



Plenary sitting

A9-0111/2023

4.4.2023

REPORT

on discharge in respect of the implementation of the budget of the European Union Agency for the Cooperation of Energy Regulators (ACER) for the financial year 2021
(2022/2092(DEC))

Committee on Budgetary Control

Rapporteur: Katalin Cseh

CONTENTS

	Page
1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
2. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	5
3. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	7
INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE	13
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE	14

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 (ACER) for the financial year 2021 (2022/2092(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Union Agency for the Cooperation of Energy Regulators (ACER) for the financial year 2021,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2021, 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 2021, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 28 February 2023 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2021 (06248/2023 – C9-0074/2023),
- 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 412, 27.10.2022, p. 12.

² OJ C 412, 27.10.2022, p. 12.

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 (A9-0111/2023),
- 1. Grants the Director of the European Union Agency for the Cooperation of Energy Regulators (ACER) discharge in respect of the implementation of the Agency's budget for the financial year 2021;
- 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 (ACER), 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 (ACER) for the financial year 2021 (2022/2092(DEC))

The European Parliament,

- having regard to the final annual accounts of the European Union Agency for the Cooperation of Energy Regulators (ACER) for the financial year 2021,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2021, 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 2021, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 28 February 2023 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2021 (06248/2023 – C9-0074/2023),
- 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 412, 27.10.2022, p. 12.

² OJ C 412, 27.10.2022, p. 12.

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 (A9-0111/2023),
- 1. Approves the closure of the accounts of the European Union Agency for the Cooperation of Energy Regulators (ACER) for the financial year 2021;
- 2. Instructs its President to forward this decision to the Director of the European Union Agency for the Cooperation of Energy Regulators (ACER), 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 (ACER) for the financial year 2021 (2022/2092(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 (ACER) for the financial year 2021,
 - 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 (A9-0111/2023),
- 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 2021 was EUR 23 590 235, representing an increase of 36,38 % compared to 2020; whereas the budget of the Agency is derived partly from the Union budget and partly from collection of fees;
- B. whereas the Court of Auditors (the ‘Court’), in its report on the Agency’s annual accounts for the financial year 2021 (the ‘Court’s report’), states that the Court has obtained reasonable assurance that the Agency’s annual accounts are reliable and that the underlying transactions concerning revenue are legal and regular;

Budget and financial management

1. Notes that budget monitoring efforts during the financial year 2021 resulted in a budget implementation of current year commitment appropriations rate of 94,06 %, (short of the Agency’s planned target of 95 %), representing a decrease of 4,81 % compared to 2020; notes that the current year payment appropriations execution rate was 65,96 % (short of the Agency planned target of 75 %), representing a decrease of 15,11 % compared to 2020;
2. Notes from the Court’s report, that in 2019 several specific contracts under a framework contract for information technology (IT) services were identified as partly irregular, that subsequent payments based on this framework contract may also be affected, and that in 2021, EUR 21 534 was the amount of associated payments; notes that the framework contract concerned will expired in 2025, and the Agency’s reply that it has minimised the use of the out of price list to the extent possible, bringing it below 10 % of the value of each specific contract, taking into account the continuity of its operational activities;
3. Notes with concern, from the Court’s report, that the Agency carried over EUR 6,6 million (29,9 %) of 2021 commitment appropriations to 2022, that, of that amount, EUR 4,0 million, or 54 % of operational expenditure, was related to core operational

¹ OJ C 141, 29.3.2022, p. 157

activities under the Regulation on wholesale energy market integrity and transparency (REMIT), and that high rates of carry-overs contradict the budgetary principle of annuality and suggest structural issues in the implementation of the budget; notes from the Agency's reply that 2021 was the first year in which the Agency collected fees with no prior experience in this domain, that the Agency was cautious in contracting its resources and delayed the start of several operational projects planned to be covered by fees until the settlement of the first fees instalment, and that it resulted in a high level of carry-overs from the commitments open balances at year-end; further notes that the Court has also reported of the high rate of carry-overs in 2020 and 2019 and that the discharge authority asked the Agency to resolve the issue with further improvements to its budget planning and its implementation cycles;

4. Notes that 2021 was the first year that the Agency collected fees from the registered reporting mechanisms for the services it provides for the collection, handling and analysing of data reported by the energy market participants for the implementation of REMIT;

Performance

5. Notes that the Agency uses key performance indicators (KPIs) to assess the results of its activities as regards the implementation and objectives of its work programme, and others in relation to the management of human and financial resources, among others; appreciates that the KPIs were fulfilled and the fact that the Agency has drawn attention to measures that can improve the efficiency and effectiveness of the Agency's work; however recommends that the Agency takes note of the indicators that have not yet been achieved or are lagging behind;
6. Notes that the Agency's work programme was largely implemented, and that a few tasks were deprioritised, cancelled, postponed or in part combined with other tasks, due to the limitation in available human resources, primarily in the field of REMIT; notes, moreover, that, according to the Agency, there was a mismatch in the timing between tasks and resources allocation, for example the tasks and resources for REMIT legislation and the clean energy market;

Staff policy

7. Notes that, on 31 December 2021, the establishment plan was 95,77 % implemented, with 68 temporary agents appointed out of 71 temporary agents authorised under the Union budget (compared to 71 authorised posts in 2020); notes that, in addition, 30 contract agents, four seconded national experts, and 10 interim staff worked for the Agency in 2021; highlights that, at the end of 2021, 23,4 % of the Agency's workforce was covered through traineeship programme and interim agency workers and therefore reiterates Court's recommendations on assigning permanent and ongoing tasks to directly employed members of staff;
8. Regrets the fact that a high gender imbalance within the Agency's senior management persists, namely one woman (17 %) and five men (83 %); notes that among its staff overall, the gender ratio is 37 women (37 %) to 63 men (63 %); notes that the Agency's administrative board is composed of nine women (50 %) and nine men (50 %); calls on the Agency to take concrete measures to improve gender balance at all levels of hierarchy as soon as possible, and to report back to the discharge authority on progress;

9. Notes that the Agency has a policy on protecting the dignity of the person and preventing psychological and sexual harassment, and that the Agency is part of the interagency network of confidential counsellors; notes that there were no reported cases of harassment in 2021 and encourages the Agency to continue and develop the work to prevent cases in the future as well;
10. Recalls the importance of developing a long-term human resources policy on work-life balance, lifelong guidance and the offering of specific training possibilities for career development, gender balance at all staff levels, teleworking, the right to disconnect, the enhancement of a geographical balance to have an appropriate representation from all Member States, and the recruitment and integration of people with disabilities as well ensuring that they are treated equally and that their opportunities are widely promoted s;

Procurement

11. Notes that 200 procurement procedures were concluded in 2021, compared to 109 in 2020, and that additional staff would be required as the number of procedures is increasing; notes that the Agency implemented e-Tendering, e-Submissions and e-Invoicing and has tested PPMT with the aim to implement it during 2023; notes that in 2021, it being the first year of fees collection, the Agency took a rather conservative approach regarding the launching of the procurement procedures; calls on the Agency to report to the discharge authority any development in that regard;
12. Recalls the importance for all procurement procedures, to ensure fair competition between tenderers and to procure goods and services at the best price, respecting the principles of transparency, proportionality, equal treatment and non-discrimination; asks for the implementation of the e-procurement IT tools developed by the Commission; calls for an updated clarification of the procedures and templates in the procurement guidelines; notes with concern the Court's observation regarding the public procurement weaknesses are increasing and remain the largest source of irregular payments for most of agencies;

Prevention and management of conflicts of interest and transparency

13. 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 that the Agency implements its comprehensive policy for the prevention and management of conflicts of interest and that the Agency collects the annual declarations of interest of its management staff, administrative board members and alternates, 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, furthermore, that the Agency assesses, assigns the submitted forms with risk levels and handles them accordingly;
14. Notes from the Court's report that between 2019 and 2021, the Agency assessed three cases of a potential conflict of interest in relation to a senior member of staff taking up paid outside activity or a new job elsewhere, and that the one case reviewed by the Court, was in contravention of Article 16 of the Staff Regulations, as the Agency did not consult the joint committee and issued its decision, that included restrictions designed to mitigate the risk, after the deadline, and that the Agency subsequently asked the person concerned to honour the restrictions, lacking any legal basis; notes from the

Agency's reply that it considered the exchange of letters with the former staff member as representing a good solution to formalise the contractual obligations after the withdrawal of the decision, thus protecting from operational, legal and reputational risks, and that the Agency is committed to apply the process in a timely and correct manner;

15. Notes that the Agency has a policy for the prevention and management of conflicts of interest, adopted by an administrative board's decision of 31 January 2015; insists on the need to put in place more systematic rules on transparency, incompatibilities, conflicts of interest, illegal lobbying and revolving doors, and if needed to update its policy of conflict of interest; calls on the Agency to strengthen its internal control mechanisms, including the setting up of an internal anticorruption mechanism;

Internal control

16. Notes that in 2021 the internal audit service (IAS) performed an audit on planning, budgeting and monitoring, and that the final report in January 2022 contained one very important recommendation on the Implementation of activity based budgeting, functional time recording and workload assessment and one important recommendation on procurement planning, monitoring and reporting for which an action plan was defined; calls on the Agency to report to the discharge authority any development in that regard;
17. Notes that from the IAS 2020 audit on the implementation of REMIT, two very important and three important recommendations were fully implemented and reported to the IAS in 2021 and closed by the IAS in 2022, and that one important recommendation was to be implemented in 2022; calls on the Agency to report to the discharge authority any development in that regard;
18. Notes that from the 2018 audit on "IT security in the Agency and information security in the REMIT domain" four important recommendations were fully implemented and closed by the IAS in 2021, one important recommendation was fully implemented and closed by the IAS in 2022, and one remaining important recommendation was significantly delayed but was fully implemented and reported to the IAS in 2022; notes, furthermore, from the 2017 audit on "Human Resources Management" that the action plan was implemented in 2020 and closed by IAS in 2021;
19. Notes that the Agency's Administrative Board adopted a new anti-fraud strategy in December 2021, based on the findings of the implementation report of the anti-fraud strategy 2019-2021;
20. Notes that the Agency, in cooperation with CERT-EU, orders and conducts regular vulnerability scans of core information and communications technology systems to assess security and data protection issues and implements mitigation techniques to address them, and that, in 2021 the Agency, after having completed the development and adaptation of an overall set of cybersecurity standards already in use by major Union Institutions, implemented the first review of one of the standards to align with the new emerging risks;
21. Notes that the Agency performed a mid-year risk review in June 2021 to re-assess the risks originally foreseen and the risks related to the surge in legal appeals against

Agency decisions were identified as a critical risk; calls on the Agency to report to the discharge authority any development in that regard;

22. Recalls the importance to strengthen management and control systems to ensure the proper functioning of the Agency; strongly insists on the requirement of an effective management and control systems to avoid potential cases of conflicts of interest, missing *ex-ante/ex-post* controls, inadequate management of budgetary and legal commitments, and failures to report issues in the register of exceptions;

Digitalisation and the green transition

23. Notes that the Agency uses a number of IT tools to improve efficiency and use of resources, including shared services provided by the Commission, such as ARES (document management) and Sysper (human resources management);
24. Notes with concern that the Agency's shortage of human and financial resources has limited the Agency in its capability to improve and further develop its digitalisation (for example, projects in the area of cloud computing had to be put on hold), as cybersecurity measures in some areas cannot mitigate the risks in line with the Agency's risk appetite;
25. Notes with appreciation the Agency's Greening Action Plan 2021-2022 with 17 concrete action points aiming to reduce the Agency's carbon footprint, such as the installation of light sensor and LED lighting, the use of more cloud resources, and the purchase of 100 % green electricity;
26. Welcomes the fact that in 2021, as regard the gas sector, the Agency focused on the upcoming legislation to decarbonise the energy sector in line with the European Green Deal with a position paper on key regulatory requirements to achieve gas decarbonisation, a white paper on rules to prevent methane leakage in the energy sector and a regulatory white paper on when and how to regulate hydrogen networks; notes, moreover, the position paper on improving the TEN-E Regulation and the white paper on regulatory treatment of power to gas; notes, furthermore, the contribution of the Agency in relation to the "Clean Energy for all Europeans" package;
27. Recalls the importance of increasing 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; 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;
28. Encourages the Agency to work in closely cooperation with ENISA (the European Union Agency for Cybersecurity); suggests that regularly updated cybersecurity-related training programmes be offered to all staff within the Agency;

Business continuity along crisis

29. Notes that a continuity management group, composed by the senior management of the Agency and responsible for human resources, IT and security, was established in March 2021 and that the Agency began implementing its strategy on new ways of working as from fall 2021; notes, moreover, that teleworking was the predominant operational

mode in order to safeguard the health of staff, that the Agency also strived to introduce hybrid methods of work, and that staff presence at the office was limited in line with the safety measures available; encourages the agency to better organise meetings that could be carried out more efficiently remotely than in-person in the future;

30. Notes that temporary security exceptions were provided and approved by the Agency's director to facilitate access to sensitive information for REMIT case work, and that several risk mitigation measures were applied in that regard;

Other comments

31. Notes with appreciation that the Agency has begun the process of migrating its public website to a new content management system (Drupal) in 2021, in an effort to modernise the Agency's public image and improve its website's user-friendliness; notes, in particular, the improvement of the Agency's public events pages;
32. Calls on the Agency to continue to develop its synergies (for instance human resources, building management, IT services and security), and to reinforce its cooperation, its exchange of good practices and its discussion regarding areas of mutual interest with other Union agencies, with a view to improving efficiency;
-
- ◦
33. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of [...] 2023² on the performance, financial management and control of the agencies.

² Texts adopted, P9_TA(2023)0000.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	22.3.2023
Result of final vote	+ : 22 - : 2 0 : 0
Members present for the final vote	Gilles Boyer, Olivier Chastel, Caterina Chinnici, Ilana Cicurel, Corina Crețu, José Manuel Fernandes, Daniel Freund, Isabel García Muñoz, Monika Hohlmeier, Jean-François Jalkh, Joachim Kuhs, Claudiu Manda, Alin Mituța, Markus Pieper, Petri Sarvamaa, Eleni Stavrou, Angelika Winzig, Lara Wolters, Tomáš Zdechovský
Substitutes present for the final vote	Maria Grapini, Niclas Herbst, Viola von Cramon-Taubadel
Substitutes under Rule 209(7) present for the final vote	Claude Gruffat, Anne-Sophie Pelletier

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

22	+
PPE	José Manuel Fernandes, Niclas Herbst, Monika Hohlmeier, Markus Pieper, Petri Sarvamaa, Eleni Stavrou, Angelika Winzig, Tomáš Zdechovský
Renew	Gilles Boyer, Olivier Chastel, Ilana Cicurel, Alin Mituța
S&D	Caterina Chinnici, Corina Crețu, Isabel García Muñoz, Maria Grapini, Claudiu Manda, Lara Wolters
The Left	Anne-Sophie Pelletier
Verts/ALE	Daniel Freund, Claude Gruffat, Viola von Cramon-Taubadel

2	-
ID	Jean-François Jalkh, Joachim Kuhs

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention