



P. Nikiforos Diamandouros
European Ombudsman

Mr Mario Draghi
President
European Systemic Risk Board
Eurotower
Kaiserstraße 29
60311 Frankfurt am Main
ALLEMAGNE

info@esrb.europa.eu

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Agency visit OI/10/2012/EIS - Visit to the European Systemic Risk Board (ESRB)

Dear Mr Draghi,

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, the European Medicines Agency and the European Police College. Subsequently, on 1 June 2011, I met with the heads of all EU agencies in Brussels and had occasion to familiarise them with this initiative in more detail. In October and November 2011, I visited, respectively, the European Environment Agency in Copenhagen and the European Monitoring Centre for Drugs and Drug Addiction and the European Maritime Safety Agency in Lisbon. 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. 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

I will be in Frankfurt on 14 June 2012, and I would also like to take this opportunity to visit the ESRB, as agreed on at an earlier stage. I note that the European Central Bank (ECB) provides the secretariat of the ESRB. It seems appropriate to address myself to you as the Director of the ESRB and of the ECB in view of the intended agenda for the visit, which is outlined in the attached note. The same note also contains information concerning the procedural aspects of this type of visit.



Following informal contacts between our offices, I would be happy to meet you and relevant members of your team on Thursday 14 June 2012, preferably in the morning. I expect that my visit will last two to three hours.

Please note that, following the visit and our meeting, I would also like to meet with the ESRB's Staff Committee. My wish to meet the Staff Committee follows a request by the Assembly of Agency Staff Committees (AASC) that I 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 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 further like to thank in advance the ESRB's management for organising the practical aspects of my meeting with the ESRB's Staff Committee, which should take place on the same day, Thursday 14 June 2012, also in the morning, after the conclusion of our meeting with the management.

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/10/2012/EIS). The Ombudsman would be grateful if the ESRB could quote this reference number in its 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 14 June 2012 visit, the European Ombudsman would like to discuss the following themes:

- the ESRB'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 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. However, I have not found on the ESRB's website a link to the European Code of Good Administrative Behaviour. I am also not aware of how the ESRB has implemented the Code, and how it goes about ensuring that its staff complies with the principles laid down in the Code. I have not been able to find references to this matter on the ESRB's website and would therefore be grateful for information on this subject.

2. Transparency, dialogue and accountability

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

I note that Article 7(1) of Regulation 1096/2010¹ provides for the secretariat of the European Central Bank (ECB) "to ensure the application of ECB Decision ECB/2004/32", which contains provisions on public access to ECB documents. The website of the ESRB contains a link to Decision ECB/2004/3 as well as a link to Decision of the European Risk Board ESRB/2011/5³ on public access to ESRB documents. According to Article 1 of Decision ESRB/2011/5, the decision "*sets out the practical arrangements for the application of Decision ECB/2004/3 to ESRB documents. The rules specified in Decision ECB/2004/3 applying to the granting by the European Central Bank (ECB) of access to ECB documents shall apply mutatis mutandis to the granting by the ESRB of access to ESRB documents, subject to the adaptations specified in this Decision*".

¹ OJ 2010 L 331, p. 162.

² OJ 2004 L 80, p. 42, as amended by Decision of the European Central Bank ECB/2011/6 (OJ 2011 L 158, p. 37).

³ OJ 2011 C 176, p. 3.



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

- a) On the basis of the provisions based on Decision ECB/2004/3 and Decision ESRB/2011/5, what is the ESRB's interpretation of the 'dual' legal status of ESRB documents, in the light of Article 15 TFEU? How does the ESRB deal in practice with requests for public access to documents? What are its guidelines and/or practical arrangements for handling such requests? Please provide examples, such as the main correspondence in the ESRB's handling of the last three requests for public access to documents. (The *substance* of the ESRB's decision in these examples will not be examined, as this is not the purpose of this visit.)
- b) Does the ESRB produce an annual report (internal or external) on its handling of public access to documents?
- c) Does the ESRB operate, or intend to operate, a public register of documents? In the affirmative, what is the relation with the section "*Documents*" on its website? Will this section be expanded?
- d) The ESRB handles a vast amount of information and data. Its website is user-friendly and contains a large volume of data, publications and information relating to the ESRB's main activities, more particularly in the section "*Documents*". How does the ESRB deal with requests for information? Please provide information concerning the feedback the ESRB's services receive from users and stakeholders regarding access to information.

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 Agency 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 note that, on the website of the ESRB, there is a link "*Open vacancies*", which leads to the website of the European Central Bank. I would be grateful to receive additional clarifications on the following issues:



- a) How does the ESRB ensure an effective communication with candidates 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 the ESRB provide candidates with access to the assessments of their applications?
- c) To what extent does the ESRB 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?
- d) Does the ESRB systematically inform candidates in its correspondence that they may complain to the Ombudsman, as provided for in Article 19 of the above-mentioned Code of Good Administrative Behaviour?
- e) The ECB's website, where the ESRB's website leads to, contains the following statement: *"Before applying, please consider whether your qualifications are commensurate with the vacancy. Indiscriminately applying for vacancies might reflect on your credibility."* What does this statement imply in practical terms?

4. Tenders and contracts

At the review level, disputes in relation to tender decisions and contractual relationships are most commonly dealt with by courts. However, the Ombudsman also has to deal with a significant number of such cases. In relation to tenders, the Ombudsman draws inspiration from the EU Courts' 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.

Questions:

- a) How does the ESRB handle disputes in relation to these areas?
- b) Are tenderers and contractors informed that they can complain to the Ombudsman?



5. 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 ESRB applies in order to avoid conflicts of interest in relation to the following areas:

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