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Mr P. Nikiforos Diamandouros
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Médiateur européen

-3 MAI 2013

Date d'arrivée

Subject: Follow-up given by ECHA following the European Ombudsman report - OI/12/2012/EIS

Reference: Your letter dated 3 April 2013 (ref. S2013-171632)

Dear Mr Diamandouros,

Thank you for your visit of 5 October 2012 and for sharing with us your thoughts on how institutions and agencies can improve their relations with citizens. We appreciate the open discussion that took place that day between you and ECHA's services. Your suggestions will definitely help us to foster our administrative culture of service. I take this opportunity to reassure you that ECHA is committed to delivering high quality service.

Following your visit, you sent me a letter on 3 April 2013, which contained your report with the findings and suggestions of your visit. You concretely made five suggestions to ECHA and I have the pleasure today to inform you that ECHA has decided to react positively to all of them. You will find below the concrete steps and actions that ECHA will or has already undertaken in that respect.

(A) ECHA could consider adding an explicit reference to the Ombudsman in Article 19 of its Code of Good Administrative behaviour

Currently, Article 19 of ECHA's Code of Good Administrative Behaviour (CGAB) reads as follows: "Where Community law so provides, a decision of the Agency which may adversely affect the rights of a natural or legal person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time limits for exercising them". You suggest in your report to add to this article an explicit reference to the Ombudsman.

ECHA's CGAB has been adopted by the Management Board in a decision of 14 February 2008. Thus, any modification of the document should follow the same procedure. Following your suggestion, I have decided to make a corresponding proposal to the Management Board.

(B) ECHA could consider making its annual report on its handling of requests for public access to documents available to the public

Transparency is the first core value of ECHA¹. According to your proposal, we have published an annual report, which is available online on our website at: <http://echa.europa.eu/about-us/the-way-we-work/procedures-and-policies/access-to-documents>.

Users just need to click on the link titled "Fact sheet - Access to documents at ECHA - 2012 Key figures" available below the header "Related documents". The relevant document http://echa.europa.eu/documents/10162/13604/fact_sheet_access_to_documents_en.pdf will then be opened automatically.

(C) ECHA could reconsider its position regarding disclosure of the names of selection board members, so that such information would be provided to all candidates and not only to those who explicitly request it

As indicated in your report, ECHA is already disclosing the names of selection board members upon request. You suggest making the information available to all candidates and on a systematic basis.

Following your suggestion, ECHA has decided to amend its position and will provide the names of selection board members to all candidates and no longer only to those who explicitly request it. The envisaged solution is to give these names in the letter inviting candidates for the interview (for those shortlisted) and in the letter informing candidates that they have not been selected for interview (for those not shortlisted).

To implement your suggestion, ECHA plans to include a sentence clearly stating that any attempt to contact selection board members in any way whatsoever would directly result in the exclusion of the candidate from the procedure. ECHA usually sends out these two types of letters simultaneously to avoid inconsistencies in the information provided to candidates. ECHA plans to implement this solution in the selection procedures that will be launched during the fourth quarter of this year (i.e. Q4 2013).

(D) In the area of tenders and contracts, ECHA could consider including a reference to the Ombudsman in its notification letters and contracts

As mentioned in your report, ECHA already informs tenderers and contractors of their right to submit a complaint to the Ombudsman in the contract notice and the contract award notice published in the Official Journal of the EU. In addition to this publicity, you suggest including a reference to the Ombudsman in ECHA's notification letters and contracts.

Following your suggestion, I have agreed with my services that ECHA will start including such a reference in its notification letters and in all letters exchanged in the context of solving contractual disputes and applying contractual remedies. We should be able to implement these solutions from the third quarter of this year (i.e. Q3 2013). This, in our view, would respond to the need that you have raised and a non-legal clause in a legal contract governed by national law is unnecessary.

(E) ECHA could report on the concrete measures it has adopted in order to comply with its legal obligations, on the conflict of interest issues identified by the Court of Auditors. In this regards, ECHA could in

¹ <http://echa.europa.eu/web/guest/about-us/who-we-are/values>.

particular report on its follow-up actions with respect to the finding that (i) interests are not reviewed before tasks are assigned to staff, and (ii) policies and procedures to assess and manage conflict of interest situations at ECHA's BoA are not adequate

The Special Report 15/2012 of the European Court of Auditors (ECA) recommended that ECHA should improve its conflict of interest policies and procedures. However, it needs to be clarified that ECHA's new conflict of interest policy, which was already in place at the time of the Court's audit, was not taken into account in the Court's findings, as it was not yet fully implemented in the Agency's practices at that time (i.e. October 2011).

At the time of the Ombudsman's visit, ECHA had already made a lot of progress with the implementation of its new policy and many of the ECA's recommendations had already been addressed. A detailed account of the actions taken to implement this policy and the ECA's recommendations was provided on several occasions to the European Court of Auditors, the Agency's Management Board and the European Parliament.² Significant progress was made in particular with regard to the points referred to by the Ombudsman (i.e. policies and procedures to assess and manage the potential conflicts of interest of ECHA staff and members of the Board of Appeal)

Since the adoption of the Agency's new conflict of interest policy, all staff members, regardless of their grade, are required to renew their declarations of interest annually. The template for these declarations has been significantly enhanced to include a more comprehensive set of information and the declarations of interest of ECHA's management (as well as those of the members of the Board of Appeal) are published on ECHA's website to allow for public scrutiny.

As an implementing rule to the Agency's conflict of interest policy and as a direct follow-up action to the ECA's recommendations, a specific procedure was put in place to ensure that potentially conflicting interests are checked before tasks are assigned to ECHA's staff.³ The new procedure places a duty on all process owners to perform an interest check whenever tasks are assigned. In practice, this implies that an active and systematic check of the annual declaration of interest of the staff member is performed before assigning a case. In some processes, this active and systematic check is combined with an ad hoc case-related declaration of no interest by the staff member concerned.

A similar approach is followed by the Agency's Board of Appeal and its Registry. In assigning tasks related to the appeals, each actor involved is also required to make a self declaration of no interest related to the case. The Registrar performs a procedural interest check on each desk officer involved in the appeal case, while the Chair of the Board performs the interest check on the other members of the Board and on the Registrar. The longest serving member performs the check on the Chair.

With these new procedures, the Agency feels confident that it has addressed the recommendations of the Court of Auditors and that the independence and impartiality of the Agency decision-making process can be upheld while at the same time maintaining public trust and confidence in its activities and protecting its staff from unjustified

² For more detailed information, see Annex 2 of the Report available at: <http://www.europarl.europa.eu/document/activities/cont/201301/20130117ATT59286/20130117ATT59286EN.pdf>

³ Previously, ECHA relied upon the staff's obligation to spontaneously inform superiors if they were aware of any conflict of interest.

suspicion.

I hope that the above developments meet your expectations.

We remain at your disposal should you wish to have more information or receive some clarification on any of the issues mentioned in this letter.

Yours sincerely,


Geert Dancet

Executive Director