



Plenary sitting

A9-0120/2024

14.3.2024

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 2022
(2023/2140(DEC))

Committee on Budgetary Control

Rapporteur: Petri Sarvamaa

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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 (ACER) for the financial year 2022 (2023/2140(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 2022,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2022, 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 2022, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 22 February 2024 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2022 (00000/2024 – C9-0259/2024),
- 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, C/2023/594, 27.10.2023.

² OJ C, C/2023/112, 12.10.2023.

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 (A9-0120/2024),
- 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 2022;
- 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 2022 (2023/2140(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 2022,
- having regard to the Court of Auditors' annual report on EU agencies for the financial year 2022, 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 2022, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
- having regard to the Council's recommendation of 22 February 2024 on discharge to be given to the Agency in respect of the implementation of the budget for the financial year 2022 (00000/2024 – C9-0259/2024),
- 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, C/2023/594, 27.10.2023.

² OJ C, C/2023/112, 12.10.2023.

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 (A9-0120/2024),
- 1. Approves the closure of the accounts of the European Union Agency for the Cooperation of Energy Regulators (ACER) for the financial year 2022;
- 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 2022 (2023/2140(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 (the ‘Agency’) for the financial year 2022,
 - having regard to Rule 100 of and Annex V to its Rules of Procedure,
 - having regard to the Special Report No 03/2023 of the Court of Auditors;
 - having regard to the report of the Committee on Budgetary Control (A9-0120/2024),
- A. whereas, according to its statement of revenue and expenditure¹, the final budget of the Agency for the financial year 2022 was EUR 24 827 843, representing an increase of 5,25 % compared to 2021; whereas the budget of the Agency is funded from mainly two sources of revenue, namely collected fees and the contribution from the general budget of the Union;
- B. whereas the Court of Auditors (the ‘Court’), in its report on the Agency’s annual accounts for the financial year 2022 (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 are legal and regular;

Budget and financial management

1. Notes that budget monitoring efforts during the financial year 2022 resulted in a budget implementation of current year commitment appropriations rate of 99,26 %, representing an increase of 5,20 % compared to 2021; notes that the current year payment appropriations execution rate was 70,12 % (short of the Agency planned target of 75 %), representing an increase of 4,16 %, compared to 2021;
2. Notes with concern that the Agency had high rate of carry-overs of the commitment appropriations for several consecutive years, EUR 7,2 million in 2022 (29,4 %), a slight increase as compared to 2021 (29,9 %); reminds that the discharge authority has asked the Agency to resolve the issue; notes furthermore that EUR 5,5 million (or 66,2 %) of appropriations under Title III, related to operational expenditure, mainly the Agency’s core activities under Regulation (EU) 1227/2011 of the European Parliament and of the Council² (66,4 % in 2021); insists that recurrent high rates of carry-overs could indicate a structural issue, weak budgetary planning, or possibly a contravention of the budgetary principle of annuality; notes that as 2023 the Agency introduced quarterly

¹ OJ C 38, 31.01.2023, p.87.

² OJ L 326, 8.12.2011, p. 1.

awareness sessions for its budget line managers that are conducted before each budget review aiming to improve the budget planning and timely implementation of both budget and procurement plan in line with the principle of annuality;

Performance

3. Notes that as in previous years, the Agency's management monitored the achievement of the work programme objectives through the Agency's key performance indicators (KPIs) using the Agency's 'traffic light' system; also notes that according to the Agency 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; recommends however that the Agency addresses the indicators that have not yet been achieved or are lagging behind and that the Agency fine tunes KPIs on a regular basis in order to optimise its performance;
4. Observes that 82 % of the work programme was achieved or achieved with a small issue and 18 % was not achieved or the related tasks deprioritised or postponed due to the limitation in available human resources; recommends that the Agency reassess the feasibility of the work programme in relation to the human resources available, as the limitation of human resources has proved to be an explanatory factor in the implementation of the work programme in previous years as well; notes furthermore that the KPI targets were met, with the exception of the payments appropriation rate that reached 70,1 % (target 75 %) in 2022 as compared to 65,9 % in 2021;
5. Acknowledges that the Russian invasion of Ukraine called for extraordinary policy actions to preserve energy security of supply and protect consumers which increased the responsibilities of the Agency and affected the Agency's work in various ways; notes that in this context several additional comprehensive tasks were assigned to the Agency throughout the year (e.g. publication of the Final assessment of the Union wholesale electricity market , publication of the liquefied natural gas price assessment or benchmark and application of the market correction mechanism); welcomes the efforts of the Agency to deliver on those additional tasks and the additional support to the policy-makers provided in the high price energy environment;
6. Takes note of the Court's observation in its Special Report 03/2023 on internal electricity market referring to weaknesses in the Agency's monitoring and reporting framework; recalls that although the Agency's annual work programmes have consistently mentioned that monitoring is a critical task the work programmes are not sufficiently explicit in order to clarify how the monitoring and reporting is planned, despite the Agency's obligation to present all expected outputs; highlights that this risks undermining the Agency's accountability and could also hamper stakeholders' understanding of the Agency data needs and involvement in implementation monitoring;

Efficiency and gains

7. Observes that the Agency regularly re-assesses, optimises and streamlines its support functions and administrative processes by various means: knowledge sharing and introduction of best practices from other agencies, review, documentation and automation of certain processes and centralisation of certain support functions;

8. Takes note that the Agency conducted a workload activity analysis with the support of an external consulting company to assess its current state of task or activity distribution and to identify potential organisational gaps and issues, as well as space for synergies and improved spans of control and task allocation; notes that this resulted in an action plan which is monitored during senior management meetings and dedicated sessions for this purpose;
9. Welcomes the use by the Agency of a number of IT tools for procurement processes (e-Submission portal, e-Tendering portal, e-Notices and e-Invoicing for invoices under DIGIT contracts); notes that the Agency also uses Sysper, ARES (including Qualified Electronic Signature) and MiPS; calls on the Agency to further develop its internal processes by making use of digitalisation, especially when it generates efficiency and savings in operating costs;
10. 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; 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, insist on the need to step up action against cyberattacks or infiltration attempts particularly originating from Russia or China;

Staff policy

11. Notes that, on 31 December 2022, the establishment plan was 97,40 % implemented, with 74 temporary agents appointed out of 76 temporary agents authorised under the Union budget (compared to 71 authorised posts in 2021); notes that, in addition, 38 contract agents, seven seconded national experts 19 interim staff and two consultants worked for the Agency in 2022; reiterates Court's recommendations on assigning permanent and ongoing tasks to directly employed members of staff;
12. Notes that given the long-term contracts of the Agency's senior management members (excluding that of the Director, who is not selected by the Agency and has a fixed-term mandate), the Agency is currently not in a position to alter in the short term the existing gender balance of its senior management; notes that the Agency's administrative board is composed of ten women (53 %) and nine men (47 %); reiterates that among its staff overall, the underrepresentation of women persists, 40 women (35 %) to 73 men (65 %), (37 % and 63 % in 2021); recalls the importance to ensure staff gender balance and calls on the Agency to take this aspect into consideration with regard to future recruitments of staff and appointments within its senior management; is aware that the Agency endorsed the charter on diversity and inclusion, and confirmed its commitment in improving its policy and endeavours with regards to gender equality, diversity, and inclusion; strongly reiterates its call for concerted efforts to address the underrepresentation of women and report back to the discharge authority on quantifiable targets for its achievement within the Agency;
13. 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 task force of confidential counsellors; looking forward to receiving their report and recommendations; notes that there were no reported cases of harassment in

2022 and encourages the Agency to continue and develop the work to prevent cases in the future as well;

14. Encourages the agency to pursue the development of a long-term human resources policy framework which addresses work-life balance, lifelong learning and career development, gender balance, teleworking, geographical balance and the recruitment and integration of people with disabilities;

Procurement

15. Takes note of the fact that the Agency has partially resolved previous procurement weaknesses identified by the Court, especially with its orders of out-of-price list items that resulted in a qualified opinion; welcomes that the Agency has in place a complete set of guidelines for its project managers including templates and detailed instruction for the workflows in place in line with the requirements of the financial regulation in public procurement; notes that the observation of the Court will be kept open until the underlying framework contracts expire;
16. Notes that a total number of 246 procurement procedures of different types were concluded in 2022, compared to 200 in 2021; recalls the importance for all procurement procedures, to ensure fair competition between tenderers and to procure goods and services at the best price to ensure efficient use of the available budget, respecting the principles of transparency, proportionality, equal treatment and non-discrimination; 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

17. Notes that in 2022 the Agency continued to implement its comprehensive policy for the prevention and management of conflicts of interest, including provisions related to staff, its boards, working groups and task forces; also notes that the administrative board adopted in December 2022 more stringent guidelines on the prevention and management of conflicts of interest for the administrative board and the board of appeal; notes furthermore that the guidelines complement the existing Agency's overall policy on the prevention and management of the conflict of interest that was established in 2015 providing additional understanding to the administrative board's members in fulfilling their duties according to the Agency policy on the prevention and management of conflicts of interest, while they also provide additional guidelines to the review panel in the assessment of circumstances that could lead to conflicts of interest;
18. Observes that in 2022 one case of conflict of interest concerning a staff member was indicated; takes note that the head of department resolved the matter by deciding that the staff member should not be involved in certain cases involving their former employer which was furthermore confirmed by the legal services of the Agency, ethics correspondent, human resources and reflected in a note to the file;
19. Regrets that according to the Court's Special Report 03/2023 on Internal electricity market, the Agency's website is run ineffectively as key documents for stakeholders and the general public are not easily accessible, or are not published at all; notes furthermore

that the website lacks the transparency needed for a communication tool and in certain cases, it does not even comply with the regulatory requirements; calls on the Agency to urgently improve the transparency and accountability of its work by facilitating public access to the documents and data contained on its website, ensuring full and timely publication of its decisions and data in accordance with legal requirements, and introducing a clearly defined transparency policy based on best practices;

20. Is concerned by the observations in the Court's Special Report No 03/2023 on the internal market for electricity, which indicate that the Agency's governance structure hampers its effectiveness and independence; notes that as highlighted by the Court the Agency's director must obtain from the Board of Regulators (BoR) approval for key regulatory outputs; notes furthermore that despite the BoR being composed of one National regulatory authority (NRA) representative per Member State and tasked with acting in sole interest of the EU as a whole, the Agency Regulation has no legislative safeguards to avoid representatives' involvement in BoR decisions that conflict with specific NRAs' decisions or national interests (where defended by NRAs in accordance with their legal status); also notes that external expertise at the Agency greatly depends on the involvement of NRAs' experts in the working groups and task forces and although NRAs' experts may also be subject to conflicts of interest they are not required to sign any declaration concerning conflicts of interest; calls on the Commission to evaluate and propose improvements to the Agency's governance by enhancing independence from NRAs and national interests, enforcement powers, and convergence tools;
21. Observes that in the above mentioned special report, the Court also noticed weaknesses in the implementation of the Agency's internal rules on the management and publication of the declarations of interests for the BoR's and the administrative board's members; highlights that more transparency in the decision making processes of the Agency's boards and working groups could contribute to the public scrutiny of conflicting interests (e.g. publication of minutes and voting results);
22. Takes note of the fact that the Agency's meetings with lobbyists are registered at the level of the director's meetings and published on the Agency's website;
23. Recalls the importance for the Agency to develop greater visibility in the media, internet, and social media in order to make its work known to the citizens;

Internal control

24. Notes that with the aim of strengthening the internal control system a number of internal policies have been revised during 2022 including Director Decision 2022-14 of 13 September 2022 establishing the register of exceptions and non-compliance events, laying down the procedure for requesting exceptions and reporting non-compliance events; Director Decision 2022-08 of 21 June 2022 adopting the policy and procedure for managing sensitive functions and repealing Director Decision 2019-06 of 2 April 2019 on the adoption of the Policy and procedure for the management of sensitive functions; and administrative board decision amending Decision No 17/2022 of the administrative board of 13 December 2018 on the internal control framework of the Agency for the Cooperation of Energy Regulators;
25. Takes note that according to the Court's annual report, in December 2022, a payment

order of EUR 714 720 was authorised by an authorising officer by delegation whose powers of authorisation were limited to EUR 500 000; highlights that this indicates a weakness in the Agency's internal controls with regard to the delegation of powers for authorising payments; calls on the Agency to take steps to ensure that limits are enforced per payment order;

Other comments

26. Notes with appreciation that in 2022 the Agency started implementing a penetration testing plan to review all existing and newly built applications exposed to the internet with the aim of having regular penetration testing at least once every 3 years;
27. Welcomes the fact that the Agency signed in 2022 the interinstitutional framework contract on consultancy services for implementing and registering an environmental management system (EMAS); notes furthermore that the Agency continued the implementation of its Greening Action Plan 2021-2022 and looked into the possibility of taking further steps to better meet EMAS standards together with the Landlord due to the limitations and constraints imposed by the specificities of the rented premises;
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28. Refers, for other observations of a cross-cutting nature accompanying its decision on discharge, to its resolution of ...³ on the performance, financial management and control of the agencies.

³ Texts adopted, P9_TA(2024)0000.

**ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The rapporteur declares under his exclusive responsibility that he did not receive input from any entity or person to be mentioned in this Annex pursuant to Article 8 of Annex I to the Rules of Procedure.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	4.3.2024
Result of final vote	+: 21 -: 2 0: 0
Members present for the final vote	Dominique Bilde, Gilles Boyer, Olivier Chastel, Caterina Chinnici, Ilana Cicurel, Carlos Coelho, Daniel Freund, Isabel García Muñoz, Monika Hohlmeier, Joachim Kuhs, Markus Pieper, Petri Sarvamaa, François Thiollet
Substitutes present for the final vote	Katalin Cseh, Bas Eickhout, Hannes Heide, Marian-Jean Marinescu, Sabrina Pignedoli, Wolfram Pirchner
Substitutes under Rule 209(7) present for the final vote	Malin Björk, Michael Gahler, César Luena, Miguel Urbán Crespo

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

21	+
NI	Sabrina Pignedoli
PPE	Caterina Chinnici, Carlos Coelho, Michael Gahler, Monika Hohlmeier, Marian-Jean Marinescu, Markus Pieper, Wolfram Pirchner, Petri Sarvamaa
Renew	Gilles Boyer, Olivier Chastel, Ilana Cicurel, Katalin Cseh
S&D	Isabel García Muñoz, Hannes Heide, César Luena
The Left	Malin Björk, Miguel Urbán Crespo
Verts/ALE	Bas Eickhout, Daniel Freund, François Thiollet

2	-
ID	Dominique Bilde, Joachim Kuhs

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention