



P. Nikiforos Diamandouros
European Ombudsman

Mr Udo Helmbrecht
Executive Director
ENISA (European Network and Information
Security Agency)
P.O. Box 1309
71001 HERAKLION
GRECE

Strasbourg, 05 -07- 2012

**OI/11/2012/ANA - Own-initiative visit to the European Network and
Information Security Agency**

Dear Mr Helmbrecht,

In May 2011, I launched a programme of visits to EU agencies with the aim of identifying and spreading best practices among them. I initially carried out three 'pilot' visits to the EU agencies in the United Kingdom, namely, the European Banking Authority (EBA), the European Medicines Agency (EMA) and the European Police College (CEPOL). Subsequently, on 1 June 2011, I met with the heads of all EU agencies in Brussels and had the occasion to acquaint them with this initiative in more detail. I visited the European Environment Agency (EEA) in Copenhagen and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in October 2011 and the European Maritime Safety Agency (EMSA) in Lisbon the following month. In February 2012, I visited the European Centre for the Development of Vocational Training (Cedefop) in Thessaloniki and, in May 2012, I visited the European Foundation for the Improvement of Living and Working Conditions (Eurofound) in Dublin. In June 2012, I visited the European Police Office (EUROPOL) and Eurojust in the Hague, and the European Systemic Risk Board (ESRB) in Frankfurt.

Additional information on my earlier visits to other EU agencies is available on the following page of my website:

www.ombudsman.europa.eu/activities/visits.faces

I will be in Heraklion from 18 to 19 July 2012 for meetings with the representative associations and the civil society. I would like to take the opportunity to also visit ENISA during my stay. Following informal contacts between our offices, I would like to confirm that I wish to meet you and members of your team on the morning of 19 July 2012. I expect that my visit will last two to three hours. Please find in annex to this letter a draft programme for our meeting, as well as some additional information concerning



the procedural aspects of this type of visit.

During my visit to ENISA, I will be accompanied by Mr Antonios Antoniadis, Legal Officer, who will act as contact person for the organisational aspects of our meeting. His contact details are: antonios.antoniadis@ombudsman.europa.eu, tel: 0033 388 173768. From the informal contacts between our offices, I understood that Mr Emmanuel Maurage from your Office will be the contact person at ENISA who will liaise with him for all the necessary arrangements.

Please note that, following the visit and our meeting, I would also like to meet with ENISA's Staff Committee, since the Assembly of Agency Staff Committees (AASC) has requested me to systematically meet with the staff committees of the agencies that I visit.

I would like to thank you again for agreeing to organise this visit, and I look forward to what I am certain will prove to be fruitful exchanges on the various themes identified in the note in annex to this letter. I would furthermore like to thank in advance ENISA's management for organising the practical aspects of my meeting with ENISA's Staff Committee, which should take place that same morning, after my meeting with the management.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure:

- Annex: Procedural aspects and draft agenda of the visit



ANNEX: Procedural aspects and draft agenda of the visit

Procedural aspects

The European Ombudsman's visits are formally carried out on the basis of his competence to conduct own-initiative inquiries. The correspondence relating to this visit will therefore bear registration number OI/11/2012/ANA, in line with the procedure followed in own-initiative inquiries. The Ombudsman would be grateful if ENISA could quote this reference number in its correspondence concerning the visit.

An own-initiative inquiry implies, among other things, 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 - see Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions:

www.ombudsman.europa.eu/resources/provisions.faces

As well as informing the agency to be visited of the issues that he intends to raise, the Ombudsman can also ask it to provide in advance certain relevant information and/or documents.

Following each visit, the Ombudsman will inform the agency in writing of his findings. If he makes any specific suggestions, he will normally ask the agency to inform him of any follow-up action it proposes to take. Depending on the agency's response, the Ombudsman will either consider closing the inquiry or taking further steps, for instance, by issuing formal recommendations.

Please note that the preparatory letter for this visit, as well as this annex, will be published on the European Ombudsman's website, at the following address: <http://www.ombudsman.europa.eu/activities/visits.faces>

The Ombudsman's letter to the Agency following the visit, including any suggestions to the Agency will also be published on the website. Please note that this letter will contain the names and job titles of the persons who take part on behalf of the Agency during the meetings that form part of the visit. I would kindly request you to make sure that the persons concerned are made aware of this fact. The Agency's response to the letter, any further correspondence, and the Ombudsman's final written conclusions will also be published on the website.

Agenda

With regard to the content of the 19 July 2012 visit, the European Ombudsman would like to discuss the following themes:

1. ENISA's initial contacts with the public;
2. Transparency, dialogue and accountability;
3. Selection and recruitment;



4. Tenders and contracts;
5. Conflicts of interest.

The specific issues that the Ombudsman would like to focus on under each theme are as follows.

1. Initial contacts with the public

One of the Ombudsman's fundamental tasks is to ensure that the EU administration is open, service-minded and efficient in its contacts with citizens. The relevant basic principles are laid down in the European Code of Good Administrative Behaviour (ECGAB). Such issues are often raised in complaints submitted to the Ombudsman. This suggests 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 my services' contacting the relevant person by telephone.

I understand that all the EU agencies agreed to adopt the European Code of Good Administrative Behaviour at a meeting of the heads of the agencies held in Lisbon in October 2008. I have not been able to find references to this matter on ENISA's website. I am also not aware of how ENISA has implemented the Code, and how it goes about ensuring that its staff complies with the principles laid down in the Code. I would therefore be grateful if you were to give a brief presentation on this subject.

2. Transparency, dialogue and accountability

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

In accordance with Article 12 of ENISA's Founding Regulation, the Agency shall ensure that it carries out its activities "*with a high level of transparency*" and "*that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate*".

Despite the extremely technical nature of ENISA's mandate, the Agency's website is user-friendly and contains a large volume of data, publications and information relating to its main activities. Part of the website is also available in French, German and Greek.

The contact details, structure and organisation, and the legal framework of ENISA are well presented on the website.

An adequate amount of information is available as regards ENISA's financial operations: the 2012 Annual Budget and Establishment Plan, the Annual Accounts of past years including the opinion of ENISA's Management Board, and the Reports from the European Court of Auditors on these accounts feature prominently on the website.



Sections on 'Recruitment' and 'Public Procurement' are also readily visible to a visitor of this website.

Concerning access to documents, the website notes that:

"2.2. Access to Documents

Documents published on this web site constitute a measure implementing Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents."

Despite the existence of different contact persons for different matters, there seems to be no contact person for access to documents issues. Moreover, there is no information on the arrangements for implementing Regulation 1049/2001, as required by Article 14(2) of ENISA's Founding Regulation.

The website provides information about data protection in general, Regulation 45/2001, in particular, and the contact details of the European Data Protection Supervisor. The contact details of ENISA's data protection officer are also provided.

According to Article 12 of ENISA's Founding Regulation, ENISA must make public the Declarations of Interest made by the Executive Director, seconded national experts and experts in relation to items on the agendas of meetings of the *ad hoc* Working Groups. ENISA's relevant internal rules require that this information be published on ENISA's website in a timely manner. However, no information concerning the Declarations of Interest mentioned above seems to be available on the website.

I would therefore be grateful if you were to provide further information about the following issues:

- a) How does ENISA deal in practice with requests for public access to documents? What are its guidelines and/or practical arrangements for handling such requests? Please give examples of the manner in which it handles such requests, for instance by providing the main correspondence concerning the last three requests for public access to documents dealt with under Regulation 1049/2001. Kindly note that I will not examine the substance of ENISA's decision in these examples, as this is not the purpose of this visit.
- b) Does ENISA produce an annual report (internal or external) on its handling of public access to documents?
- c) Does ENISA operate, or intend to operate, a public register in the sense of Article 11 of Regulation 1049/2001?
- d) Since January 2011, the publication of the ENISA Quarterly Review (EQR), an ENISA online publication for stakeholders and other interested readers, was discontinued in order to reduce ENISA's carbon footprint and promote the use of digital online tools for communications and publications. Which publications replaced EQR?



- e) The ENISA work programmes and general reports are available online in English (the Work Programmes of 2008 and 2010 are also available in French and German, subject to the disclaimer that the English version is the only official one). What is ENISA's policy regarding language issues?
- f) The 'Contact' section of the website provides one telephone number, one fax number and two e-mail contact forms (one for website-related questions and one for all other information requests). ENISA is kindly requested to provide the Ombudsman with more information as to how it deals with requests for information. It could inform the Ombudsman about the feedback it receives from users and stakeholders.
- g) How does ENISA ensure the availability to the public of Declarations of Interest made by the Executive Director, seconded national experts and experts in relation to items on the agendas of meetings of the *ad hoc* Working Groups?

3. Selection and recruitment

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 very wide discretionary powers of the Administration in selecting its staff.

With regard to the procedural aspects of selection and recruitment, the Ombudsman has very actively worked to increase the transparency of EU recruitment procedures. This has, for instance, led to enhanced transparency regarding the names of members of selection boards, and more detailed evaluation sheets that provide candidates with a better insight into how they were assessed.

ENISA publishes on its website information on the application procedure and on open and closed vacancies. I would be grateful if you were to provide additional clarifications on the following issues:

- a) How does ENISA ensure effective communication with candidates who participate in selection procedures concerning the status of their applications and/or the outcome of the selection procedure?
- b) Are the names of selection board members known to candidates? To what extent does ENISA provide candidates with access to the assessments of their applications?
- c) To what extent does ENISA seek quicker and less formal means of resolving disputes over selection and recruitment decisions than the ones foreseen in Article 90 of the Staff Regulations?
- d) Does ENISA systematically inform candidates that they may complain to the Ombudsman, as provided for in Article 19 of the above-mentioned Code of Good Administrative Behaviour?



4. Tenders and contracts

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 has over the years concerned these areas as well. In relation 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, while carefully checking 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 the administrative actions or omissions.

On its website, ENISA has a dedicated procurement section which provides information on current and past calls. I would be grateful if you were to provide information on how ENISA handles disputes in relation to these areas.

It is encouraging that ENISA's current calls for tender make reference to the right to submit a complaint to the European Ombudsman. However, I note that the Ombudsman is presented as a "*Body responsible for mediation procedures*", which could be misleading, and that the contact details that are provided are no longer valid. I would be happy to discuss with you how the information included in the calls for tender could be improved in this regard.

Moreover, I would be grateful if you could clarify whether information about the right to complain to the Ombudsman is also extended to all tenderers and contractors..

5. Ethical issues

Ethical issues may be usefully examined under the following broad subheadings: first, the Public Service Principles, second, conflicts of interest, and, third, whistleblowing.

Public Service Principles

I will soon be writing to ENISA and other agencies to inform them about the Public Service Principles which I published on 19 June 2012.

I wish to point out that my main aim in publishing the principles is to help build greater trust between citizens and the EU institutions.

The principles take account of best practice in the Member States and were established following an extensive period of reflection and public consultation.

As the public consultation confirmed, the public service principles are not new, but represent existing expectations of citizens and civil servants. They constitute the fundamental ethical standards that govern the conduct of EU civil servants. Bearing the principles in mind can also help civil servants to understand and apply rules correctly, and guide them towards the right decision in situations where they should exercise judgment. As such, they constitute a vital component of the administrative culture of service to which the EU institutions adhere.



I hope that you will ensure that all members of staff of ENISA are informed of the public service principles. You are also welcome to make the principles available on your website, so that the public are informed that ENISA subscribes to them.

Conflicts of Interest

Conflicts of interest arise when persons who work 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 handled appropriately 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 enjoy the public's full confidence in relation to this issue.

Having regard to Articles 11 and 13(2) of ENISA's Founding Regulation, I would be grateful if ENISA were to provide information on the concrete measures it takes in order to avoid conflicts of interest in relation to:

- a) The recruitment of staff, including senior staff.
- b) The conduct of current and former staff members, notably regarding external activities during and after their service at ENISA (see, for instance, Articles 11, 11a, 12b, and 16 of the Staff Regulations concerning staff members and Article 13 of ENISA's Founding Regulation concerning members of the Management Board, the Executive Director, and the Permanent Stakeholders Group).
- c) The implementation of Article 11 of its Founding Regulation.

Whistleblowing

I would be grateful if ENISA could provide information about any arrangements it has in place for internal whistleblowing and about any experiences with whistleblowers.