



Decision

of the European Ombudsman closing his own-initiative inquiry OI/11/2012/ANA concerning the European Network and Information Security Agency ('ENISA')

The background to the inquiry

1. With the aim of identifying and spreading best practices used by EU agencies in their relations with citizens, the Ombudsman launched in May 2011 a programme of visits to such agencies. The visit in the present own-initiative inquiry took place on 19 July 2012. In his meeting with ENISA's Executive Director and the relevant members of ENISA's staff, the Ombudsman clarified that such visits are formally carried out on the basis of his competence to conduct own-initiative inquiries. An own-initiative inquiry implies, among others, that the usual procedural guarantees concerning such inquiries apply. These include the Agency's right, as envisaged in Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions¹, to request the European Ombudsman to treat information and documents on a confidential basis.

2. ENISA was established by Regulation 460/2004 (hereafter, 'ENISA's Founding Regulation')², which was last amended by Regulation 580/2011³. On the basis of its Founding Regulation, ENISA aims to ensure a high and effective level of network and information security and to develop a culture of network and information security in the European Union for the benefit of EU citizens, consumers, enterprises and public sector organisations, thus contributing to the smooth functioning of the internal market. ENISA serves the following objectives: (i) to enhance the capability of the Union, the Member States and, as a consequence, the business community to prevent, address and to respond to network and information security problems; (ii) to provide assistance and deliver advice to the Commission and the Member States on issues related to network and information security falling within its competencies; (iii) to develop a high level of expertise and use this expertise to stimulate broad cooperation between actors from the public and private sectors; and (iv) to assist the Commission, where called upon, in the technical preparatory work for updating and developing Union legislation in the field of network and information security. ENISA is based in Heraklion, Greece.

3. The Ombudsman expressed a particular interest in familiarising himself with ENISA's examples of best practice that could potentially be shared among the

¹ www.ombudsman.europa.eu/resources/provisions.faces

² Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency, OJ 2004 L 77, p. 1.

³ OJ 2011 L 165, p. 3.



various EU agencies. During the Ombudsman's visit, ENISA's Executive Director and the relevant members of ENISA's staff provided the Ombudsman with detailed information about ENISA, its mission and organisation and made presentations, with a view to answering the questions put by the Ombudsman in his letter opening his own-initiative inquiry. Each presentation was followed by a discussion and a question and answer session. A copy of the presentation and supporting documents were also provided to the Ombudsman.

The subject matter of the inquiry

4. The meeting with ENISA's Executive Director and the relevant members of ENISA's staff focused on the following topics:

- A. ENISA's initial contacts with the public;
- B. Transparency, dialogue and accountability;
- C. Selection and recruitment;
- D. Tenders and contracts;
- E. Ethical issues.

The inquiry

5. On the basis of the information received on the occasion of his visit of 19 July 2012, the Ombudsman drew up a report in which he made a number of findings. This report is available on the Ombudsman's website⁴.

6. In his report, the Ombudsman summarised his suggestions as follows:

- a)** ENISA could make its commitment to the principles set out in the European Code of Good Administrative Behaviour ('ECGAB') more visible to Union citizens by providing a link to the ECGAB on its website.
- b)** Pending the adoption of provisions intended to implement Regulation 1049/2001, ENISA could consider (a) creating a dedicated page on its website which would identify the rules applicable to requests for access to documents and the responsible contact person, (b) producing an annual report on its handling of requests for public access to documents, and (c) establishing a public register of its documents.
- c)** ENISA could consider making available in all 23 Treaty languages at least the homepage of its website, as well as information on its functions and language policy.
- d)** With a view to further improving the information provided to candidates in selection and recruitment procedures, ENISA could inform candidates of their rights to challenge an unfavourable decision.

⁴ <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/12106/html.bookmark>



e) ENISA could reconsider its position regarding disclosure of the names of selection board members⁵.

f) ENISA could ensure that all its staff members are informed of the public service principles for EU civil servants. It could consider making the public service principles available on its website. That way, citizens would be informed that it subscribes to those principles.

g) ENISA could adopt the concrete measures on conflict of interest issues set out in its Founding Regulation in order to comply with its legal obligations. In this regard, ENISA could develop templates for the Declarations of Interest of the Executive Director and seconded national experts and it could ensure that these Declarations of Interest are made available on its website.

h) ENISA could consider informing staff about the option provided by the Staff Regulations to report the possible existence of illegal activity internally first.

The follow-up given by ENISA to the Ombudsman's suggestions

7. On 31 January 2013, ENISA's Executive Director replied to the Ombudsman's suggestions. This letter is also available on the Ombudsman's website⁶.

8. At the outset, ENISA's Executive Director acknowledged the helpfulness of the visit and the discussions that took place which served as guidance to improve ENISA's working practices. ENISA's Executive Director underlined his appreciation of the spirit of the Ombudsman's visit *"which was perceived by ENISA not as a way for a third party institution to simply exercise its powers on the Agency or to reprimand it but as a first step towards a fruitful partnership with a view [to] implementing public services principles in the daily life of a still young agency"*. ENISA's Executive Director further recognised that the Ombudsman's visit raised awareness among staff with regard to the duties incumbent upon European Union civil servants and the manifold implications arising from their status and expressed his commitment to guaranteeing the independence of the Agency and its adherence to public service principles.

9. ENISA's Executive Director noted that these statements would, however, remain void if they were not effectively and visibly enforced. In this regard, he moved on to comment on the concrete actions taken in order to implement the Ombudsman's suggestions in the analysis that follows.

⁵ Draft recommendation of the European Ombudsman in his own-initiative inquiry OII/4/2012/CK concerning the European Centre for the Development of Vocational Training (Cedefop) available at <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/12072/html.bookmark>

⁶ <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/49236/html.bookmark>



The Ombudsman's analysis and conclusions

Preliminary remark

10. In the analysis that follows, the Ombudsman will examine ENISA's replies to his suggestions one by one.

A. Suggestion that ENISA could make its commitment to the principles set out in the ECGAB more visible to Union citizens by providing a link to the ECGAB on its website

ENISA's reply

11. ENISA explained that the European Code of Good Administrative Behaviour is now available on its website⁷.

The Ombudsman's assessment

12. The Ombudsman notes that the section 'Procedures and Policies' on ENISA's website starts with the following statement: *"ENISA is committed to operating as an open and transparent organisation. To help citizens and other stakeholders understand how the Agency is managed and held accountable, ENISA publishes a range of documents and other relevant information on its web site."* ENISA's website also provides a short statement on the role of the ECGAB as containing *"the basic principles for the staff of the Agency to direct their relations with the public"*, a summary of these principles and a link to ECGAB from the European Ombudsman's website⁸. In light of this, the Ombudsman considers that ENISA has clearly made its commitment to the principles set out in the ECGAB more visible to EU citizens and thus fully complied with his suggestion.

⁷ <http://www.enisa.europa.eu/about-enisa/procedures-and-policies/code-of-goodadministrative-behaviour>

⁸ <http://www.ombudsman.europa.eu/resources/code.faces#/page/1>



B. Suggestion that ENISA could consider (a) creating a dedicated page on its website which would identify the rules applicable to requests for access to documents and the responsible contact person, (b) producing an annual report on its handling of requests for public access to documents, and (c) establishing a public register of its documents.

ENISA's reply

13. As a preliminary remark, ENISA informed the Ombudsman that, on 9 October 2012, ENISA's Management Board adopted the Implementing Rules of Regulation 1049/2001 regarding public access to documents (hereinafter, 'Implementing Rules on Access to Documents')⁹. As regards part (a) of the Ombudsman's suggestion, ENISA pointed to a dedicated page on its website¹⁰ and informed the Ombudsman that Article 7 of its Implementing Rules on Access to Documents provide for an e-mail address to which requests for access to documents should be sent. As regards part (b) of this suggestion, ENISA informed the Ombudsman that it will undertake to draft such an annual report for the first time in 2013. As regards part (c) of this suggestion, ENISA drew the Ombudsman's attention to Article 7 of ENISA's Implementing Rules on Access to Documents and explained that the public register is still to be implemented and should be accessible on the Agency's website by the end of April 2013.

The Ombudsman's assessment

14. The Ombudsman welcomes the fact that ENISA's Management Board adopted Implementing Rules on Access to Documents and that ENISA dedicates a section of its website to matters concerning access to documents. As regards part (a) of his suggestion, the Ombudsman is pleased to note that a dedicated page with links to both Regulation 1049/2001 and ENISA's Implementing Rules on Access to Documents has been created and that ENISA has committed itself to providing a functional e-mail address for citizens to make access to documents requests. As regards part (b) of his suggestion, the Ombudsman welcomes ENISA's undertaking to draft an annual report on access to documents in 2013. As regards part (c) of his suggestion, the Ombudsman is pleased to note that ENISA has committed itself to setting up a public register. Even though ENISA was not able to make this register available by April 2013, as it had envisaged, the Ombudsman has no reason to doubt that the public register will be available in the near future. The Ombudsman expects that ENISA will inform him as soon as the register has been set up.

⁹ http://www.enisa.europa.eu/about-enisa/structure-organization/management-board/minutes-decisions-1/mb-decision_2-09-10-2012

¹⁰ <http://www.enisa.europa.eu/about-enisa/procedures-and-policies/accessto-documents>



C. Suggestion that ENISA could consider making available in all 23 Treaty languages at least the homepage of its website, as well as information on its functions and language policy

ENISA's reply

15. In its reply, ENISA informed the Ombudsman that, following complete revamping of its website in 2012, it plans to translate the entry homepage in all official languages. ENISA informed the Ombudsman that this task should be completed in 2013.

The Ombudsman's assessment

16. As stated in point 25 of his report¹¹, the Ombudsman considers that, by greeting citizens who visit the website in their own language and by explaining its functions to them, ENISA would demonstrate clearly that it recognises that all citizens of the European Union have a legitimate interest in its work. The Ombudsman therefore welcomes ENISA's undertaking to make homepage of its website available in all the Treaty languages.

D. Suggestion that ENISA could inform candidates in selection and recruitment procedures of their rights to challenge an unfavourable decision

ENISA's reply

17. In its reply, ENISA stated that the vacancy notices template has been amended as suggested by the Ombudsman and now refers to all possible remedies including the European Ombudsman. ENISA enclosed the template that was used in the latest vacancy notice.

The Ombudsman's assessment

18. The Ombudsman applauds the fact that, by amending its vacancy notice template, ENISA has fully implemented his suggestion.

E. Suggestion that ENISA could reconsider its position regarding disclosure of the names of selection board members

ENISA's reply

19. In its reply, ENISA pointed out that, as a follow-up to the discussion which took place with the European Ombudsman, it envisages disclosing the names of the selection board members in the letter inviting candidates to an interview. This letter would include a sentence clearly stating that any attempt to contact

¹¹ See footnote 4 above.



the selection board members would result in the exclusion of the candidate from the procedure.

20. In addition, ENISA sought the Ombudsman's guidance as to the practical modalities for implementing this practice. In more general terms, ENISA proposed that the Ombudsman launches a debate among institutions in an appropriate forum so as address this delicate issue. ENISA expressed the view that a common approach to this question should be taken and should be applied to EU institutions uniformly.

The Ombudsman's assessment

21. The Ombudsman considers it appropriate to reiterate that, as stated in point 33 of his report¹², the disclosure of the names of selection board members to candidates in recruitment procedures is in line with the Court of Justice's case-law on the matter. In this regard, he applauds ENISA's preparedness to respond in a positive and constructive manner to his suggestion and its intention to adapt the modalities for implementing his suggestion in a manner that would enable candidates to be informed of the names of selection board members and of the consequences any attempt to contact them will entail.

22. The Ombudsman also appreciates both ENISA's request for guidance as to the best approach to be adopted and its proposal for a broader debate on the issue of the disclosure of the names of selection board members. The Ombudsman notes that this issue has raised a number of questions in the context of his visits to various agencies and that some agencies have sought guidance from him. In conformity with his aim to identify and spread good practices, the Ombudsman will therefore open an own-initiative inquiry concerning the issue of disclosure of the names of selection board members by EU agencies. The Ombudsman expects that that own-initiative inquiry will serve as the most appropriate forum for best practices to be identified and shared among the EU agencies.

F. Suggestion that ENISA could ensure that all its staff members are informed of the public service principles for EU civil servants and that it could consider making the public service principles available on its website

ENISA's reply

23. ENISA informed the Ombudsman that the public service principles are available in a specific section set up for that purpose on its website¹³.

The Ombudsman's assessment

24. The Ombudsman welcomes the fact that, in the relevant section of its website, ENISA gives a brief description of the public service principles and provides a link to the Ombudsman's website. The Ombudsman considers that,

¹² See footnote 4 above.

¹³ <http://www.enisa.europa.eu/about-enisa/procedures-and-policies/public-service-principles-for-eu-civil-servants>



by responding to his suggestion in this manner, ENISA enables citizens to be informed that it subscribes to the public service principles. The Ombudsman thus considers that ENISA has implemented this suggestion.

G. Suggestion that ENISA could adopt the concrete measures on conflict of interest issues set out in its Founding Regulation in order to comply with its legal obligations

ENISA's reply

25. Within the framework of the visit, ENISA had already expressed its willingness to develop templates for the Declarations of Interest ('DoIs') of the Executive Director and seconded national experts and to ensure that these DoIs are made available on its website. ENISA did not expressly address the issue further in its reply. When the Ombudsman's services contacted ENISA about this matter, they were informed that the omission of a specific comment to this suggestion from ENISA's reply was due to an oversight. In any event, ENISA pointed to its website that was revamped in the aftermath of the Ombudsman's visit and includes a section which is entitled 'Declaration of Interests'¹⁴. The DoI of ENISA's Executive Director is available there.

The Ombudsman's assessment

26. The Ombudsman notes that the relevant section on ENISA's website provides an introductory statement that underlines the importance ENISA assigns to independence as a core value of the Agency. Furthermore, it provides an outline of ENISA's policy on conflicts of interest and a link to the Declaration of Interests of its Executive Director. The Ombudsman takes the view that the information ENISA provides on its website goes in the right direction towards complying with its obligations under its Founding Regulation¹⁵. The Ombudsman notes that the DoIs of seconded national experts are not yet available on that section of the website. He trusts, however, that ENISA will be in a position to provide this information to citizens in the near future. The Ombudsman expects that ENISA will inform him as soon as this further step has been taken. In these circumstances, the Ombudsman considers that ENISA has taken steps to implement this suggestion.

H. Suggestion that ENISA could consider informing staff about the option provided by the Staff Regulations to report the possible existence of illegal activity internally first

ENISA's reply

27. In its reply, ENISA informed the Ombudsman that it was carrying out internal consultations with the relevant actors concerning the implementation of the Commission Guidelines on Whistleblowing. ENISA also noted that it

¹⁴ <http://www.enisa.europa.eu/about-enisa/procedures-and-policies/conflicts-of-interest>

¹⁵ See, the Ombudsman's Report following his visit, cited above at footnote 4, at paragraphs 46-48.



envisaged having a consultation with the Staff Committee on this issue. Given that it expected this action to be completed by the end of April 2013, the Ombudsman's services contacted ENISA for an update. ENISA informed the Ombudsman's services that the consultation process was completed and that it was in the process of implementing an internal policy on whistleblowing on the basis of the Commission Guidelines on Whistleblowing¹⁶. That policy, which is expected to be approved by the end of July 2013, provides that staff should report the possible existence of an illegal activity internally first.

The Ombudsman's assessment

28. The Ombudsman considers that the actions ENISA has undertaken serve the objective of informing staff about the available internal avenues for reporting an illegal activity. Furthermore, ENISA appears to have engaged in broad consultations with a view to implementing the Commission Guidelines on whistleblowing. The Ombudsman considers that thereby ENISA has reacted positively to his suggestion.

I. Conclusion

On the basis of his inquiry, the Ombudsman closes it with the following conclusion:

The Ombudsman welcomes ENISA's constructive approach and willingness to implement the suggestions he made after his visit to the Agency. In light of ENISA's positive reaction to his suggestions, the Ombudsman closes his inquiry.

ENISA will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 20-06-2013

¹⁶ Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing, SEC(2012) 679 final, Brussels, 6.12.2012.