



Plenary sitting

A9-0097/2022

7.4.2022

REPORT

on discharge in respect of the implementation of the budget of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020
(2021/2116(DEC))

Committee on Budgetary Control

Rapporteur: Lefteris Christoforou

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1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on discharge in respect of the implementation of the budget of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020 (2021/2116(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2020, together with the agencies' replies¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 28 February 2022 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2020 (06003/2022 – C9-0071/2022),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012³, and in particular Article 70 thereof,
- having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators⁴, and in particular Article 35 thereof,
- having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵, and in particular Article 105 thereof,
- having regard to Rule 100 of and Annex V to its Rules of Procedure,

¹ OJ C 439, 29.10.2021, p. 3.

² OJ C 439, 29.10.2021, p. 3.

³ OJ L 193, 30.7.2018, p. 1.

⁴ OJ L 158, 14.6.2019, p. 22.

⁵ OJ L 122, 10.5.2019, p. 1.

- having regard to the report of the Committee on Budgetary Control (A9-0097/2022),
- 1. Grants the Director of the European Union Agency for the Cooperation of Energy Regulators discharge in respect of the implementation of the Agency's budget for the financial year 2020;
- 2. Sets out its observations in the resolution below;
- 3. Instructs its President to forward this decision, and the resolution forming an integral part of it, to the Director of the European Union Agency for the Cooperation of Energy Regulators, the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the closure of the accounts of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020 (2021/2116(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2020, together with the agencies' replies¹,
- having regard to the statement of assurance² as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 28 February 2022 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2020 (06003/2022 – C9-0071/2022),
- having regard to Article 319 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012³, and in particular Article 70 thereof,
- having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators⁴, and in particular Article 35 thereof,
- having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁵, and in particular Article 105 thereof,
- having regard to Rule 100 of and Annex V to its Rules of Procedure,

¹ OJ C 439, 29.10.2021, p. 3.

² OJ C 439, 29.10.2021, p. 3.

³ OJ L 193, 30.7.2018, p. 1.

⁴ OJ L 158, 14.6.2019, p. 22.

⁵ OJ L 122, 10.5.2019, p. 1.

- having regard to the report of the Committee on Budgetary Control (A9-0097/2022),
- 1. Approves the closure of the accounts of the European Union Agency for the Cooperation of Energy Regulators for the financial year;
- 2. Instructs its President to forward this decision to the Director of the European Union Agency for the Cooperation of Energy Regulators, the Council, the Commission and the Court of Auditors, and to arrange for its publication in the *Official Journal of the European Union* (L series).

3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020 (2021/2116(DEC))

The European Parliament,

- having regard to its decision on discharge in respect of the implementation of the budget of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2020,
 - having regard to Rule 100 of and Annex V to its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A9-0097/2022),
- A. whereas, according to its statement of revenue and expenditure¹, the final budget of the Agency for the Cooperation of Energy Regulators (the ‘Agency’) for the financial year 2020 was EUR 17 297 383, representing an increase of 7,12 % compared to 2019, whereas the inflation rate was 0,7 % in the Union in 2020; whereas the Agency’s budget of the derives entirely from the Union budget;
- B. whereas the Court of Auditors (the ‘Court’), in its report on the Agency’s annual accounts for the financial year 2020 (the ‘Court’s report’), states that the Court has obtained reasonable assurances that the Agency’s annual accounts are reliable and that the underlying transactions concerning revenue are legal and regular; whereas the Court identified a total amount of payments of EUR 752 654 which it considered to be irregular, representing 3,71 % of the total appropriations available, resulting in a qualified opinion on the legality and regularity of the payments underlying the accounts;

Budget and financial management

1. Notes with satisfaction that budget monitoring efforts during the financial year 2020 resulted in a budget implementation rate of 98,83 %, exceeding the Agency’s planned target of 95 %, representing a decrease of 0,44 % compared to 2019; notes that the payment appropriations execution rate was 83,35 %, representing an increase of 0,09 % compared to 2019;
2. Notes that the Court issued a qualified opinion on the legality and regularity of the payments underlying the accounts concerning the finding in its audit report for the 2019 financial year, in which the Court concluded that several specific contracts under a framework contract for IT services were irregular, because no competitive procurement procedure had been followed; notes specifically that certain ordered items and services were not covered by the price lists of the bids submitted for the contract and that the Court found payments made in 2020 for out-of-price list items under this framework contract amounting to EUR 752 654 (3,71 % of the total payment appropriations

¹ OJ C 114, 31.03.2021, p. 245.

available in 2020); notes further that the Court acknowledges that the Agency, following the Court's observations concerning the financial year 2019, has prepared an action plan and that its implementation is regularly monitored by the Agency's management;

Performance

3. Notes that the Agency continues to use certain measures as key performance indicators to assess the performance of its activities; notes that for each task of the Agency a priority level is given (critical, important etc.), objectives are established in the annual work plan and performance indicators are established; notes with satisfaction that the Agency reports that despite the COVID-19 pandemic, the objectives of the 2020 work programme were largely met, with the exception of some goals related to Regulation (EU) No 1227/2011² that were performed to a lesser extent due to human resources constraints;

Staff policy

4. Notes that, on 31 December 2020, the establishment plan was 100 % implemented, with 71 temporary agents appointed out of 71 temporary agents authorised under the Union budget (compared to 67 authorised posts in 2019); notes that, in addition, 30 contract agents and 4 seconded national experts worked for the Agency in 2020 with 33 and 4 posts authorised respectively;
5. Reiterates its concern about the lack of gender balance among the Agency's senior management, namely one woman (16,7 %) and five men (83,3 %) in its senior management; notes that the gender distribution among the staff overall is 68 men (67,3 %) and 33 women (32,7 %) and encourages the Agency to take measures to achieve gender balance; notes that the Agency's management board is composed of four men (44,4 %) and five women (55,6 %); reiterates its call on the Commission and the Member States to take the importance of ensuring gender balance into account when nominating their members to the management board of the Agency;
6. Welcomes the efforts made in staff policy to promote teleworking and a healthy life and continues to encourage the Agency to pursue the development of a long-term human resources policy framework that addresses work-life balance, lifelong guidance and career development, gender balance, teleworking, geographical balance and the recruitment and integration of people with disabilities;
7. Notes that the Agency was reorganised following the arrival of the Agency's new Director, aiming to increase synergies in the Agency by creating clusters (data excellence, legal service) and further enhancing cooperation between the market surveillance and conduct department and the market monitoring teams in the electricity and gas departments;
8. Notes that the Agency needs more staff and resources, primarily for implementing its tasks related to wholesale energy market integrity and transparency and for monitoring

² Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

unprecedentedly increased energy market transactions;

9. Notes that according to the Agency's annual report, the increase of powers that were granted to the Agency in recent years, also increased the number of appeals against the Agency's decisions, in turn drastically increasing the need for legal support in defending the Agency's decisions; calls on the Agency to reflect the need for sufficient legal support in its organisation structure and to ensure appropriate staffing; welcomes in this regard the transfer of appropriations in the form of a subsidy amounting to EUR 429 000 in support for its unprecedented need of legal support in defending the Agency's decisions; calls on the Agency to reflect the potentially continuing need for legal support in the procedure for future budgets of the Agency;

Procurement

10. Notes that 185 procurement procedures were concluded in 2020, compared to 79 in 2019; notes that following the implementation of e-tendering in 2019, the agency implemented e-submission for all open procedures in 2020, continuing the implementation of e-procurement in the Agency;
11. Notes with concern that the Court has issued a qualified opinion regarding the legality and regularity of the payments underlying the accounts for the financial year 2019; notes with concern that for the 2019 financial year, the Court concluded that several specific contracts under a framework contract for IT services were irregular, because no competitive procurement procedure had been followed by the Agency, and more precise, certain ordered items and services were not covered by the price lists of the bids submitted for the contract; notes that payments made in 2020 for out-of-price list items under this framework contract amounted to EUR 752 654 (3,71 % of the total payment appropriations available in 2020); notes the statements of the director of the Agency in the discharge hearing with the agencies on 29 November 2021, and the Agency's reply to written questions that the Court's finding was related to an excessive use of the option of 'out-of-price list items', and that the Agency has taken steps to prevent this from happening in the future; calls on the Agency to report to the Court and the discharge authority on the above mentioned framework contracts as well as on the steps taken;

Prevention and management of conflicts of interest and transparency

12. Acknowledges the Agency's existing measures and ongoing efforts to secure transparency, prevention and management of conflicts of interest, and to ensure the protection of whistleblowers; notes the Agency's continued efforts to implement its comprehensive policy for the prevention and management of conflicts of interest and that the Agency continued to collect the annual declarations of interest of its management staff of members and alternates of its administrative board, board of regulators and board of appeal, 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; notes that Agency reported that those declarations were reviewed in accordance with the policy and published on the Agency's website together with the CVs of the persons in question and that the Agency reported no cases of potential conflict of interest in 2020;

Internal control

13. Notes that the internal audit service (IAS)'s audit on the implementation of Regulation (EU) No 1227/2011³ in 2020 resulted in two very important, and four important recommendations that are currently being implemented on the basis of an action plan that was approved by the IAS; notes that from previously performed audits, the audits on "IT security in the Agency and information security in the REMIT domain" and "Human Resources Management" that three very important and four important recommendations were closed in 2020, and four important recommendations still need to be implemented; also notes that two important recommendations previously closed by the Agency, were re-opened, after the IAS considered the efforts of the Agency to implement them insufficient, yet closed again later in 2020; calls on the Agency to not close recommendations too early and calls on the IAS to continue its follow-up work on closed recommendations to make sure they are implemented as intended;
14. Notes that a risk assessment was performed in 2020, resulting in a new IAS strategic audit plan for the Agency for the period from 2021 to 2023; calls on both the IAS and the Agency to monitor the identified risks and to take appropriate mitigating actions, as well as assess the measures taken by performing audits on the identified risks;
15. Notes the statement of the Agency in its annual report, that the delegations and sub-delegations of budget implementation powers for the financial year 2020 were signed in November 2019 by the outgoing director and were not revoked by the incoming director, and remained valid as such, and that they were reconfirmed by the Agency's director in December 2020; notes however the finding of the Court that the current director took office on 1 January 2020 and that he issued retroactively on 18 December 2020 a confirmation of the delegations of two members of staff, meaning that for almost one year, the members of the staff in question authorised operations based on the delegations issued by the previous director; notes with concern the Court's conclusion that this constitutes an important internal control weakness, and is in particular concerned that this weakness was not identified by the Agency itself; calls on the Agency to properly assess its internal control framework, in accordance with the guidance provided by the Directorate-General for the Budget of the European Commission;

COVID-19 response and business continuity

16. Notes that the Agency, following measures to contain the spread of COVID-19, made recourse to teleworking as its normal operational mode; notes that the Agency, in accordance with its business continuity plan, set up a continuity management group which included senior management and selected members of staff, that took decisions and provided guidance to the Agency's staff on the working arrangements, related safety measures, as well as human resources and information technology issues; notes that the continuity management group also regularly informed members of staff of the measures in place in Slovenia, which were not always readily available in English;
17. Notes the difficulties faced by the Agency in applying a telework regime and handling an increasing amount of confidential data for the Agency's supervisory mandate, from more than 3 million records collected in 2019, to an average of over 6,8 million records of transactions and orders to trade per day in 2020; calls on the Agency to inform the

³ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326. 8.12.2011, p. 1).

discharge authority on the measures taken to ensure business continuity, while at the same time complying with data security and confidentiality requirements;

18. Notes that the Agency reported significant savings under the allocated appropriations for missions and events; calls on the Agency to maintain (part of) those savings in the post-lockdown era and to reflect a new way of more economical remote working in its operational procedures;

Other comments

19. Notes that the Agency has a security and information security policy in place, in addition to a set of rules for the use of IT means issued by the IT team, implementing the security and information security policy and in agreement with the security office;
20. Recalls the importance to increase the digitalisation of the Agency in terms of internal operation and management but also in order to speed up the digitalisation of procedures; stresses the need for the Agency to continue to be proactive in this regard in order to avoid a digital gap between the agencies at all costs; draws attention, however, to the need to take all the necessary security measures to avoid any risk to the online security of the information processed; calls on the Agency to speed up the development of its cybersecurity policy and to inform the discharge authority on its completion;

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21. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of [...] 2022⁴ on the performance, financial management and control of the agencies.

⁴ Texts adopted, P9_TA(2022)0000.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	31.3.2022
Result of final vote	+ : 24 - : 5 0 : 1
Members present for the final vote	Matteo Adinolfi, Gilles Boyer, Olivier Chastel, Caterina Chinnici, Lefteris Christoforou, Corina Crețu, Ryszard Czarnecki, José Manuel Fernandes, Raffaele Fitto, Luke Ming Flanagan, Isabel García Muñoz, Monika Hohlmeier, Jean-François Jalkh, Pierre Karleskind, Mislav Kolakušić, Joachim Kuhs, Ryszard Antoni Legutko, Claudiu Manda, Alin Mituța, Jan Olbrycht, Younous Omarjee, Markus Pieper, Michèle Rivasi, Petri Sarvamaa, Angelika Winzig, Lara Wolters, Tomáš Zdechovský
Substitutes present for the final vote	Bas Eickhout, Tsvetelina Penkova, Viola Von Cramon-Taubadel

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

24	+
ECR	Ryszard Czarnecki, Raffaele Fitto, Ryszard Antoni Legutko
PPE	Lefteris Christoforou, José Manuel Fernandes, Monika Hohlmeier, Jan Olbrycht, Markus Pieper, Petri Sarvamaa, Angelika Winzig, Tomáš Zdechovský
Renew	Gilles Boyer, Olivier Chastel, Pierre Karleskind, Alin Mituța
S&D	Caterina Chinnici, Corina Crețu, Isabel García Muñoz, Claudiu Manda, Tsvetelina Penkova, Lara Wolters
Verts/ALE	Bas Eickhout, Michèle Rivasi, Viola Von Cramon-Taubadel

5	-
ID	Jean-François Jalkh, Joachim Kuhs
NI	Mislav Kolakušić
The Left	Luke Ming Flanagan, Younous Omarjee

1	0
ID	Matteo Adinolfi

Key to symbols:

+ : grants discharge

- : postpones discharge

0 : abstention