



Decision

of the European Ombudsman closing his own-initiative inquiry OI/12/2012/EIS concerning the European Chemicals Agency (ECHA)

The background to the inquiry

1. With the aim of identifying and spreading best practices used by EU agencies in their relations with citizens, the Ombudsman launched in May 2011 a programme of visits to such agencies. The visit in the present own-initiative inquiry took place on 5 October 2012. In his meeting with the Director of Regulatory Affairs of the European Chemicals Agency (hereinafter 'ECHA'), the Ombudsman clarified that such visits are formally carried out on the basis of his competence to conduct own-initiative inquiries. An own-initiative inquiry implies, among others, that the usual procedural guarantees concerning such inquiries apply. These include the agency's right, as envisaged in Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions¹, to request the European Ombudsman to treat information and documents on a confidential basis.

2. ECHA was established on the basis of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (hereinafter the 'REACH Regulation')². The REACH Regulation was adopted to improve the protection of human health and the environment from the risks that can be posed by chemicals, while enhancing the competitiveness of the EU chemicals industry. It also promotes alternative methods for the hazard assessment of substances in order to avoid unnecessary testing on vertebrate animals. ECHA acts as the central point in the REACH system: it (i) manages the databases necessary to operate the system; (ii) co-ordinates the in-depth evaluation of suspicious chemicals; and (iii) is building up a public database in which consumers and professionals can find hazard information. ECHA is based in Helsinki, Finland.

3. The Ombudsman was particularly interested in familiarising himself with ECHA's best practices and in deriving insights that could potentially be used in the future, with an eye to sharing best practice among the various EU agencies. During the Ombudsman's visit, the Director of Regulatory Affairs and the senior members of ECHA's staff present at the visit provided the Ombudsman with detailed information about ECHA, its mission and organisation and made presentations, with a view to answering the questions put by the Ombudsman in his letter opening his own-initiative inquiry. Supporting documents were also provided to the Ombudsman.

¹ www.ombudsman.europa.eu/resources/provisions.faces

² OJ 2006 L 396, p. 1.



The subject matter of the inquiry

4. The meeting with the Director of Regulatory Affairs of ECHA and the relevant members of his staff centred around the following topics:

- The Public Service Principles;
- ECHA's initial contacts with the public;
- Transparency, dialogue and accountability;
- Recruitment;
- Tenders and contracts;
- Conflicts of interest; and
- Whistleblowing.

The inquiry

5. The visit took place on 5 October 2012. On the basis of the information received on that occasion, the Ombudsman made a number of findings that are set out in detail in his report following his visit to ECHA. This report is available on the Ombudsman's website³.

6. In his report, the Ombudsman **summarised his suggestions** as follows:

a) ECHA could consider adding an explicit reference to the Ombudsman in Article 19 of its Code of Good Administrative Behaviour.

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

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.

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

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 regard, ECHA could in particular report on its follow-up actions with respect to the findings 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 Board of Appeal are not adequate.

³ <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/49847/html.bookmark>



The follow-up given by ECHA to the Ombudsman's suggestions

7. On 26 April 2013, the Director of ECHA submitted its reply to the Ombudsman's suggestions. This letter is also available on the Ombudsman's website⁴.

8. It is useful to quote the first two paragraphs of the Director's letter in full:

"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."

The Ombudsman's analysis and conclusions

Preliminary remark

9. In the following, the Ombudsman will examine ECHA's replies to his suggestions one by one.

A. Suggestion that ECHA could consider adding an explicit reference to the Ombudsman in Article 19 of its Code of Good Administrative Behaviour

ECHA's reply

10. ECHA explained that, currently, Article 19 of its Code of Good Administrative Behaviour⁵ 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."

11. ECHA then stated that its Code of Good Administrative Behaviour has been adopted by a Decision of its Management Board of 14 February 2008. Thus, any amendment to the Code should follow the same procedure. Following the

⁴ <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/50230/html.bookmark>

⁵ http://www.echa.europa.eu/documents/10162/13559/code_of_good_administrative_behaviour_en.pdf



Ombudsman's suggestion to add an explicit reference to the Ombudsman in Article 19 of ECHA's Code, ECHA's Director had decided to make a corresponding proposal to the Management Board.

The Ombudsman's assessment

12. The Ombudsman notes and applauds the fact that ECHA has decided to make a proposal to implement his suggestion a). He therefore ends his examination of this issue.

B. Suggestion that ECHA could consider making available to the public its annual report on its handling of requests for public access to documents

ECHA's reply

13. In its reply, ECHA explained that it had decided to publish online on its website⁶ the annual report on its handling of requests for public access to documents.

The Ombudsman's assessment

14. The Ombudsman notes and welcomes the fact that ECHA has decided to implement his suggestion b) by making its annual report on its handling of requests for public access to documents prominently available to the public under the header "Access to documents" of its website.

C. Suggestion that ECHA could consider disclosing the names of selection board members to all candidates and not only to those who explicitly request it

ECHA's reply

15. As indicated in the Ombudsman's report, ECHA pointed out that it had been already disclosing the names of members of selection boards upon request. Following the Ombudsman's suggestion, however, ECHA had decided to change its position and provide the names of the selection board members to all candidates. It added that it intended to disclose these names in the letters inviting candidates for an interview (shortlisted candidates), and in the letters informing candidates that they have not been selected for the interview (candidates not shortlisted).

16. ECHA further explained that it intends to include a sentence in its future invitation letters to the effect that any attempt to contact selection board members will result in the automatic exclusion of the candidate from the selection procedure. As to the time schedule, ECHA informed the Ombudsman

⁶ http://www.echa.europa.eu/documents/10162/13604/fact_sheet_access_to_documents_en.pdf



that it intends to implement his suggestion in the selection procedures that will be launched during the fourth quarter of 2013.

The Ombudsman's assessment

17. As stated in point 39 of his report⁷, the Ombudsman notes that disclosing the names of selection board members is in line with the Court's case-law on the matter. He welcomes ECHA's new policy to disclose the names to all candidates as of the fourth quarter of 2013, which implements his suggestion c).

D. Suggestion that, in the area of tenders and contracts, ECHA could consider including a reference to the Ombudsman in its notification letters and contracts

ECHA's reply

18. As mentioned in the Ombudsman's report, ECHA stated that it 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. Following the Ombudsman's suggestion, ECHA stated that it will start including a reference to the Ombudsman in its notification letters and all letters exchanged in the context of solving contractual disputes and applying contractual remedies. As to the timetable for the implementation of these suggestions, ECHA explained that it intends to put in place these arrangements during the third quarter of 2013.

The Ombudsman's assessment

19. The Ombudsman applauds the fact that ECHA, apart from informing tenderers that they can seek judicial redress, has decided to implement his suggestion d) by starting, as of the third quarter of 2013, to include a reference to the Ombudsman in its notification letters and all letters exchanged in the context of solving contractual disputes and applying contractual remedies. In the Ombudsman's view, this arrangement will make sure that unsuccessful tenderers are adequately informed that they can seek redress from the Ombudsman.

E. Suggestion that ECHA could report on the concrete measures it has adopted on the conflict of interest issues identified by the Court of Auditors

ECHA's reply

20. As the Ombudsman noted in his report, ECHA explained that it had taken follow-up action in relation to many of the findings of the European Court of

⁷ See footnote 3 above.



Auditors⁸ and, in particular, in relation to those identified by the Ombudsman, namely, concerning policies and procedures to assess and manage conflicts of interest of the Agency's staff and members of its Board of Appeal.

21. ECHA then explained that, since the adoption of its new conflict of interest policy, all staff members, regardless of their grade, are required to make an annual declaration of interests. The new template used for these declarations enables staff to include a more comprehensive set of information in the declaration. The declarations of ECHA's management are published on ECHA's website so as to allow for public scrutiny.

22. Moreover, ECHA pointed out that a specific procedure has been put in place to ensure that potentially conflicting interests are checked before tasks are assigned to staff. The new procedure entails an active and systematic check of the annual declaration of interest of each staff member when a case is assigned to him or her. In some processes, this active and systematic check is combined with an ad hoc case-related declaration in which the staff member concerned confirms that there is no conflicting interest. A similar approach has been implemented in the Agency's Board of Appeal and its Registry, where each staff member involved is required to make an additional self-declaration to confirm that there is no conflicting interest related to the case. The Registrar performs a procedural interest check on each desk officer involved in the case on appeal, while the Chair of the Board performs the interest check on other members of the Board and on the Registrar. The longest serving member performs the check on the Chair.

The Ombudsman's assessment

23. The Ombudsman has stated on several occasions that EU institutions, bodies, offices and agencies should do their utmost to avoid not only actual conflicts of interest, but also apparent conflicts of interest, in order to maintain public trust and confidence in its activities and to protect their staff from unjustified suspicion. In his report to ECHA, he invited the Agency in particular to report on its follow-up actions with respect to the Court of Auditors' findings 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 Board of Appeal needed to be improved. In this respect, he applauds the fact that ECHA has adopted concrete measures to implement the findings of the Court of Auditors, as identified in the latter's Special Report No 15/2012⁹, for instance, by introducing new procedures to ensure that potentially conflicting interests are checked before tasks are assigned to staff. The Ombudsman thus considers that ECHA has implemented his suggestion e) as well.

F. Conclusion

On the basis of his examination of the European Chemicals Agency's reply, the Ombudsman concludes that ECHA has taken appropriate steps to adopt all the suggestions he made to the Agency in his letter of 3 April 2013. The Ombudsman therefore closes this inquiry.

⁸ See, in this respect,

http://www.europarl.europa.eu/document/activities/cont/201301/20130117ATT59286/20130117ATT59286_EN.pdf.

⁹ <http://eca.europa.eu/portal/pls/portal/docs/1/18686746.PDF>



ECHA will be informed of this decision.

A handwritten signature in black ink, which appears to read 'P. Diamandouros', is written over a horizontal line.

P. Nikiforos Diamandouros

Done in Strasbourg on 27-05-2013