



P. Nikiforos Diamandouros
European Ombudsman

Mr Wolfgang Götz
Director
European Monitoring Centre for Drugs and
Drug Addiction (EMCDDA)
Cais do Sodré
1249-289 LISBOA

Strasbourg, **15 -05- 2012**

**Report of the European Ombudsman following his visit to the European
Monitoring Centre for Drugs and Drug Addiction (EMCDDA),
OI/12/2011/(JSA)JF**

Dear Mr Götz,

Please find attached my report relating to the visit that I made to the
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) on 22
November 2011.

I hope that EMCDDA will find useful the suggestions made in the
report. I would be grateful if you could inform me, by 31 August 2012, of the
follow up you have given to my suggestions.

The Ombudsman aims to be not only a form of external control, but also
to help assist those with management responsibilities in the EU institutions,
bodies, offices and agencies to improve the quality of their administration and
to build and maintain a culture of service to citizens. In addition to my
suggestions, my staff and I are ready to give advice on request, within the limits
of my competence and resources.

Finally, I would like to thank you and your staff for your excellent co-
operation.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure: 1



Report

of the European Ombudsman following his visit to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) - OI/12/2011/(JSA)JF

The background to the Visit

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, which aims at identifying and spreading best practices used by the agencies' in their relations with citizens. He has already carried out three "pilot" visits to the EU agencies in the United Kingdom, i.e., the European Banking Authority, the European Medicines Agency and the European Police College. Subsequently, in October 2011, the Ombudsman visited the European Environment Agency in Copenhagen. On 18 October 2011, the Ombudsman wrote to the Director of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and announced his intention to visit the Centre. The date proposed was agreed to and the visit took place on 22 November 2011.

2. As mentioned in its official website, the EMCDDA exists to provide the EU and its Member States with a factual overview of drug problems in Europe as well as data, evidence and information on these matters. Its goal therefore is to warn the Member States about new threats and developments in the field of drugs. Although it does not propose policy, the Centre is able to have an impact on decision-making through the analyses it provides. For example, it is able to offer policymakers data for drawing up informed drug laws and strategies. Some of these strategies are reflected in the Centre's 2010-2012 strategy which outlines its plans for the years to come.

3. The EMCDDA obtains information primarily from the 'Reitox network' which consists of a group of focal points in each of the 27 EU Member States, Norway, the candidate countries to the EU and the European Commission. This human and computer network links the national information systems of the 27 Member States, Norway, and their key partners to the Lisbon agency for analysis, and produces a variety of information products which accurately convey the broader European picture in this area. The Centre acts as a practical instrument for the collection and exchange of data and information. Its annual report on the state of the drugs problem in the European Union and Norway and an online statistical bulletin offer a yearly overview of the latest European drug situation and trends.

4. While the EMCDDA is primarily European in focus, it also works with partners in other world regions, exchanging information and expertise. Collaboration with European and international organizations in the drugs field is also central to its work and serves to enhance understanding of the global



drugs phenomenon through an active exchange of expertise, data and methodological information and tools. Its interlocutors include the United Nations International Drug Control Program, the World Health Organization, the Council of Europe's Pompidou Group, the Organisation of American States Drug Abuse Control Commission, the World Customs Organization, the International Criminal Police Organization (Interpol), the Maritime Analysis and Operation Centre–Narcotics (MAOC-N), as well as several EU agencies such as the European Police Office, the European Centre for Disease Prevention and Control (ECDC), the European Medicines Agency (EMA), the European Union's Judicial Cooperation Unit (Eurojust) and the European Police College (CEPOL). The EMCDDA also cooperates with third countries, with special focus on candidate countries, potential members involved in the accession process to the EU, with countries making part in the European Neighbourhood Policy, as well as, on the basis of bilateral agreements, with other non-EU countries.

5. The EMCDDA was formally established in 1993 by Council Regulation 302/93¹, is based in Lisbon, Portugal and started operations in 1995. The 1993 Regulation has been substantially amended several times. Since further amendments appeared necessary, it was recast in December 2006 by Regulation 1920/2006² in the interest of clarity and in order to help the Agency better to respond to new challenges in the field of drugs. Though mainly organizational, these changes also introduced more fundamental modifications concerning the Centre's priority areas of activity and tasks.

6. In advance of this visit, the Ombudsman forwarded to the Centre a note with the substantive points that he wished to discuss with its management. The Ombudsman also informed the Centre that, in response to a commitment he had undertaken following a request by the Assembly of Agency Staff Committees (AASC), he would be meeting with the Centre's Staff Committee during his visit.

The subject matters discussed during the visit

7. The meeting with EMCDDA's management took place on the 22 November 2011. The Ombudsman was accompanied by M. João Sant'Anna, Director of the Legal Department. EMCDDA was represented by Mr Gonçalo Felgueiras e Sousa, Head of the Director's office, Mr Fabian Pereyra, Head of Human Resources Management Sector, Mr Ignacio Vasquez Moliní, Principal Officer in charge of diplomatic relations and Ms Silke Vitt, Communication support officer. The meeting started with a short presentation by Mr Felgueiras e Sousa who provided the Ombudsman with general information about the Centre, its mission and organization.

8. 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 basis. Information concerning the Ombudsman's own-initiative inquiries is contained in Articles 5.1, 5.2 and 14.2 of the Ombudsman's

¹ OJ L 036, 12/02/1993 p. 0001-0008.

² OJ L 376, 27/12/2006 p. 0001-0013.



Implementing Provisions:
www.ombudsman.europa.eu/resources/provisions.faces

After these initial presentations, the Centre's management went on to provide the Ombudsman with detailed answers to the questions he had raised in the letter announcing his visit.

9. The following subjects constituted the object of discussion:

- EMCDDA's initial contacts with the public
- Transparency, dialogue and accountability
- Recruitment
- Tenders and contracts
- Conflicts of interest.

The Ombudsman's findings and suggestions

Initial contacts with the public

10. 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). This issue continues to remain significant in the daily work of the European Ombudsman's Office, 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 having his services contact the relevant person by telephone.

11. Although all the EU agencies agreed to adopt the ECGAB at a meeting of the heads of the agencies held in Lisbon in October 2008, the Ombudsman wanted to find out exactly how EMCDDA has implemented this decision, and how it goes about ensuring that its staff complies with the principles laid down in the above-mentioned Code. The Ombudsman also noted that no references to this matter could be found on EMCDDA's website. Accordingly, he asked for a presentation on this subject.

12. EMCDDA drew the Ombudsman's attention to its new website where virtually all relevant documents concerning its activities are available. It highlighted the fact that the ECGAB figures prominently on the front page of its website as one of the Centre's key documents. Moreover the Centre explained that the Code and its principles form part of the standard induction courses for new staff and of intramural training given to staff.

13. Moreover the Centre explained that its activities can also be followed through the following social networks:

- on **twitter**, where it posts links to drug related information, research and information concerning its plans;



- on **facebook**, where it only provides basic information concerning its work and mission; and
- through **RSS** (= 'Really Simple Syndication') **feeds** which offer visitors the most up-to-date news from the Agency and provide a way to see at a glance the latest content from the EMCDDA, without actually having to visit the website each time. Feeds typically consist of headlines, short summaries and links to the full articles.

14. No information is provided on the official website about the EMCDDA twitter page or facebook group. There is, however, information about RSS feeds and how to subscribe to them.

15. The Ombudsman's findings in relation to the question of contacts with the general public were indeed positive. The Website is user friendly and contains a vast quantity of information of great quality. The Agency also appears to be at the forefront of using social media for communicating its activities. The Ombudsman commends the Centre in this regard and has no specific suggestions to make on this topic.

Transparency, dialogue and accountability

16. The European Ombudsman also places a premium on promoting transparency and enhancing accountability in the EU administration. This requirement is, among others, reflected in 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 him thoroughly to clarify the facts and issues raised in his inquiries.

17. The Ombudsman therefore wanted to know more about the following issues:

- a.** How does EMCDDA deal in practice with requests for public access to documents? What are EMCDDA's 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 Regulation 1049/2001. (The substance of EMCDDA's decision in these examples will not be examined, as this is not the purpose of this visit.)
- b.** EMCDDA handles a vast amount of information and data. Regulation 1049/2001 strictly speaking only applies to 'documents'. What is EMCDDA's approach to requests for access to information as opposed to, or compared with, documents in the sense of Regulation 1049/2001?
- c.** Does EMCDDA produce an annual report (internal or external) on its handling of public access to documents?
- d.** Does EMCDDA operate, or intend to operate, a public register in the sense of Article 11 of Regulation 1049/2001?

18. EMCDDA explained that, in accordance with detailed rules laid out in the implementing rules adopted by the Management Board on 24 February 2006, citizens of the European Union and natural or legal persons residing or having their registered office in a Member State have the right of access to EMCDDA



documents under (former) Article 255(1) of the EC Treaty and Article 2(1) of Regulation (EC) No 1049/2001.

Article 7 of Regulation 1920/2006 states that Regulation 1049/2001 shall apply to documents held by the Centre, that is to say, documents drawn up or received by it and in its possession.

19. Pursuant to article 2(2) of Regulation 1049/2001, citizens of third countries not residing in a Member State and legal persons not having their registered office in one of the Member States shall enjoy the right of access to EMCDDA documents on the same terms as the beneficiaries referred to in (former) Article 255(1) of the EC Treaty and Article 2(1) of Regulation (EC) No 1049/2001.

20. As mentioned in the Centre's official website, all applications for access to a document can be sent by mail, fax or email, clearly stating the reference "Application for access to EMCDDA documents". Applications sent by mail or fax should be addressed to: The Director of the EMCDDA, Cais do Sodré, 1249-289 Lisboa, Portugal / Fax: (351) 218 13 17 11

21. For general questions concerning the media, the EMCDDA includes in both its publications and on its website press contact emails as well as phones for relevant staff. (<http://www.emcdda.europa.eu/contact>)

22. According to article 7 of Regulation 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction (recast) states that decisions taken by the Centre pursuant to Article 8 of Regulation 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 TFEU and 263 TFEU respectively. The Ombudsman moreover notes that there is clear and sufficient information on the Centre's website as to how a member of the public can request access to documents held by EMCDDA.

23. The Ombudsman also notes that the Centre appears indeed to be proactively disseminating an impressive amount of information to its stakeholders and the general public. EMCDDA has a Communication unit whose tasks include media relations, marketing, special events, publications and distribution. The mission of the Communication unit is to provide the European Union and its Member States (and especially researchers and practitioners) with a high-quality and highly valued information service on the drugs phenomenon in Europe. It therefore makes every effort to ensure that the information produced by the Centre is tailored to the needs of its target groups and is timely, analytical, up-to-date, concise, and produced in the right format.

24. The Ombudsman acknowledges that, as an information dissemination agency or body, the Centre has a transparency-friendly approach in relation to requests for access to documents and information. He notes, however, that, with the entry into force of the Lisbon Treaty, the obligations contained in articles 11, 12 and 17 of Regulation 1049/2001 create for agencies as well an obligation to establish a public register of documents and to produce an annual report on the cases in which they refuse to grant access to documents. In light of the Centre's commitment to openness as laid down in Regulation 1049/2001, the Ombudsman suggests that it could usefully consider the possibility of including in its Annual Management Plan for 2013 the task of examining and implementing the two above-mentioned obligations.



Selection and recruitment

25. 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 administration's very wide discretionary powers in selecting its staff.

26. 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 selection board members, and more detailed evaluation sheets that provide candidates with a better insight into how they were assessed.

27. The Ombudsman therefore asked EMCDDA to provide him with clarifications on the following issues concerning selection procedures it organises:

- a.** Are the names of selection board members known to candidates? To what extent does EMCDDA provide job candidates with access to the assessments of their applications?
- b.** To what extent does EMCDDA 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?
- c.** Does EMCDDA systematically inform candidates that they may complain to the Ombudsman, as provided for in Article 19 of the above-mentioned European Code of Good Administrative Behaviour?

28. EMCDDA answered affirmatively to the last two questions. However, it was not clear either from the presentation to the Ombudsman or from the sample documents (calls for applications) which the Centre submitted to the Ombudsman whether it does indeed make the identity of selection board members public. The Centre is therefore invited to clarify this question in its answer to the Ombudsman. In this regard, the Ombudsman recalls that knowing the identity of the members of the selection board constitutes an important guarantee for citizens who wish to ascertain that no conflicts of interest affect certain members of the boards involved in selection procedures.

29. The Centre also assured the Ombudsman that it tries to reconcile the duty to give reasons and inform candidates about the rationale of decisions affecting them with the secrecy necessary for the selection boards to conduct their tasks in full independence. In addition, EMCDDA indicated that the recruitment notices it publishes explicitly inform candidates that, in case they disagree with the procedures applied or with the decisions taken by selection boards, they may complain to the Ombudsman. The Centre further explained that its staff is composed of 106 persons, the huge majority of whom are temporary agents. Taking into account the small number of complaints the Ombudsman has received relating to recruitment procedures conducted by EMCDDA, he considers the level of transparency and the information given to candidates about decisions taken by selection boards to be adequate and encourages EMCDDA to pursue that policy in recruitment matters.



Tenders and contracts

30. 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 have over the years concerned these areas as well. With respect 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, but carefully to check 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 administrative actions or omissions.

In this context, the Ombudsman put the following two questions to the Centre:

- a.** How does EMCDDA handle disputes in relation to these areas?
- b.** Are tenderers and contractors informed that they can complain to the Ombudsman?

31. EMCDDA explained that it conducts a limited number of tender procedures and that these involve relatively small amounts of money. To date, the Centre's decisions in tender procedures have not been challenged before the courts.

32. The Ombudsman recalls that, during the visit, EMCDDA committed itself explicitly to indicate in its calls for tender that the European Ombudsman constitutes a review mechanism in potential disputes. He would therefore welcome it, if, in its answers to this report, the Centre referred to any developments in this respect.

Conflicts of interest

33. Conflicts of interest arise when persons working 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.

34. In light of these considerations, the Ombudsman was interested to know what concrete measures EMCDDA applies in order to avoid conflicts of interest in relation to the following areas:

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

35. EMCDDA stated that, although it was particularly conscious of the relevant provisions of the Staff Regulations, it recognised the need to train staff in this



respect. It indicated that it intends to undertake in-house training actions and to encourage staff to seek advice whenever necessary.

36. EMCDDA showed the Ombudsman the various parts of its website where clear guidance is given to members of staff concerning their professional obligations. Moreover the Centre also subsequently forwarded to the Ombudsman samples of internal information notes to staff, reminding them of their obligations under the Staff Regulations, in matters concerning external activities, serious wrongdoing, whistle blowing (articles 22 a and 22b of the Staff Regulations), the statutory obligations of civil servants when entering the service, as well as declarations of confidentiality and assignment of rights. It also provided the Ombudsman with a copy of the form that members of selection boards have to sign declaring an absence of a conflict of interest and respect for confidentiality.

37. The Ombudsman is also pleased to see and indeed welcomes the fact that the Centre has issued a code of ethics (common values to achieve common objectives), which corresponds to a great extent to the European Ombudsman's public service principles for EU civil servants, which will be published on his own website in the Summer of 2012.

38. The Ombudsman considers, however, that two further issues should also merit the Centre's attention: first, it could adopt measures informing its staff of the obligations laid down in the Staff Regulation for officials leaving the service, which would be similar to those it has adopted for newly recruited agents. Second, it could ensure that the general declarations of no conflict of interest signed by its experts and staff are sufficiently detailed and substantive. It should, in addition, ensure that such declarations are actually checked and concluded upon by the Centre itself, thereby avoiding the eventuality that they are accepted merely on their face value and without adequate scrutiny. In response to these suggestions, the Centre could forward to the Ombudsman copies of (a) updated declaration forms and of updated written procedures for handling, and concluding upon, such declarations, as well as (b) the internal guidelines to staff concerning their professional obligations after leaving the service.

Summary of the Ombudsman's suggestions

a. In light of the Centre's commitment to openness, and in order to apply Regulation 1049/2001, the Ombudsman suggests that the Centre could usefully consider the possibility of including in its Annual Management Plan for 2013 the task of examining and implementing the obligation to establish a public register of documents and to publish an annual report on the cases in which it refused to grant access to documents.

b. From the documents (calls for applications) which the Centre submitted to the Ombudsman, it was not clear whether it does indeed make public the identity of selection board members. The Centre is therefore invited to clarify this question in its answer to the Ombudsman. The Ombudsman recalls that disclosing the identity of the members of the selection board is also a condition for citizens to be able to ascertain that there are no conflicts of interest affecting certain members of the boards in selection procedures.

c. The Ombudsman also recalls that, during the visit, EMCDDA committed itself to indicating explicitly in its calls for tender that the European



Ombudsman constitutes a possible review mechanism in case of disputes. He would therefore welcome it, if, in responding to this report, EMCDDA could refer to any developments in this respect.

d. The Ombudsman considers that EMCDDA could issue concrete guidelines to its staff concerning the obligations laid down in the Staff Regulation for officials and agents leaving the service. Moreover, it could ensure that the declarations of no conflict of interest signed by its experts and staffs are sufficiently detailed and substantive and that they are actually checked and concluded upon by the Centre itself, thereby avoiding the eventuality that they declarations are accepted merely on their face value and without adequate scrutiny. Finally, the Centre could forward to the Ombudsman copies of (a) updated declaration forms and of updated written procedures for handling, and concluding upon, such declarations, as well as (b) the internal guidelines to staff concerning their obligations when leaving the service.

I would be pleased if EMCDDA could report back to me by 31 of August 2012 on its follow-up on the above suggestions.

P. Nikiforos Diamandouros

Done in Strasbourg on 15-05-2012