply to property, plant and equipment and intangible assets, which retain their value in euros at the date when they were purchased.

Year-end balances of monetary assets and liabilities denominated in foreign currencies are translated into euros on the basis of the European Central Bank (ECB) exchange rates applying on 31 December.

##### Euro exchange rates

| Currency   | 31.12.2018      | 31.12.2017      | Currency   | 31.12.2018      | 31.12.2017      |
|------------|-----------------|-----------------|------------|-----------------|-----------------|
| <b>BGN</b> | <b>1.9558</b>   | <i>1.9558</i>   | <b>PLN</b> | <b>4.3014</b>   | <i>4.1770</i>   |
| <b>CZK</b> | <b>25.7240</b>  | <i>25.5350</i>  | <b>RON</b> | <b>4.6635</b>   | <i>4.6585</i>   |
| <b>DKK</b> | <b>7.4673</b>   | <i>7.4449</i>   | <b>SEK</b> | <b>10.2548</b>  | <i>9.8438</i>   |
| <b>GBP</b> | <b>0.8945</b>   | <i>0.8872</i>   | <b>CHF</b> | <b>1.1269</b>   | <i>1.1702</i>   |
| <b>HRK</b> | <b>7.4125</b>   | <i>7.4400</i>   | <b>JPY</b> | <b>125.8500</b> | <i>135.0100</i> |
| <b>HUF</b> | <b>320.9800</b> | <i>310.3300</i> | <b>USD</b> | <b>1.1450</b>   | <i>1.1993</i>   |

##### 1.2.3. Use of estimates

In accordance with IPSAS and generally accepted accounting principles, the financial statements necessarily include amounts based on estimates and assumptions by management based on the most reliable information available. Significant estimates include, but are not limited to; accrued and deferred revenue and charges, provisions, financial risk on accounts receivables, contingent assets and liabilities, and degree of impairment of assets. Actual results could differ from those estimates.

Reasonable estimates are essential part of the preparation of financial statements and do not undermine their reliability. An estimate may need revision if changes occur in the circumstances on which the estimate was based or as a result of new information or more experience. By its nature, the revision of an estimate

does not relate to prior periods and is not the correction of an error. The effect of a change in accounting estimate shall be recognised in the surplus or deficit in the periods in which it becomes known.

## 1.3. BALANCE SHEET

### 1.3.1. Intangible assets

Acquired computer software licences are stated at historical cost less accumulated amortisation and impairment losses. The assets are amortised on a straight-line basis over their estimated useful lives. The estimated useful lives of intangible assets depend on their specific economic lifetime or legal lifetime determined by an agreement. Internally developed intangible assets are capitalised when the relevant criteria of the EU accounting rules are met. The costs capitalisable include all directly attributable costs necessary to create, produce, and prepare the asset to be capable of operating in the manner intended by management. Costs associated with research activities, non-capitalisable development costs and maintenance costs are recognised as expenses when incurred.

### 1.3.2. Property, plant and equipment

All property, plant and equipment are stated at historical cost less accumulated depreciation and impairment losses. Historical cost includes expenditure that is directly attributable to the acquisition or construction of the asset. Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits or service potential associated with the item will flow to the entity and its cost can be measured reliably. Repairs and maintenance costs are charged to the statement of financial performance during the financial period in which they are incurred. Land and works of art are not depreciated as they are deemed to have an indefinite useful life. Assets under construction are not depreciated as these assets are not yet available for use. Depreciation on other assets is calculated using the straight-line method to allocate their cost less their residual values over their estimated useful lives, as follows:

| Type of asset                 | Straight line depreciation rate |
|-------------------------------|---------------------------------|
| <i>Buildings</i>              | <i>4 % to 10 %</i>              |
| <i>Plant and equipment</i>    | <i>10 % to 25 %</i>             |
| <i>Furniture and vehicles</i> | <i>10 % to 25 %</i>             |
| <i>Computer hardware</i>      | <i>25 % to 33 %</i>             |
| <i>Other</i>                  | <i>10 % to 33 %</i>             |

Gains or losses on disposals are determined by comparing proceeds less selling expenses with the carrying amount of the disposed asset and are included in the statement of financial performance.

### Leases

Leases of tangible assets, where the entity has substantially all the risks and rewards of ownership, are classified as finance leases. Finance leases are capitalised at the inception of the lease at the lower of the fair value of the leased asset and the present value of the minimum lease payments. The interest element of the finance lease payment is charged to statement of financial performance over the period of the lease at a constant periodic rate in relation to the balance outstanding. The rental obligations, net of finance charges, are included in financial liabilities (non-current and current). The interest element of the finance cost is charged to the statement of financial performance over the lease period so as to produce a constant periodic interest rate on the remaining balance of the liability for each period. The assets held under finance leases are depreciated over the shorter of the assets' useful life and the lease term.

Leases where the lessor retains a significant portion of the risks and rewards inherent to ownership are classified as operating leases. Payments made under operating leases are charged to the statement of financial performance on a straight-line basis over the period of the lease.

### 1.3.3. Impairment of non-financial assets

Assets that have an indefinite useful life are not subject to amortisation/depreciation and are tested annually for impairment. Assets that are subject to amortisation/depreciation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and its value in use.

Intangible assets and property, plant and equipment residual values and useful lives are reviewed, and adjusted if appropriate, at least once per year. An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. If the reasons for impairments recognised in previous years no longer apply, the impairment losses are reversed accordingly.

#### 1.3.4. Financial assets

The financial assets are classified in the following categories: financial assets at fair value through surplus or deficit; loans and receivables; held-to-maturity investments; and available for sale financial assets. The classification of the financial instruments is determined at initial recognition and re-evaluated at each balance sheet date.

##### *(i) Financial assets at fair value through surplus or deficit*

A financial asset is classified in this category if acquired principally for the purpose of selling in the short term or if so designated by the entity. Derivatives are also categorised in this category. Assets in this category are classified as current assets if they are expected to be realised within 12 months of the balance sheet date. During this financial year, the entity did not hold any investments in this category.

##### *(ii) Loans and receivables*

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. They arise when the entity provides money, goods or services directly to a debtor with no intention of trading the receivable. They are included in non-current assets, except for maturities within 12 months of the balance sheet date. Loans and receivables include term deposits with the original maturity above three months.

##### *(iii) Held-to-maturity investments*

Held-to-maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturities that the entity has the positive intention and ability to hold to maturity. During this financial year, the entity did not hold any investments in this category.

##### *(iv) Available for sale financial assets*

Available for sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories. They are classified as either current or non-current assets, depending on the period of time the entity expects to hold them, which is usually the maturity date. During this financial year, the entity did not hold any investments in this category.

#### Initial recognition and measurement

Purchases and sales of financial assets at fair value through surplus or deficit, held-to-maturity and available for sale are recognised on trade date - the date on which the entity commits to purchase or sell the asset. Cash equivalents, loans and term deposits are recognised at settlement date. Financial instruments are initially recognised at fair value. For all financial assets not carried at fair value through surplus or deficit transaction costs are added to the fair value at initial recognition.

Financial instruments are derecognised when the rights to receive cashflows from the investments have expired or the entity has transferred substantially all risks and rewards of ownership to another party.

## **Subsequent measurement**

Financial assets at fair value through surplus or deficit are subsequently carried at fair value with gains and losses arising changes in the fair value being included in the statement of financial performance in the period in which they arise.

Loans and receivables and held-to maturity investments are carried at amortised cost using the effective interest method.

Available for sale financial assets are subsequently carried at fair value. Gains and losses arising from changes in the fair value are recognised in the fair value reserve. Interest on available for sale financial assets calculated using the effective interest method is recognised in the statement of financial performance.

The entity assesses at each balance sheet date whether there is objective evidence that a financial asset is impaired and whether an impairment loss should be recorded in the statement of financial performance.

### **1.3.5. Pre-financing amounts**

Pre-financing is a payment intended to provide the beneficiary with a cash advance, i.e. a float. It may be split into a number of payments over a period defined in the particular contract, decision, agreement or basic legal act. The float or advance is either used for the purpose for which it was provided during the period defined in the agreement or it is repaid. If the beneficiary does not incur eligible expenditure, he has the obligation to return the pre-financing advance to the entity. The amount of the pre-financing may be reduced (wholly or partially) by the acceptance of eligible costs (which are recognised as expenses).

Pre-financing is, on subsequent balance sheet dates, measured at the amount initially recognised on the balance sheet less eligible expenses (including estimated amounts where necessary) incurred during the period.

### **1.3.6. Receivables and recoverables**

As the EU accounting rules require a separate presentation of exchange and non-exchange transactions, for the purpose of drawing up the accounts, receivables are defined as stemming from exchange transactions and recoverables are defined as stemming from non-exchange transactions (when the entity receives value from another entity without directly giving approximately equal value in exchange).

Receivables from exchange transactions meet the definition of financial instruments and are thus classified as loans and receivables and measured accordingly).

Recoverables from non-exchange transactions are carried at original amount (adjusted for interests and penalties) less write-down for impairment. A write-down for impairment is established when there is objective evidence that the entity will not be able to collect all amounts due according to the original terms of the recoverables. The amount of the write-down is the difference between the asset's carrying amount and the recoverable amount. The amount of the write-down is recognised in the statement of financial performance.

### **1.3.7. Cash and cash equivalents**

Cash and cash equivalents are financial instruments and include cash at hand, deposits held at call or at short notice with banks, and other short-term highly liquid investments with original maturities of three months or less.

### **1.3.8. Provisions**

Provisions are recognised when the entity has a present legal or constructive obligation towards third parties as a result of past events, it is more likely than not that an outflow of resources will be required to settle the obligation, and the amount can be reliably estimated. Provisions are not recognised for future operating losses. The amount of the provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date. Where the provision involves a large number



of items, the obligation is estimated by weighting all possible outcomes by their associated probabilities ('expected value' method).

Provisions for onerous contracts are measured at the present value of the lower of the expected cost of terminating the contract and the expected net cost of continuing with the contract.

#### 1.3.9. Payables

Included under accounts payable are both amounts related to exchange transactions such as the purchase of goods and services and to non-exchange transactions e.g. to cost claims from beneficiaries, grants or other EU funding.

Where grants or other funding is provided to the beneficiaries, the cost claims are recorded as payables for the requested amount when the cost claim is received. Upon verification and acceptance of the eligible costs, the payables are valued at the accepted and eligible amount.

Payables arising from the purchase of goods and services are recognised at invoice reception for the original amount and corresponding expenses are entered in the accounts when the supplies or services are delivered and accepted by the entity.

#### 1.3.10. Accrued and deferred revenue and charges

Transactions and events are recognised in the financial statements in the period to which they relate. At year-end, if an invoice is not yet issued but the service has been rendered, the supplies have been delivered by the entity or a contractual agreement exists (e.g. by reference to a contract), an accrued revenue will be recognised in the financial statements. In addition, at year-end, if an invoice is issued but the services have not yet been rendered or the goods supplied have not yet been delivered, the revenue will be deferred and recognised in the subsequent accounting period.

Expenses are also accounted for in the period to which they relate. At the end of the accounting period, accrued expenses are recognised based on an estimated amount of the transfer obligation of the period. The calculation of accrued expenses is done in accordance with detailed operational and practical guidelines issued by the Accounting Officer which aim at ensuring that the financial statements provide a faithful representation of the economic and other phenomena they purport to represent. By analogy, if a payment has been made in advance for services or goods that have not yet been received, the expense will be deferred and recognised in the subsequent accounting period.

## 1.4. STATEMENT OF FINANCIAL PERFORMANCE

#### 1.4.1. Revenue

Revenue comprises gross inflows of economic benefits or service potential received and receivable by the entity, which represents an increase in net assets, other than increases relating to contributions from owners.

Depending on the nature of the underlying transactions in the statement of financial performance it is distinguished between:

##### *(i) Revenue from non-exchange transactions*

Revenue from non-exchange transactions are taxes and transfers because the transferor provides resources to the recipient entity without the recipient entity providing approximately equal value directly in exchange.

Transfers are inflows of future economic benefits or service potential from non-exchange transactions, other than taxes. The entity shall recognise an asset in respect of transfers when the entity controls the resources as a result of a past event (the transfer) and expects to receive future economic benefits or service potential from those resources, and when the fair value can be reliably measured. An inflow of resources from a non-exchange transaction recognised as an asset (i.e. cash) is also recognised as revenue, except to the extent that the entity has a present obligation in respect of that transfer (condition), which

needs to be satisfied before the revenue can be recognised. Until the condition is met the revenue is deferred and recognised as a liability (pre-financing received).

*(ii) Revenue from exchange transactions*

Revenue from the sale of goods and services is recognised when the significant risk and rewards of ownership of the goods are transferred to the purchaser. Revenue associated with a transaction involving the provision of services is recognised by reference to the stage of completion of the transaction at the reporting date.

#### 1.4.2. Expenses

Expenses are decreases in economic benefits or service potential during the reporting period in the form of outflows or consumption of assets or incurrence of liabilities that result in decreases in net assets/equity. They include both the expenses from exchange transactions and expenses from non-exchange transactions.

Expenses from exchange transactions arising from the purchase of goods and services are recognised when the supplies are delivered and accepted by the entity. They are valued at original invoice amount. Furthermore, at the balance sheet date expenses related to the service delivered during the period for which an invoice has not yet been received or accepted are recognised in the statement of financial performance.

Expenses from non-exchange transactions relate to transfers to beneficiaries and can be of three types: entitlements, transfers under agreement and discretionary grants, contributions and donations. Transfers are recognised as expenses in the period during which the events giving rise to the transfer occurred, as long as the nature of the transfer is allowed by regulation or an agreement has been signed authorising the transfer; any eligibility criteria have been met by the beneficiary; and a reasonable estimate of the amount can be made.

When a request for payment or cost claim is received and meets the recognition criteria, it is recognised as an expense for the eligible amount. At year-end, incurred eligible expenses due to the beneficiaries but not yet reported are estimated and recorded as accrued expense.

## 1.5. CONTINGENT ASSETS AND LIABILITIES

#### 1.5.1. Contingent assets

A contingent asset is a possible asset that arises from past events and of which the existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity. A contingent asset is disclosed when an inflow of economic benefits or service potential is probable.

#### 1.5.2. Contingent liabilities

A contingent liability is a possible obligation that arises from past events and of which the existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or a present obligation that arises from past events but is not recognised because: it is not probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation or, in the rare circumstances where the amount of the obligation cannot be measured with sufficient reliability.

## 1.6. CONSOLIDATION

The accounts of this entity are fully consolidated in the EU consolidated annual accounts.

## 2. NOTES TO THE BALANCE SHEET

### ASSETS

#### INTANGIBLE ASSETS

EUR '000

|   |                |
|---|----------------|
| <i>Gross carrying amount at 31.12.2017</i>    | 5 130          |
| <i>Additions</i>                              | (3)            |
| <b>Gross carrying amount at 31.12.2018</b>    | <b>5 127</b>   |
| <i>Accumulated amortisation at 31.12.2017</i> | (2 585)        |
| <i>Amortisation charge for the year</i>       | (1 271)        |
| <b>Accumulated amortisation at 31.12.2018</b> | <b>(3 856)</b> |
| <b>NET CARRYING AMOUNT AT 31.12.2018</b>      | <b>1 272</b>   |
| <i>NET CARRYING AMOUNT AT 31.12.2017</i>      | 2 545          |

The above amounts relate to the REMIT Portal, an IT platform built to assist the agency with the monitoring of the wholesale energy markets and other computer software that is amortized at 25% amortisation rate per year.

#### 2.1. PROPERTY, PLANT AND EQUIPMENT

EUR '000

|   | Plant and equipment | Furniture and vehicles | Computer hardware | Other        | TOTAL          |
|---|---------------------|------------------------|-------------------|--------------|----------------|
| <i>Gross carrying amount at 31.12.2017</i>    | 2                   | 127                    | 1 284             | 267          | 1 680          |
| <i>Additions</i>                              | –                   | 3                      | 50                | 1            | 55             |
| <i>Disposals</i>                              | -                   | (5)                    | (2)               | (7)          | (13)           |
| <i>Other changes</i>                          | -                   | -                      | 3                 | -            | 3              |
| <b>Gross carrying amount at 31.12.2018</b>    | <b>2</b>            | <b>126</b>             | <b>1 335</b>      | <b>261</b>   | <b>1 724</b>   |
| <i>Accumulated depreciation at 31.12.2017</i> | (2)                 | (59)                   | (981)             | (249)        | (1 291)        |
| <i>Depreciation charge for the year</i>       | –                   | (13)                   | (135)             | (15)         | (164)          |
| <i>Disposals</i>                              | –                   | 3                      | 1                 | 7            | 11             |
| <i>Other changes</i>                          | –                   | 0                      | (3)               | -            | (3)            |
| <b>Accumulated depreciation at 31.12.2018</b> | <b>(2)</b>          | <b>(69)</b>            | <b>(1 118)</b>    | <b>(257)</b> | <b>(1 446)</b> |
| <b>NET CARRYING AMOUNT AT 31.12.2018</b>      | <b>–</b>            | <b>57</b>              | <b>217</b>        | <b>4</b>     | <b>278</b>     |
| <i>NET CARRYING AMOUNT AT 31.12.2017</i>      | –                   | 68                     | 303               | 18           | 389            |

#### 2.2. PRE-FINANCING

The ACER short-term pre-financing amounts relate to the advance payments given to contractors for services derived from the Nasdaq SMARTS project. A guarantee was received in 2017 to cover the full amount of the pre-financing given for this project. The bank guarantee was released when services were performed in 2018.

EUR '000

|                              | 31.12.2018 | 31.12.2017 |
|------------------------------|------------|------------|
| <i>Current pre-financing</i> | –          | 160        |
| <b>Total</b>                 | <b>–</b>   | <b>160</b> |

## 2.3. EXCHANGE RECEIVABLES & NON-EXCHANGE RECOVERABLES

At 31 December 2018 ACER did not have any non-current receivables and recoverables. The amounts included under this heading are of a current nature and can be broken down as follows:

| EUR '000   |       |              |              |
|--|-------|--------------|--------------|
|  | Note  | 31.12.2018   | 31.12.2017   |
| <i>Recoverables from non-exchange transactions</i> | 2.4.1 | 68           | 69           |
| <i>Receivables from exchange transactions</i>      | 2.4.2 | 2 992        | 3 485        |
| <b>Total</b>                                       |       | <b>3 060</b> | <b>3 555</b> |

### 2.3.1. RECOVERABLES FROM NON-EXCHANGE TRANSACTIONS

| EUR '000             |            |            |
|----------------------|------------|------------|
|                      | 31.12.2018 | 31.12.2017 |
| <i>Member States</i> | 68         | 69         |
| <b>Total</b>         | <b>68</b>  | <b>69</b>  |

Recoverables from Member States contain VAT amounts to be recovered from the Republic of Slovenia. The Agency benefits from a direct exemption for VAT from the Republic of Slovenia for purchases above the threshold amount of EUR 60. For purchases where the direct exemption is impracticable to obtain, the VAT is refunded by the Republic of Slovenia on a quarterly basis.

### 2.3.2. RECEIVABLES FROM EXCHANGE TRANSACTIONS

| EUR '000  |              |              |
|---|--------------|--------------|
|   | 31.12.2018   | 31.12.2017   |
| <i>Central treasury liaison accounts</i>                  | 2 778        | 3 259        |
| <i>Deferred charges relating to exchange transactions</i> | 197          | 229          |
| <i>Customers</i>  | 3            | 4            |
| <i>Impairment on receivables from customers</i>           | –            | (3)          |
| <i>Receivables from consolidated entities</i>             | –            | 1            |
| <i>Others</i>   | 13           | (3)          |
| <b>Total</b>  | <b>2 992</b> | <b>3 485</b> |

Following the appointment of the Accounting Officer of the Commission as the Accounting Officer of ACER, the treasury of ACER was integrated into the Commission's treasury system. Because of this, ACER does not have any bank accounts of its own since 1 October 2017. All payments and receipts are processed via the Commission's treasury system and registered on inter-company accounts, which are presented under the heading Central treasury liaison accounts.

The deferred charges consist of pre-payments made during the year for services that will be delivered in 2019. They mainly relate to subscriptions, insurance premium and school fees.

In 2017 the amounts of receivables from consolidated entities are related to the receivables from the EU agency OSHA. At 31 December 2018 there were no such uncollected amounts.

## 2.4. CASH AND CASH EQUIVALENTS

|                         | 31.12.2018 | 31.12.2017 |
|-------------------------|------------|------------|
| <i>Current accounts</i> | –          | –          |
| <i>Imprest accounts</i> | 0          | 2          |
| <b>Total</b>            | <b>0</b>   | <b>2</b>   |

Following the appointment of the Accounting Officer of the Commission as the Accounting Officer of ACER, the treasury of ACER was integrated into the Commission's treasury system. The majority of payments and receipts are processed via the Commission's treasury system and registered on liaison accounts, which are presented under heading receivables from exchange transactions (see 2.3.2).

The amounts remaining under this heading relate to imprest account that are managed by ACER and reserved for small local payments where it would be impractical to process them through the central treasury system.

## LIABILITIES

### 2.5. PAYABLES

|   | 31.12.2018 | 31.12.2017 |
|---|------------|------------|
| <i>Pre-financing received from EC - balancing subsidy</i> | 192        | 294        |
| <i>Sundry payables</i>                                    | 9          | 12         |
| <i>Vendors</i>  | 0          | 0          |
| <b>Total</b>  | <b>201</b> | <b>306</b> |

EUR '000

The amount of pre-financing received from EC – balancing subsidy comprises the unused amount of the 2018 Commission balancing subsidy that is to be reimbursed by ACER. This positive budgetary outturn will be returned to the Commission upon request in the course of 2019.

In 2017 the sundry payables related mainly to the goods delivered in 2017 for which no invoice was received by 31 December 2017. In 2018 this heading contained outstanding amounts from salaries which will be settled in 2019.

### 2.6. ACCRUED CHARGES

|                        | 31.12.2018 | 31.12.2017 |
|------------------------|------------|------------|
| <i>Accrued charges</i> | 1 097      | 571        |

EUR '000

Accrued charges are composed of estimated operating expenses of kEUR 815 that relate to expenses incurred in relation with operational activities of ACER in 2018 for which no invoices were received or validated by the year end. The increase in the level of accruals is not due to increase of level of activity, but rather due to the fact that there was a higher percentage of invoices not received for the services or goods delivered during 2018 compared with the end of 2017.

Also included under this heading are accrued administrative expenses, i.e. estimated costs of services and goods delivered in year 2018 but not yet invoiced or processed by the end of the year of kEUR 123, for supplies and maintenance (kEUR 25), non-IT services (kEUR 51), maintenance and security of buildings (kEUR 36) and communications and publications (kEUR 11).

The heading also includes accrued charges for untaken leave of kEUR 159.

### 3. NOTES TO THE STATEMENT OF FINANCIAL PERFORMANCE

#### REVENUE

#### NON-EXCHANGE REVENUE

##### 3.1. FUNDS FROM THE COMMISSION

|                                  | EUR '000 |        |
|----------------------------------|----------|--------|
|                                  | 2018     | 2017   |
| <i>Funds from the Commission</i> | 13 370   | 12 979 |

Included under the heading Funds from the Commission is the 2018 subsidy received in two installments from the European Commission (kEUR 13 562). The amounts included under this heading correspond to the amounts of the Commission subsidy used during 2018. Unused amounts are recorded under accounts payable and will be reimbursed to the Commission in 2019.

#### EXCHANGE REVENUE

##### 3.2. OTHER EXCHANGE REVENUE

|  | EUR '000   |            |
|--|------------|------------|
|  | 31.12.2018 | 31.12.2017 |
| <i>Property, plant and equipment related revenue</i> | 100        | -          |
| <i>Foreign exchange gains</i>                        | 0          | 1          |
| <i>Miscellaneous income exchange</i>                 | 0          | 0          |
| <b>Total</b>   | <b>100</b> | <b>2</b>   |

Included under the heading Property, plant and equipment related revenue are revenues from the correction of bookings on fixed assets purchased in 2017. The foreign exchange gains include both amounts related to realised and unrealised exchange gains. The corresponding exchange losses are included under other expenses (see note 3.5).

#### EXPENSES

##### 3.3. OPERATING COSTS

|                        | EUR '000 |       |
|------------------------|----------|-------|
|                        | 2018     | 2017  |
| <i>Operating costs</i> | 3 111    | 6 128 |

Included under this heading are operating expenses incurred in relation to operational missions, workshops, public hearings, REMIT project related costs and other operational expenditure incurred for the functioning of the Agency.

The high reduction - by Keur 3 017 - in operating costs is related with the fact that in 2017 there was a much higher carry over amount of operational expenses from 2016 compared to the one carried forward into 2018.

### 3.4. STAFF COSTS

EUR '000

|                    | 2018  | 2017  |
|--------------------|-------|-------|
| <i>Staff costs</i> | 7 500 | 6 920 |

Included under this heading are salary expenses and other employment-related allowances and benefits. Calculations related to staff costs are, based on the service level agreement, entrusted to the Office for administration and payment of individual entitlements (also known as the Paymaster's Office-PMO).

ACER staff members are part of the Pensions Scheme of European Officials. The administration of pensions is entrusted to the European Commission, which also accounts for underlying pension expenses and liabilities.

A defined benefit plan is a pension plan that generally defines an amount of benefit an employee will receive on retirement, usually dependent on one or more factors such as age and years of service. Both the ACER staff and the European Commission contribute to the pension scheme in the function of the basic salary of the staff. The contribution percentage is yearly revised to reflect the changes in staff regulation. The cost to the European Commission is not reflected in ACER's accounts.

Future benefits payable to ACER staff under the European Communities Pension Scheme are accounted for in the European Commission accounts. No provisions for such pensions are made in these accounts.

### 3.5. OTHER EXPENSES

EUR '000

|   | 2018         | 2017         |
|---|--------------|--------------|
| <i>External non IT services</i>                       | 1 643        | 747          |
| <i>Property, plant and equipment related expenses</i> | 1 588        | 1 559        |
| <i>Operating lease expenses</i>                       | 850          | 972          |
| <i>Office supplies and maintenance</i>                | 496          | 641          |
| <i>Administrative expenses with EU entities</i>       | 328          | 71           |
| <i>Training costs</i>                                 | 124          | 48           |
| <i>Missions</i>                                       | 103          | 84           |
| <i>Recruitment costs</i>                              | 60           | 45           |
| <i>Communications &amp; publications</i>              | 58           | 46           |
| <i>Experts and related expenditure</i>                | 24           | 473          |
| <i>Foreign exchange losses</i>                        | 0            | 1            |
| <i>Other</i>  | 57           | 28           |
| <b>Total</b>  | <b>5 333</b> | <b>4 715</b> |

Under this heading the external non IT services combined with the expert and related expenditure line had the highest increase with Keur 448, due to the increase of the allowance for trainees, in order to align it with the Commission level, and more interim clerical services contracted compared to the previous year.

The leasing expenses included under this heading relate to the rental contract of ACER's offices in Ljubljana. The future payments for this contract are as follows:

EUR '000

| Future amounts to be paid |          |            |           |       |
|---------------------------|----------|------------|-----------|-------|
|                           | < 1 year | 1- 5 years | > 5 years | Total |
| <i>Buildings</i>          | 867      | 3 647      | 80        | 4 594 |

## 4. OTHER SIGNIFICANT DISCLOSURES

### 4.1. OUTSTANDING COMMITMENTS NOT YET EXPENSED

This heading relates to outstanding commitments not yet expensed in amount of kEUR 1 668. It comprises the budgetary RAL ('Reste à Liquider') less related amounts that have been included as expenses in the 2018 statement of financial performance. The budgetary RAL is an amount representing the open commitments for which payments and/or de-commitments have not yet been made. This is the normal consequence of the existence of multi-annual programmes.

### 4.2. SERVICES IN KIND

During 2018 ACER received from the Council of the European Energy Regulators offices space and logistical and secretarial support for the agency's liaison office in Brussels free of charge.

### 4.3. RELATED PARTIES

The related ACER parties are the other EU consolidated entities and ACER key management personnel. Transactions between these parties take place as part of the normal ACER operations and as this is the case, no specific disclosure requirements are necessary for these transactions in accordance with the EU accounting rules.

### 4.4. KEY MANAGEMENT ENTITLEMENTS

The highest ranked civil servant of the ACER is the Director, who executes the role of the Authorising Officer.

|                 | 31.12.2018  | 31.12.2017  |
|-----------------|-------------|-------------|
| <i>Director</i> | <i>AD15</i> | <i>AD15</i> |

The Director is remunerated in accordance with the Staff Regulations of the European Union that are published on the Europa website, which is the official document describing the rights and the obligations of all officials of the EU. The Director has not received any loans from ACER.

### 4.5. OTHER EVENTS

At the end of the financial year 2018, the Agency had one legal case ongoing before the Board of Appeal (referring to the capacity booking platform to be used at "Mallnow" Interconnection Point and "GCP" Virtual Interconnection Point, case filed by PRISMA European Capacity Platform GmbH) and three cases before the European Court of Justice (Case T-332/17, E-Control v ACER, Case T-333/17, APG & VUEN v ACER, Case T-735/18, Aquind v ACER). For the first one the Board of Appeal in February 2019 decided to annul Decision No. 11/2018 on procedural grounds, and to remit the case back to the Agency. The other cases are ongoing but with no major risks against Agency.



## 5. FINANCIAL RISK MANAGEMENT

### 5.1. TYPES OF RISK

**Market risk** is the risk that the fair value or future cashflows of a financial instrument will fluctuate, because of variations in market prices. Market risk embodies not only the potential for loss, but also the potential for gain. It comprises currency risk, interest rate risk and other price risk (the ACER has no significant other price risk).

- (1) *Currency risk* is the risk that the ACER operations or its investments' value will be affected by changes in exchange rates. This risk arises from the change in price of one currency against another.
- (2) *Interest rate risk* is the possibility of a reduction in the value of a security, especially a bond, resulting from an increase in interest rates. In general, higher interest rates will lead to lower prices of fixed rate bonds, and vice versa. ACER does not have any securities thus it is not exposed to the interest rate risk.

**Credit risk** is the risk of loss due to a debtor's/borrower's non-payment of a loan or other line of credit (either the principal or interest or both) or other failure to meet a contractual obligation. The default events include a delay in repayments, restructuring of borrower repayments and bankruptcy.

**Liquidity risk** is the risk that arises from the difficulty in selling an asset; for example, the risk that a given security or asset cannot be traded quickly enough in the market to prevent a loss or meet an obligation.

### 5.2. CURRENCY RISKS

#### Exposure to currency risk at year-end

At 31 December 2018 the financial assets are composed of current bank account (imprest account), exchange receivables and non-exchange recoverables. The financial liabilities comprise current payables and accrued charges. The ending balances of both financial liabilities and financial assets are mainly quoted in EUR. The impact of other currencies is individually immaterial. At the-year-end ACER thus does not have any significant exposure to currency risks.

### 5.3. CREDIT RISK

#### Financial assets that are neither past due nor impaired

At 31 December 2018 financial assets are neither past due nor impaired comprise of current bank account and current exchange receivables and non-exchange recoverables.

#### Financial assets by risk category

The financial assets comprise exchange receivables with debtors without external credit rating that have never defaulted in the past (kEUR 2 992), non-exchange VAT receivable (kEUR 68) from the Republic of Slovenia (lower medium investment grade) and imprest account in UniCredit bank AG (prime and high investment grade).

#### Carrying amount of the financial assets which are impaired

The financial assets which are impaired include receivables from customers and receivables from staff that are overdue for more than 2 years. In line with impairment model used for ACER those receivables were for the purpose of the annual accounts fully written down and have remaining net book value of 0 at 31 December 2018.

### 5.4. LIQUIDITY RISK

#### Maturity analysis of financial liabilities by remaining contractual maturity

The financial liabilities are composed of accounts payable with contractual maturity of less than 1 year and accrued charges that are also classified under current liabilities.

## **Annex VIII: Negotiated procedures**

In 2018, there were no negotiated procedures under points (a) to (f) of point 11.1 and point 39 of Annex I to the Financial Regulation.