



P. Nikiforos Diamandouros
European Ombudsman

Mr Markku Mylly
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Strasbourg, 05 -06- 2013

Decision of the European Ombudsman closing his own-initiative inquiry
OI/13/2011/(JSA)JF concerning the European Maritime Safety Agency

Dear Mr Mylly,

Please find enclosed a copy of my above decision.

On the basis of my inquiry, I have decided to close it with the following
conclusion:

**The Ombudsman welcomes the fact that EMSA implemented the
suggestions made after his visit to the Agency.**

Since the issue of the disclosure of the names of selection board
members has raised a number of questions in the context of his visits to the
different agencies and some of the agencies have sought guidance from the
Ombudsman as to the best approach to be adopted in this respect¹, the
Ombudsman will open an own-initiative inquiry concerning the issue of
disclosure of the names of selection board members and, in view of the
subject matter, he will also include EMSA in his inquiry.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure: Decision closing own-initiative inquiry OI/13/2011/(JSA)JF

¹ See, for instance, the follow-up given by the European Network and Information Security Agency
following the European Ombudsman report - OI/11/2012/ANA, available at:
http://www.ombudsman.europa.eu/en/activities/visitreport_faces/en/49236/html.bookmark



Decision

of the European Ombudsman closing his own-initiative inquiry OI/13/2011/(JSA)JF concerning the European Maritime Safety Agency

The background to the inquiry

1. The European Ombudsman launched a programme of visits to the agencies of the European Union (the 'EU') in May 2011 with the aim of promoting good administration and sharing best practice among these EU entities. These visits are formally carried out on the basis of the Ombudsman's competence to conduct own-initiative inquiries under Article 228 of the Treaty on the Functioning of the European Union. They provide an opportunity for the Ombudsman and the agencies to engage in a constructive dialogue with a view to nurturing and strengthening an administrative culture of service to citizens¹.

2. The European Maritime Safety Agency (EMSA) was established by Regulation 1406/2002 of the European Parliament and of the Council of 27 June 2002², which was subsequently amended by Regulations 1644/2003 of 22 July 2003³, 724/2004 of 31 March 2004⁴ and 2038/2006 of 18 December 2006⁵.

3. The Ombudsman visited EMSA on 22 November 2011.

The subject matter of the inquiry

4. The meeting with EMSA's management focused on the following issues:

- EMSA's initial contacts with the public
- Transparency, dialogue and accountability
- Recruitment

¹ Information on previous visits to the EU agencies is available on the following page of the Ombudsman's website: www.ombudsman.europa.eu/activities/visits.faces

² Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, OJ 2002 L 208, p.1.

³ Regulation (EC) No 1644/2003 of the European Parliament and of the Council of 22 July 2003 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency, OJ 2003 L 245, p. 10.

⁴ Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004, amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency, OJ 2004 L 129, p. 1.

⁵ Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and amending Regulation (EC) No 1406/2002, OJ 2006 L 394, p.1.



- Tenders and contracts
- Conflicts of interest.

The Ombudsman's findings and suggestions following his visit to EMSA

5. On 10 May 2012, the Ombudsman sent a Report to EMSA containing his findings from the visit as well as the following suggestions⁶:

a. The Ombudsman considered 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 were of course available on the website. It was not clear, however, whether or not these could be used to request access to documents. The Ombudsman stated that this could be usefully clarified on the relevant page of the Agency's website.

b. In light of the Agency's commitment to openness, and to the application of Regulation 1049/2001⁷, the Ombudsman suggested 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.

c. The Ombudsman noted that he has received virtually no complaints relating to recruitment procedures conducted by EMSA. Accordingly, the Ombudsman concluded that the level of transparency towards candidates about decisions taken by selection boards was sufficient. He encouraged EMSA to continue to pursue that policy in recruitment matters. He also asked 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.

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 stated that he would welcome it if, in responding to his report, EMSA were to refer to, and report on, any recent developments in this respect.

e. The Ombudsman considered 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 Regulations 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*

⁶ For a more detailed account of the visit and the Ombudsman's findings and suggestions, see the Report of the European Ombudsman following his visit to the European Maritime Safety Agency (EMSA) - OI/13/2011/(JSA)JF, available at:

<http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/11616/html.bookmark>

⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



forma basis. The Ombudsman suggested that the Agency forward to him 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 follow-up given by EMSA to the Ombudsman's suggestions

6. EMSA replied to the report on 19 July and 12 December 2012. It explained the follow-up action it took after the Ombudsman made his suggestions and outlined its position on each of the Ombudsman's suggestions as follows.

As regards suggestion **a.**, EMSA stated that it will update its website with clear information as to how a member of the public can request access to documents held by it and that it will also make available a specific form for such requests.

EMSA welcomed suggestion **b.** and stated that it would examine how best to establish a public register of documents. Once it implemented the obligations relating to the public register of documents, EMSA would be in a position to report annually on the cases in which it refuses to grant access to documents, if any.

In respect of suggestion **c.**, EMSA confirmed that it informs all candidates that they may complain to the Ombudsman if they disagree with the procedures applied, or the decisions taken, by selection boards. It stated that it will update its website to list the different redress mechanisms available in case of disputes, namely, the Court of Justice of the European Union and the European Ombudsman.

Regarding suggestion **d.**, EMSA explained that its updated 'Guidelines for Tenderers' have been available on its website since January 2012. These guidelines provide for some general instructions on how to submit tenders in the framework of the procurement procedures organised by EMSA. They also include a clear reference to two different redress mechanisms available in case of disputes, namely, the Court of Justice of the European Union and the European Ombudsman.

With respect to suggestion **e.**, EMSA stated that it has taken a number of measures to avoid potential conflicts of interest. In addition to its Intranet webpage on Ethics and Conduct, EMSA organises compulsory training on ethics and integrity for its staff, thereby ensuring that they are aware of matters relating to ethical conduct and conflicts of interest. As regards its recruitment and procurement procedures, EMSA explained that it has developed training and processes aimed at avoiding any potential conflicts of interest. Relatedly, members of selection boards and of evaluation committees sign declarations of absence of conflicts of interest. The Chairs of selection and procurement committees systematically check all signed declarations of absence of conflicts of interest. All relevant information in this respect is published both on EMSA's Intranet and in EMSA's manual. EMSA further informs its staff of their obligations resulting from the Staff Regulations of the Officials of the European Communities, namely, in respect of activities outside EMSA and when leaving the Agency. Finally, EMSA has adopted specific guidelines applicable to its staff members who conduct assessments or inspections. These guidelines provide for a declaration of absence of conflicts of interest. EMSA stated that it



is aware of the importance of good and up-to-date policies and procedures on the subject of conflicts of interest and is therefore making sure that all relevant documents are updated whenever needed. Recently, EMSA updated and communicated to its staff its guidelines on gifts and hospitality.

The Ombudsman's analysis and conclusions

The Ombudsman's assessment

7. In respect of suggestion a., the Ombudsman notes that, on its 'Documents' webpage⁸, EMSA states that it applies Regulation 1049/2001 when dealing with requests for public access to documents and that such requests should be submitted to it by ordinary mail or through a document request form⁹, which EMSA also makes available on its website¹⁰. The Agency has thus clarified the means available to the general public for requesting access to its documents.

As regards suggestion b., the webpage containing the 'EMSA documents request form' also includes a link to a decision adopted by EMSA's Administrative Board on 19 March 2013¹¹ according to which, the Agency is to provide access to a register of documents containing "*the title of the documents and other useful references to identify the document*". The aim of this register is to assist the public in finding specific EMSA documents¹². While the Ombudsman did not find on EMSA's website a specific, formal 'Registry of documents' section, he notes that the 'Documents' webpage provides for direct links to legislative and financial texts, reports on workshops, and documents issued by EMSA's Administrative Board. In respect of the latter documents, the Ombudsman notes that the public may obtain direct access to a number of identified decisions and minutes of meetings of that board by selecting the desired document from the scroll-down menu which appears under the heading 'What document are you looking for?'¹³. EMSA's legislative and financial documents are referred to by title and date and may be downloaded directly by clicking on the links to the desired texts¹⁴. Finally, the reports on various workshops organised by EMSA or attended by its staff are available in

⁸ <http://www.emsa.europa.eu/emsa-documents/access-to-documents.html>

⁹ "EMSA provides access to many key documents relating to the Agency on its website. Please note that a request to access to documents may fall under the exceptions provided for in Articles 4 and 9 of Regulation 1049/2001.

Requests for documents may be submitted:

by filling out a document request form

by ordinary mail to

European Maritime Safety Agency (EMSA)

Cais do Sodré

1249-206 Lisbon, Portugal..."

¹⁰ <http://emsa.europa.eu/emsa-documents/access-to-documents/document-request.html>

¹¹ Decision of the Administrative Board of 19 March 2013 amending the Decision of the Administrative Board concerning the arrangements to be applied by the Agency for public access to documents of 25 June 2004.

¹² "Article 8 - measures facilitating access to documents..."

1. In order to make the right of access provided for in Regulation 1049/2001 effective, the Agency shall provide access to a register of documents. The register shall be accessible in electronic form on the Agency website.

2. The register shall contain the title of the documents and other useful references to identify the document. The aim of the register is to assist the public in finding specific documents. If a document is published, there shall be a link to the document in question."

¹³ <http://emsa.europa.eu/who-are-we/admin-board/ab-menu-documents.html>

¹⁴ Legislative texts: <http://emsa.europa.eu/emsa-documents/legislative-texts.html>

Financial texts: <http://emsa.europa.eu/emsa-documents/financial-documents.html>



chronological order and may also be downloaded¹⁵. In light of the foregoing, the Ombudsman considers that EMSA has taken measures to establish a register of documents and trusts that it will be able to have a fully-functional, formal register of documents in the future, which will also enable it to report on the documents to which it refuses access, if any.

Regarding suggestion c., in its 'General Information for Recruitment' webpage¹⁶, EMSA clearly explains that applicants for its recruitment procedures may complain to the European Ombudsman¹⁷. While he notes that the Ombudsman's postal address indicated by EMSA is no longer correct (though this may easily be rectified)¹⁸, EMSA does indeed refer to the Ombudsman in the information it makes available to applicants for vacancies within the Agency. The Ombudsman trusts that EMSA will update that information soon so as to also include a reference to the Civil Service Tribunal, in accordance with the assurances it gave him during the inquiry.

While confirming his conclusion (based on EMSA's previous explanation that candidates receive a letter indicating the name of the chairperson and the fact that the Ombudsman has received virtually no complaints about recruitment procedures conducted by EMSA) that the level of transparency and the information the Agency provides to candidates about decisions taken by selection boards is sufficient¹⁹, the Ombudsman points out that the Agency does not appear to publish on its website the names of the members of selection boards. In this respect, he notes that the issue of the disclosure of the names of selection board members has raised a number of questions in the context of his visits to the different agencies. Some of the agencies have sought guidance from the Ombudsman as to the best approach to be adopted in this respect²⁰. The Ombudsman considers that the best way forward is to open an own-initiative inquiry concerning the issue of disclosure of the names of selection board members and, in view of the subject matter, the Ombudsman will include in his inquiry all EU agencies, and therefore also EMSA.

With respect to suggestion d., the Ombudsman examined EMSA's 'Guidelines for Tenderers submitting a tender in the framework of a procurement procedure organised by the European Maritime Safety Agency', adopted in January 2013 and available on EMSA's 'Calls for Tenders' webpage. In those guidelines, EMSA clearly identifies the European Ombudsman as one of the

¹⁵ <http://emsa.europa.eu/workshops-a-events/188-workshops.html>

¹⁶ <http://www.emsa.europa.eu/recruitment-info.html>

¹⁷ "[A]pplicants can make a complaint to the European Ombudsman at the following address:
European Ombudsman
1 Avenue du Président Robert Schuman 0 BP 403
F-67001 Strasbourg Cedex
France"

¹⁸ The correct address is:
European Ombudsman
1 avenue du Président Robert Schuman
CS 30403
F - 67001 Strasbourg Cedex
FRANCE

¹⁹ See paragraphs 24 to 26 of the Report of the European Ombudsman following his visit to the European Maritime Safety Agency (EMSA) - OI/13/2011/(JSA)JF, available at: <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/11616/html.bookmark>

²⁰ See, for instance, the follow-up given by the European Network and Information Security Agency following the European Ombudsman report - OI/11/2012/ANA, available at: <http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/49236/html.bookmark>



'Remedies' available to tenderers, together with the General Court of the European Union.

As regards suggestion e., EMSA enclosed with its replies a copy of announcements published on its Intranet drawing staff's attention to their obligations to avoid the appearance of conflicts of interest, attend training sessions on Ethics and Integrity, and apply the Code of Good Administrative Behaviour²¹. EMSA also enclosed a 'Declaration of the Selection Board of confidentiality and of absence of conflict of interest', to be signed by the chairpersons of recruitment selection boards²². It further provided a copy of a declaration requiring staff to respect its obligations upon departure from the Agency²³, and of a form to be filled in by staff wishing to engage in further occupations²⁴. EMSA also enclosed its internal policy document in respect of potential conflicts of interest during safety assessments and inspections²⁵, which provides, in sum, that EMSA may not appoint a staff member to conduct inspections in the organisations with which that staff member has a working or a family connection, or any other interest liable to affect his or her judgement²⁶.

²¹ "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 can 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 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...

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**..."

²² "I the undersigned, ... acting as a Chairman of the Selection Board for the vacant position ..., 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 ..."

²³ "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 declare also to have taken note that any professional activity must receive prior authorisation from the appointing authority, and I am obliged, in this respect, to seek approval from EMSA."

²⁴ 'Application for authorisation to engage in an occupation after leaving EMSA Article 16 of the Staff Regulations'.

²⁵ Decision No. 2012/16 of the Executive Director concerning a policy for the avoidance of conflicts of interest in safety assessments and inspections.

²⁶ Article 2 of Decision No 2012/16 provides that "(1) [c]onflicts of interest may occur when EMSA staff members visit, for the purpose of an inspection:

- a) Public and/or private organisations they have worked for ...;
- b) Organisations hierarchically linked to the organisations in (a) ...;
- c) Organisations in which they have a commercial interest ...;
- d) Ships belonging to a Member State's Administration ... 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 it may be considered to potentially impair their objectivity and due care during the inspection.



This internal policy document includes a declaration to be signed by staff participating in inspections²⁷. Finally, EMSA provided a copy of its 'Guidelines on Conflict of Interest', published on its Intranet (the 'Guidelines'). The Guidelines offer detailed explanations as to the obligations of EMSA staff in situations where conflicts of interest may potentially arise, namely, (i) outside activities during employment; (ii) professional activity during leave on personal grounds; (iii) activities after leaving the Agency; (iv) receiving a decoration; (v) gifts and hospitality; (vi) employment of spouses; (vii) publishing of articles and speeches; (viii) participating in electoral campaigns; (ix) exercising an elective public office; (x) personal interests which could impair a staff member's impartiality; and (xi) giving evidence in and/or immunity from legal proceedings²⁸. The Ombudsman considers that all the above documents and actions sufficiently ensure EMSA's compliance with his suggestion²⁹.

Conclusion

On the basis of his inquiry, the Ombudsman closes it with the following conclusion:

The Ombudsman welcomes the fact that EMSA implemented the suggestions made after his visit to the Agency.

Since the issue of the disclosure of the names of selection board members has raised a number of questions in the context of his visits to the different agencies and some of the agencies have sought guidance from the Ombudsman as to the best approach to be adopted in this respect³⁰, the Ombudsman will open an own-initiative inquiry concerning the issue of disclosure of the names of selection board members and, in view of the subject matter, he will also include EMSA in his inquiry.

The Executive Director of EMSA will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 05-06-2013

(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 appointment or if there is a right of return to employment with that organisation...

²⁷ "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 [EMSA] should such circumstances arise in the future...

I undertake to make [EMSA] 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...

²⁸ Articles 5.1 to 5.11 of the Guidelines.

²⁹ The Ombudsman notes that, according to the 'Declaration of the Selection Board of confidentiality and of absence of conflict of interest', that declaration is signed by the chairpersons of recruitment selection boards. The Ombudsman trusts that similar declarations are also signed by the remaining members of selection boards.

³⁰ See, for instance, the follow-up given by the European Network and Information Security Agency following the European Ombudsman report - OI/11/2012/ANA, available at:

<http://www.ombudsman.europa.eu/en/activities/visitreport.faces/en/49236/html.bookmark>