



P. Nikiforos Diamandouros
European Ombudsman

Mr Christian F. Lettmayr
Acting Director
European Centre for the Development of
Vocational Training (CEDEFOP)
P.O. Box 22427
55102 Thessaloniki
GRECE

Strasbourg, 17 -10- 2012

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)

Dear Mr Lettmayr,

Please find enclosed my draft recommendation in the above own-initiative inquiry, made in accordance with Article 3(6) of the Statute of the European Ombudsman.

My draft recommendation is as follows:

With a view to ensuring transparency in selection procedures, Cedefop should adopt a new policy enabling it to disclose the names of Selection Board members in a manner compliant with data protection rules.

In accordance with my Statute, Cedefop shall send a detailed opinion before 31 January 2013. The detailed opinion could consist of the acceptance of my draft recommendation and a description of how it has been implemented.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure:

- Draft recommendation to Cedefop



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)

Made in accordance with Article 3(6) of the Statute of the European Ombudsman¹

The background to the visit

1. The European Ombudsman launched a programme of visits to the EU agencies in May 2011 with the aim of promoting good administration and sharing best practice among these EU entities. These visits are formally carried out on the basis of the Ombudsman's competence to conduct own-initiative inquiries under Article 228 of the Treaty on the Functioning of the European Union. They provide an opportunity for the Ombudsman and the agencies to engage in a constructive dialogue with a view to nurturing and strengthening an administrative culture of service to citizens².
2. By letter of 30 January 2012, the Ombudsman informed Cedefop that, in the framework of his programme of visits to agencies, he had decided to visit the Centre on 22 February 2012.
3. Cedefop was established by Regulation (EEC) No 337/75 of the Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training³, which was last amended by Council Regulation (EC) No 2051/2004⁴. Its mission is to support the development of European vocational education and training (VET) policies and to contribute to their implementation. Its strategic objective is to strengthen European cooperation and support the Commission, the Member States and social partners in designing and implementing policies for an attractive VET that promotes excellence and social inclusion. Cedefop's tasks are to: compile selected documentation and analyses of data; contribute to developing and coordinating research; exploit and disseminate information; encourage joint approaches to vocational education and training problems; provide a forum for debate and exchanges of ideas.

¹ Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

² Information on previous visits to the EU agencies is available on the following page of the Ombudsman's website: www.ombudsman.europa.eu/activities/visits.faces

³ OJ L 39, 13.2.1975, p. 1–4.

⁴ OJ L 355, 1.12.2004, p. 1–3.



4. A draft agenda with the specific issues which the Ombudsman wished to discuss was sent to Cedefop. Moreover, the Ombudsman informed Cedefop that, in response to a commitment he had undertaken following a request by the Assembly of Agency Staff Committees (AASC), he would also meet with Cedefop's Staff Committee during his visit. In the absence of an elected Staff Committee, the Ombudsman received a request for a meeting from representatives of a trade union in Cedefop, US-Cedefop. The Ombudsman agreed to meet the trade union representatives.

The visit

5. The meeting with Cedefop's management took place on 22 February 2012. It started with a short presentation by the Acting Director, who provided the Ombudsman with some general information about Cedefop, its mission and organisation. In turn, the Ombudsman clarified that his visits are formally carried out on the basis of his competence to conduct own-initiative inquiries. He pointed out that 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 basis⁵. After these initial presentations, the Heads of different units gave presentations with a view to providing answers to the questions put by the Ombudsman in his letter of 30 January 2012. A PowerPoint presentation and supporting documents were also provided to the Ombudsman.

6. The following subjects constituted the object of discussion between the Ombudsman and Cedefop's management:

- Complying with the Code of Good Administrative Behaviour and ethical standards
- Transparency, dialogue and accountability
- Selection and recruitment
- Tenders
- Conflicts of interest
- The absence of a staff committee

7. After the meeting with management, the Ombudsman met two representatives of US-Cedefop. The trade union raised the issues of the absence of a staff committee and of problems in the flow of information from management to staff. They pointed out that Cedefop's staff was not informed about the Ombudsman's visit. They also asked questions regarding access to documents and the application of Regulation 1049/20001.

⁵ Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions: www.ombudsman.europa.eu/resources/provisions.faces



The Ombudsman's findings and suggestions following the visit

8. On 27 April 2012, the Ombudsman sent a Report to Cedefop containing his findings from the visit and the following suggestions⁶:

- a)** In addition to its commitments to create a dedicated page for access to documents requests and to produce an annual report on its handling of such requests, Cedefop could consider adopting formal procedures to deal with requests for access to documents. Such procedures should include both initial requests and confirmatory applications. In that way Cedefop would be able to comply with the deadlines set out in Regulation 1049/2001. The participation of the legal advisor in the handling of requests for access to documents would be most appropriate and advisable. The Ombudsman added that he would be happy to assist Cedefop in providing further training about access to documents and the application of Regulation 1049/2001.
- b)** The Ombudsman encouraged Cedefop to make at least the homepage of its website, as well as information on its functions and language policy, available in all 23 Treaty languages. By greeting citizens who visit the website in their own language and explaining its functions to them, Cedefop would demonstrate clearly that it recognises that all citizens of the European Union have a legitimate interest in its work.
- c)** With a view to further improving the information provided to candidates in selection procedures, the Ombudsman encouraged Cedefop to inform candidates of all the possibilities available to them to challenge a decision excluding them from a competition. The possibilities of external challenge are the right to complain to the Ombudsman and the right to bring an action for annulment before the EU courts.
- d)** The Ombudsman suggested that Cedefop reconsider its position regarding disclosure of the names of Selection Board members.
- e)** Cedefop could consider informing tenderers about the possibility to seek redress by submitting a complaint to the Ombudsman.
- f)** The Ombudsman encouraged Cedefop to take all necessary measures to ensure that a Staff Committee would be elected to represent the interests of the staff.

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

9. On 18 July 2012, Cedefop sent its follow-up action plan on the Ombudsman's suggestions.

⁶ For a more detailed account on the visit and the Ombudsman's findings and suggestions, see the Report of the European Ombudsman's following his visit to the European Centre for the Development of Vocational Training (Cedefop), OII/4/2012/CK, <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/11781/html.bookmark>



10. In particular, Cedefop informed the Ombudsman that it intends to create in its website a dedicated section for access to documents requests. The webpage, which will be available in English, German and French, will provide immediate access to Cedefop's 'most requested documents' and will include a request form to be used in cases where the document sought is not available online. Requests that require legal advice in order to be answered will be forwarded to the Legal advisor. The Agency also committed itself to publishing an annual report on its handling of access to documents requests.

11. Cedefop informed the Ombudsman that, as from August 2012, it intended to make available in English, German and French its official website's static information, such as information on its mission and its main areas of activities, as well as the navigation menu. In the framework of a potential migration to a new technological solution for its Web portal, it also undertook to explore the possibility of having a multilingual website providing information in the 23 official languages. However, due to budgetary constraints, this project could not start before 2014.

12. Cedefop added that, as from July 2012, it started to inform both candidates in selection procedures as well as unsuccessful tenderers of their right to submit a complaint to the Ombudsman and pointed out that a statement to this effect is now included in all relevant documents and communications. Cedefop maintained its position not to disclose the names of the Selection Board members.

13. Finally, it informed the Ombudsman that, following elections, a new staff committee assumed its responsibilities on 12 June 2012.

The Ombudsman's analysis and conclusions

14. The Ombudsman welcomes Cedefop's constructive approach and willingness to implement the majority of his suggestions. In particular, he is pleased to note that Cedefop has already implemented his suggestions regarding the provision of information to tenderers and candidates in staff selection procedures. In this respect, he notes that the vacancy notices recently published in Cedefop's website include information on the possibility to complain to the Ombudsman, under the heading "appeal procedures". He trusts that similar information is included in the letters sent to unsuccessful tenderers.

15. The Ombudsman also welcomes Cedefop's proactive approach regarding access to documents. As the Ombudsman has repeatedly emphasised, good administration requires that the right of public access to documents be understood to relate not only to the need for EU institutions, bodies, offices and agencies to deal correctly with requests for public access to documents, but also to the requirement that information and documents be readily made available to the public proactively⁷. Cedefop's commitment to providing direct access to a number of documents identified as being of interest to the public is very welcome.

⁷ See, inter alia, the Ombudsman's speech "EU rules on access to documents: The European Ombudsman's perspective", Leon, April 2011
<http://www.ombudsman.europa.eu/en/activities/speech.faces/en/10310/html.bookmark>



16. The Ombudsman is also pleased with Cedefop's commitments regarding its language policy. He is heartened by the Agency's efforts to make the homepage of its website available in all 23 official languages. It is the Ombudsman's position that, as far as the European institutions' external communication with the citizens is concerned, it would be ideal that the material intended for such purposes be published in all official languages. In order for that external communication to be effective, it is necessary that citizens understand the information provided to them by the institutions⁸.

17. Furthermore, since he considers highly important the role staff committees play as the main formal channel of communication between management and staff, the Ombudsman welcomes the news of the election of a staff committee.

18. As regards the disclosure of the names of Selection Board members, Cedefop argued during the Ombudsman's visit that non-disclosure aims to protect Selection Board members from outside pressure. It asked the Ombudsman to bear in mind the agency's small size and its location. It noted that its staff members would hesitate to participate in Selection Boards if their names were disclosed.

19. In his Report of 27 April 2012 following the visit, the Ombudsman carefully considered these arguments and responded to them as follows.

31. Concerning Cedefop's policy of not disclosing the names of the members of its selection boards, the Ombudsman recalls that, according to established case-law, the secrecy relating to the deliberations and proceedings of selection boards was introduced with a view to guaranteeing the independence of these boards and the objectivity of their proceedings, by protecting them from all external interference and pressure.⁹ Observance of this secrecy therefore precludes the disclosure of the views adopted by individual members of selection boards. The Ombudsman has consistently taken the view that the right to keep secret the individual views of selection board members is not, however, the same as keeping their identities secret¹⁰.

32. The Ombudsman notes that the institutions' views as to the correct balance between openness and the legitimate needs of confidentiality in the work of Selection boards have evolved in the direction of giving greater weight to openness¹¹. He recalls that both EPSO and the Commission have an established practice, whereby they disclose the names of the selection board members. In the Ombudsman's view, such a practice guarantees transparency in selection procedures, helps to build and maintain public trust in the EU institutions, bodies, offices or agencies and reassures candidates that the selection procedure has not been vitiated by conflicts of interest.

⁸ See the decision of the European Ombudsman on complaint 871/2006/(BB)MHZ, paragraph 2.9.

⁹ See, for example, case 89/79 Bonu v Council [1980] ECR I-553, paragraph 5.

¹⁰ Decision of the European Ombudsman closing his inquiry into complaint 2586/2010/(ML)TN against the European Personnel Selection Office (EPSO). See also, decision of the European Ombudsman closing his inquiry into complaint 3115/2009/RT against the European Commission; Special report from the European Ombudsman to the European Parliament following the own-initiative inquiry into the secrecy which forms part of the Commission's recruitment procedures (1004/97/(PD)GG); Decision of the European Ombudsman on complaint 674/2004/(MF)PB against the European Commission and the European Personnel Selection Office.

¹¹ Decision of the European Ombudsman on complaint 812/2004/MHZ against the European Personnel Selection Office.



20. Cedefop's reply to the Ombudsman's suggestions did not address the above points. The Agency merely reiterated that it prefers not to disclose the names of members of Selection Boards.

21. The Ombudsman regrets the position adopted by the Agency and takes the view that, as regards the question of disclosing the names of Selection Board members, Cedefop's action, that is, both the failure to address the arguments formulated by the Ombudsman on this issue and the response itself, demonstrate an unwillingness to engage in a constructive dialogue with the Ombudsman in a manner conducive to nurturing and strengthening an administrative culture of service to citizens.

22. The Ombudsman, therefore, further examined the substantive question and maintains the analysis quoted in paragraph 15 above. In addition, the Ombudsman points out that any member of the public who deals with a civil servant is entitled to know the name of that civil servant. This constitutes a fundamental principle of good administration. An administration without a face and a name is alienating¹². Furthermore, keeping secret the views of the members of Selection Boards is not the same as keeping their identities secret. The former protects members of Selection Boards from external pressure, whereas the latter contributes to a climate of secrecy and mistrust.

23. The Ombudsman also notes that disclosure of the names of the members of Selection Boards involves processing of personal data by the EU institution, body, office or agency concerned and therefore results in the applicability of Regulation 45/2001. The Ombudsman's understanding is that disclosure of the names would be compatible with the right to data protection provided that the institution concerned complies with a number of legal requirements. These include (i) the adoption of a decision specifying the legal basis as well as the purpose and the modalities of such disclosure and (ii) ensuring the protection of the data subject's rights, including the right to receive in advance clear and complete information on the disclosure and the right to object under Article 18 of the Regulation¹³.

24. In light of the above, the Ombudsman makes a draft recommendation to Cedefop, in accordance with Article 3(6) of the Statute of the European Ombudsman.

B. The draft recommendation

On the basis of the above findings, the Ombudsman makes the following draft recommendation to Cedefop:

With a view to ensuring transparency in selection procedures, Cedefop should adopt a new policy enabling it to disclose the names of Selection Board members in a manner compliant with data protection rules.

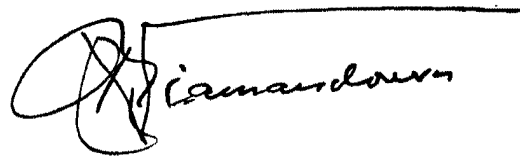
Cedefop will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, Cedefop shall send a

¹² Draft recommendation to the European Commission in the own-initiative inquiry 1004/97/PD.

¹³ See for guidance the EDPS opinion on "Publication on the Internet of the official directory of the agents of European institutions of bodies", available at: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Adminmeasures/2012/12-02-08_Official_directory_agents_EN.pdf



detailed opinion by 31 January 2013. The detailed opinion could consist of the acceptance of the draft recommendation and a description of how it has been implemented.



P. Nikiforos Diamandouros

Done in Strasbourg on **17 -10- 2012**