



P. Nikiforos Diamandouros
European Ombudsman

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Agency visit OI/12/2012/EIS – Visit to the European Chemicals Agency (ECHA)

Dear Mr Dancet,

In May 2011, I launched a programme of visits to EU agencies, with the aim of identifying and spreading best practices in their relations with citizens. I initially carried out three "pilot" visits to the EU agencies in the United Kingdom, namely, the European Banking Authority, the European Medicines Agency and the European Police College. Subsequently, on 1 June 2011, I met with the heads of all EU agencies in Brussels and had occasion to familiarise them with this initiative in more detail. In October and November 2011, I visited, respectively, the European Environment Agency in Copenhagen and the European Monitoring Centre for Drugs and Drug Addiction and the European Maritime Safety Agency in Lisbon. In February 2012, I visited the European Centre for the Development of Vocational Training in Thessaloniki and in May I visited the European Foundation for the Improvement of Living and Working Conditions in Dublin. In June 2012, I visited EUROJUST and EUROPOL in The Hague and the European Systemic Risk Board in Frankfurt. Finally, in July 2012, I visited the European Network and Information Security Agency, ENISA, in Iraklion, Crete. Information on my previous visits to the EU agencies is available on the following page of my website:

www.ombudsman.europa.eu/activities/visits.faces

I will be in Helsinki on 5 October 2012 and would like to take this opportunity to visit ECHA. I would be happy to meet with relevant members of the Agency's management team. Given the nature of such a visit, it seems appropriate to address myself to you as the Executive Director of ECHA. To assist you in preparing for what I am certain will prove to be a useful and constructive exchange of views, I attach to this letter an annex containing (a) the draft programme for our meeting and (b) information concerning the procedural aspects of this type of visit.



I note that, following informal contacts between our offices, Friday 5 October 2012 (9:30 - 12:30 h) has been agreed upon as a mutually convenient date for our meeting, in which, I understand, your Deputy Director Mr Jukka Malm will, in your absence, represent ECHA's management.

During my visit to ECHA, I will be accompanied by Ms Eija Salonen, Legal Officer, who will act as the contact person for the organisational aspects of our meeting. Her contact details are: eija.salonen@ombudsman.europa.eu, tel: + 33 3 88 17 24 29. From the informal contacts between our offices, I also understand that Ms Minna Heikkilä from your Agency will serve as the contact person in ECHA who will liaise with Ms Salonen for all the necessary preparations.

Please note that, following our meeting, I would also like to meet with ECHA's Staff Committee. Doing so follows a request by the Assembly of Agency Staff Committees (AASC) that I systematically meet with the staff committees of the EU agencies which I visit in the context of own-initiative inquiries.

I would like to thank you again for agreeing to organise this visit, and, in your absence, look forward to meeting with your Deputy Director and your colleagues and to engaging with them all in what I am sure will be fruitful exchanges concerning the various issues contained in the draft agenda for our meeting. I also wish to thank the ECHA management for organising the practical aspects of my meeting with the Agency's Staff Committee.

Yours sincerely,

P. Nikiforos Diamandouros

Attachment: 1



ANNEX:

Procedural aspects and draft agenda of the visit

Concerning the procedural aspects

The European Ombudsman's visits are formally carried out on the basis of his competence to conduct own initiative inquiries. The correspondence relating to this visit will therefore carry a registration reference number for such own-initiative inquiries (OI/12/2012/EIS). The Ombudsman would be grateful if ECHA could quote this reference number in its correspondence concerning the visit.

An own initiative inquiry implies, among others, that the usual procedural guarantees concerning such inquiries apply. These include the agency's right to request the European Ombudsman to treat information and documents on a confidential basis - see Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions:
www.ombudsman.europa.eu/resources/provisions.faces

As well as informing the agency to be visited of the issues that he intends to raise, the Ombudsman can also ask it to provide in advance certain relevant information and/or documents.

Following each visit, the Ombudsman will inform the agency in writing of his findings. If he makes any specific suggestions, he will normally ask the agency to inform him of any follow-up action it proposes to undertake. Depending on the agency's response, the Ombudsman will either consider closing the inquiry or taking further steps, for instance, by issuing formal recommendations.

Please note that the preparatory letter for this visit, as well as this annex will be published on the European Ombudsman's website. If the Ombudsman decides to make suggestions to the Agency following his visit, the communication containing such suggestions will also be published on that page, as will the Agency's response, any further correspondence, and the Ombudsman's final written conclusions. These exchanges will appear on the following page of the Ombudsman's website:
<http://www.ombudsman.europa.eu/activities/visits.faces>

Concerning the issues on the agenda

With regard to the content of the 5 October 2012 visit, the European Ombudsman would like to discuss the following themes:

- The public service principles;
- ECHA's initial contacts with the public;
- Transparency, dialogue and accountability ;
- Recruitment;
- Tenders and contracts;
- Conflicts of interest; and



- Whistleblowing.

The specific issues that the Ombudsman would like to look at under each theme are as follows:

1. The Public Service Principles

On 10 July 2012, I informed the ECHA of the publication of five public service principles that should guide the conduct of EU civil servants. I would be interested to learn whether the Agency has taken or plans to take steps to ensure (a) that all members of its staff are informed of the principles and (b) to make the principles available on its website, so that the public is informed that the Agency subscribes to them.

2. Initial contacts with the public

One of the Ombudsman's fundamental tasks is to ensure that the EU administration is open, service-minded and efficient in handling contacts with citizens. The relevant basic principles are laid down in the European Code of Good Administrative Behaviour (ECGAB). The issue remains significant in our daily work, suggesting that the EU administration still faces some challenges in this area. When appropriate, the European Ombudsman tries to find a rapid solution to complaints that concern grievances about a citizen's initial contacts with the administration. Usually this involves my services' contacting the relevant person by telephone.

I understand that all the EU agencies agreed to adopt the European Code of Good Administrative Behaviour at a meeting of the heads of the agencies held in Lisbon in October 2008. I have found on ECHA's website a link to its own Code of Good Administrative Behaviour¹ (hereinafter 'the ECHA Code'). At first sight, it appears that the ECHA Code mainly reflects the principles contained in the European Code of Good Administrative Behaviour (ECGAB). However, for example, a reference to the Ombudsman is missing in the ECHA Code as regards the provision corresponding to Article 19 of the ECGAB (indication of the possibilities of appeal). In this respect, I would be grateful if ECHA could clarify how it sees the relationship between the two codes and whether it intends to publish also the ECGAB on its website. I would also be grateful to know more as to how ECHA goes about ensuring that ECHA's staff complies with the principles laid down in the Code. I have not been able to find references to this matter on ECHA's website and would therefore be grateful for a presentation on this subject.

3. Transparency, dialogue and accountability

The European Ombudsman also places a premium on promoting transparency and increasing accountability in the EU administration. This requirement is, among others, reflected in

¹ http://www.echa.europa.eu/documents/10162/13559/code_of_good_administrative_behaviour_en.pdf



the EU legislation on public access to documents, which expressly mentions the Ombudsman as a review body. It is also reflected in the Ombudsman's extensive powers of investigation, which enable us thoroughly to clarify the facts and issues raised in our inquiries.

I would therefore be grateful to know more about the following issues:

- a) I note that ECHA's website contains a section on access to documents held by the agency. However, I would be grateful to know how ECHA deals in practice with requests for public access to documents. What are its rules, guidelines and/or practical arrangements for handling such requests? Please provide examples, such as the main correspondence in the Agency's handling of the last three requests for public access to documents dealt with under the relevant ECHA rules and/or Regulation 1049/2001. (The *substance* of ECHA's decisions in these examples will not be examined, as this is not the purpose of this visit.)
- b) Does ECHA produce an annual report (internal or external) on its handling of public access to documents?
- c) Does ECHA operate, or intend to operate, a public register in the sense of Article 11 of Regulation 1049/2001?
- d) ECHA handles a vast amount of information and data. Its website is user-friendly and contains a large volume of data, publications and information relating to ECHA's main activities. Regulation 1049/2001 strictly speaking only applies to 'documents'. How does ECHA deal with requests for information? Please provide us with information concerning the feedback ECHA's services receive from users and stakeholders regarding access to information.

4. Selection and recruitment

With regard to the substance of selection and recruitment decisions, the Ombudsman takes an approach similar to that of the EU Courts. This means, among others, that he recognises the very wide discretionary powers of the Administration in selecting its staff.

With regard to the procedural aspects of selection and recruitment, the Ombudsman has very actively worked to increase the transparency of EU recruitment. This has, for instance, led to enhanced transparency regarding the names of members of selection boards, and more detailed evaluation



sheets that provide candidates with a better insight into how they were assessed.

ECHA has published on its website, under the section "*Jobs*", information on its recruitment policy and its recruitment procedures for temporary agents and contract agents (ECHA currently has no permanent officials). I would be grateful to receive additional clarification on the following issues:

- a) How does ECHA ensure an effective communication with candidates to selection procedures concerning the status of their applications and/or the outcome of the selection procedure?
- b) Are the names of selection board members known to candidates? To what extent does ECHA provide candidates with access to the assessments of their applications?
- c) To what extent does ECHA seek quicker and less formal means to resolve disputes about selection and recruitment decisions than the ones foreseen in Article 90 of the Staff Regulations?
- d) Does ECHA systematically inform candidates in its correspondence that they may complain to the Ombudsman, as provided for in Article 19 of the above-mentioned European Code of Good Administrative Behaviour and ECHA's Code of Good Administrative Behaviour?

5. Tenders and contracts

At the review level, disputes in relation to tender decisions and contractual relationships are most commonly dealt with by the courts. However, a significant proportion of the Ombudsman's cases has over the years concerned these areas as well. In relation to tenders, the Ombudsman draws inspiration from the Court's approach, which is to recognise the administration's broad discretionary powers in assessing the substantive aspects of tender proposals, while carefully checking whether it gave valid and adequate reasons for its decisions and whether it adequately respected applicable procedures and information rights. In relation to contractual disputes, the Ombudsman does not as such assess whether there is a breach of contract. He does, however, thoroughly examine whether the administration provided good reasons for its position, and also looks into the fairness of the administrative actions or omissions.

I note that ECHA's website contains a section on "*Procurement*". In this respect, my questions are:

- a) How does ECHA handle disputes in relation to these areas?



- b) Are tenderers and contractors informed that they can complain to the Ombudsman?

6. Conflicts of interest

The avoidance of conflicts of interest is an important aspect of the second public service principle: integrity. Conflicts of interest arise when persons who work for the public administration may be perceived to have an inappropriate personal interest in a matter with which they are dealing. Such conflicts need to be appropriately handled in order to ensure objective decision-making, and to enhance the public's trust in the administration. Recent events and cases show that the EU administration does not clearly enjoy the public's full confidence in relation to this issue.

I note that ECHA has published on its website, under the section "*Procedures and Policies*", its Policy for Managing potential Conflicts of Interest² as well as annual declarations of interest by ECHA's Directors, Managers and other senior-level staff members.

In light of these considerations, I would be interested to know what further concrete measures ECHA applies in order to avoid conflicts of interest in relation to the following areas:

- a) Recruitment of staff, including senior staff
- b) Current and former staff members, notably regarding external activities during and after their service at ECHA (see for instance articles 11, 11a, 12b, and 16 of the Staff Regulations).

7. Whistleblowing

Articles 22a and 22b of the Staff Regulations are commonly referred to as the 'whistleblower provisions'. These provisions have a twofold structure consisting of (a) a duty to report serious wrongdoings to the whistleblower's own institution or, under certain conditions, to OLAF, and (b) a right also to report the matter to the office-holders of certain other EU institutions, provided that specific requirements are complied with³. Articles 22a and 22b define the circumstances in which whistleblowers are protected against retaliation by the institution they work for. According to Article 22a, the institution concerned is not permitted to take action to the detriment of the official who disclosed the information, if he or she has acted reasonably and honestly. Article 22b extends this protection to the official who further discloses information to one or more of five office-holders mentioned therein, that is, to the Presidents of the European Parliament, Commission, Council, Court of Auditors, or the European Ombudsman.

² http://www.echa.europa.eu/documents/10162/13608/mb_45_2011_d_policy_conflict_interest_en.pdf

³ Namely, the official (a) honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and (b) has previously disclosed the same information to OLAF or to his own institution and has allowed sufficient time for appropriate action.



I would be grateful if ECHA could provide information about any arrangements it has in place for internal whistleblowing and about any experiences with whistleblowers.