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Report of the European Ombudsman following his visit to the European Environment Agency (EEA), OI/11/2011/PB

Dear Ms McGlade,

Please find attached my report on my visit to the European Environment Agency (EEA) which took place on 20 October 2011.

I hope that the EEA will find useful the suggestions made in the report. I would be grateful if you could inform me, by 30 September 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 a resource to help 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 towards 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:

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Report

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the European Environment Agency -
OI/11/2011/PB

The background to the Visit

1. To identify and spread best administrative practices, the European Ombudsman initiated in 2011 a programme of visits to all EU agencies. His visit to the European Environment Agency was the fourth visit to an EU agency. It took place in Copenhagen, on 20 October 2011.

2. The main objective of the European Environment Agency (EEA) is to provide sound, independent information on the environment to those involved in developing, adopting, implementing and evaluating environmental policy, and also the general public. The Agency has been charged with the following main responsibilities:

- To help the European Union and member countries make informed decisions about improving the environment, integrating environmental considerations into economic policies and moving towards sustainability
- To coordinate the European environment information and observation network (Eionet).

3. The EEA was founded in 1990 and commenced operations in 1994. Its establishment followed the Single European Act of 1987, which introduced an explicit recognition of the environment in the Community's founding treaty. The Agency now has 32 member countries and seven cooperating countries. Its headquarters are in Copenhagen.

4. The EEA was established by Council Regulation (EEC) No 1210/90 of 7 May 1990¹, a Regulation that has been amended several times since then².

5. To date, the European Ombudsman has conducted very few inquiries concerning the European Environment Agency. Only four complaints against the Agency have led the Ombudsman to open a full inquiry, the last one dating

¹ OJ 1990 L 120, p. 1.

² Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version), OJ 2009 L 126 p. 13.



back to 2000. There are currently no inquiries involving the Agency. Given the EEA's importance and the obvious public interest in the issues it deals with, this very low number of complaints cannot be interpreted as the result of a lack of public awareness of the Agency's existence or of its activities. On the contrary, it should be taken as a sign that the Agency successfully manages to integrate good administration into its procedures and working methods. The Ombudsman was, therefore, particularly interested in familiarising himself with the EEA's best practices and in deriving insights that could potentially be used in the future, with an eye to sharing best practice among the various EU agencies.

6. In advance of his visit, the Ombudsman forwarded to the Agency a note containing the substantive points that he wished to discuss with management. The Ombudsman also informed the Agency that, following a request to that effect by the Assembly of Agency Staff Committees (AASC), he would be meeting with the EEA's Staff Committee.

The subject matters discussed during the visit

7. The meeting with the EEA's management took place on 20 October 2011. The Ombudsman was accompanied by Mr João Sant'Anna, Director of the Legal Department, and Mr Peter Bonnor, Head of Legal Unit. The EEA was represented by its Director, Ms Jacqueline McGlade, Mr Søren Nielsen, Head of Administrative Services, Mr Olivier Joël Lilian Cornu, Head of Group, Legal services and procurement, Mr Sigfús Bjarnason, Head of Programme, and Nha-Yong Au, Project Officer.

8. After an introductory presentation by the Agency's management, the Ombudsman briefly clarified that his 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 Provisions (www.ombudsman.europa.eu/resources/provisions.faces), to request the European Ombudsman to treat information and documents on a confidential basis.

9. Following this clarification, the Ombudsman was presented with detailed answers to the questions raised in the letter announcing the visit. The presentation and ensuing discussion centred around the following topics:

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



The Ombudsman's findings and suggestions

The initial contacts with the public

10. The European Ombudsman receives many complaints about the initial contacts that citizens have with the EU administration. This pattern is not, however, replicated in the case of the European Environment Agency. Bearing in mind that the Agency had introduced an *inquiry service* for handling initial inquiries and requests from the public, the Ombudsman asked the Agency for a presentation on that service.

11. The Agency presented a system that was most convincing, both in terms of its technical qualities and of how it is used in practice. In technical terms, the system appeared, for instance, to allow for an *efficient and regular monitoring* of the goals that the Agency has set for itself in handling initial contacts with the public. In management terms, the Ombudsman took note of the significant *delegation* in the handling of initial contacts which the Agency has adopted. Members of the generalist staff deal with initial requests to the greatest extent possible, eventually guiding members of the public to the Agency's online information sources. If need be, the generalist staff will coordinate with expert staff. This appears to provide for an efficient handling of inquiries and requests.

12. The Ombudsman commended the Agency on its good work in this regard, and did not find occasion to make any suggestions for improvement.

Transparency, dialogue and accountability³

13. Promoting greater openness and dialogue in the EU administration is fundamental to the European Ombudsman's mission. As noted above, the European Environment Agency's mission is strongly focussed on dissemination of information. The Ombudsman was therefore not surprised to learn that the Agency only rarely has to handle requests for public access to documents and information submitted through the formal procedures laid down in the European Union's regulation on access to documents (Regulation 1049/2011⁴).

14. It also emerged that, in light of the Agency's core activities, formal distinctions between access to *documents* and access to *data/information* are normally not an issue, and that the inherent potential conflict between data protection rules and disclosure of information is simply not a recurring matter.

15. The Ombudsman also noted that the Agency does not appear to produce a *report* on its handling of formal requests for public access to documents, in line with the applicable EU regulation referred to above. He also noted that, while the Agency provides a vast amount of information online concerning its core activities, it does not appear to have set up a *public register of documents*.

³ Time did not allow for an examination of point (5) of the visit for this part of the programme, which concerned public consultations. The Ombudsman subsequently decided that it was not necessary to pursue that issue.

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145 p. 43.



16. It is the Ombudsman's understanding that the EU's legislation on public access to documents, that is, Regulation 1049/2001, applies to the Agency in its entirety. In the Ombudsman's view, the entry into force of the Lisbon Treaty in late 2009, which extends the right of public access to documents to all EU institutions, bodies, offices and agencies (Article 15 TFEU), reinforces this understanding.

17. If this assessment is accurate, the Agency would, among others, appear to have an obligation to set up a public register of documents, and to produce an annual report on its application of Regulation 1049/2001. These obligations are laid down in articles 11, 12 and 17 of the above-mentioned Regulation 1049/2001.

18. In light of the Agency's sophisticated document and inquiry management systems, and its thorough experience with annual management plans, the Ombudsman therefore suggests that it could usefully include in its Annual Management Plan for 2013 the task of examining and implementing the two above-mentioned obligations. The Ombudsman invites the Agency to submit, in its reply to the present report, the text of such an addition to its management plan.

Recruitment

19. The Agency informed the Ombudsman that having transparent recruitment procedures is one of its policy aims. The online recruitment page of the Agency's website contains detailed and helpful information on the recruitment process, including, for instance, the names of selection board members, rules on equal opportunities and data protection. The Agency even provides a direct link to its Data Protection Officer's e-mail for candidates who wish to ask questions about their data protection rights in the recruitment procedure.

20. In addition, the recruitment page contains two useful sections entitled 'Request for review' and 'Appeal procedures'. These two sections inform candidates that they may submit a request for review to the relevant selection board, or lodge a complaint under the Staff Regulations. The Ombudsman notes, however, that the two sections do not inform candidates of their right to complain to the European Ombudsman. The Ombudsman therefore suggests that the Agency include information about the candidates' right to complain to the Ombudsman. In doing so, the Agency should make certain to clarify that that candidates are not obliged to submit a formal complaint under the Staff Regulations before turning to the Ombudsman. It should add that candidates are merely obliged to make 'appropriate approaches' to the Agency before complaining to the Ombudsman, and that what is 'appropriate' depends on the circumstances. Hence, the Ombudsman invites the Agency to submit, in its reply to the present report, written examples of samples of *complaint guidance* that it could include in the relevant documents made available to candidates. Such guidance should also be given to candidates who apply for posts internally.

Tenders and contracts

21. The Ombudsman was reassured to learn that, as far as possible, the Agency seeks 'amicable solutions' to disputes relating to the field of tenders and contracts. This is very much in line with the Ombudsman's own mission of



promoting settlements between the parties concerned. The Agency's approach may indeed help to explain the very low number of complaints it receives in these fields as well.

22. The Ombudsman took the opportunity to inform the Agency about his work in both of these fields. Whereas both are governed by detailed tender rules and contract clauses, the Ombudsman frequently helps EU institutions to find mutually beneficial solutions to their disputes. In order to ensure that this service is drawn to the attention of individuals concerned, the Ombudsman suggests that the Agency should systematically inform tenderers and contract parties of their right to seek the Ombudsman's assistance in seeking a solution to their disputes. He therefore invites the Agency to submit, in its reply to the present report, written samples of *complaint guidance* that it could include in the relevant tender and contract documents.

Conflicts of interest

23. The Ombudsman is aware that, at the time of preparing this report, the European Parliament was examining a specific issue of alleged conflict of interest concerning the European Environment Agency, more specifically an issue relating to its Director. The Ombudsman therefore considers it appropriate not to comment on that issue in the present report. Accordingly, the Ombudsman's comments below are of a more general nature and concern the Agency as a whole.

24. During his visit, the Agency's representatives showed the Ombudsman a number of standard forms and information sheets concerning conflicts of interest. Overall, these forms convey a professional image of the Agency's handling of such issues. Thus, scientific experts are obliged to sign declarations to the effect that they are not involved in any activities that may give rise to a conflict of interest between those activities and their work at the Agency. These declarations even feature under each expert's profile on the Agency's website. As for the Agency's staff, they are obliged, when wishing to engage in activities outside the Agency, to fill in and sign a form for '*Authorisation to engage in an outside activity, whether gainful or not, or carry out an assignment outside the Communities*'. The line of authorisation involves several management levels. Staff members are also obliged to sign a declaration of awareness of legal obligations related, among others, to conflicts of interest. The declaration expressly mentions their legal obligation to report on any evidence that gives rise to a presumption of any illegal activity or behaviour in their work environment.

25. The Ombudsman nevertheless believes that, in one important respect, the Agency's rules and practices would benefit from further improvement. It should be immediately noted that the need for the improvement in question applies to very many parts of the EU administration, and is therefore not in any way due to systemic shortcomings specific to the Agency's organisation.

26. The improvement the Ombudsman has in mind is intended to enhance the Agency's capacity to assess conflicts of interest. As so many other EU institutions and bodies, the Agency rightly places a strong emphasis on the individual staff member's responsibility for drawing attention to a potential conflict of interest. It is indeed true that staff members and experts have such an obligation. It is also true, however, that individuals cannot be expected always fully to understand precisely how an EU institution or body approaches



'conflicts of interest'. Their own, personal assessment of the matter can therefore rarely be more than tentative.

27. The Ombudsman recalls that the idea of a 'conflict of interest' is not limited to the obvious situation where, for instance, a selection board member handles a job application from a family member, or where a scientific expert evaluates information from his or her own research institute or NGO. 'Conflicts of interest' also cover situations where the individual in question is fully able subjectively to act in a neutral manner, but where the specific circumstances are such that the public could reasonably entertain doubts as to whether the relevant decision makers or experts are truly able to act in a neutral and professional manner.

28. In the case of the European Environment Agency, citizens may, for instance, directly access the CVs and the declarations of interest of the members⁵ of the Agency's Scientific Committee (<http://www.eea.europa.eu/about-us/governance/scientific-committee/list-of-scientific-committee-members>). These declarations - and presumably other similar declarations for the Agency's staff - bear no indication that they have been examined and approved by the Agency itself. The declarations therefore convey the mistaken impression that the only person who has any responsibility for the issue is the expert himself/herself, not only as regards the factual information these declarations contain but also as regards the more complex assessment of whether a conflict of interest exists. Additionally, the Members' CVs appear to be very short, especially when compared to other online CVs that those same Members have already published. They do not, for instance, systematically contain information on the Members' affiliation with other organisations.

29. The Ombudsman accordingly suggests that the Agency make modifications to its existing procedures and rules relating to conflicts of interest. More specifically, such modifications could introduce rules which foresee (a) that, along with the relevant declaration, the Agency's staff, including its management, as well as all experts should provide the Agency with their *full* CVs, in order to allow it to determine whether an actual or potential situation of a conflict of interest exists; and, (b) that the Agency formally adds to the file of the person in question *its own written assessment* of the question of conflict of interest, signed by the relevant manager in charge. Finally, whenever the publication of CVs and declarations of interest is possible and appropriate - as is the case for the members of the Agency's Scientific Committee - the Agency could add its above-mentioned assessment to the list of documents that the public may consult online.

⁵ 'Member' in this particular context applies to each of the professionals that form the Scientific Committee assisting the EEA management board and the Executive Director in providing scientific advice and delivering professional opinion on any scientific matter in the areas of work undertaken by the Agency.



Summary of the Ombudsman's suggestions

- a. The Ombudsman invites the Agency to include in its Annual Management Plan for 2013 the task of examining and implementing (a) the obligation to produce an annual report on its application of Regulation 1049/2001 regarding public access to documents and (b) to set up the public register of documents foreseen in that Regulation.
- b. The Ombudsman invites the Agency to submit, in its reply to the present report, written samples of *complaint guidance*, mentioning the right to complain to the European Ombudsman, which it could include in the relevant documents made available to candidates applying for employment with the Agency. Such guidance should also be given to candidates who apply for posts internally.
- c. The Ombudsman invites the Agency to submit, in its reply to the present report, written samples of *complaint guidance*, mentioning the right to complain to the European Ombudsman, which it could include in the relevant tender and contract documents.
- d. The Ombudsman invites the Agency to make modifications to its existing procedures and rules relating to conflicts of interest. More specifically, such modifications could introduce rules which foresee (a) that, along with the relevant declaration, the Agency's staff, including its management, as well as all experts should provide the Agency with their *full CV*, in order to allow it to determine whether an actual or potential situation of a conflict of interest exists; and, (b) that the Agency formally adds to the file of the person in question *its own written assessment* of the question of conflict of interest, signed by the relevant manager in charge. Finally, whenever the publication of CVs and declarations of interest is possible and appropriate - as is the case for the members of the Agency's Scientific Committee - the Agency could add its above-mentioned assessment to the list of documents that the public may consult online.

I would be pleased if the EEA could report back to me on its follow-up of the above suggestions by 30 September 2012.

P. Nikiforos Diamandouros

Done in Strasbourg on 06-06-2012