Decision

of the European Ombudsman closing the file on the Ombudsman's visit to the European Banking Authority (EBA) - OI/8/2011/IJH

The background to the visit

1. On 3 May 2011, the European Ombudsman made a visit to the European Banking Authority (EBA).

2. Following that visit, correspondence was exchanged about his findings and suggestions. All the relevant correspondence and documents are available on the Ombudsman's website.

3. The visit to the EBA was one of three pilot visits. On the basis of the experience gained from the three pilots, a programme of visits was subsequently developed and implemented in the framework of the own-initiative inquiry power entrusted to the Ombudsman by Article 228 of the Treaty on the Functioning of the European Union. Although the visit to the EBA was not originally announced as an own-initiative inquiry, it was subsequently classified as such for administrative purposes.

4. The Ombudsman's suggestions following the visit to the EBA and the latter's responses are summarised below, together with the Ombudsman's assessment and conclusions.

The Ombudsman's suggestions

5. The Ombudsman made the following suggestions:

(i) The EBA should publish on its website the practical measures to be adopted by its Management Board for applying Regulation 1049/2001[1], together with easily understandable information on how to make an application for public access to documents.

(ii) The EBA should continue to develop its proactive information policy. In particular, the Ombudsman suggests that, as far as possible, all documents should be drafted with a view to being made public. If a document necessarily contains material that falls within the exceptions of Regulation 1049/2001, such material should be put in a separate part of the document, or an annex. This would facilitate proactive publication, as well as rapid handling of access

[1] 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, 2001 OJ L 145 p. 43.

requests. As regards personal data, the Ombudsman encourages the EBA to follow the updated advice given by the European Data Protection Supervisor on 24 March 2011[2].

(iii) The EBA should aim to make the homepage of its website, as well as information on the EBA's 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, the EBA would demonstrate clearly that it recognises that all citizens of the European Union have a legitimate interest in its work.

(iv) The Ombudsman encourages the EBA to regard the complaints made to it directly, concerning the selection of the members of the Banking Stakeholder Group, as an opportunity to demonstrate its commitment to openness. The EBA could consider, for example, making the CVs of the members available on its website in order to demonstrate their qualifications and experience, as well as publishing any information given to members by the EBA about what is expected of them.

(v) The EBA could also consider what arrangements to make as regards transparency of meetings of the Group and of the advice that the Group and its members provide.

(vi) The Ombudsman also welcomes the EBA's declared intention to prepare a code of ethics, which will draw on best practice at national level, contain a clear definition of the notion of conflict of interest and provide for specific whistleblowing arrangements. In preparing its code of ethics, the EBA should have regard to the view of the OECD on the importance of avoiding "apparent" conflicts of interest as well as "real" conflicts[3]. This will help ensure confidence and trust in its work.

(vii) The EBA should address the issue of potential conflicts of interest in relation to the Banking Stakeholder Group, as well as in relation to its own staff.

(viii) In drafting provisions for whistleblowing, the EBA should bear in mind the need to ensure consistency with the provisions of Articles 22a and 22b of the Staff Regulations, which apply to EBA staff[4].

EBA's responses and the Ombudsman's assessment

6. The EBA responded to the above suggestions in letters dated 9 August and 3 October 2011.

[2] *Public access to documents containing personal data after the* Bavarian Lager *ruling*, available on the website of the EDPS at: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24_Bavarian_Lager_EN.pdf

[3] See the OECD's Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, June 2003 http://www.oecd.org/dataoecd/13/22/2957360.pdf

[4] Regulation 1093/2010, Article 68.

Access to documents

7. The EBA forwarded to the Ombudsman a copy of its Management Board Decision 036 on public access to documents, dated 27 May 2011, which is published on the EBA website.

8. The Ombudsman welcomes the EBA's timely adoption of rules on public access to documents.

Proactive information policy

9. The EBA informed the Ombudsman that its staff are adapting to the new requirements and are bearing in mind, when drafting a document, that it may become public. The EBA has also appointed a data protection officer. A practical example of changes is that meeting registration forms include a statement that the names of participants at the meeting may become public, in order to prepare for the possibility that EBA may be asked to divulge lists of participants.

10. The Ombudsman welcomes the measures taken by the EBA.

Languages on the EBA's website

11. The EBA responded by explaining that it has entered into an agreement with the Translation Centre for Bodies of the European Union and that work was being done to establish a proper translation policy.

12. The Ombudsman also notes that, in 2012, subsequent to the visit, he dealt with a complaint against the EBA (1363/2012/BEH) concerning the fact that its website was only available in English. In closing the case with a finding of no maladministration, the Ombudsman noted that, in the framework of the redesign of its website during the first half of 2013, the EBA aimed to ensure that users have access in all official languages to key information related to its role and main tasks.

13. The Ombudsman's services visited the EBA's website on 25 September 2013 and found that the homepage includes a dropdown menu from which information about its role and main tasks in 23 languages is easily accessible. The Ombudsman welcomes the EBA's constructive approach in this regard.

Responding to complaints

14. The EBA informed the Ombudsman that, to ensure that complaints from the public are dealt with more swiftly, it engaged an additional staff member to assist the person already engaged in that task. It also stated that it was looking into the suggestion to publish the CVs of members of the Banking Stakeholder Group (BSG) on the EBA website.

15. The Ombudsman welcomes the EBA's commitment to timely complaint handling and to the provision of adequate resources for that purpose.

16. The Ombudsman is also pleased to note that the list of names of the members of the BSG on the EBA's website contains links to biographical information about each member.

Transparency of the work of the Banking Stakeholder Group (BSG)

17. The EBA stated that it will publish the conclusions of BSG meetings on its website.

18. The Ombudsman welcomes this proactive measure.

Code of ethics

19. The EBA confirmed that the OECD principles regarding apparent conflicts of interest were taken into consideration in the drafting of its code of ethics.

20. The Ombudsman welcomes the EBA's commitment in this regard.

Conflicts of interest in relation to the BSG

21. The EBA stated that it was currently looking into what could be applied to members of the BSG in this regard.

22. The Ombudsman notes that Article 12 of the Rules of Procedure of the BSG, adopted on 28 June 2011 refer to conflicts of interest.

Whistleblowing

23. The EBA stated that the code of ethics will cover whistleblowing and incorporate the provisions of Article 22a and 22b of the Staff Regulations.

24. The Ombudsman welcomes the EBA's response.

Conclusions

Following his visit to the EBA, the Ombudsman closes the file with the following conclusions:

The Ombudsman welcomes the constructive responses of the EBA to his suggestions.

The visit to the EBA was not originally announced as an own-initiative inquiry. The Ombudsman therefore considers that it would be inappropriate to envisage any further steps in relation to these suggestions. The Ombudsman may, however, decide to re-visit certain matters in the future, through an own-initiative inquiry.

The Ombudsman notes that he is at an advanced stage of handling complaints against the EBA and other EU financial regulatory bodies concerning the composition of Stakeholder Groups. For the avoidance of doubt, the Ombudsman wishes to make clear that the present decision has no implications for the handling of those complaints.

The EBA will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 27-09-2013