

Internal follow-up to Heinz Hilbrecht Report

Note from the Director

Ljubljana, 1 March 2013

Heinz Hilbrecht's (HH) assignment focussed on a limited survey of selected stakeholders (MEPs, BoR members and other NRA representatives, European Commission's officials, representatives of European energy sector associations). Therefore, the results presented in HH's report reflect the perception of these stakeholders. Whilst in some cases it is evident that such perception does not fully correspond to reality (not least because some of the findings refer to the initial stages of the Agency's establishment and thus some issues have already been addressed), in general the feedback received should be taken in the greatest consideration since the Agency, as a regulatory institution, should not only perform well, but also appear and be perceived to act properly and efficiently.

This note focuses on the findings in HH's report which relate to the internal organisation and management of the Agency under the overall responsibility of the Director, its efficient operation, transparency and accountability. It presents the measures that the Director and the senior management of the Agency has taken or is planning to take to address such findings. This note does not deal with the policy issues identified in the HH's report (such as the strategic thinking, our priority areas, etc.), nor in general with other aspects related to the other bodies of the Agency.

1 Staffing of the Electricity and Gas Departments to ensure proper handling of Framework Guidelines and Network Codes

The survey was carried out when the position of the Head of the Gas Department was still vacant. Since then, the new Head has joined the Agency.

Both departments rely heavily on SNEs (at the moment 3 in each Department, but an additional position is currently still vacant), who are increasingly difficult to recruit and whose terms of secondment have in several cases been cut short by the seconding institutions. The Agency has therefore initiated the process of transforming part of its SNE positions into Contract Agent positions.

The Agency has also bid for additional staff in both, Electricity and Gas Departments, to deal with the new tasks assigned to it by the TEN-E Regulation.

The Agency will continue to rely heavily on its Working Groups staffed mainly by experts from NRAs.

2 Risk of resource overstretching

From this year (2013), the Agency will review its Work Programme at the beginning of the year (mid-term review), to align it to the available resources (including as a result of the budgetary allocation)¹. If needed, negative priorities (tasks which will not be performed or postponed to future years) will be identified.

3 Relationship with stakeholders

Stakeholders involvement and, in general, contacts with stakeholders represent a key aspect of the Agency's way of operating (well beyond the legal requirements in its founding Regulation). HH's report indicates that stakeholders are generally satisfied with the way in which they are involved in the Agency's activities. The Agency is soon to adopt its consultation policy document.

At the same time, the HH's report indicates that in some cases the attitude of the Agency's staff vis-à-vis stakeholders could be improved. In this respect, the Agency will organise an internal meeting, with the involvement of its entire staff assigned to the operational departments. The aim of the meeting will be to initiate a common reflection on best practices when relating to stakeholders at all levels.

¹ The Agency's WP is adopted (in September every year) without prejudice to the annual budgetary procedure. The Agency already conducted a mid - term review of its 2012 Work Programme last year. This review however was not

Trilateral meetings with the European Commission and ENTSO-E/G have already taken place to take stock of the lessons emerging from the FG/NC development process, especially concerning the relationship between the Agency and the ENTSOs.

Greater effort will be put in maintaining an on-going dialogue with the ITRE Committee, including through the biannual meeting of the ACER Contact Group. The NRA Coordinator based in Brussels has played a major role in this respect and will continue to do so.

Finally, the new website of the Agency is being improved. A training session has been organised with NRA representatives.

4 Technical expertise of Agency's staff

The Agency is a young institution and this is also reflected in the age composition of its staff (the average age is 40). However, staff is recruited on the basis of an open selection procedure and the successful candidates who are offered a position in the Agency are, therefore, those who demonstrate the best mix of expertise and experience.

This said, training is an important component of professional development at the Agency. Given the specialised nature of the activities of the Agency, some training necessarily takes place "on the job". However, formal training is also offered. Every year staff members agree, with their direct hierarchical superior, a training map which lists the areas in which training could be fruitful. On the basis of these training maps, training is then authorised within the limit of the available financial resources.

The Agency has earmarked increasing financial resources for training (from €50,000 in the 2012 budget to €213,717 in the proposed budget for 2014). For 2013 the training budget is €90,000, but the Agency is looking at the possibility of making additional resources available, through budgetary transfers, within a very tight overall budget constraint.

5 Streamlining administrative procedures related to the reimbursement of BoR members travel.

The Agency is continuously looking at ways of streamlining its administrative procedures, including in relation to the reimbursement of travel costs to BoR members attending meetings in Ljubljana, always within the limit of sound financial management.

The Administrative Board Decision governing such reimbursements is under review to identify aspects where greater flexibility can be introduced.

6 SNEs' role

Some SNEs in the past expressed concerns regarding the limitations imposed by the rules on their ability to represent the Agency in public. Such concerns have mostly been appeased, as SNEs have taken an increasing role in the Agency's activities, within the limit set by the existing rules. At present SNEs are generally pleased about their role at the Agency, to the extent that a number of them have already applied for an extension of their secondment well in advance of the end of their initial period.

Currently SNEs' concerns relate mostly to the fact that they do not have access to all the benefits available to Temporary Agents. However, they receive a generous tax-free allowance, on top of the salary paid by the seconding institution.

The Agency is also looking into any appropriate improvement for spreading the information on available SNE positions to the NRAs.

7 Independence and impartiality of Agency staff

While, according to HH's report, "the impartiality and integrity of the Director and his staff is generally beyond any doubt", the Agency had already planned to introduce a mandatory course on Ethics and Integrity for its entire staff. The course is provided by the European Commission. The first edition of the course, in two sessions, took place in February 2012. Moreover, the Agency is reviewing its rules and guidelines on confidentiality and conflict of interest. Further development of these rules is expected, based on the new Commission's Communication on conflicts of interest, for the second half of 2013.

8 Input of the Agency's staff into the Agency Working Groups

Greater emphasis is now given to the preparation of the participation of Agency's staff (typically the Head of Department or his representatives) in the Agency's Working Groups. A revision of the Rules governing the functioning of the Agency's Working Groups is also underway to assign more specific responsibilities to the Agency's staff in conveying the Director's views during the meetings of the Agency's Working Groups, at the earliest stages and throughout the process.

The logistic of Agency's Working Group meetings is also being reassessed. In conjunction with the relocation of the CEER Secretariat into new premises and, therefore, also of the Agency's Brussels operations (hosted by CEER and which have made and will continue to make a significant contribution to the coordination of NRAs activities through the Working Groups), the possibility of establishing the practice on multi-location Working Group meetings, supported by video-conferencing, will be explored.

Closer contacts are also being promoted between the AWG Chairs and the corresponding Head of Departments in the Agency.

These measures should also reduce the probability of the Director having to intervene on draft documents prepared by the AWG and intended for consideration by the BoR with "last-minute changes", even though this will always remain a possibility.

9 Greater clarity in presenting Framework Guidelines and, possibly, other ACER acts (Reasoned opinions on NC and Recommendations to the EC)

It has now been decided that all future Framework Guidelines, when they are published after their adoption, will be accompanied by a short (typically 1-2 page) summary in non-technical terms, also identifying any benefit for final consumers. It is also being considered whether the same practice should be applied to Reasoned Opinions and Recommendations on Network Codes adopted and published by the Agency.

10 Reinforcing expertise in the infrastructure area

The resources currently allocated to the Agency will never be sufficient to conduct a thorough analysis of the TYNDPs (there are one officer and one assistant in each department assigned to the TSO Cooperation area). The new TEN-E Regulation assigns additional tasks to the Agency in the infrastructure assessment area. The Agency is bidding for additional staff required to perform these tasks. If such additional staff is authorised, the Agency will be able to increase its expertise and analytical capability in this area. However, a thorough assessment of the TYNDPs also requires significant investment in modelling tools and capabilities, which the Agency currently cannot afford.