



European Ombudsman

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P. Nikiforos Diamandouros
European Ombudsman

Mr Willem de Ruyter
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Strasbourg, 18 -10- 2011

Agency visit OI/13/2011/JSA - Visit to the European Maritime Safety Agency

Dear Mr De Ruyter,

In May 2011, I launched a programme of visits to EU agencies, with the aim of identifying and spreading best practices used by the agencies' in their relations with citizens. I initially 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, on 1 June, I met with the heads of all EU agencies and had occasion to familiarise them with this initiative in more detail. On 20 October I will next visit the European Environment Agency in Copenhagen, where the next meeting of the European Network of Ombudsmen of the EU Member States and candidate Countries will be taking place.

Information on my previous visits to the EU agencies is available on the following page of my website:

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

To date the European Ombudsman has conducted virtually no inquiries concerning the European Maritime Safety Agency (EMSA). In fact, in the last five years only four complaints have been submitted to me against the EMSA. Three of them were deemed inadmissible and in one I found no grounds to justify opening an inquiry. Given the EMSA's importance and the obvious public interest in the issues it deals with, I cannot interpret this very low number of complaints as the result of a lack of public awareness of the Centre's existence or of its activities. On the contrary, I take it as a sign that your Agency successfully manages to integrate good administration into its procedures and working methods. I am, therefore, particularly interested in familiarising



myself with the EMSA's best practices at this early stage of my visits to EU agencies and deriving insights that I can potentially use in the future.

I will be in Lisbon in November 2011 for an official visit to the National Ombudsman of Portugal and to various other Portuguese authorities. I would be happy to meet you and relevant members of your team on Tuesday 22 November, preferably in the morning from 9.30 to 11.30. Please find in annex to this letter a draft programme for our meeting during the visit to the EMSA as well as some additional information concerning the procedural aspects of this type of visits.

In my visit to the Agency, I will be accompanied by Mr João Sant'Anna, Director in my Office, who will act as contact person for the organisational aspects of our meeting. His contact details are: joao.santanna@ombudsman.europa.eu, 00 33 3 88 17 5346. I would be grateful if you could inform me of a relevant contact person from your staff who could liaise with him for all the necessary preparations.

Please note that, following the visit and our meeting covering the substantive points outlined in the note in annex, I will also meet with the EMCDDA's Staff Committee. My decision to do so follows a request by the Assembly of Agency Staff Committees (AASC) that I systematically meet with the staff committees of the agencies that are the objects of my own initiative visits.

I would like to thank you again for agreeing to organise this visit, and look forward to fruitful exchanges on the various themes which are identified in the note in annex to this letter. I would further like to thank in advance the EMSA management for organising the practical aspects of my meeting with the EMSA's Staff Committee, which should take place between 11:30 and 12:30 of the same day, Tuesday, 22 November.

Yours sincerely,

P. Nikiforos Diamandouros

Attachment: 1



ANNEX:

Procedural aspects and draft agenda of the visit.

Concerning the 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 carry a registration reference number for such own-initiative inquiries (OI/13/2011/JSA). The Ombudsman would be grateful if the EMSA could quote this reference number in its own future correspondence concerning the visit.

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 - 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 undertake. 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. If the Ombudsman decides to make suggestions to the Agency following his visit, the communication containing such suggestions will also be published on that page, as will the Agency's response, any further correspondence, and the Ombudsman's final written conclusions. These exchanges will appear on the following page of the Ombudsman's website:
<http://www.ombudsman.europa.eu/activities/visits.faces>

Concerning the issues on the agenda

With regard to the content of the visit on 20 October 2011 visit, the European Ombudsman would like to discuss the following themes:

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



The specific issues that the Ombudsman would like to look at 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 handling contacts with citizens. The relevant basic principles are laid down in the European Code of Good Administrative Behaviour (CGAB). The issue remains significant in our daily work, 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 my services' contacting the relevant person by telephone.

Although 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 am not aware of how the EMSA has implemented this decision, and how it goes about ensuring that its staff complies with the principles laid down in the above-mentioned Code. I have not been able to find references to this matter on the EMSA's website and would therefore be grateful for a presentation on this subject.

Transparency, dialogue and accountability

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

I would therefore be grateful to know more about the following issues:

- (1) How does the EMSA deal in practice with requests for public access to documents? What are the EMSA'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 the EMSA's decision in these examples will not be examined, as this is not the purpose of this visit.)
- (2) The EMSA handles a vast amount of information and data. Regulation 1049/2001 strictly speaking only applies to 'documents'. What is the EMSA's approach to requests for access to information as opposed to, or compared with, documents in the sense of Regulation 1049/2001?



- (3) Does the EMSA produce an annual report (internal or external) on its handling of public access to documents?
- (4) Does the EMSA operate, or intend to operate, a public register in the sense of Article 11 of Regulation 1049/2001?

2. 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. 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.

I would be grateful to receive clarification on the following issues concerning selections procedures organised by EMSA:

- (1) Are the names of selection board members known to candidates? To what extent does the EMSA provide job candidates with access to the assessments of their applications?
- (2) To what extent does the EMSA 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?
- (3) Does the EMSA 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?

3. 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, but 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.

Questions:

- (1) How does the EMSA handle disputes in relation to these areas?
- (2) Are tenderers and contractors informed that they can complain to the Ombudsman?

4. 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 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.

In light of these considerations, I would be interested to know what concrete measures the EMSA applies in order to avoid conflicts of interest in relation to the following areas:

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