



European Maritime Safety Agency

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Médiateur européen

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Date d'arrivée

Lisbon, 19 JUL 2012

**Subject: Follow up to your visit at the European Maritime Safety Agency  
[European Ombudsman report OI/13/2011/ (JSA) JF]**

Dear Mr Diamandouros,

We have well received the above mentioned report relating to your visit to EMSA on 22 November 2011. The findings and suggestions made in your report are very useful and will be taken into consideration during the on-going improvement of our contacts with the public.

Please find enclosed the answers of EMSA relative to the observations made in your report.

Yours sincerely,

Leendert Bal  
Acting Executive Director

End.: Report on the measures taken following the EU Ombudsman visit on 22 November 2011 and its annexes (5)

**Report on the measures taken following the EU Ombudsman visit  
on 22 November 2011**

**1. Introduction**

This report has been drawn up following the receipt of the report relating to the visit of the European Ombudsman to EMSA on 22 November 2011. It outlines all actions taken or planned to address the suggestions made by the EU Ombudsman.

**2. Measures taken in light of the European Ombudsman's observations**

a. *"The Ombudsman considers that it would be useful to make available on EMSA's website information as to how a member of the public can request access to documents held by the Agency. Telephone and fax numbers, e-mail addresses, as well as the postal address of the Agency itself, are of course available on the website. It is not clear, however, whether or not these can be used to request access to documents. This could be usefully clarified on the relevant page of the Agency's website."*

The EMSA website will be updated and besides providing clear information as to how a member of the public can request access to documents held by EMSA, a specific form to request access to such documents will be made available.

b. *"In light of the Agency's commitment to openness, and to the application of Regulation 1049/2001, the Ombudsman suggests that the Agency could usefully consider the possibility of including in its Annual Management Plan for 2013 the task of examining and implementing the obligations to (a) have a public register of documents and (b) publish an annual report on the cases in which it refused to grant access to documents."*

EMSA welcomes the suggestion of the EU Ombudsman and will examine how to best implement a public register of documents. Once the obligations relative to the public register of documents are implemented, the Agency will also be in a position to report annually on the cases in which it refused to grant access to documents, if this will be the case.

c. *"The Ombudsman has received virtually no complaints relating to recruitment procedures conducted by EMSA. Accordingly, the Ombudsman concludes that the level of transparency towards candidates about decisions taken by selection boards is sufficient. He would like to encourage EMSA to continue to pursue that policy in recruitment matters. He would,*

*furthermore, like to ask EMSA specifically to confirm that all its recruitment notices provide candidates with the information that they may complain to the Ombudsman in case they disagree with the procedures applied or with the decisions taken by selection boards."*

EMSA confirms that it provides all candidates with information that they may complain to the Ombudsman in case they disagree with the procedures applied or with the decisions taken by selection boards. The EMSA website will be updated to list the different mechanisms available in case of disputes (Court of Justice, European Ombudsman).

d. *"EMSA committed itself to indicate explicitly in its calls for tenders that the European Ombudsman is a possible review mechanism in case of disputes between tenderers and awarding authorities. The Ombudsman would therefore welcome it, if, in responding to this report, EMSA could refer to, and report on, any recent developments in this respect."*

Since January 2012 EMSA has made its updated Guidelines for Tenderers available on its Website. These guidelines provide some general instructions on how to submit a tender in the framework of a procurement procedure organised by European Maritime Safety Agency. They also include a clear reference to the European Ombudsman. Furthermore the EMSA website will be updated to list the different mechanisms available in case of disputes (Court of Justice, European Ombudsman).

e. *"The Ombudsman considers that the Agency could better formalise its existing policy as concerns conflicts of interest and issue guidelines to its staff concerning the obligations laid down in the Staff Regulation both on entering and leaving the service and during their contracts. Moreover, it could ensure that (a) the declarations of no conflict of interest signed by its experts and staff are sufficiently detailed and substantive and (b) they are carefully and thoroughly checked and concluded upon by the Agency itself, with an eye to avoiding the eventuality that such declarations are merely accepted on a pro forma basis. The Agency could forward to the Ombudsman copies of (a) updated declaration forms and updated written procedures for handling, and concluding upon, such declarations, as well as, more generally, (b) the internal guidelines to staff concerning their professional obligations."*

The Agency has taken a number of measures to avoid (potential) conflicts of interest.

Examples of such measures are:

- A specific training for newcomers on Ethics and Integrity;
- A dedicated intranet section on Ethics and Conduct;
- Guidelines to all staff on gifts and hospitality;
- Declarations of absence of conflict of interests for selection board and members of evaluation committees (recruitment and procurement);
- Information regarding the obligations of staff when leaving the service (art. 16) or outside activities (art. 11);
- Special Guidelines and declaration for the avoidance of conflicts of interests in the field of assessment/inspections.

As mentioned above, one of the measures concerns an internal training course on Ethics and Integrity – developed by the Agency's Internal Audit Capability – which is obligatory to all staff. By doing so, staff is kept aware of ethical and organisational values, in particular ethical conduct and avoidance of conflicts of interest. Also, in the areas of

Human Resources (recruitment) and Public Procurement, the Agency has developed the necessary trainings and procedures to avoid any potential conflicts of interest. At the same time all relevant information is published on the Agencies' Intranet and in the EMSA manual.

As regards the declaration of absence of conflict of interest the Agency can confirm that all signed declarations are systematically checked by the Chair of each selection or procurement committee.

The Agency is well aware of the importance of good and up-to-date policies and procedures dealing with conflicts of interest and is therefore making sure all documents are updated whenever needed. As an example, the guidelines dealing with gifts and hospitality have been updated and communicated to all staff recently. However, following the suggestion of the EU Ombudsman, the Agency will prepare a consolidated set of guidelines to be issued to all staff by the end of the year.

**Annexes:**

- **Extract of the EMSA Intranet – Staff Ethics and Conduct**
- **Declaration of the Selection Board of confidentiality and of absence of conflict of interest**
- **Declaration on Honour – leaving the service**
- **Application for authorisation to engage in an occupation after leaving EMSA**
- **Decision of the Executive Director concerning a policy for the avoidance of conflicts of interests in the field of assessment/inspections.**

## Staff Ethics & Conduct

### Staff Ethics & Conduct

*Last Updated on Friday, 08 June 2012 15:44*

To maintain EMSA's independence and credibility, as a member of staff, you are subject to certain reasonable requirements which affect the exercise of your duties and can have implications for your private life. **For this reason, you are required to request authorisations or provide notifications in various situations to avoid any appearance of a conflict of interest and thus avoid possible accusations of bias and partiality in any decision-making process you may be involved in.**

These situations could be:

- Seeking prior authorisation for external activities (paid or unpaid) you may wish to undertake during service, during CCP and even after leaving service
- Requesting permission to accept a gift or favour. In this context, please read carefully EMSA Guidelines on Gifts and Hospitality
- Standing for public office
- Election or appointment to public office
- Declaring your spouse's or partner's professional activities
- Requesting permission to publish a publication or speech
- Requesting authorisation to accept remuneration for a publication or speech
- Providing immediate notification if you are called on to decide on a matter in which you have a personal interest which could impair your impartiality
- Requesting permission to receive a decoration or honour

If you would like any clarification regarding any of these issues or have any doubts, please contact Lucy Urbanowski and/or visit the Commission website.

In addition, please be reminded that EMSA Staff in their relations with the public are subject to the Code of Good Administrative Behaviour.

Please note that **every staff member is obliged to attend the Ethics and Integrity course**. If you have not carried out this course please contact Sylviane Rivoire.



European Maritime Safety Agency

## DECLARATION OF THE SELECTION BOARD

of confidentiality and of absence of conflict of interest

I the undersigned, XXX, acting as a Chairman of the Selection Board for the vacant position XXXX, hereby declare that I will comply with the rules of confidentiality set out in the EMSA Guidelines on recruitment and that, should I discover during the selection process, that I am in situation of conflict of interest, I will declare it immediately and resign from the Selection Board.

I also confirm that I will keep all matters entrusted to me confidential.

I have noted that according to Art. 7(3) of the *Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data*, the data received in the framework of the recruitment procedure should not be used or transferred for any other purpose."

XXXX

Date

## **DECLARATION ON HONOUR**

**To be signed by any person leaving EMSA services  
in accordance with article 18 of the Commission decision of 28 April 2004  
relating to external activities and mandates**

I, the undersigned (name):

Position:

Personnel N°:

Contact address:

Telephone & private email:

Declare to have examined the staff regulations and notably the articles 16, 17 and 19 providing for:

### *Article 16*

*An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.*

*Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The institution shall, after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.*

### *Article 17*

- 1. An official has the right to freedom of expression, with due respect to the principles of loyalty and impartiality.*
- 2. An official shall continue to be bound by this obligation after leaving the service.*

Article 19

*An official shall not, without permission from the appointing authority, disclose on any grounds whatever, in any legal proceedings information of which he has knowledge by reason of his duties. Permission shall be refused only where the interests of the Communities so require and such refusal would not entail criminal consequences as far as the official is concerned. An official shall continue to be bound by this obligation after leaving the service.*

*The provisions of the preceding paragraph shall not apply to an official or former official giving evidence before the Court of Justice of the European Communities or before the Disciplinary Board of an institution on a matter concerning a servant or former servant staff of one of the three European Communities.*

**I commit myself to respect the obligations of articles 16, 17 and 19 of the Staff Regulations after my departure from EMSA, and to inform the responsible service if I could be concerned with the contents of these articles. I commit myself to restore at the time of my departure any document or written notes belonging to the files or the series of non-public documents managed by myself during my activities at the Commission.**

**I declare also to have taken note that any new professional activity must receive prior authorisation from the appointing authority, and I am obliged, in this respect, to seek approval from EMSA.**

Date:

Signature (\*): .....

(\* ) to be preceded by the handwritten text "read and approved"



**Application for authorisation to engage in an occupation after leaving EMSA**  
**Article 16 of the Staff Regulations**

**The former official or other servant**

NAME/First name: .....

Personnel No ..... Date of leaving EMSA: .....

Telephone: ..... Email: .....

Address: .....

Are you receiving or will you receive any pecuniary benefit from EMSA after leaving?

Yes       No

If so of what sort? .....

What was your work during the last three years of service?

.....

**New activity**

Name of the body: .....

Address: .....

Telephone: .....

Email: .....

Nature of its activities: .....

Does this body receive funding from EMSA?

Yes       No

Description of the work contemplated: .....

.....

.....

.....

.....

.....

.....

Expected duration of the work: .....

Position in the body: .....

Are you an employee and/or shareholder in the body?

Employee & Shareholder       Shareholder       Employee

Will you receive remuneration or other pecuniary advantages?

.....

Does the body for which you wish to work have direct or indirect commercial, financial or contractual links (including grants) with a Community institution (in particular EMSA) or body? .....

.....

.....

.....



During your work at EMSA, did you have any direct or indirect relations with the body for which you wish to work<sup>1</sup>? If so, specify them: .....

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Will your new activity have direct or indirect links with other EMSA departments:

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.....  
.....

Other relevant information:

.....  
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.....  
.....

Place: ..... Date: .....

Signature:

You may attach any document you consider will demonstrate that your new activities or duties are compatible with those you exercised at EMSA.

\_\_\_\_\_

<sup>1</sup> State in particular whether you were engaged in preparing financial and/or contractual relations.

Lisbon, 27 APR 2012

**DECISION No. 2012/16 OF THE EXECUTIVE DIRECTOR CONCERNING A POLICY  
FOR THE AVOIDANCE OF CONFLICTS OF INTEREST IN SAFETY ASSESSMENTS AND  
INSPECTIONS**

The Acting Executive Director of the European Maritime Safety Agency (EMSA),

Having regard to Regulation (EC) 1406/2002, as amended, and in particular Article 15 thereof,

Whereas:

- (1) In accordance with Articles 2(b) and 3 of Regulation 1406/2002, EMSA conduct visits to EU and EFTA Member States and inspections and of non-EU Member States, Maritime Education and Training establishments (METs) and Classification Societies, hereinafter referred to collectively as 'inspections', to verify the implementation of EU legislation.
- (2) The adoption of a policy on the avoidance of conflicts of interest is to ensure that EMSA staff members (be they inspectors, project officers or specialists) are not appointed to an inspection in which they may have a conflict of interest or in which they may be perceived to have a conflict of interest.

Has decided:

Article 1

In order to avoid a conflict of interest or the perception of a conflict of interest as regards the EMSA's inspection activities in accordance with Articles 2(b) and 3 of Regulation (EC) 1406/2002 as amended, the Policy set out in Article 2 shall be applicable to all EMSA staff members.

Article 2

**Policy**

- (1) Conflicts of interest may occur when EMSA staff members visit, for the purposes of an inspection:
  - a) Public and/or private organisations they have worked for (Note: staff members participating in inspections are likely to have gained experience relevant to their functions in EMSA, as employees of one of the organisations inspected, e.g. Member States' Administrations);

- b) Organisations hierarchically linked to the organisations in (a), e.g. Harbour Master Offices, Port State Control Authorities, etc.;
  - c) Organisations in which they have a commercial interest e.g. shares, part ownership.
  - d) Ships belonging to a Member State's Administration (school ships, special or other scientific ships, etc.) that was a previous employer;
  - e) Organisations headed by persons with whom they have a working or family relationship;
  - f) Organisations in which relatives are employed.
  - g) Organisations with which they may have interacted in the past, in such a way that may be considered to potentially impair their objectivity and due care during the inspection.
- (2) EMSA will not appoint a staff member to participate in an inspection of an organisation that has employed that staff member in the past, if that employment ended less than two years prior to the date of the appointment or if there is a right of return to employment with that organisation.
- (3) The period referred to in paragraph (2) may be reduced in exceptional and justified cases, and subject to the approval of the Executive Director.
- (4) All staff members within Unit B.1 Safety Assessments and Inspections whose responsibilities include participating in inspections shall sign the declaration regarding conflicts of interest in Annex 1 upon appointment to the Unit, or before participating in an inspection for the first time after this Decision enters into force. All other staff members shall sign the declaration regarding conflicts of interest in Annex 2 whenever they are appointed to participate in an inspection.
- (5) In cases where an inspector or specialist declares circumstances that may be considered a potential conflict of interest, it will be the prerogative of the Executive Director concerned to approve participation of the said staff member, despite the declared circumstances.
- (6) If a staff member is proposed to participate in a type of inspection that was not part of his or her responsibilities when the previous declaration was signed, then a new declaration shall be signed to include any additional organisations he or she may be appointed to inspect.

#### Article 3

Failure to sign the declaration will render that staff member ineligible to participate in visits and/or inspections.

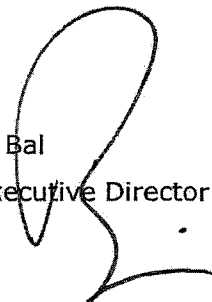
#### Article 4

All signed declarations shall be retained in the staff member's personnel file held by HR.

Article 5

This Decision comes into force on 1 May 2012. It shall be communicated to all EMSA staff and published on the EMSA Intranet.

Leendert Bal  
Acting Executive Director

A handwritten signature in black ink, consisting of a large, stylized loop at the top and a horizontal line at the bottom.

**ANNEX 1 TO EXECUTIVE DIRECTOR DECISION No. 2012/16**

**Policy on Avoidance of Conflicts of Interest**

**Unit B.1 - Declaration of Absence of Conflict of Interest**

I, ..... declare that I have read and understood EMSA's Policy on Avoidance of Conflicts of Interest and hereby declare the following circumstances which may give rise to a conflict of interest, or the perception of a potential conflict of interest, should I be part of a team engaged in an inspection of the organisation(s) listed below.

I will immediately inform the Head of Unit B.1 should such circumstances arise in the future. (For each organisation, please declare all such circumstances whether by reason of previous employment (irrespective of time since leaving) or other links with the organisation concerned, or for any other reason you consider may be pertinent.)

I undertake to make my Head of Department aware of any such source of conflict of interest as may result to me in future, or change of circumstance that may affect this declaration.

Signed .....

At..... on .....

**ANNEX 2 TO EXECUTIVE DIRECTOR DECISION No. 2012/16**

**Policy on Avoidance of Conflicts of Interest  
Declaration of Absence of Conflict of Interest**

Visit to: .....

Date of visit: .....

Nature of Visit: .....

Entities to be visited: .....

Unit leading visit: .....

I, ..... declare that I have read and understood EMSA's Policy on Avoidance of Conflicts of Interest and hereby declare that, for the purpose of my participation in the visit indicated above,

I am not aware of circumstances that may give rise to a conflict of interest, real or potential or to the perception of such.

the following circumstances may be considered to give rise to a conflict of interest, real or potential, or to the perception of such (*Please indicate circumstance below*):

.....  
.....  
.....  
.....  
.....

I undertake to make my Head of Department aware of any such source of conflict of interest as may result to me in future, until the conduct of the said visit.

Signed .....

At..... on .....